Federal Court  Cour fédérale

Date: 20220210

Docket: IMM-7139-19

Citation: 2022 FC 176

Toronto, Ontario, February 10, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

OLUSEYI BABATUNDE FAROMBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a Member of the Refugee Protection Division (the "RPD") dated October 25, 2019 concerning the applicant's claim for refugee status and protection under s. 96 and subs. 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The RPD determined that the claimant had not established his identity. The RPD also concluded that the applicant was excluded from protection under s. 98 of the *IRPA*.

[3] On this application for judicial review, the applicant submitted that the RPD's decision should be set aside as unreasonable under the principles described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 and because the RPD breached his right to procedural fairness.

[4] For the reasons below, I have concluded that the application must be dismissed. In my view, the applicant has not demonstrated that the Member's decision was unreasonable. In addition, the applicant did not raise the allegation of a reasonable apprehension of bias in a timely manner before the RPD and did not file a complete transcript of the hearing. On the evidence before the Court, the applicant has not demonstrated a reasonable apprehension of bias.

I. Factual Context

[5] The applicant claims to be Oluseyi Babatunde Farombi, a citizen of Nigeria. He says that he worked, carried on business, permanently resided in and did not leave Nigeria until he left to seek refugee protection in 2017 in Canada.

[6] The Minister intervened at the RPD to argue that the applicant was not who he claimed to be. The Minister argued that the applicant was, in fact, a person who used several different aliases, all with the common surname Farombi. That person had been convicted of a serious offence and was wanted on nearly 40 other criminal charges in the United Kingdom.

[7] The RPD Member agreed with the Minister. The Member found that the applicant had not established his identity through a Nigerian passport. The Member was also convinced that the applicant was the same individual who was wanted in the United Kingdom.

II. Analysis

A. *The RPD Member's Decision*

[8] The applicant filed a Nigerian passport in his name issued on May 27, 2016. The Member concluded that the passport had no probative value to establish his identity because its validity was compromised.

[9] Although the Member concluded that the passport itself was genuine, the Member found that it had been obtained using false documents. The Member explained that the applicant initially testified that he had lost his birth certificate and therefore used a declaration of age to obtain his passport. He then changed his testimony to say that he used his Nigerian driver's licence to obtain the passport. That driver's licence had been seized by authorities in the United States and determined to be likely counterfeit. The applicant subsequently changed his testimony again, to claim that he did not use his driver's licence to obtain the passport. Other documents suggested to the Member that the passport was not genuine and that the claimant had not established his identity. The claimant filed bank statements and transaction documents (bills of lading) for his business of buying and selling cars. The names on those documents varied from the one he asserted as his identity. The applicant tried to explain that his friends had used nicknames in the bills of lading. The Member was not convinced.

[10] The Member also found that other issues undermined the applicant's claimed identity. The Member referred to information received from authorities in the United Kingdom of an individual with the same last name but different given names and dates of birth. The applicant claimed he was the victim of mistaken identification. The Member was not convinced.

B. *Was the RPD's Decision on Identity Unreasonable?*

(1) The Standard of Review

[11] The standard of review of the Member's substantive decision is reasonableness, as described in *Vavilov*. In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15.

[12] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at paras 85 and 99. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision-maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at para 31.

[13] The court's review is both robust and disciplined. Not all errors or concerns about a decision will warrant intervention. To intervene, the reviewing court must be satisfied that there

are “sufficiently serious shortcomings” in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”. The problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[14] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

(2) Was the RPD’s Decision on Identity Unreasonable?

[15] On this application, the applicant challenged the reasonableness of the Member’s conclusions on identity. He submitted that the Member failed to address key evidence, particularly his testimony that he is not the person wanted for criminal offences in the United Kingdom. He testified that he worked, carried on business and never left Nigeria from the mid-1990s until 2017 when he fled that country and claimed refugee status in Canada.

[16] The applicant submitted that the Member did not deliver a reasonable decision because she failed to “directly address this aspect of the applicant’s testimony”, which he argued was inconsistent with and undermines her conclusion that the applicant was the same person as the individual wanted for criminal defences in the United Kingdom. The applicant referred to the principle in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53.

[17] The applicant also made detailed submissions impugning the evidence filed by the Minister at the RPD hearing. The applicant challenged two statements from a police constable in the United Kingdom. He pointed out inconsistencies and unexplained irregularities with the Minister's documentary evidence about the immigration status and movements of the individual(s) in the United Kingdom who share his surname but who, according to the applicant, are not him.

[18] In my view, the applicant's submission cannot succeed. First, the Member did refer to his testimony and specifically to his position that he was not in the United Kingdom. Writing in the third person, the Member stated:

> In these proceedings, the claimant also denies that he committed any of these crimes and has argued that this is a case of mistaken identity and that he never resided in the UK and therefore never committed any criminal acts. […] The fingerprints taken in the UK correlate to the arrest summons… and were forwarded to Canada. The fingerprints taken in the UK were compared by an analyst of the RCMP with the claimant's fingerprints taken in Canada and the RCMP was of the opinion that the fingerprint analysed was a match. The member, upon weighing the evidence, gives more weight to the findings of the RCMP over the applicant's testimony denying that he was in the UK. The member concludes that the person who committed the above crimes in the UK is the same person as the claimant.

[19] As this passage reveals, the Member also gave more weight to fingerprint evidence from law enforcement over the applicant's testimony. The Member was entitled to do so in her role. The Court on judicial review may not reassess or reweigh that evidence: *Vavilov*, at paras 125-126.

[20] In addition, as the applicant acknowledged, the Member was not required to address every piece of evidence. The Member did address the central document submitted by the applicant to prove his identity: his Nigerian passport. The Member found that the passport was genuine but had been procured using fraudulent documents. She supported that conclusion with evidence that the applicant's own documents (bank statements and bills of lading) suggested that he used other names than the one in that passport, and with information from law enforcement authorities in Canada and the United Kingdom. The applicant's submissions to this Court did not challenge any of the Member's conclusions about the fraudulent procurement of the Nigerian passport.

[21] It is true that the Member did not extensively address the applicant's testimony that he was continuously in Nigeria throughout the period in which an individual sharing his surname was apparently engaged in criminal activity in the United Kingdom. However, this testimony did not answer any of the evidence related to the procurement of his Nigerian passport by fraud.

[22] I therefore conclude that the applicant has not demonstrated that the Member's decision was unreasonable under *Vavilov* principles.

C. ***Reasonable Apprehension of Bias***

[23] The applicant's second submission concerned procedural fairness. He stated that the Member engaged in discussions with counsel for the Minister, during the hearing, in French. The language of the hearing was English. The applicant submitted that the existence of these exchanges, on their face, gave rise to a reasonable apprehension of bias and procedural

unfairness. The applicant submitted that the Member participated in these discussions with the Minister's counsel even after the applicant protested that neither he nor his counsel could speak or understand French. The applicant combined this submission with allegations that the Member showed hostility towards him during the hearing and by doing things that were, in the Member's words, "the Minister's job to do".

[24] On this application, the Court's review of procedural fairness issues involves no deference to the decision maker. The question is whether the procedure was fair having regard to all of the circumstances, focusing on the nature of the substantive rights involved and the consequences for the individual(s) affected: *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69, at paras 46-47; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, esp. at paras 49 and 54; *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 63.

[25] The test for reasonable apprehension of bias is whether a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the decision maker, whether consciously or not, would not decide the matter fairly: *Gulia v Canada (Attorney General)*, 2021 FCA 106, at para 17; *Committee for Justice and Liberty et al. v National Energy Board et al.*, [1978] 1 SCR 369, at p. 394.

[26] The onus of demonstrating bias rests with the party that alleges it: *R v S (RD)*, [1997] 3 SCR 484, at para 114.

[27] In *Younis v Canada (Immigration, Refugees and Citizenship)*, 2021 FCA 49, the Federal Court of Appeal provided the following summary of the law:

> [35] In *Miglin v. Miglin*, 2003 SCC 24, the Supreme Court of Canada confirmed the test for bias:
>
> > [26] The appropriate test for reasonable apprehension of bias is well established. The test, as cited by Abella J.A., is whether a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that the judge's conduct gives rise to a reasonable apprehension of bias: […] A finding of real or perceived bias requires more than the allegation. The onus rests with the person who is alleging its existence … As stated by Abella J.A., the assessment is difficult and requires a careful and thorough examination of the proceeding. The record must be considered in its entirety to determine the cumulative effect of any transgressions or improprieties. […]
>
> [36] In *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, (*Yukon*) the Supreme Court of Canada noted:
>
> > [26] The inquiry into whether a decision-maker's conduct creates a reasonable apprehension of bias, as a result, is inherently contextual and fact-specific, and there is a correspondingly high burden of proving the claim on the party alleging bias: […] As Cory J. observed in *S. (R.D.)*:
> >
> > > ... allegations of perceived judicial bias will generally not succeed unless the impugned conduct, taken in context, truly demonstrates a sound basis for perceiving that a particular determination has been made on the basis of prejudice or generalizations. One overriding principle that arises from these cases is that the impugned comments or other conduct must not be looked at in isolation. Rather it must be considered in the context of the circumstances, and in light of the whole proceeding. [Emphasis added by the Supreme Court; para. 141.]
>
> [37] As noted by this Court in *ABB Inc. v. Hyundai Heavy Industries Co.*, 2015 FCA 157, at para. 55: "[t]he onus of establishing a reasonable apprehension of bias lies with the person who alleges it, and the threshold for perceived bias is high" […]

> [Underlining added by the Federal Court of Appeal; internal citations removed.]

[28] The Federal Court of Appeal has firmly established that allegations of bias must be raised at the earliest practical opportunity: *Canadian National Railway Company v Canada (Transportation Agency)*, 2021 FCA 173, at para 68; *Taseko Mines Limited v Canada (Environment)*, 2019 FCA 320, at para 47. Such opportunity arises when the applicant is aware of the relevant information and it is reasonable to expect him or her to raise an objection: *Maritime Broadcasting System Limited v Canadian Media Guild*, 2014 FCA 59, at para 67 (quoting *Benitez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 461, [2007] 1 FCR 107, at para 220, aff'd 2007 FCA 199, [2008] 1 FCR 155).

[29] In *Sandoval v Canada (Citizenship and Immigration)*, 2008 FC 211, Justice Noël set aside an RPD decision because the behaviour of the presiding Member created a reasonable apprehension of bias against the principal applicant. In that case, the principal applicant alleged that the presiding Member made different comments including several interventions in French, even though the applicant did not understand French and the hearing was held in English with an English-Spanish interpreter.

[30] In his decision, Noël J. set out three statements by the presiding Member from the transcript of the hearing, one of which was directed to the Minister's counsel and concerned the substantive issue on which the Minister was appearing at the hearing. The Court held that these language concerns, together with others, required the Court to intervene to set aside the RPD decision. At paragraph 19, Justice Noël stated:

> These passages from the three different hearings reflect insensitivity to the applicants who do not speak French. Moreover, the interpreter, Madame Cristina Swidzinski, translated from English to Spanish and vice versa. There is no indication in the transcripts that the presiding Member repeated in English the instances when French was spoken. This oversight is particularly egregious when one considers the fact that when the Minister's representative spoke in French, at the March 26, 2007, it was not a simple exchange of introductory remarks as in the two previous instances. Rather, the Minister's representative spoke to the substance of the Minister's presence, indicating that they would be remaining to observe the proceedings because the essence of the Minister's concerns depended on the credibility of the principal applicant. Isn't that information the applicants and indeed the principal applicant ought to have been privy to? The presiding Member neither reiterated in English what was [said] during this exchange nor had the presence of mind to do so when the refugee protection officer intervened and objected. This is unacceptable. The principal applicant has a right to hear what is been levied against him in order to be fully armed to respond accordingly.
>
> [Emphasis added.]

[31] Now I turn to the present case.

[32] The applicant filed an affidavit on this application that attached portions of the hearing transcript. Those excerpts reflected the occasions that discussions occurred in French during the hearing. In his affidavit, the applicant stated that he felt excluded from the hearing during those French conversations and that he was troubled that the Member and the Minister's counsel could have been colluding to undermine his interests at the hearing by holding discussions in a language that neither his counsel nor he spoke or understood, even after he had protested.

[33] Attached to the applicant's affidavit were seven pages from an unofficial transcript of the hearing before the RPD. They were pages 75, 150, 155, 268 and 274-276 of that transcript. Pages

75, 150 and 155 refer to French statements. The remaining pages contain what the applicant characterizes as the Member's admission of doing the Minister's work and the Member allegedly showing hostility towards him. I will return to the latter pages later.

[34] The applicant did not file the entire transcript, nor the pages before and after the three individual pages just mentioned. The transcript itself is entirely in English and the references to French conversation are not transcribed and are in brackets. They say: "[French]" or "[French conversation]". When the respondent raised the fact that the transcripts were not official, the respondent filed an affidavit from the director of a company that provides interpretation, translation and transcription services. That affidavit attached the same pages, taken from a 322-page transcription of approximately 14 hours of hearing. The affidavit referred to an original transcribed file being sent to former counsel for the applicant via email, but that transcribed file was not filed in this Court.

[35] The first transcript excerpt filed by the applicant refers to an exchange between counsel for the Minister and the Member in French, on page 75 of the unfiled transcript. Counsel for the Minister says something in French; the Member says something in French; and counsel says something in French. The transcript states, in each case, "[French]". The next statement is also from the Minister's counsel, but is in English. It refers to viewing a video that is 30 seconds long.

[36] I observe that, considering the single transcript page before the Court, the French exchange between the Member and the Minister's counsel could have been a brief back-and-

forth about an innocuous matter, e.g. how to set up the video clip for viewing during the hearing. It could also have been something substantive about the applicant's objection. We do not know because the French words were not transcribed and there is no affidavit evidence to explain.

[37] I note also that on this page of the transcript, the applicant himself objected to the RPD Member speaking in French and advised the Member that neither he nor his counsel could understand French. His legal counsel was also present and made a statement after the French exchange, but raised no objection (at least on the single page of the transcript in the record). The objection by the applicant itself is at the bottom of the page, and is incomplete because the next page is missing. We do not know if his counsel made any comment later. We do not know if or how the Member may have addressed the applicant's objection.

[38] The second excerpt from the transcript is approximately 75 pages later. It is unclear whether his legal counsel attending the hearing during the previous transcript excerpt was present. The applicant had just made an objection concerning bias by the Member on a different ground. The transcript attributed the following to the Member: "Okay. [Speaking French] Okay. Merci." The transcript then stated "[cut]". The Member then provided a ruling on the other bias objection.

[39] The third excerpted page is five pages later. At this stage, the Member (Ms Parker), the applicant and counsel for the Minister (Ms Lacalle) are speaking at the end of the hearing day. Starting at the top of the page:

> MR FAROMBI: … collude with this woman to get me … Is that what you want to do? It will not be because …"

LINDA PARKER: The dates are July 3rd and 4th.

MR FAROMBI: you seem to be working to a target. I did not write for you to recuse yourself. I wrote to the coordinating Member that this Member be taken out. Not that you should recuse yourself. I wrote to the coordinating Member and Mr. Amana would also be writing his reasons for pulling out when the time comes. But then…

LINDA PARKER: okay, sir. This puts an end to the hearing. The next hearing date is July 3 and fourth. All right?

MR FAROMBI: well, if I don't get a lawyer, I wouldn't come. If you want to abandonment …

LINDA PARKER: it would be an abandonment. If you are not here, it would be an abandonment.

MR FAROMBI: Okay. Go ahead and do that.

SYLVIE LACALLE: May I mention, if there is a medical reason it has to be justified, too.

LINDA PARKER: Yes, these are written in the rules as well, sir.

MR FAROMBI: 1:18:56 you want to go on with your abandonment, let's go ahead and do it. I mean, you'll find out United Nations is in charge of refugee hearing and not you personally. I am 1:19:05 request for you to be changed because you keep showing to me this bias. Thank you.

[speaking French]

[French conversation]

[40] Unfortunately, the record before this Court does not include the pages of the transcript immediately before or after this exchange. We therefore do not know what the applicant meant when he referred to "collude with this woman to get me" at the top of the page, nor to what happened after the French conversation at the bottom of the page.

[41] Nothing in the record filed in this Court disclosed the contents of the conversation between the RPD Member and counsel for the Minister. Apparently, no effort was made to transcribe the conversation that occurred in French, although the second affiant (the director of the company providing interpretation, translation and transcription services) presumably had the capacity to do so if so instructed.

[42] In this Court, the applicant's legal argument was not premised on the contents of the conversation. The applicant's position was simply that if any French language conversation had occurred on the record between the RPD Member and counsel for the Minister, it was sufficient to create a reasonable apprehension of bias and a breach of the obligation of procedural fairness owed to the applicant.

[43] On the other hand, the respondent Minister submitted that there had been no breach of procedural fairness nor was there any reasonable apprehension of bias. The respondent submitted that any allegation of bias must be "substantial" and that a real likelihood or probability of bias must be demonstrated, not a mere suspicion. The respondent submitted that in this case, the applicant's materials do not support an allegation of bias because there was no compelling evidence to support the allegation. Specifically, the respondent submitted that the applicant's materials did not disclose that the Minister's counsel's use of the French language was in any way related to the substance of the RPD's consideration of the applicant's identity or the Minister's application for exclusion under article 1F(b) of the Refugee Convention.

[44] At the hearing before this Court, the respondent also emphasized that the applicant had made many arguments, protests and claims throughout the proceeding, all of which had been considered by the Member. The applicant made many objections during the hearing but in fact had not significantly protested about any discussions in French. The RPD Member did not inhibit the applicant's ability to answer the issues raised in the hearing.

[45] Also at the hearing, the applicant advised, consistent with his legal position on this application, that the Court could proceed on the paper record and it was not necessary to listen to a recording of the RPD hearing. The respondent took no position on the latter. The applicant's counsel advised that he had not listened to the 14 hours recorded (having been retained only recently before the hearing), while the respondent's counsel had done so. In those circumstances and consistent with the *Federal Courts Act*, RSC 1985, c F-7, subsection 18.1(4) and the Court's adjudicative (not inquisitorial) role, I have proceeded on the paper record.

[46] I make the following observations. First, the applicant did not suggest that he made a formal objection or motion to the Member about a reasonable apprehension of bias owing to the use of French during the hearing or between hearing days. He did raise an objection at one point, which was not immediately pursued by his legal counsel who was present. The evidence on this application does not reveal the outcome of that objection (if any) due to the absence of a full transcript. Importantly, however, the applicant did not mention the issue in his 65 pages of very comprehensive and detailed submissions filed at the end of the hearing by his then-counsel. In short, the applicant did not pursue the point he raises in this Court in a timely manner and with

the original decision maker, so that the RPD Member could make a ruling with all the necessary information and context.

[47] Second, I respectfully disagree with the applicant's position that the mere existence of a conversation in a language not understood by the applicant was sufficient to create a reasonable apprehension of bias and a breach of procedural fairness. The applicant cited no case to support that position.

[48] The applicant's position does not reflect the general law on proof of a reasonable apprehension of bias. The case law requires more than an allegation or suspicion: *Committee for Justice and Liberty*, at p. 394. The test is:

> whether a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the decision-maker, whether consciously or not, would not decide the matter fairly.

[49] As the Supreme Court held in *Miglin v Miglin*, the assessment is "difficult and requires a careful and thorough examination of the proceeding. The record must be considered in its entirety to determine the cumulative effect of any transgressions or improprieties…": 2003 SCC 24, [2003] 1 SCR 303, at para 26. The analysis to answer the overall question on bias must therefore be a substantive one, based on all the evidence and circumstances.

[50] Third, the objective evidence to support the applicant's position on this application, in the form of the three single-page excerpts from the transcript, was obviously incomplete and unsatisfactory. We do not have the benefit of the complete transcript. We have three excerpts

that are each only a page in length. In addition, there is no transcription of what was stated in French. Nor is there any indication, by way of timestamp, about how long these statements were – whether they were passing comments or a lengthy exchange. The entire transcript should have been prepared for this application, with a bilingual reporter, so the parties and the Court could work from a full record of what occurred. (I note that applicant's present counsel was retained shortly before the hearing and did not prepare the application record.)

[51] Considering all these circumstances, I conclude that the applicant has not demonstrated a reasonable apprehension of bias or breach of procedural fairness. In my view, the applicant should have raised and advocated his bias allegation immediately, and at the latest in his final submissions to the RPD. He did raise at least one other bias allegation, which the Member addressed with a ruling during the RPD hearing. The applicant's failure to raise the point immediately or in his final submissions suggests that, at the time, he did not wish to pursue it and was content that the conversations did not raise an apprehension of bias: *Taseko Mines Limited*, at paras 47-49.

[52] The purpose and importance of raising such an objection promptly is to ensure that the decision maker that is the subject of the allegation has an opportunity to resolve the matter promptly, on the basis of full information and before any harm is done: *Canadian National Railway Company*, at para 68. For example, as Justice Noël noted in *Sandoval*, an immediate explanation or translation of the exchange in another language may assuage concerns about an appearance of bias.

[53] The importance of a prompt objection and the applicant's failure to do so leads to my second, and more important, reason for dismissing his procedural fairness issue. I find that the record before the Court does not support the applicant's position, and is not sufficient to conclude, that a reasonable and informed person, "with knowledge of all the relevant circumstances, viewing the matter realistically and practically", would conclude that the circumstances give rise to a reasonable apprehension of bias. In this case, the RPD Member herself could have addressed the applicant's current concerns with a ruling on the merits of the bias allegation. As a result of the inadequate record, this Court cannot conclude that the circumstances give rise to a reasonable apprehension of bias on the part of the RPD Member. The evidence is much too thin. Put another way, the evidence on this application does not show bias or even permit me to engage in the required meaningful analysis. See, for example, the Federal Court of Appeal's analysis in *Younis*, at paras 38-51, 55-61, and Justice Noël's reasons in *Sandoval*, at paras 18-23, 26.

[54] Finally, I return to the other few pages of transcript filed by the applicant to support his position. The applicant first argued that on page 268, the Member admitted she was doing the Minister's work during the hearing, which shows bias against him. This submission cannot be sustained. Reading the transcript page filed, the Member made two statements that she was no longer going to point out things in the documents that were being presented to her. We do not have the prior pages of the transcript on which, presumably, we would see what the Member had pointed out in the documents. The Member stated that doing so was "more the minister's job to do, than my own". The Minister's representative stated: "Which, I think I did." Later on this page of the transcript, the Member also expressed concerns about efficiency and about

completing the hearing that day. In my view, this transcript excerpt suggests that the Member was well aware of the contents of the documents and gave a mild reproach to the Minister's representative. It does not show a reasonable apprehension of bias against the applicant.

[55] The applicant also filed pages 274-276 in which, according to the applicant, the Member allegedly showed hostility towards him. However, the transcript does not show any hostility or bias against him. The Member asked the applicant's representative to "move on" from discussing a letter that did not appear to be relevant to the issues in the proceeding. The applicant himself then interjected to raise prior efforts to schedule the hearing while he was having health issues. The Member stated to the applicant: "Mr Farombi, can we move on to the issues at hand, please". The applicant replied: "Okay, all right. Okay. Okay." Neither the applicant nor his representative protested or objected at the time about any hostility. The transcript then contains two pages of questions to the applicant and his answers without interruption from the Member.

[56] For these reasons, I conclude that the application has not shown a reasonable apprehension of bias by the RPD Member.

[57] I add that this conclusion does not condone conversations between an RPD Member and counsel for one of the parties, during a formal hearing, in a language that is not the language of the hearing and that the other party and his counsel do not understand, and without proper translation services. The integrity of the hearing process itself is at stake when a party and their legal counsel are both unable to understand what is occurring during a hearing: *Sandoval*, at para 19. Such communications are better avoided.

III. Conclusion

[58] The application is therefore dismissed. Neither party raised a question to certify for appeal and none is stated.

JUDGMENT in IMM-7139-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7139-19
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