

Federal Court



Cour fédérale

**Date: 20180514**

**Docket: IMM-4988-17**

**Citation: 2018 FC 505**

**Ottawa, Ontario, May 14, 2018**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**JULIO CESAR REIS ANDRADE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This judicial review is in respect of a decision of the Refugee Appeal Division [RAD] to not admit “new evidence” pursuant to s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]:

**110 (4)** On appeal, the person who is the subject of the appeal may present only

**110 (4)** Dans le cadre de l’appel, la personne en cause ne peut présenter que des

evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[2] The RAD dismissed the appeal and confirmed the decision of the Refugee Protection Division [RPD] holding the Applicant not to be a Convention refugee.

[3] The Applicant argues that a doctor's letter and four news articles which were published before the RPD decision were not reasonably available or the Applicant could not have been expected to have presented them to the RPD before the decision.

## II. Background

[4] The Applicant, a citizen of Brazil, filed a refugee claim on the basis of being gay and targeted by a Brazilian criminal organization. He later amended his claim to include a fear of persecution on the basis of being HIV positive and a member of a social-religious organization.

[5] The RPD hearing was on November 21, 2016, the Applicant filed post-hearing submissions on December 2, 2016, and the RPD dismissed his claim on January 12, 2017.

[6] In the Applicant's RAD proceeding, he attempted to file eight additional documents. The RAD admitted one document, part of the National Documentation Package for Brazil, but denied the request to admit the other seven documents.

[7] The Applicant now concedes that two of the documents that he sought to admit as new evidence did not fall within s 110(4). The five remaining documents are a letter from a doctor and four news articles ranging in dates from December 15, 2016 to January 2, 2017.

[8] The RAD rejected these five documents on finding that they were all dated prior to the RPD's rejection of the claim and/or contained no truly "new" information.

### III. Analysis

[9] As held in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29, [2016] 4 FCR 230, the standard of review with respect to new evidence is, generally, reasonableness.

[10] I cannot find anything unreasonable in the RAD's consideration and conclusion on this matter.

[11] The doctor's letter was vague and unclear as to when it could have been available. Information is not necessarily "new" just because it is expressed in a document dated after the RPD decision. The doctor had been treating the Applicant since shortly after his HIV diagnosis. The information, such as it was, expressed in the doctor's letter could have been available sooner – most particularly for the original hearing.

[12] The Applicant had 53 days between the RPD hearing and the rejection decision. It was not unreasonable to view this time period as more than sufficient to file this evidence.

[13] As to the news articles, the fact that one of them was in Portuguese was no bar to submitting it prior to the decision or, at the bare minimum, advising the RPD that it existed and generally what it said, along with an undertaking to file a translation as soon as possible.

[14] The only document that raises the possibility of admissibility is a January 2, 2017 news article that was published only shortly before the RPD decision. Whether it was “click bait” or not, the information it contains is basically the same as another article submitted by the Applicant which was published November 2, 2016. It was reasonable to conclude that the information in the article was not “new” in the sense of s 110(4).

[15] For these reasons, I conclude that the RAD’s rejection of this evidence as not falling within s 110(4) was reasonable.

#### IV. Conclusion

[16] This judicial review will be dismissed.

[17] There is no question for certification.

**JUDGMENT in IMM-4998-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Michael L. Phelan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4988-17

**STYLE OF CAUSE:** JULIO CESAR REIS ANDRADE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MAY 7, 2018

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** MAY 14, 2018

**APPEARANCES:**

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