

Federal Court



Cour fédérale

Date: 20220512

Docket: IMM-6412-20

Citation: 2022 FC 698

Ottawa, Ontario, May 12, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

GWENDOLYN WILLIAMS-CAMPBELL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated November 19, 2020, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a *Convention* refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant, a 57-year-old citizen of Jamaica, claims fear of persecution and risk to her life at the hands of her ex-husband, who previously abused her, and who she claims, as a result of on-going threats, would continue to harm her if she returns to Jamaica. The RPD accepted that the Applicant was a victim of domestic abuse but found that there was no forward-facing risk that her ex-husband would threaten her if she returned to Jamaica.

[3] In its decision, the RAD (who also accepted that the Applicant was a victim of domestic abuse) found that, while the RPD had made a number of errors in its assessment of the Applicant's credibility and in drawing negative inferences against her, there remained a number of significant credibility concerns regarding the Applicant's evidence of her forward-looking risk, and that the Applicant's repeated returns to Jamaica from Canada undermined her claim that she feared for her safety in Jamaica.

[4] The Applicant asserts that the RAD made the following reviewable errors: (i) the RAD failed to apply, in a meaningful way, the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* and to demonstrate how they were applied; (ii) the RAD found that the Applicant was not credible because of information that was left out of a support letter written by her mother, contrary to this Court's repeated finding that aspects of a refugee claimant's story should not be discounted because a support letter does not corroborate this part of their story; and (iii) the RAD erred in finding that the Applicant did not face a forward-facing risk in Jamaica based on the fact that she had made multiple return trips to Jamaica, when the RAD acknowledged that in relation to certain trips the Applicant was not aware at the time of the trips that she could make a refugee claim as a victim of domestic violence and for her one trip thereafter,

the RAD failed to consider that she stayed with friends during that brief trip so as to avoid any further interactions with her ex-husband.

[5] The sole issue for determination on this application is whether the RAD's decision was reasonable.

[6] The presumptive standard of review is reasonableness and I find that no exception to that presumption has been raised nor applies [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25]. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Vavilov*, supra at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[7] While a number of issues have been raised by the Applicant, I am satisfied that the RAD erred in its consideration of the Applicant's return trips to Jamaica, which error was sufficient to render the RAD's decision unreasonable.

[8] The Applicant visited Canada in January 2016 and in April 2016 to see her son and grandson. She thereafter made further trips to Canada as a visitor in September 2016, February 2017, June 2017 and finally in September 2017. She submitted her refugee claim in July 2018.

[9] In its decision, the RAD disagreed with the RPD's determination that the Applicant had delayed in making her refugee claim. The RAD accepted the Applicant's explanation that she did not file her refugee claim until 2018 because she was not aware of her option of seeking refugee protection as a victim of domestic violence until 2017. However, the RAD went on to find that the Applicant had returned to Jamaica multiple times between 2016 and 2018 for extended periods of time, which suggested an intention to re-avail to Jamaica and which undermined the credibility of her subjective fear. The RAD found that the Applicant had not provided a reasonable explanation for her multiple return trips to Jamaica.

[10] I agree with the Applicant that the RAD erred in its assessment of the Applicant's explanation for her return trips to Jamaica by finding that the Applicant had re-availed "multiple" times without reasonably taking into consideration that the Applicant's evidence (which the RAD accepted) was that she was not aware that she could claim refugee protection until 2017. The RAD failed to properly consider that, at the time of all but one of the Applicant's return trips to Jamaica, the Applicant believed that she had no other option but to return to Jamaica as her Canadian visitor visa was limited to six months. Moreover, there is no mention in the RAD's decision of the fact that, in relation to the one trip back to Jamaica in September 2017 (after the Applicant became aware of her ability to apply for refugee status), the Applicant did not reside at her home but rather resided with friends in order to avoid contact with her ex-husband. I find that this evidence suggests

that, contrary to the finding made by the RAD, the Applicant continued to have a subjective fear of her ex-husband. Moreover, the Applicant's final trip to Jamaica was only for a brief period of two months to get her affairs in order and to ensure that her adult sons were safely relocated in Jamaica. I find that this one trip to Jamaica does not demonstrate an intention to permanently reside in Jamaica and thus cannot reasonably be viewed as constituting re-availment [see *Camargo v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1434 at paras 33-36; *Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2015 FC 266 at paras 48-49].

[11] I find that the aforementioned errors render the RAD's decision unreasonable. Accordingly, the application for judicial review is granted, the RAD's decision is set aside and the matter is sent back for redetermination by a differently-constituted panel of the RAD.

[12] The parties have proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-6412-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted to a differently-constituted panel of the Refugee Appeal Division for redetermination.
2. The parties proposed no question for certification and none arises.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6412-20

STYLE OF CAUSE: GWENDOLYN WILLIAMS-CAMPBELL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF HEARING: APRIL 6, 2022

JUDGMENT AND REASONS: AYLEN J.

DATED: MAY 12, 2022

APPEARANCES:

Nicholas Woodward FOR THE APPLICANT

Catherine Vasilaros FOR THE RESPONDENT

SOLICITORS OF RECORD:

Migration Law Group FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario