

Federal Court



Cour fédérale

**Date: 20220906**

**Docket: IMM-5870-21**

**Citation: 2022 FC 1255**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, September 6, 2022**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**ABADALLAH BEN ABDALLA GADIAGA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

[1] The applicant, Abadallah Ben Abdalla Gadiaga, is a citizen of Senegal. He is seeking judicial review of the August 9, 2021, decision [decision] in which the Refugee Appeal Division [RAD] dismissed his claim for refugee protection and confirmed the Refugee Protection Division's determination of March 17, 2021, that the applicant is neither a Convention refugee

nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The applicant states that, in particular, he fears (i) two of his uncles and one of his aunts due to a conflict regarding the inheritance from his father, who died in 2015; and (ii) people in his neighbourhood, who had been pitted against him by his uncles and his aunt through rumors that the applicant was homosexual based on his trips to Europe related to his professional involvement in the fashion industry.

[3] The RAD concluded that the determinative issue for the purposes of the appeal was the credibility of the applicant's allegations and the objective basis of the refugee protection claim. The RAD found that the applicant failed to credibly establish that the conflict involving his father's inheritance led to a risk to his life or a risk of cruel and unusual treatment or punishment by his uncles and his aunt. He also did not show a well-founded fear of persecution based on the perception that he was homosexual.

[4] In this application for judicial review, the applicant submits that the RAD erred in the assessment of his credibility.

[5] For the following reasons, the application for judicial review is dismissed.

## II. Issue and standard of review

[6] The only issue before the Court is whether the RAD decision is unreasonable.

[7] The parties submit, and I agree, that the applicable standard of review is reasonableness. To be reasonable a decision must be justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 at para 85 [*Vavilov*]). The burden is on the applicant, the party challenging the decision, to show that the RAD decision is unreasonable (*Vavilov* at para 100). In order to intervene, the reviewing court must be satisfied by the party challenging the decision that there are “sufficiently serious shortcomings in the decision such that it cannot be said to meet the requisite degree of justification, intelligibility and transparency”, and that the flaws and shortcomings are “more than merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100). Reasonableness review is not a “line-by-line treasure hunt for error”. The reviewing court must be satisfied that the decision maker’s reasoning “adds up” (*Vavilov* at paras 102, 104).

### III. Analysis

[8] The two issues the applicant raises involve credibility. As my colleagues Justices Simon Fothergill, Shirzad A. Ahmed and Nicholas McHaffie have stated, credibility determinations are part of the fact-finding process, and decisions on credibility require deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Credibility determinations lie within “the heartland of the discretion of triers of fact...and cannot be overturned unless they are perverse, capricious or made without regard to the evidence” (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22).

A. *Fear based on the conflict involving the inheritance*

[9] The applicant feels that the RAD erred because the omissions and contradictions identified did not justify the dismissal of statements from sworn testimony without contradictory evidence. The applicant states that his explanations about the contradictions were [TRANSLATION] “logical and reasonable” and that the RAD should take his explanations into account since they were not obviously implausible. The applicant argues that the RAD erred in the assessment of the facts in finding there was an issue with the inheritance, without his establishing that there was a risk to his life.

[10] The respondent submits that the RAD properly explained its logical and reasonable reasoning, finding the applicant lacked credibility regarding the fact that the conflict would result in a risk to his life or a risk of cruel and unusual treatment or punishment. The respondent claims that the applicant did not present this Court with any arguments regarding the reasonableness of the RAD decision and his disagreement with the RAD’s finding is not a ground for judicial review, as this Court’s role is not to reweigh the evidence.

[11] I agree with the respondent. It is trite law that, absent exceptional circumstances, reviewing courts must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125). In my opinion, the applicant is asking the Court to reweigh the evidence and draw a different conclusion. The applicant might disagree with the RAD’s findings about the conflict involving his father’s inheritance, but it is not for this Court to reassess or reweigh the evidence in order to make findings that would be favourable to him.

B. *Fear due to being perceived as homosexual*

[12] The RAD found that, aside from his testimony, the applicant did not present any evidence to the effect that there was a perception he was homosexual. The RAD states that the applicant “has not credibly established, on a balance of probabilities, that he is perceived as homosexual by his community. He has not established that there is a serious possibility of persecution on these grounds. I am prepared to accept that some members of his family view his involvement in the fashion world in a negative light, but this is insufficient to conclude that there is a serious possibility of persecution.”

[13] The applicant states that the RAD’s reasoning that he would not be persecuted because of being perceived as homosexual since he had never experienced such persecution is incompatible with the applicant’s allegations that he would face persecution upon returning to Senegal. The applicant states that the lack of credibility based on the applicant’s conduct should not have prevented the RAD from considering the risk related to his profile.

[14] The respondent argues that the applicant’s merely disagreeing with the RAD’s findings is clearly insufficient to show that the decision has “sufficiently serious shortcomings...such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency.” The respondent states that the applicant did not have the profile of a person perceived as homosexual, because he did not prove that this perception existed or applied to him.

[15] As indicated above, it is not the Court's role in judicial review to reweigh the evidence and draw a new conclusion. In cases when the RAD is called upon to assess and weigh a number of variables, there is clearly room for disagreements regarding the weight to be granted to each element and the RAD's final conclusion. A simple disagreement on these issues is not a ground for review. Having reviewed the record and the evidence presented to the RAD as well as the parties' submissions, I am not convinced that the RAD erred. Based on the record before it, the RAD reasonably concluded that the applicant did not show that he was perceived as homosexual by his community.

IV. Conclusion

[16] To conclude, I am of the view that the applicant did not show that the RAD decision was unreasonable. I am satisfied that, when read holistically and contextually, the decision meets the reasonableness standard stated in *Vavilov*.

[17] No question of general importance was submitted for certification, and the Court agrees that none arises.

**JUDGMENT in docket IMM-5870-21**

**THIS COURT'S JUDGMENT is as follows:**

1. The applicant's application for judicial review is dismissed; and
2. There is no question to certify.

“Vanessa Rochester”

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Judge

Certified true translation  
Elizabeth Tan

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5870-21

**STYLE OF CAUSE:** ABADALLAH BEN ABDALLA GADIAGA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 2, 2022

**JUDGMENT AND REASONS  
BY:** ROCHESTER J.

**DATED:** SEPTEMBER 6, 2022

**APPEARANCES**

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