Federal Court

Cour fédérale

Date: 20230419

Docket: IMM-2680-22

Citation: 2023 FC 570

Montréal, Quebec, April 19, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

THIERNO ABDOUL BAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Thierno Abdoul Bah, is seeking judicial review of a Pre-Removal Risk Assessment [PRRA] decision rendered on December 21, 2021 [Decision] by a senior immigration officer [Officer], pursuant to subsection 112(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. In the Decision, the PRRA Officer found insufficient evidence to determine that Mr. Bah would face more than a mere possibility of harm or

persecution if he were removed to Guinea, his alleged country of citizenship. The Decision followed negative decisions of the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD], which had both dismissed Mr. Bah's claim for refugee protection because of his failure to provide evidence establishing his personal identity and his status as a citizen of Guinea.

[2] Mr. Bah seeks to have the Decision set aside. He submits that the PRRA Officer erred when he refused to admit new evidence and that he fettered his discretion by fictitiously assessing the risk he would face upon removal to Guinea.

[3] Having examined the Officer's reasons, the evidence before him, and the applicable law, I see no reason to set the Decision aside. The Officer's reasons on the refusal to admit new evidence and on his risk assessment have the qualities that make the Officer's reasoning logical and coherent in relation to the relevant legal and factual constraints. There are no grounds to justify the Court's intervention, and I therefore must dismiss Mr. Bah's application for judicial review.

II. Background

A. *The factual context*

[4] Mr. Bah claims to be a citizen of Guinea. He submits that he fears persecution in Guinea because of his political opinions and his membership in the opposition party, the Union des Forces démocratiques de Guinée [UFDG]. Mr. Bah adds that he also fears persecution due to his Peul ethnicity.

[5] In March 2015, Mr. Bah arrived in Canada and claimed refugee protection. The RPD, and subsequently the RAD, rejected Mr. Bah's refugee claim on the basis that he did not provide sufficient evidence to establish his identity.

[6] In June 2021, Mr. Bah submitted a PRRA application and an application for permanent residence on humanitarian and compassionate grounds. They were both rejected.

B. *The PRRA Decision*

[7] The Officer began his analysis by looking at the new evidence submitted by Mr. Bah for the purpose of his PRRA application, in light of the criteria established in paragraph 113a) of the IRPA and in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]. Mr. Bah had submitted a large number of documents, including articles on country conditions, documents on his identity, letters from individuals, groups, and organizations in Canada, bank statements and credit card statements, as well as the birth certificates of his children. The Officer determined that Mr. Bah failed to explain why the documents could not have been submitted sooner, as they were dated prior to the RAD's decision or contained information that was reasonably available before it. Moreover, according to the Officer, some of the documents contained information that had already been considered by the RAD and the RPD. Therefore, the Officer determined that the documents were not "new evidence" within the meaning of paragraph 113a) of the IRPA, and could not be accepted for the purpose of the PRRA application.

[8] The Officer continued with the assessment of the risk faced by Mr. Bah if he was removed to Guinea. The Officer first concluded that Mr. Bah's failure to establish his identity made it impossible to connect the evidence with the possible risk faced by Mr. Bah personally.

Nevertheless, the Officer conducted a risk assessment against Guinea, the country of removal, based on Mr. Bah's profile. The Officer found that, even if Mr. Bah were able to prove his identity, the evidence did not have sufficient probative value to establish that Mr. Bah is at risk of persecution or torture in Guinea due to his political opinions and membership of the UFDG, his Peul ethnicity, or his status as a failed asylum seeker.

[9] The Officer concluded that Mr. Bah did not establish that he would face possible persecution or personal harm if deported to Guinea.

C. *The standard of review*

[10] Mr. Bah submits that, based on *Dunsmuir v New Brunswick*, 2008 SCC 9, the first issue (i.e., the admissibility of new evidence) is reviewable on a standard of reasonableness, while the second issue (i.e., the fettering of the Officer's discretion by failing to assess the risk faced by Mr. Bah in Guinea) is reviewable on a standard of correctness. The Minister of Citizenship and Immigration [Minister] argues that the standard of reasonableness applies to all aspects of the PRRA Decision.

[11] I agree with the Minister (*Rinchen v Canada (Citizenship and Immigration)*, 2022 FC 437 at para 15, citing *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 36; *Ashkir v Canada (Citizenship and Immigration)*, 2020 FC 861 at paras 10–12; *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at paras 19–20; *Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15; and *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at para 19). Since *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the analytical framework for judicial

review of the merits of an administrative decision is now based on a presumption that the standard of reasonableness is applicable in all cases (*Vavilov* at para 16). This presumption can only be rebutted in two types of situations. The first is where the legislature has prescribed the applicable standard of review or provided a mechanism for appealing the administrative decision to a court of law; the second is where the issue under review falls into one of the categories of issues for which the rule of law requires review on the standard of correctness (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 27; *Vavilov* at paras 10, 17). None of the issues raised in this application for judicial review warrants the use of the correctness standard.

[12] Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). A reasonable decision is justified with transparent and intelligible reasons that uncover an internally coherent reasoning (*Vavilov* at paras 86, 99). The reviewing court must be knowledgeable of the factual and legal constraints upon the decision maker (*Vavilov* at paras 90, 99), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125). The reviewing court must focus its attention on the decision made by the administrative decision maker, in particular on its justification, and not on the conclusion that the court would have itself reached had it been in the shoes of the decision maker.

[13] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

III. Analysis

A. *The exclusion of new evidence*

[14] It is undisputed that, to be admitted on a PRRA application, any new evidence presented by a claimant has to meet the requirements of paragraph 113a) of the IRPA, as clarified by the Federal Court of Appeal's decision in *Raza*. Paragraph 113a) reads as follows:

Consideration of application	**Examen de la demande**
113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	**a)** le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

[15] More precise admissibility criteria for new evidence were developed in *Raza*, where the Federal Court of Appeal held that new evidence must be credible, relevant, new, material, and respectful of the express statutory conditions (*Raza* at para 13).

[16] At issue is whether, in light of the applicable case law and the documents presented by Mr. Bah, it was reasonable for the Officer to conclude that the new evidence was not admissible. Mr. Bah argues that the Officer engaged in a narrow reading of the *Raza* test and erred in refusing new evidence on a mere technicality, namely that it should have been submitted earlier.

According to Mr. Bah, the Officer failed to address other relevant factors, such as the nature of the evidence, its probative value, its credibility, and its importance to the case. The Minister responds that the Officer not only did correctly consider whether the evidence could have been submitted earlier, but also specifically assessed its newness, its relevance, and its materiality, as required in *Raza*.

[17] I agree with the Minister.

[18] Mr. Bah relies heavily upon this Court's decision in *Elezi v Canada (Minister of Citizenship and Immigration)*, 2007 FC 240 [*Elezi*]. However, I am not persuaded that the *Elezi* precedent is of much assistance here. First, *Elezi* predates the *Raza* decision and provides for a broad approach to admissibility that has not been followed in subsequent jurisprudence (*Sitnikova v Canada (Citizenship and Immigration)*, 2016 FC 464 [*Sitnikova*] at para 21). Second, Mr. Bah fails to mention that in *Elezi*, Justice De Montigny held that the new evidence submitted by Mr. Elezi was not only extremely helpful in assessing his claim, but also that Mr. Elezi "could not reasonably have been expected in the circumstances to have presented them to the Board" (*Elezi* at para 43). This is a significant distinction with the case at bar, as the Officer in Mr. Bah's case clearly held that not only the information contained in the documents submitted as new evidence predated the RAD's decision, but that Mr. Bah had also failed to explain why he could not have been reasonably expected to present them beforehand.

[19] Paragraph 113a) of the IRPA requires, as an express statutory condition, that an applicant has to establish that the new evidence brought forward on a PRRA application was not reasonably available to him or her or that he or she could not reasonably have been expected in the circumstances to have presented the evidence before. If not, said the Federal Court of Appeal,

"the evidence need not be considered" (*Raza* at para 13). Contrary to Mr. Bah's argument, this is not a mere technicality; it is an express statutory requirement which, on its own, is sufficient to refuse new evidence (*Sitnikova* at para 19). It goes without saying that the Officer could not have ignored these specific legislative requirements. Here, Mr. Bah has not provided any evidence demonstrating that any new evidence was not reasonably available at the time of the RPD or RAD rejections, nor that he could not reasonably have been expected to have presented it at the time.

[20] What is more, in his consideration of Mr. Bah's new documents, the Officer clearly went beyond the sole statutory language found at paragraph 113a) of the IRPA. On multiple occasions, the Officer provided additional comments on the documents submitted by Mr. Bah, pointing out that some of them contained information that had already been submitted to the RPD and the RAD, or determining that others simply did not have sufficient probative value to establish Mr. Bah's identity. In sum, the Officer applied the *Raza* factors in his analysis. The Officer made a detailed and rigorous assessment of the documents submitted by Mr. Bah, including support letters from individuals and groups in Canada, letters from the Fulani Cultural Association of Canada and from the UFDG, bank and credit card statements, and birth certificates. For each piece of new evidence, the Officer conducted the assessment mandated by paragraph 113a) of the IRPA and required under *Raza*. None of the new evidence was found to be probative for a risk determination or for the establishment of Mr. Bah's identity.

[21] Therefore, I am of the opinion that the Officer did not commit any reviewable error in refusing to admit the documents that Mr. Bah submitted as new evidence. On the contrary, the Officer carefully examined the information contained in the new evidence and reasonably

assessed it against the statutory requirements and the criteria established in *Raza*. The Officer's conclusions on the inadmissibility of the new evidence are fully justified, transparent, and intelligible. They call for deference, and I see no reason justifying the Court's intervention.

[22] I must stress the fact that Mr. Bah erroneously attacks both the RPD's and the RAD's decisions and argues that they erred by refusing his identity documents. A PRRA assessment is not an appeal nor a judicial review of those decisions. In fact, absent new evidence admissible under paragraph 113a) of the IRPA, a PRRA officer must respect the negative refugee determination made by the RPD or the RAD (*Raza* at para 13). If Mr. Bah did not agree with the RAD's conclusions, he should have sought judicial review of its decision, which he did not do.

B. *Reasonableness of the Officer's risk assessment*

[23] As a second argument, Mr. Bah claims that the Officer's risk assessment is fictitious since the treatment of the evidence is tainted by the RAD's identity finding to such an extent that the risk is not assessed based on Mr. Bah's profile. Mr. Bah also submits that if the Canada Border Services Agency is able to remove him, it will be because Guinea recognizes him as a citizen of the country, which would establish his national identity. Therefore, by trying to remove him to Guinea, there would be an implicit acknowledgment of Mr. Bah's identity as a citizen of Guinea. Mr. Bah maintains that, because the Officer repeatedly stated that he had not established his identity, the risk assessment was at best cursory and incomplete.

[24] I disagree. As correctly pointed out by the Minister, the Officer pursued the analysis beyond the identity issue and looked at all the evidence going to Mr. Bah's risk of persecution upon return to Guinea.

[25] The Officer, after acknowledging that he could not link the evidence to Mr. Bah's situation because Mr. Bah had failed to establish his identity, nonetheless conducted an alternative analysis. In this exercise, the Officer did not consider the issue of Mr. Bah's identity, and focused on the risk a person with his profile would face, based on his political opinions, his ethnicity, and his status as a failed asylum seeker. This is substantially different from the situation in *Ladipo v Canada (Citizenship and Immigration)*, 2014 FC 408 [*Ladipo*], on which Mr. Bah relies, where the PRRA officer had rejected Mr. Ladipo's application without any examination or assessment of risk because his identity had not been established (*Ladipo* at paras 5, 11).

[26] In the case at bar, it is clear from the reasons that the Officer proceeded beyond the identity issue, as he was required to do (*Chen v Canada (Citizenship and Immigration)*, 2009 FC 379 at para 55). First, on the issue of Mr. Bah's risk in Guinea due to his political opinions, the Officer recognized that the situation is problematic for the government's opponents. However, the Officer found that there was no information in the National Documentation Package concerning the treatment of opponents of the government since it was overthrown in September 2021. Similarly, with respect to Mr. Bah's alleged risk due to his ethnicity, the Officer found that the objective documentary evidence did not establish that people of Peul ethnicity are persecuted in Guinea. Finally, the Officer held that, based on the evidence before him, Mr. Bah did not establish that he would face a risk if removed to Guinea based on his status as a failed refugee claimant.

[27] As a result, the Officer held that, even if Mr. Bah had established his identity, the evidence did not have sufficient probative value to establish that he faces a risk if removed to Guinea.

[28] I pause to underscore that, in his submissions to the Court, Mr. Bah has not pointed to any evidence on the record that would fault or contradict the Officer's factual findings on Mr. Bah's absence of risks if removed to Guinea.

[29] Since *Vavilov*, the reasons given by administrative decision makers have taken on greater importance and are now the starting point for the analysis. They are the primary mechanism by which administrative decision makers demonstrate that their decisions are reasonable — both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They serve to "explain how and why a decision was made", to demonstrate that "the decision was made in a fair and lawful manner" and to shield against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that establish the justification for the decision. The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Canada Post* at para 31, citing *Vavilov* at para 97).

[30] The reasons given in support of a decision do not have to be perfect nor exhaustive. Indeed, the reasonableness standard of review is not concerned with the decision's degree of perfection but rather with its reasonableness (*Vavilov* at para 91). However, the reasons must be understandable and justified. An administrative decision maker has a duty to articulate its rationale in its reasons (*Farrier v Canada (Attorney General)*, 2020 FCA 25 at para 32). Admittedly, the lack of detail given in a decision does not necessarily make it unreasonable, but

the reasons must enable the Court to understand the basis of the disputed decision and to determine whether the conclusion holds water.

[31] In the case of Mr. Bah, I find that the Officer's reasoning concerning his alternative risk assessment based on Mr. Bah's profile does not reveal any decisive flaws in terms of rationality or logic, and that the reasons contain a line of analysis that could reasonably lead the Officer to the conclusion at which he arrived (*Canada Post* at para 31; *Vavilov* at para 102). Contrary to what Mr. Bah argues, I do not find that the Officer's reasons are unintelligible or even cursory. On the contrary, they clearly show that, even if the Officer was not satisfied that Mr. Bah's identity had been established, he nevertheless dutifully assessed Mr. Bah's risk based on his profile: the Officer considered the risk he faced due to his political opinions, the risk he faced because of his Peul ethnicity, and the risk he faced as a failed asylum seeker. In each case, the Officer concluded, after a thorough review and specific references to the relevant documents, that the new evidence presented by Mr. Bah did not have sufficient probative value to establish that he is at risk. Far from being cursory, the Officer's analysis was detailed, rigorous, and methodical.

[32] Mr. Bah has failed to demonstrate any serious shortcomings in the Officer's Decision and reasoning. This is not a case where the administrative decision maker has ignored the evidence on the record, or "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126). Rather, the Decision testifies to the internally coherent reasoning followed by the Officer.

IV. Conclusion

[33] For the reasons detailed above, Mr. Bah's application for judicial review is dismissed.

[34] No question of general importance was proposed for certification and I agree that none arises here.

JUDGMENT in IMM-2680-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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