

Federal Court



Cour fédérale

Date: 20200506

Docket: IMM-5094-19

Citation: 2020 FC 594

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 6, 2020

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

AHMAT GONI BICHARA FATIME

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Ahmat Goni Bichara Fatime is applying for judicial review of a decision by the Refugee Appeal Division [RAD] to dismiss her appeal of a negative decision of the Refugee Protection Division [RPD]. The RPD found that the applicant's account was not credible and denied her refugee status.

[2] The applicant is arguing before the Court that the RAD did not conduct its own analysis of the evidence presented in support of her claim for refugee protection and that it violated a principle of procedural fairness by not giving her an opportunity to respond to its concerns about the medical report submitted to the RPD, which were concerns that the RPD did not raise.

II. Facts

[3] The applicant is a citizen of Chad and is of Arab ethnicity.

[4] She alleges that on the evening of July 2, 2017, at the printing company where she worked, she was intercepted by a client who abducted her and took her to an abandoned villa where he beat and raped her. He beat her hands, feet and face, and stabbed her in the leg.

[5] Following this attack, the applicant managed to leave the villa and went to the hospital by taxi. She was treated, received a prescription for anti-inflammatories and painkillers, and was able to return home.

[6] A few days later she returned to the hospital because she was unable to eat and speak, and an X-ray revealed that her jaw was fractured.

[7] Her attacker returned to the printing company on July 24, 2017, to threaten her, but since she was not alone, he did not persist and left the premises.

[8] After this incident, the applicant found refuge with her grandfather who lived in Djikhémé and applied for a United States visa. She left Chad for the United States on September 13, 2017. She did not seek asylum in the United States because of current United States government policies, and entered Canada on September 17, 2017, to claim refugee protection.

III. Impugned decision

[9] In its short decision rendered on July 19, 2019, the RAD stated that its role is to conduct its own analysis of the case using the standard of correctness, except where the RPD has an advantage over it in assessing the credibility of witnesses. The RAD stated that it listened to the recording and found no error in the RPD's appreciation of the evidence.

[10] After stating a number of generalities, the RAD was of the opinion that the RPD clearly expressed the contradictions and gaps in the applicant's testimony and that its decision leads to the conclusion that the very existence of the alleged rape "is highly questionable".

[11] Its own analysis of the applicant's account and supporting evidence is set out in the following two paragraphs:

[9] Based on my own analysis of the record, the RPD did not err in concluding that the appellant failed to establish, on a balance of probabilities, that she suffered the injuries she claims to have suffered. In fact, as the RPD noted, there are contradictions between her written account in her Basis of Claim Form (BOC Form), her testimony, and the two medical documents she submitted. I would add that, on its face, the medical certificate is deficient in its very form, which casts doubt on its authenticity. Clearly, this is a document that was written on a computer, with no letterhead clearly

identifying the hospital. Moreover, the letter “T” is missing in the French word “travail” that is part of the national motto for the country.

[10] In my opinion, it is open to me to find that there is another credibility issue without giving the appellant the possibility to explain herself, because her credibility is not a *new issue* in this appeal.

[12] The RAD finished by concluding that, in light of all the evidence, the documentary evidence regarding the situation of women in Chad also does not lead to a conclusion that she would be personally at risk should she return to her country.

IV. Issues and standard of review

[13] This application for judicial review raises the following issues:

A. Is the RAD’s decision inherently logical?

B. Did the RAD violate a principle of natural justice or procedural fairness?

[14] The standard of review applicable to the first issue is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 16–17, 23).

However, since the Supreme Court of Canada did not specifically rule on the analysis of an alleged breach of procedural fairness in *Vavilov*, the previous case law remains relevant, and if the Court finds that there has been such a breach, the decision must be set aside and the record referred back to the RAD for reconsideration.

V. Preliminary objection

[15] The respondent argues that the applicant's application for leave was filed out of time, five days after the expiry of the time limit prescribed by paragraph 72(2)(b) of the *Immigration and Refugee Protection Act*, and without a valid explanation.

[16] However, since the application for leave was granted by Justice Yvan Roy, I am of the opinion that he has disposed of this matter and that this application for judicial review can be decided on its merits.

VI. Analysis

A. *Is the RAD's decision inherently logical?*

[17] It is important to note that the RAD decision predates *Vavilov*, in which the Supreme Court provides a rigorous and detailed analytical framework for the benefit of courts reviewing the decisions of administrative tribunals on the standard of reasonableness, with particular emphasis on the culture of justification.

[18] Where reasons are required, they are the primary mechanism by which administrative decision makers show that their decisions are reasonable (*Vavilov*, at para 81).

[19] The RAD has an obligation to conduct its own analysis of the refugee protection claim before it, while focusing on the errors identified by the appellant (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, at para 103). While it must conduct its own analysis of

the record, it also has an obligation to reach its own conclusions and provide its own justification.

[20] However, the only response that the RAD offers to the applicant's arguments and to the errors she identified in her Memorandum of Fact and Law is the following:

. . . as the RPD noted, there are contradictions between her written account in her Basis of Claim Form (BOC Form), her testimony, and the two medical documents she submitted.

[21] A decision that contains no internally coherent and rational chain of analysis cannot be justified in relation to the facts and the law that constrain the decision maker (*Vavilov*, at para 85). The RAD cannot simply state that it sees no error in the RPD's findings. It must state the reasons why it comes to the same conclusion as the RPD and why it rejects an appellant's submissions. In my opinion, this means that its decision must be inherently logical and independent of the RPD's decision.

[22] The RAD's decision is neither of these things, and it does not allow the Court to determine whether it can be justified in relation to the facts and the law that constrain it. I am of the opinion that it therefore lacks the attributes of justification.

B. *Did the RAD violate a principle of natural justice or procedural fairness?*

[23] The only portion of the RAD decision where there is any real, albeit short, analysis of the evidence concerns the medical report of July 2, 2017. The RAD concluded that there are deficiencies in its form that cast doubt on its authenticity. Since no such doubt was raised by the

RPD, the applicant argues that the RAD should have given her the opportunity to address its concerns and that its failure to do so constitutes a breach of procedural fairness.

[24] I do not agree with the applicant in this regard.

[25] However, I share the opinion recently expressed by Justice Peter G. Pamel in *Akram v Canada (Citizenship and Immigration)*, 2020 FC 143, as follows:

[17] . . . Although the RAD offers scant explanation for this finding, it does not constitute a breach of procedural fairness. As noted by the Court in *Oluwaseyi Adeoye v Canada (Citizenship and Immigration)*, 2018 FC 246, at para 13: “There is no procedural fairness issue when the RAD finds an additional basis to question the Applicant’s credibility using the evidentiary record before the RPD.” Similarly, in *Marin v Canada (Citizenship and Immigration)*, 2018 FC 243, Justice Mosley stated that:

[37] The RAD can make independent credibility findings, without putting them to the Applicant and giving him an opportunity to make submissions: *Koffi*, above at para 38; see also *Ortiz*, above at para 22. In other words, the failure to give an applicant an opportunity to respond to a credibility finding does not necessarily constitute a breach of procedural fairness.

[18] The RAD may independently assess the documentary evidence or make credibility findings.

[19] This is not a case where the RAD raised a new question or issue and identified additional arguments and reasoning, going beyond the RPD decision under appeal, without affording the appellant an opportunity to respond to them. [Citations omitted.]

[26] I am of the opinion that the RAD could make a new negative finding with respect to the documentary evidence filed before the RPD by the applicant herself.

[27] The applicant's argument is therefore rejected.

VII. Conclusion

[28] While there was no breach of the principles of natural justice or procedural fairness, the RAD decision does not have the attributes of a reasonable decision as it is not inherently rational and logical. The application for judicial review is therefore allowed, and the record is referred back to the RAD for reconsideration.

[29] The parties have not proposed any question of general importance for certification, and I am of the view that no such question arises from the facts of this case.

JUDGMENT in IMM-5094-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed, and the record is referred back to the RAD for reconsideration.
2. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
This 12th day of May 2020.
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5094-19

STYLE OF CAUSE: AHMAT GONI BICHARA FATIME v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 11, 2020

JUDGMENT AND REASONS: GAGNÉ ACJ

DATED: MAY 6, 2020

APPEARANCES:

Stéphanie Valois

FOR THE APPLICANT

Evan Liosis

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stéphanie Valois
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT