

Federal Court



Cour fédérale

Date: 20210604

Docket: IMM-3933-20

Citation: 2021 FC 551

Ottawa, Ontario, June 4, 2021

PRESENT: Madam Justice Walker

BETWEEN:

SHEQUELLA WILLIAMS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Shequella Williams is a citizen of the Bahamas. She seeks judicial review of a July 30, 2020 decision of the Refugee Appeal Division (RAD) confirming the refusal of her refugee claim. The RAD agreed with the Refugee Protection Division (RPD) that the Applicant has a viable internal flight alternative (IFA) in Freeport, Bahamas.

[2] Ms. Williams' application for judicial review will be allowed. Although I have found that the RAD reasonably refused to admit her 2019 affidavit as new evidence, its analysis of the identities and motivation of Ms. Williams' alleged agents of persecution and failure to consider material evidence are reviewable errors.

I. Context

[3] Ms. Williams came to Canada in March 2017 because she feared persecution from her now ex-boyfriend's family in the Bahamas. She requested refugee protection in Canada pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

[4] In the Bahamas, Ms. Williams lived in Nassau with her ex-boyfriend. In February 2017, she went with him to the airport to pick up a package. Ms. Williams and her ex-boyfriend were arrested at the airport because the package contained an illegal shipment of ammunition from the United States. Ms. Williams was ultimately acquitted but her ex-boyfriend was convicted of the charge and received a six-year jail sentence.

[5] Ms. Williams alleges that her ex-boyfriend's family broke into her apartment and stole her belongings and car while she was in prison. She also states that the family began to threaten and harass her, telling her to be afraid for her life. Ms. Williams attempted to report the break-in to the police but they refused to act until her father intervened. When she tried to report the threats and harassment, the police took no action.

[6] Subsequent to her departure from the Bahamas, Ms. Williams learned that two of her ex-boyfriend's associates, whom she believed were connected to his illegal activities, were killed.

[7] The Refugee Protection Division (RPD) rejected Ms. Williams' refugee claim on December 6, 2018 on the basis that she has a viable IFA in Freeport, Bahamas.

[8] On appeal to the RAD, Ms. Williams argued that the RPD erred in its assessment of the ability and motivation of her alleged agents of persecution to pursue her in Freeport and in its conclusion that she has a viable IFA. She based her argument in part on the small size and closely interconnected population of the Bahamas. Ms. Williams also argued that the RPD used the wrong standard of proof in considering her risk in Freeport.

[9] Ms. Williams submitted new evidence to the RAD in support of her appeal and requested an oral hearing.

II. The RAD decision

[10] The RAD reviewed the new evidence Ms. Williams had submitted pursuant to subsection 110(4) of the IRPA and admitted a 2018 Report of the Special Rapporteur on Violence against Women (2018 Report). The member excluded Ms. Williams' affidavit dated February 8, 2019, a 2014 Report of the Special Rapporteur on Trafficking in Persons (2014 Report), and a Bahamian news story regarding witness protection programs from 2010. At issue in this application is the exclusion of Ms. Williams' affidavit.

[11] Turning to the substance of the decision, the RAD cited the two-prong test for a viable IFA set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*). The RAD's analysis focused on the first prong of the test as Ms. Williams had not contested the RPD's finding that it would not be unreasonable for her to re-establish herself in Freeport.

[12] Ms. Williams' primary submission on appeal was that the RPD's IFA finding was flawed for two reasons. She argued that the RPD erred in its assessment of both the ability of her alleged agents of persecution to pursue her to Freeport and the related issue of the small size and closely connected population of the Bahamas.

[13] The RAD found that Ms. Williams had not established who her alleged agents of persecution are or that they have the motivation or resources to find and pursue her to Freeport. The panel stated that Ms. Williams provided very little detail as to the profiles, connections, resources and motivation of her alleged persecutors. Regarding any ongoing threat from the ex-boyfriend, the RAD found that Ms. Williams gave no details about her ex-boyfriend's relationship to the individuals she alleged were associates or any connection between her, her ex-boyfriend and the killings. The RAD stated that Ms. Williams' assertion that the deaths were connected to her risk of persecution was speculative.

[14] The RAD acknowledged Ms. Williams' evidence that the Bahamas is a small country but stated that the size of a country is not determinative of the availability of an IFA. More important was Ms. Williams' failure to establish the profile of her alleged persecutors or their ability to

pursue her. In the course of considering the size of the Bahamas, the RAD referred to the government's difficulty in providing dedicated shelter for rescued victims of trafficking because of challenges in maintaining their safety and confidentiality. One of Ms. Williams' submissions in this application is that the RAD based its reference to victims of trafficking on the 2014 Report it had refused to admit as new evidence.

[15] Finally, the RAD disagreed with Ms. Williams' submission that the RPD applied the wrong standard of proof in determining her risk in Freeport. The RAD found that the RPD correctly applied the first prong of the *Rasaratnam* test when it concluded that there was no serious possibility of persecution or risk of harm to Ms. Williams in Freeport on a balance of probabilities. Ms. Williams has not challenged this aspect of the decision.

III. Issues and standard of review

[16] Ms. Williams submits that the RAD made reviewable errors in its assessment of the admissibility of her new evidence and her risk of persecution in the proposed IFA in Freeport. She also submits that the RAD committed a breach of natural justice in citing the wrong evidence in its decision. In this latter regard, Ms. Williams argues that the RAD's error must be reviewed for correctness but I disagree. The panel's reliance on the evidence in question is one aspect of its assessment of the evidence as a whole and does not raise a procedural issue.

[17] The merits of the RAD's decision regarding the availability of an IFA and its assessment of the new evidence will be reviewed for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship*

and Immigration), 2021 FC 430 at para 32). None of the situations identified by the Supreme Court in *Vavilov* for departing from the presumptive standard of review apply in this case. The RAD's refusal to admit Ms. Williams' affidavit as new evidence is also subject to review for reasonableness (*Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at paras 27-28).

[18] The Supreme Court in *Vavilov* set out guidance for reviewing courts in applying the reasonableness standard, emphasizing the importance of the decision maker's reasoning process and the outcome for the person affected by the decision (*Vavilov* at para 83). The hallmarks of a reasonable decision are an internally coherent and rational chain of analysis that is justified, transparent and intelligible in relation to the facts and law that constrain the decision maker (*Vavilov* at paras 85, 99; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 31). Such a decision is entitled to deference by a reviewing court.

IV. Analysis

Admissibility of Ms. Williams' affidavit dated February 8, 2019

[19] It is important to bear in mind as a starting point that an analysis of the admissibility of new evidence before the RAD begins with the premise that the appeal of an RPD decision is intended to be a paper-based appeal (*Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at para 59). A RAD appeal is not a second chance to submit evidence to answer weaknesses identified by the RPD (*Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at para 15):

[15] In other words, responding to an inadequacy identified by the RPD in a party's case cannot be a legitimate foundation for the

party to claim that had she known about the deficiency she could have presented better evidence that was always in existence from persons that could have been called, in this case from her cousin. This would make the RPD process a monumental waste of time, which is surely not Parliament's intention in providing appeal rights.

[20] Ms. Williams' affidavit addresses two factual matters: (1) Ms. Williams states that she had known her ex-boyfriend for over two years and that, although she does not know the identities of individuals within his family to whom he would have mentioned her, she is sure the family knows who she is. She notes that the couple were in the news in the Bahamas when they were arrested; and (2) Ms. Williams reiterates her testimony to the RPD concerning the small size of the Bahamas and the fact that everyone knows everyone. She also relates her experience visiting other Bahamian islands.

[21] Ms. Williams submits that the RAD unreasonably refused to admit her 2019 affidavit pursuant to subsection 110(4) of the IRPA. She argues that the affidavit contains details she cannot reasonably have been expected to explain to the RPD prior to receiving its decision. Ms. Williams states that the affidavit was intended to address specific, unanticipated findings made by the RPD.

[22] I am not persuaded by Ms. Williams' submissions and find that the RAD committed no reviewable error in refusing to admit her affidavit as new evidence.

[23] Ms. Williams was required to put her best foot forward before the RPD. As stated above, an appeal to the RAD is not an opportunity for an appellant to submit evidence to address

weaknesses in their case identified by the RPD (*Eshetie v Canada (Citizenship and Immigration)*, 2019 FC 1036 at para 33).

[24] There are two problematic aspects of the affidavit. First, it repeats elements of Ms. Williams' testimony before the RPD. The affidavit contains phrases that refer directly to her testimony, such as “[a]t my hearing, I testified that the Bahamas is [a] small place [...]” and, in reference to her experience living in the country, “which I explained in my testimony, I felt that I had adequately explained why I cannot move to another island and find safety that way”.

[25] Second, any new information in the affidavit addresses matters that were squarely before the RPD as part of its IFA analysis. I do not accept Ms. Williams' submission that she could not have anticipated specific elements of the RPD's final decision as sufficient to ground the admission of her evidence.

[26] The profile and ability of the ex-boyfriend's family to find Ms. Williams in the IFA was a focal point of the RPD's questions at the hearing. In its decision, the RPD referred to its question to Ms. Williams asking how the family would know she was in Freeport, located on a different island, and to her response that everyone was connected and her ex-boyfriend had family all over the Bahamas. The panel found that Ms. Williams did not testify she had ever met members of her boyfriend's family on other islands or that her ex-boyfriend had mentioned her name to his relatives. Ms. Williams' new evidence seeks to address this finding by stating that she is sure they know who she is given the length of their relationship.

[27] The RPD's conclusion that there was no evidence to establish how individuals in the ex-boyfriend's family might associate her with him was a direct result of inadequacies in Ms. Williams' testimony at the hearing. She cannot challenge this adverse conclusion with new evidence for the RAD.

[28] The information in Ms. Williams' affidavit regarding the size of the Bahamas and the connected nature of its population repeats the substance of her testimony before the RPD. The more detailed information in the affidavit relating to her travels within the Bahamas and her opinion that she had adequately explained why she could not safely move to another island is not new evidence within the purview of subsection 110(4) of the IRPA.

RAD's assessment of Ms. Williams' risk of persecution in Freeport

[29] Ms. Williams submits that the RAD failed to reasonably assess the violence and threats she experienced at the hands of her ex-boyfriend's family and the ability of family members to locate her in the IFA against the evidence before the RPD and the 2018 Report. She argues that the RAD erred in focussing only on the size of the country and did not consider the connected nature of the population. Ms. Williams states that it is this inevitable flow of information that is critical to her position that her agents of persecution will be able to track her to Freeport.

[30] The Respondent submits that Ms. Williams' submissions effectively ask the Court to re-weigh the evidence before the RAD. The Respondent argues that Ms. Williams gave only general statements about her ex-boyfriend's family that were insufficient to establish they could

and would find her. The RAD's conclusions regarding the profile, ability and motivation of Ms. Williams' alleged persecutors were comprehensive and reasonable.

[31] There are aspects of the RAD's analysis of the proposed IFA that are consistent with the evidence and justify specific findings in its decision. Most notably, Ms. Williams submits that the RAD unreasonably dismissed her evidence regarding her ex-boyfriend's criminal connections but I do not agree. First, Ms. Williams did not raise this issue in her appeal submissions to the RAD (*Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at paras 21, 32). Second, without doubt the ex-boyfriend himself has a history of criminality. However, Ms. Williams' evidence regarding the murders of two individuals with whom her ex-boyfriend associated does not assist her. As the RAD observed, she provides no evidence as to the identity of those responsible for the murders or whether the murders were in any way linked to her ex-boyfriend's activities. In addition, her general statement that his criminal associations heightened her fear of persecution is not persuasive.

[32] Ms. Williams also questions the RAD's assessment of the motivation of her ex-boyfriend and his family to continue their pursuit. She states that the fact she has not been subject to threats or harassment since she came to Canada does not indicate a lack of motivation in light of the past threats. I would not disturb the decision on this basis. It was open to the RAD to take into account the absence of recent threats as one element in its assessment of the possibility of renewed persecution and risk should Ms. Williams return to the Bahamas.

[33] In contrast, the RAD's statements questioning the identity of the alleged agents of persecution and their ability to find Ms. Williams in Freeport are neither intelligible nor consistent with the evidence. The RAD states that Ms. Williams "has not established on a balance of probabilities who the alleged agents of persecution are". The panel returns to this concern a number of times in the decision.

[34] Ms. Williams' evidence that her ex-boyfriend and his family, including his mother and his brother, were responsible for carrying out the intrusion into her apartment, the theft of her belongings and the ongoing threats and harassment, was unequivocal. In my view, her evidence was sufficient to establish the identity of the individuals responsible for the incidents in the Bahamas.

[35] I find that the RAD's insistence that the identities of Ms. Williams' alleged agents of persecution had not been established is a reviewable error. It is not justified against the evidence and undermines the panel's resulting analysis of the profiles and abilities of those agents. The RAD does not explain or qualify its statements that Ms. Williams had not shown who the alleged persecutors were. If the panel's concern was that she had not named members of the extended family on other islands who might take action against her, it was required to so state and to explain why the added detail was required.

[36] I also find that the RAD's conclusion that Ms. Williams had not established the profile and ability of her ex-boyfriend's family to track her to Freeport suffers from two material and related errors.

[37] First, the RAD failed to engage with the purpose and content of Ms. Williams' evidence regarding the small size and population of the Bahamas and its citizens' connections to each other. Ms. Williams did not submit this evidence to establish the size of the Bahamas is a determinative IFA consideration. Rather, the evidence was intended to demonstrate that the profile and ability of an agent of persecution to find someone in a country like the Bahamas need not be significant.

[38] I agree with the Respondent that the RAD made no error in stating that the size of a country is not determinative of the availability of an IFA or that Ms. Williams had provided little detail regarding individual members of her ex-boyfriend's family. However, the RAD failed to explain why a particular profile was required in the Bahamas in order to locate Ms. Williams in Freeport in light of her evidence. She explained to the RPD why the size of the country was important in her case but neither the RPD nor the RAD addressed this evidence, stating only that small size and population are not determinative factors.

[39] Second, in the course of its analysis of the relevance of the size of the Bahamas, the RAD relied on the 2014 Report, which it had ruled was inadmissible, and that Report's statement that there are challenges in the country in maintaining the safety and confidentiality of rescued victims of trafficking. The panel did not consider the 2018 Report which was in evidence and which provided information on victims of domestic abuse. The Respondent acknowledges the error but argues that it was not significant because the 2014 Report contained information that was essentially the same as that set out in the 2018 Report.

[40] I do not agree with the Respondent's argument. The similarities in language used in the two Reports are not sufficient to explain the RAD's error. Those similarities do not permit the Court to conclude that the panel's failure to consider the 2018 Report had no effect on its ultimate conclusion.

[41] The 2018 Report focuses on female victims of domestic violence. The 2014 Report provides information about survivors of human trafficking and addresses issues of safety and confidentiality of information in a context that involves different perpetrators of harm. The 2018 Report highlights the fact that the small and interconnected nature of the Bahamian community means that victims of domestic abuse must have access to safe and confidential places of refuge. The 2014 Report does not consider the flow of information within the general Bahamian populace. It is this ease of access to information by ordinary individuals that is Ms. Williams' concern.

[42] The 2018 Report was material to Ms. Williams' appeal submissions. I find that, having admitted the Report, the RAD was required to engage with its information regarding the nature of the Bahamian community and its impact on the viability of Freeport as an IFA. The RAD limited its analysis of Ms. Williams' submissions to a statement that "the size of the proposed IFA community on its own is not determinative". Ms. Williams does not dispute this statement but her argument is more nuanced. I agree with her submission that the evidence required the RAD to consider not only the size of the IFA community but also its makeup, communication and links with the greater population of the country.

[43] In summary, I find that the RAD's decision as a whole does not satisfy the hallmarks of a reasonable decision. The RAD's errors combine to result in an analysis that lacks coherence and justification when measured against Ms. Williams' evidence and submissions. As a result, Ms. Williams' application is allowed and the matter remitted to a different panel of the RAD for redetermination.

[44] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3933-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is remitted to a different panel of the Refugee Appeal Division for redetermination.

2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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