

Federal Court



Cour fédérale

Date: 20230403

Docket: IMM-8680-21

Citation: 2023 FC 470

Ottawa, Ontario, April 3, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

THI KIM OANH PHAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated October 27, 2021 [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD], finding the Applicant is not a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[2] For the reasons that follow, I find that the RAD's decision is reasonable. This application for judicial review will therefore be dismissed.

II. **Background**

[3] The Applicant is a citizen of Vietnam who fears persecution based on her participation in an environmental protest against the government in relation to a chemical waste spill.

[4] She claims that on February 14th, 2017, she was arrested while travelling to make a complaint about not receiving compensation in relation to the spill.

[5] She was subsequently threatened by the police to confess to activism against the government or face more serious charges of protesting against the state for which she could face a ten-year prison sentence.

[6] The Applicant claims her home was also raided by the police in November 2018 and she was arrested three additional times, each time to be released for a "lack of evidence".

[7] The Applicant left for Canada on May 10, 2019, where she later initiated a claim for refugee protection.

[8] After her departure from Vietnam, the Applicant claims the police issued a summons for her to attend court in July 2019. The Applicant states that upon return to Vietnam, she will be arrested.

[9] The RPD hearing of the Applicant's claim took place on January 7, 2021. A negative decision was rendered on January 25, 2021.

[10] The determinative issue at the RPD was the Applicant's credibility. The RPD found that the Applicant had not provided credible testimony or reliable supporting documentation to establish the material elements of her claim, including that she was politically active in Vietnam in the ways alleged, or that she is currently wanted by the Vietnamese authorities

[11] The Applicant appealed the RPD's decision to the RAD.

[12] On October 27, 2021, the RAD affirmed the RPD's decision. The determinative issue for the RAD, like the RPD, was the Applicant's credibility.

III. **Issues and Standard of Review**

[13] The sole issue in this judicial review is whether the RAD's credibility analysis is reasonable.

[14] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[15] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15.

[16] Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

IV. Analysis

[17] The Applicant submits that the RAD erred in its credibility determination, based on several erroneous findings.

[18] As the Respondent notes in their written materials, the Applicant's written submissions appear to be "boilerplate" statements of law, which fail to address specifically, how the RAD actually erred. Overall, I agree with the Respondent that the Applicant's submissions amount to a mere disagreement with the RAD's credibility analysis.

[19] Credibility findings "command a high degree of judicial deference upon judicial review, considering the role of trier of fact conferred to the administrative tribunal": *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 15-16.

[20] In my view, the Decision is reasonable in each of the findings challenged by the Applicant, as outlined below.

[21] In coming to these findings, I also take note of the fact that the Applicant's testimony before the RPD was so problematic, or in the RPD's words "vague, rapidly evolving, and internally inconsistent" that these issues were acknowledged by her former counsel and her competence to testify was a concern explicitly addressed in the RPD's decision. However, in the absence of psychological evidence to the contrary, the RPD ultimately concluded that the issues with the Applicant's testimony were the result of a lack of credibility. The RAD agreed.

A. *Implausibility about the alleged trip to the protest*

[22] The RAD found that the RPD did not err in finding the Applicant's credibility was undermined by her lack of preparation regarding plans for the week following the Nghe An protest.

[23] The Applicant asserts "it is not incredible that she would find accommodation in the city when she arrived rather than booking in advance. Further with the uncertainties of attending a protest, especially with other people, may have may have warranted waiting to decide where to sleep."

[24] I note that this is precisely the same argument the Applicant put to the RAD in her appeal submissions. Specifically, the Applicant argued that as she is Vietnamese it was not unreasonable that she would be capable of securing lodgings after the protest. The Applicant also argued that as she was travelling with her church group, she may have wanted to wait to determine the best place to find lodgings with her group.

[25] The RAD found that the Applicant's submissions on appeal were mere speculation, not supported by the testimony given by the Applicant during the RPD hearing.

[26] In coming to its conclusion, the RAD noted that the Applicant was asked in three separate and distinct questions, phrased using different wording, what plans she, or she and her church group had made regarding finding a place to stay. Contrary to her submissions, at no point did the Applicant testify that she and her church group thought it would be easy for them to find lodgings after the protest. The RAD stated at paragraph 12 of the Decision:

Initially, the Appellant simply deflected and did not answer the RPD's questions. Subsequently, she provided an answer to a question that had not been asked. Finally, when the RPD posed the question a third time, using different words, she testified that she and the church group "didn't think of" that aspect of their journey. I find that the RPD did not err in finding the Appellant's testimony as to her plans for the week in Nghe An not credible.

[27] That finding was open to the RAD on the record before it.

[28] The Applicant has failed to point to any reviewable error therefore, I find the RAD's conclusions on this issue are reasonable.

B. *The Applicant's Failure to Solicit a Letter of Support from Hanoi Reporter, L.M.H.*

[29] The RPD found that it was not reasonable for the Applicant to have made no effort to solicit evidence from L.M.H., a Hanoi based reporter whom the Applicant claimed travelled with her in her car from Ho Chi Minh City. The RPD drew a negative inference from the Applicant's lack of efforts to contact L.M.H.

[30] The RAD agreed with the RPD's findings stating that it was not reasonable for the Applicant to have failed to attempt to approach L.M.H. for a letter of support attesting to the veracity of the Applicant's claims of participation in the Nghe An protest and her ensuing arrest.

[31] In arriving at its conclusion, the RAD noted in its reasons that the RPD had given the Applicant permission to file post hearing disclosure, and the Applicant failed to do so.

[32] The RAD also grappled with the Applicant's various explanations for why she refrained from reaching out to L.M.H. She cited for instance, that there were security concerns that a letter from the reporter, travelling through normal post office channels might be apprehended by the police. The RAD rejected the explanation given the alternatives available to the Applicant to elicit such evidence, for example, through a witness statement over telephone, video call, email, or text message.

[33] The Applicant asserts that she provided a reasonable explanation, which the RAD had no basis for rejecting and a lack of corroborative evidence should not have any effect on a claimant's credibility.

[34] Citing *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968, at paragraph 34, the Respondent counters that a decision maker may require corroborative evidence if they set out independent reasoning for requiring corroboration, such as doubts regarding the applicant's credibility.

[35] I agree. The RAD reasonably found numerous issues with the Applicant's testimony and explanations leading to doubts about her credibility. Therefore, in my view, the RAD's reasoning was sufficient for requiring corroboration. Further, I note that the RAD did not rest its credibility analysis solely on the absence of corroborative evidence from the reporter. In other words, it was not a determinative finding. This was but one of several concerns identified by the Member, which undermined the Applicant's overall credibility.

C. *Inconsistencies Regarding the Applicant's Claims of Being Summoned to Court in 2019*

[36] The RAD concluded that the RPD did not err in drawing a negative credibility inference concerning the genuineness of the summons, which the Applicant claims was served in June 2019, nor did it err in finding the Applicant's claims of being sought by the police in 2019 to be not credible.

[37] For context, the RAD acknowledged that the RPD grounded its conclusions on the genuineness of the summons on two factors.

[38] First, the Applicant testified that she had engaged in no further activities following her 2018 Facebook posts. She also testified that the police were unable to charge her for either participating in the protest itself in 2017 or for posting on Facebook in 2018 because of a lack of evidence. Therefore, it was not credible that the police would suddenly charge her in 2019 after she left the country, in the absence of any further activity.

[39] Second, the RPD found that the “Proof of Service” section of the summons had not been completed to show when and on whom the summons had been served and that this, taken together with the Applicant’s testimony when the issue was put to her, rendered the alleged summons not credible as to its genuine provenance.

[40] The Respondent highlights that the face of the summons document lists instructions for service. It says that “[t]he People's Committee, the Police of the ward and relevant intelligence agency are required to serve this Summons to the defendant named above and return the portion below to the People's Court of Ho Chi Minh City”. However, that portion remained attached to the document and it was left blank.

[41] On appeal to the RAD, the Applicant argued that the RPD improperly speculated as to the behaviour of the Vietnamese police, who according to her, operate more slowly than do the Canadian police. The Applicant also argued that the RPD erred in drawing a negative inference from the fact that the service portion of the summons served on her parents was neither completed nor detached. They argued the copy retained by the police would have been completed and administratively filed but the copy served on the Applicant’s parents “would not contain the service details.”

[42] The RAD did not accept the Applicant’s arguments, finding that her submissions on the practice of Vietnamese police were speculative and not at all substantiated by documentary evidence provided by the Applicant or in the National Documentation Package.

[43] The RAD also assessed the Applicant's testimony and found that her replies to the RPD's inquiries on this issue were "uniformly unresponsive". The RAD summarized the Applicant's testimony and its findings on the summons as follows:

She testified first that the summons was incomplete because she was not in Vietnam when the summons was served. The Appellant subsequently changed her explanation and testified that the lower portion "is just for you to, you know, have, like, record, so you can cut out. But in the top there, is, like, date — the date and who it's sent to", but did not answer the question of why the lower portion was not filled in or how it would have been able to operate as a record if incomplete. I find the Appellant's two differing responses to be neither responsive nor reasonable. Neither did the Appellant provide any information as to what the consequences, if any, were of her non-appearance in court at the date set in the summons. I find, therefore, that the RPD did not err in finding it more likely than not that the summons was not genuine and did not err in finding the Appellant's claims that she was wanted by the police in 2019 not credible.

[44] The Applicant submits that it was unreasonable for the RAD to make credibility findings about police practices in Vietnam, where "bureaucrats may move more slowly" when compared with Canada.

[45] In oral submissions, the Applicant conceded that she provided no evidence about police practices in Vietnam but maintained that in the absence of any evidence, it was impermissible for the RAD to speculate on this issue.

[46] With respect, I cannot agree with the Applicant's submissions. The onus was on the Applicant to establish her allegations of persecution. In the absence of any evidence about how the summons was served, the RAD's conclusion was reasonably drawn from its analysis of the face of the document and the Applicant's testimony.

[47] The Respondent notes that the RAD was ultimately left with a document that had an apparent deficiency on its face, and no real evidence as to how it had been sent or received. Given the many other concerns with the Applicant's credibility, this was an ample basis upon which to question its legitimacy.

[48] I agree with the Respondent. The Applicant's arguments fail to address the core findings made by the RAD, as cited above. The RAD drew the bulk of its conclusions about the genuineness of the summons based on the Applicant's non-responsive testimony. The Applicant's submissions are silent with respect to the concerns with her testimony, thereby failing to provide a basis for this Court to disturb the RAD's findings.

D. *Inconsistencies Regarding the Applicant's November 2018 fundraising visit and subsequent Facebook post*

[49] The Applicant had claimed that she made a November 2018 visit to a well-known human rights defender's family in order to deliver financial support to their ailing daughter.

[50] Further, the Applicant claimed to have posted about this event on social media, which she claims, triggered the police to target her even more.

[51] The RPD did not accept the Applicant's testimony regarding her alleged visit finding the account was "fabricated" due to several material inconsistencies in her testimony about basic details of the visit. The RPD also found that the Applicant's claims of having posted on

Facebook about this visit that brought her to the attention of authorities, was compromised by her failure to have included anything about any Facebook posts in her Basis of Claim form materials.

[52] The RAD agreed with the RPD's findings and rejected the Applicant's explanation that the omission of the Facebook posts from her BOC was not significant.

[53] The Applicant asserts that the BOC narrative is not a place for the claimants to provide every detail of their story and as such, it was unreasonable for the RAD to make any negative credibility findings on this issue.

[54] The Applicant's characterization of the jurisprudence is incorrect. This Court has repeatedly found that a refugee claimant may provide details in oral testimony that were not included in a basis of claim form without impugning the claimant's credibility, unless the omissions are significant to the claim: *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at paras 18-20. The Applicant's failure to mention her Facebook posts was not an omission of a peripheral detail, but a key allegation of her account of persecution in Vietnam and thus, a reasonable basis for concern: *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paras 17-18).

[55] The RAD provided clear and cogent reasons for why it rejected the Applicant's submissions on this point and why it agreed with the RPD's assessment of the omission.

[56] Overall, I find the RAD's assessment of the Applicant's credibility is consistent with this Court's jurisprudence. Further, the RAD's analysis is supported by the evidence. I find the RAD's credibility findings exhibit the requisite degree of justification, intelligibility and transparency as required by *Vavilov*.

V. **Conclusion**

[57] For the foregoing reasons, I am not persuaded the RAD's Decision is unreasonable. This application for judicial review is therefore dismissed.

[58] Neither party proposed a serious question of general importance, and none arises on these facts.

JUDGMENT in IMM-8680-21

THIS COURT'S JUDGMENT is that:

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

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8680-21

STYLE OF CAUSE: THI KIM OANH PHAM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 21, 2023

JUDGMENT AND REASONS: ELLIOTT J.

DATED: APRIL 3, 2023

APPEARANCES:

Aleksei Grachev FOR THE APPLICANT

Christopher Ezrin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Aleksei Grachev FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario