

Federal Court



Cour fédérale

Date: 20220725

Docket: IMM-5587-21

Citation: 2022 FC 1094

Toronto, Ontario, July 25, 2022

PRESENT: Madam Justice Go

BETWEEN:

LAMIN YAFFA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Lamin Yaffa [Applicant] claims to be a Muslim man from Gambia who had a relationship with a young Christian woman before she died in childbirth on August 28, 2018.

The Applicant claims that after her death, he began getting death threats from her father.

According to the Applicant, he had been reported to the authorities and accused of statutory rape because the woman was under 18.

[2] The Applicant claims that on August 29, 2018, he discovered that the authorities were looking for him in his home, so he fled to Senegal. An agent he hired arranged for him to fly to Canada on September 17, 2018. The Applicant made a refugee claim, dated October 10, 2018, based on fear of his father, as well as of the woman's father, both of whom allegedly disapproved of the relationship and threatened him with death.

[3] The Respondent intervened in the Applicant's refugee claim, providing evidence of past visa applications to Canada and Gambian passports issued in his name dated between 2014 and 2018, and alleged that these documents contained conflicting identity details. By a decision dated July 28, 2021 [Decision], the Refugee Protection Division [RPD] found that the Applicant had not established his identity and, in the alternative, that he was not credible, rejecting his claim under both s. 96 and s. 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD further found that the claim was manifestly unfounded under s. 107.1 of IRPA, meaning that he was unable to appeal to the Refugee Appeal Division [RAD].

[4] The Applicant seeks judicial review, arguing that it was unreasonable for the RPD to find the claim manifestly unfounded and to find that he lacked credibility. I find the Decision reasonable and as such, I dismiss the application.

II. Issues and Standard of Review

[5] The Applicant raises two issues:

- (1) Was the RPD's manifestly unfounded finding reasonable?
- (2) Were the RPD's credibility findings reasonable?

[6] The parties both submit that the reasonableness standard applies, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] 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: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[8] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”: *Vavilov*, at para 100.

III. Analysis

Issue 1: Was the RPD’s manifestly unfounded finding reasonable?

[9] In his written submissions, the Applicant argues that the RPD erred in its consideration both of the law and the evidence when finding that his claim is manifestly unfounded. The operative provision of *IRPA*, s. 107.1, states as follows:

107.1 If the Refugee Protection Division rejects a claim for refugee protection,

107.1 La Section de la protection des réfugiés fait état dans sa décision du fait que la

it must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent.

demande est manifestement infondée si elle estime que celle-ci est clairement frauduleuse.

[10] At the hearing, the Applicant did not pursue many of his arguments with respect to the RPD's errors in law, nor do I find those arguments persuasive. Instead, the Applicant focused on the argument that the RPD unreasonably concluded that the Applicant's allegations were not credible based on incomplete information.

[11] Specifically, the Applicant argues that the RPD discredited him without reviewing a copy of a visa and study permit in his name [the 2018 Visa] or a passport in his name which was used to enter Canada on August 23, 2018 [the 2018 Passport], as well as conflating the issues of identity and credibility.

[12] I note in the Decision the RPD acknowledged it has "the least amount of information" about the 2018 Passport, but noted that "[a]ccording to a Senior Immigration Officer, someone with the claimant's name and date of birth...used this passport to enter Canada at Pearson Airport on August 23, 2018 at 1:46 PM", and that the same passport "was used to obtain a visa to Canada and a study permit at the airport and has an expiry date of April 30, 2023."

[13] The RPD then assessed whether the claimant is responsible for the 2018 Visa application and concluded:

[36] While I do not have a copy of that visa application, it too used the claimant's name and his day and month of birth. It also used an email address that actually belonged to the claimant. Like the

other three visa applications, which I have found were submitted by the claimant, this application was also for a study permit....

[37] Moreover, the timing strongly suggests that the claimant came to Canada through this visa application and not using a smuggler and unknown passport, as the claimant alleged. The evidence is clear that over a period of four years, someone using the claimant's name repeatedly attempted to obtain study permits to Canada using invitations from Toronto colleges. Those applications were repeatedly refused. When the fourth application was finally accepted, and someone came to Canada under the claimant's name, within a few months the claimant submitted an inland refugee claim, testifying that he was brought in by a smuggler who never showed him the passport that was used, making it impossible for IRCC to look up and verify the claimant's purported date of entry in the Integrated Customs Enforcement System."

[14] At the hearing, the Applicant added that the RPD did not have any evidence with regard to the fingerprints of the person who had entered Canada using the 2018 Passport, nor any affidavit evidence from the Senior Immigration Officer who made the allegation about the 2018 Visa application and passport.

[15] For reasons set out below, I find the RPD is entitled to make the above quoted findings based on the available evidence, even though it did not have an actual copy of the visa application and passport in question.

[16] The RPD assessed the evidence provided by the Respondent of past visa applications and alternative passports in the Applicant's name. The Respondent's evidence and the Applicant's response to such evidence at the RPD hearing are summarized below:

- **The 2014 Visa Application:** The Respondent located an unsuccessful visa application in the Applicant's name made in 2014. The Applicant claims he was not responsible for this application.

- **The 2014 Passport:** Contained in the 2014 Visa Application was a copy of a Gambian passport in the Applicant's name, issued in 2014. The birth date and birth month were the same as the Applicant's, but the birth year was 1996 rather than 1993. A copy of the 2014 Passport is on file. The Applicant said this was not his passport and he did not know how it came into existence. However, the passport number and issue date from the 2014 Passport is listed in the Generic Application Form submitted with the Applicant's refugee claim. The Applicant said his previous counsel assisted him with his claim and provided no explanation how his previous counsel came to have this particular passport number.
- **The 2015 Passport:** In order to establish identity in his refugee claim, the Applicant provided a Gambian passport in his name issued in 2015. He argued that this was his genuine passport and the only passport he has ever held. This passport was seized when the Applicant made his claim and a copy is on the record.
- **The 2015 and 2017 Visa Applications:** Two further visa application were made in the Applicant's name in 2015 and 2017, using the 2015 Passport (i.e. the same passport as the refugee claim). The Applicant maintains he was not responsible for these visa applications.
- **The 2018 Passport:** There is no copy of this passport on record. Based on Global Case Management System [GCMS] notes provided by the Respondent, the RPD surmised that the passport is in the Applicant's name and was used to enter Canada on August 23, 2018. The Applicant states that he did not enter Canada at that time, and that he has no knowledge of this passport or the individual who used it to enter Canada.
- **The 2018 Visa Application:** The 2018 Passport was used to obtain a visa and study permit in the same name as the Applicant. The visa application stated that the applicant was living in Senegal, and it used the same email address as the Applicant used for his refugee claim. The Applicant denies obtaining the visa.

[17] The RPD found that the 2015 Passport was fraudulent and could not be relied upon to establish the Applicant's identity. The RPD rejected the Applicant's contention that he had no

knowledge or involvement with the 2014 Visa Application or 2014 Passport, because he placed the details of the latter in his refugee claim forms while at the same time relying on the 2015 Passport as his genuine and only passport. The RPD noted that when asked about this, the Applicant stated that his lawyer prepared all of his paperwork and that he was “traumatized” and did not know what was going on. The RPD found that although counsel could have made a typographical error, the form contains the passport number, issue date, and expiry date of an entirely different passport—a passport of which the Applicant alleges he was not aware. The RPD also confirmed that according to the Applicant’s testimony at the hearing, the 2014 Visa Application was made using an email address belonging to the Applicant. While the RPD found that it was unable to draw conclusions about differences between the signatures on the 2014 Visa Application forms and the Applicant’s signature in his refugee claim forms without expert evidence, the RPD nevertheless concluded that the Applicant possessed the 2014 Passport and was responsible for the 2014 Visa Application, therefore drawing an adverse inference against his identity and credibility.

[18] Further, the RPD found that according to the country documentation, Gambia requires a new photo for each new passport. As the 2014 Passport and the 2015 Passport both contain the same photo, the RPD concluded that both were likely fraudulent. The RPD concluded that if the Applicant is who he says he is, he should have been able to obtain a genuine Gambian passport rather than two passports with the same photo and a third passport with a different date of birth.

[19] The RPD also rejected as fraudulent the Applicant's birth certificate, which was registered by an unknown individual, erroneously listed as his sister. The RPD again drew an adverse inference against his identity and credibility.

[20] Additionally, the RPD rejected the Applicant's explanation that a family member may have made the 2015 and 2017 Visa Applications in his name. This is relevant, according to the RPD, because although a refugee claimant's credibility is not affected by misrepresentations made to escape persecution, the three visa applications were made before the alleged persecutory events in the Applicant's refugee claim occurred.

[21] The RPD also noted various contradictory information about the Applicant's family members in the three visa applications, finding that it raised considerable doubt about his identity.

[22] It was based on all of the above noted evidence that the RPD found, on a balance of probabilities, that the Applicant came to Canada on August 23, 2018, using the 2018 Visa and that therefore he could not have been subject to threats in Gambia in late August 2018 as he alleged. Specifically, the RPD relied on the fact that the 2018 Visa application used the Applicant's email, as well as his day and month of birth, and that the person using the 2018 Visa came to Canada just a few months before the Applicant made his inland refugee claim.

[23] The RPD concluded that the Applicant had not established his identity in light of a serious lack of credibility, provision of fraudulent documents, and a history of providing

fraudulent and contradictory documents since before his alleged risk in Gambia arose. In the alternative, the RPD rejected the claim on the basis of credibility, given the evidence indicating the Applicant was in Canada at the time the alleged threats occurred.

[24] It is worth noting that the Applicant, who was represented by a different counsel at the RPD hearing, did not challenge the validity and credibility of the documentary evidence that the Minister submitted, including the 2018 Visa and 2018 Passport. The Applicant maintained the position that someone else, not him, had made these applications, and that he had no knowledge about them. While given several opportunities to do so, both the Applicant and his former counsel provided little explanation as to why his photographs and his email were used for some of these applications and why information from the 2014 Passport was included in the documents the Applicant submitted to initiate his refugee claim in Canada.

[25] Thus, contrary to the Applicant's argument, the RPD did not solely rely on the 2018 Visa application and the 2018 Passport to ground its finding of credibility. Rather, the RPD considered the totality of the evidence that was put before it, along with the Applicant's response, or lack thereof, to the conflicting evidence submitted by the Minister, before reaching its conclusion.

[26] In *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 30, this Court defines a fraudulent claim as follow:

It must be that the dishonest representations, the deceit, the falsehood, go to an important part of the refugee claim for the claim to be fraudulent, such that the determination of the claim would be influenced in a material way.

[27] Applying this definition, I find that the evidence, taken as a whole, entitled the RPD to make a manifestly unfounded finding that the Applicant submitted fraudulent documents on the integral issue of identity and advanced a claim based on allegations that could not be true in light of the totality of the evidence.

Issue 2: Were the RPD's credibility findings reasonable?

[28] The Applicant faults the RPD for making unreasonable implausibility findings with respect to the Applicant's entry to Canada after continuous visa attempts in his name, his likely involvement in the previous applications, the similarities between the visa applications, and the implausibility of someone else using the Applicant's name to enter Canada less than a month before he did.

[29] I agree with the Applicant that implausibility findings should only be made "in the clearest of cases" per *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 at paras 8-11. I reject, however, the Applicant's contention that the findings in this case were made without regard to what he calls his "credible testimony and ample explanation."

[30] Contrary to the Applicant's assertion, he offered little explanation for the existence of the multiple visa applications, the similarities among these applications and passports, and their apparent connection to him, other than the possibility that someone in his family used his name to make the applications.

[31] The evidence before the RPD suggested that someone with the Applicant's name, month and day of birth, photograph, and email address, had been applying for visas between 2014 and

2018. Specifically, someone with the Applicant's name successfully obtained the 2018 Visa, and with a passport, also under the Applicant's name, entered Canada on August 23, 2018, within a month prior to the Applicant's alleged entry to this country. The RPD concluded that it was implausible for someone else other than the Applicant to have done so. This in turn led to the RPD's conclusion that the allegations made by the Applicant about the threats he received on August 29, 2018 could not have occurred since the Applicant was already in Canada.

[32] Notwithstanding counsel's able submission, the Applicant has not demonstrated why the RPD's conclusion was not reasonable.

[33] I agree with the Respondent that the Applicant is asking this Court to reweigh the evidence, hoping that he would get a more favourable outcome. Given the evidence and the Applicant's unsatisfactory explanations before the RPD, I do not find any basis to interfere with the RPD's reasonable implausibility findings.

[34] The Applicant submits that the Decision has a serious impact on him, as the RPD's manifestly unfounded finding robs him of his right to appeal to the RAD, and of a stay of removal during the appeal process.

[35] I acknowledge the serious consequences the Applicant faces due to the Decision. However, regardless of how serious these consequences are, the Applicant bears the burden of demonstrating that the RPD has committed reviewable errors. The Applicant has simply failed to do so in this case.

[36] The Applicant's other arguments amount to minor quibbles with the Decision, which are insufficient to overturn it. As the above issues are determinative of the matter, I need not address the Applicant's other arguments.

IV. Conclusion

[37] The application for judicial review is dismissed.

[38] There is no question for certification.

JUDGMENT in IMM-5587-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5587-21

STYLE OF CAUSE: LAMIN YAFFA v THE MINISTER OF CITIZENSHIP
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