Federal Court Cour fédérale

Date: 20241004

Docket: IMM-10708-23

Citation: 2024 FC 1566

Ottawa, Ontario, October 4, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SHAMMAH ABDULLAHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Abdullahi [the Applicant] seeks judicial review of a decision of a Senior Immigration Officer dated January 16, 2023, rejecting his Pre-Removal Risk Assessment [PRRA] application.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the Applicant has discharged his burden

and demonstrated that the decision is unreasonable. For the reasons that follow, this application for judicial review is granted.

II. Background Facts

[3] The Applicant is a Ghanaian citizen identifying as a gay man. He entered Canada on April 8, 2017. He presented a refugee claim on June 6, 2018, in which he alleged to fear for his life and safety in his home country due to his sexual orientation.

[4] In a decision dated July 13, 2018, the Refugee Protection Division [RPD] ruled that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2002, c 27 [IRPA], finding him not to be credible. The Applicant appealed this decision to the Refugee Appeal Division [RAD], which confirmed the RPD in a decision dated August 30, 2019. The RAD found that the Applicant had again not established his credibility nor proven on a balance of probabilities that he is homosexual or perceived to be homosexual in his home country. On December 14, 2019, this Court dismissed his application for leave and judicial review of the RAD's decision.

[5] The Applicant submitted a PRRA application on March 22, 2022, claiming that his situation had evolved since his RPD and RAD claims. At the time of the RPD and RAD decisions, he had only started dating Mr. Ilias, a permanent resident [PR] of Canada. The Applicant now claims that Mr. Ilias has become his long-term partner and are living together, and that Mr. Ilias is in the process of submitting an application for spousal sponsorship of the Applicant. In the context

of a PRRA, the Applicant claimed that this was a new element to be considered in light of the persecution of homosexual men in his home country.

[6] In support of his PRRA application, the Applicant and his partner submitted affidavits, along with the partner's PR card, photos of the couple in Montréal, letters of support from individuals aware of the relationship, proof of cohabitation, and proof of joint financial dependence. The Applicant claimed that none of this evidence was available at the time of the decisions of the RPD and RAD, and that it was thus "new evidence" pursuant to paragraph 113(a) of the IRPA.

III. Decision Under Review

[7] The Senior Immigration Officer denied the PRRA application and refused to admit the evidence about the Applicant's long-term relationship with Mr. Ilias. The information contained in the items submitted as "new evidence" was deemed to have been materially the same as the evidence presented to the RPD and RAD.

[8] The Officer noted that the RPD and RAD were aware of the Applicant's relationship, as he testified before the RPD to have been dating Mr. Ilias for two years at that point. Mr. Ilias himself had not testified at the hearing, swearing in his affidavit that they were "just dating [at the time] and felt it was just too much" (Exhibit C, Applicant's Record at 54). The relationship in 2018 had not yet reached the degree of commitment now alleged at the time of the PRRA application in 2022 (Exhibit C, Applicant's Record at 54–55).

[9] The Officer ruled that the relationship itself was not new evidence. The letters purporting to be new evidence and the information contained within them were similarly deemed to have been reasonably available or could have been reasonably presented to the RPD or RAD for consideration at the time of their decisions.

[10] Having considered the documentary evidence on the persecution of homosexual men in Ghana, the Officer then concluded that the material was too general in content and failed to rebut the credibility findings made by the RPD and RAD.

[11] Overall, the Officer concluded that the Applicant had materially restated the same information that he presented to the RPD and RAD, not presenting any new evidence nor rebutting the panels' credibility findings. On a balance of probabilities, the Officer found that it is not likely that the Applicant would be at risk of torture, a risk to life, or inhumane treatment upon returning to Ghana.

IV. Issues and Standard of Review

[12] The issues before this Court are the following:

A. Is the Officer's assessment of the new evidence reasonable?

B. Did the Officer make veiled credibility findings, thus raising an issue of procedural fairness?

[13] The standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid

judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. The Officer unreasonably ruled that the evidence was not new and therefore inadmissible

[14] New evidence submitted in the context of a PRRA application must satisfy one of the criteria listed at paragraph 113(a) of the IRPA, which provides the following:

Consideration of application	**Examen de la demande**
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet.

[15] If the new evidence meets one of the criteria above, the evidence must then also meet the conditions of admissibility identified in the jurisprudence, being credibility, relevance, newness, and materiality (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13; see also *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 38, 43–47).

[16] In this case, the Officer rejected the new evidence because the Applicant’s relationship had already been raised before the RPD and RAD. Despite the relationship having become more serious since then, the Applicant had already testified that he was dating Mr. Ilias prior to the rejection of his claims. The evidence was therefore not new.

[17] In my view, it was unreasonable for the Officer to rule that the evolution of the Applicant’s relationship with Mr. Ilias did not constitute new evidence. Before the RPD and RAD, the relationship between the Applicant and Mr. Ilias was presented as “just dating” (Applicant’s Record at 9). The two were romantically involved, but lived in separate apartments. The stage of their relationship was such that, according to Mr. Ilias, testifying about their relationship before the RPD and RAD “felt [like] it was just too much” (Exhibit C, Applicant’s Record at 54). Though involving a romantic relationship between the same two people, the situation in 2022 was presented as having taken “the next step” (Exhibit C, Applicant’s Record at 54). The Applicant alleged and submitted evidence to the effect that they now lived together and shared a joint bank account (Applicant’s Record at 8).

[18] While romantic involvement between the Applicant and Mr. Ilias was presented before the RPD and RAD panels, the evidence submitted for the Officer’s consideration purports to show a relationship of a different and more committed nature. The evidence related to this partnership is new insofar as the relationship evolved after the rejection of the Applicant’s claims, and could therefore not have been presented to the panels. This evolution post-dates the decisions made by the RPD and RAD, even if it relates to a relation that existed prior to the RPD decision (*Aboubakar v Canada (Citizenship and Immigration)*, 2023 FC 451 at para 14).

[19] Of course, the mere passing of time does not in itself make evidence "new" in the context of a PRRA application: "it is not just the date of [this information] that is important, but whether the information is significant or significantly different than the information previously provided" (*Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at para 22).

[20] However, there is a genuine difference between "just dating" and being someone's long-term partner. This difference is not reducible to mere time. It is also a question of reliance, dependence, and attachment between two people. Such is the protection that Canadian immigration law reserves for "an individual who is cohabiting with [a] person in a conjugal relationship, having so cohabited for a period of at least one year," as opposed to individuals in a more casual relationship (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s 1; IRPA, s 12(1)). What the law offers to common-law partners is not offered to inchoate romantic interests; it treats these two forms of attachment as significantly different.

[21] While the relationship itself was indeed alleged to have existed at the time of the Applicant's failed refugee claims, nothing precludes the possibility of new events arising within the context of that relationship. Relationships change, and these changes can be relevant and material to the kind of analysis conducted in a PRRA application.

[22] The specific fact of a relationship having already existed is not determinative; it is the fact of the relationship having become serious that is relevant to the Applicant's PRAA application and claim for protection. That evidence ought to have been considered by the Officer in its determination of the Applicant's risks of persecution on that ground. A long-term

relationship with a male partner, as opposed to casual and private romantic involvement, is what could create or increase a potentially dangerous situation for the Applicant upon his return to Ghana, where homosexuality is a crime.

[23] The Officer's failure to engage with this new evidence renders its analysis unreasonable. This misstep is not minor, superficial, or peripheral to the merits of the decision (*Vavilov* at para 100). Rather, it is the omission of important and contradictory evidence at the core of the Applicant's "important and numerous credibility issues" (Applicant's Record at 9).

[24] By refusing to admit this new evidence, the Officer conducted their analysis without the information that could have rebutted the lack of credibility findings of the RPD and RAD relating to the Applicant's alleged homosexuality. It is open for an Officer to determine that this information does not in fact rebut the RPD and RAD's negative credibility findings, but the Officer must conduct this analysis in light of all of the evidence before them.

[25] Absent such an analysis being undertaken by the Officer, the Court cannot substitute "its own reasons in order to buttress the administrative decision" (*Vavilov* at para 96). The Court has lost confidence in the administrative decision making process, and for this reason, the decision is unreasonable and must be sent back for redetermination.

B. The potential veiled credibility findings

[26] The Officer’s unreasonable refusal to admit the new evidence is sufficient to render their decision unreasonable as a whole. It is therefore unnecessary for the Court to discuss the matter of veiled credibility findings in this case.

VI. Conclusion

[27] The application for judicial review is granted. The decision is set aside and the matter is remitted for redetermination before a different Officer.

[28] The parties have not proposed questions for certification and I agree that none arise in this case.

JUDGMENT in IMM-10708-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision is set aside and the matter is remitted for redetermination before a different Officer.
3. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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