

Federal Court



Cour fédérale

Date: 20230921

Docket: IMM-3353-20

Citation: 2023 FC 1268

Ottawa, Ontario, September 21, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

YESHI KALSANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] A claimant's identity is central to any claim for refugee protection. A refugee claimant must provide acceptable documents establishing their identity, or explain why they cannot. Failure to do so may result in the rejection of the claim, regardless of whether the claimant is who they say they are, and regardless of the merits of other aspects of their claim.

[2] The applicant asserts that he is Yeshe Kalsang, a Tibetan monk who fears persecution in China. However, he presented limited and contradictory documentation regarding his identity, and the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada did not accept his explanations for the unavailability of other documents. The RPD also rejected certain incomplete additional evidence sent after the hearing that did not comply with the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*], and was not requested by the RPD. In a decision dated July 8, 2020, the RPD found the applicant had not established his identity, that it therefore could not assess his risk, and that he was therefore not a Convention refugee or a person in need of protection.

[3] Having reviewed the evidence and arguments that were before the RPD, I find it was reasonable for the RPD to conclude the applicant had not presented sufficient credible evidence to establish his identity and to dismiss his refugee claim on this basis.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] At the hearing of this application, the applicant challenged only the merits of the RPD's finding that he had failed to establish his identity.

[6] As the parties agree, this finding is subject to review on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *George v Canada (Citizenship and Immigration)*, 2022 FC 1065 at paras 23–24. When

reviewing a decision on this standard, the Court asks whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at para 99. Before it sets aside a decision as unreasonable, the Court must be satisfied there are sufficiently serious shortcomings central to the decision that it does not show these hallmarks: *Vavilov* at para 100.

III. Preliminary Issue: Post-hearing Documents and Former Counsel's Affidavit

[7] The applicant's initial application for leave and judicial review also challenged the RPD's rejection of evidence he submitted after the hearing. This argument relied on affidavits from the applicant and his former counsel asserting that the RPD had agreed to accept post-hearing documents. After leave was granted, the Minister filed a transcript of the hearing, which shows that the recollection of the applicant and his former counsel was mistaken. At the close of the hearing, the RPD stated that if there were any additional documents, the applicant could file an application in accordance with the *RPD Rules* "so that I can make a decision on admitting post-hearing documentation if it follows those Rules." In light of this evidence from the transcript, the applicant's new counsel withdrew the argument about post-hearing documents at the hearing of this application.

[8] Former counsel also asserted in her affidavit that, in accordance with her usual practice, she had obtained translations of the applicant's two "Green Books." The Green Book is a booklet issued to Tibetans by the Tibetan Government in Exile showing contributions made by the holder, which serves to identify the holder as Tibetan. Former counsel's affidavit attaches copies

of the translations, apparently prepared prior to the hearing, and asserts they were filed as part of pre-hearing disclosure. The certified tribunal record, however, shows that the translations were not sent to the RPD. Notably, the transcript shows the RPD referred several times to the Green Books being untranslated, without correction or objection by former counsel. Again, the applicant's new counsel at the hearing of this application conceded that the certified tribunal record did not show that the translations had been filed, and withdrew the argument based on former counsel's affidavit.

[9] For completeness, I note that the applicant did not argue that the hearing before the RPD was rendered unfair by the conduct or quality of representation of former counsel.

IV. Analysis

A. *The applicant's refugee claim and evidence of identity*

[10] The applicant arrived in Canada from the United States in 2018. He asserts he is a Tibetan citizen of China, born in India on May 4, 1969 to Tibetan parents. He fears persecution in China as a monk trained in Tibetan Buddhist traditions. He states he has a renewable Indian Registered Foreigner's Certificate, also known as a "registration certificate" or "RC", but no permanent status in India, and that he cannot apply for Indian citizenship since he does not have an Indian birth certificate.

[11] As noted above, in support of his refugee claim, the applicant filed untranslated copies of what he said were his old and new Green Books. However, he did not bring to Canada his

original Indian identity certificate (sometimes known as a “Yellow Book”) or his exit permit, documents he used to travel to the US. In an interview with a Canada Border Services Agency [CBSA] officer at his port of entry, the applicant said he had destroyed the identity certificate since a friend in the US told him he did not need it to make a refugee claim in Canada.

[12] Twenty days prior to the applicant’s scheduled refugee hearing, the RPD sent a letter pursuant to Rule 27 of the *RPD Rules*. The letter, addressed to the Minister and copied to the applicant and his counsel, stated the RPD believed there was a possibility that issues related to the integrity of the Canadian refugee protection system may apply to the claim and that it believed the Minister’s participation may be helpful in the full and proper hearing of the claim. In particular, the RPD raised concerns that the claim may have been made under a false identity, referring to the applicant’s statements at the port of entry that he had destroyed his identity certificate with his US visitor visa, as well as anomalies regarding his birth date and citizenship arising from biometric information received from the United States. The Minister did not participate in the hearing.

[13] At his refugee hearing, the applicant told the RPD he left the Indian identity certificate and exit permit behind with his friend, and believed that his friend had likely destroyed them. He testified that his friend had told him the identity certificate was unnecessary because a 2017 support letter from his monastery had his identity certificate number on it. However, he provided and filed electronic copies of the exit permit and the initial pages of the identity certificate. Each shows his date of birth as May 4, 1973, four years after the day he says is his real birth date. The applicant testified that when he was young, the monastery had told the Indian authorities that his

birth year was 1973, and that it had appeared on his identity certificate since then. According to a second letter from the monastery, dated November 7, 2018, the birth year was changed “in order for his admission in the monastery to be smooth sailing.” The letter notes that the applicant’s first Green Book uses the 1969 date, while the second Green Book uses the 1973 date that also appears on the identity certificate and registration certificate.

B. *The RPD’s decision*

[14] As noted above, the RPD rejected the documents the applicant submitted after the hearing. The applicant has withdrawn his challenge to this aspect of the decision.

[15] Based on the evidence that was before it, the RPD found the applicant had not established his identity on a balance of probabilities. The RPD began its analysis of this issue by reproducing section 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], which states as follows:

Credibility

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

Crédibilité

106 La Section de la protection des réfugiés prend en compte, s’agissant de crédibilité, le fait que, n’étant pas muni de papiers d’identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n’a pas pris les mesures voulues pour s’en procurer.

[16] The RPD reviewed the various documents on the record that were said to establish the applicant's identity. With respect to the two Green Books, the RPD was unable to understand or assess them, since they were not translated and no explanation was given for the lack of translation. The RPD therefore gave them no weight.

[17] The RPD did not accept the applicant's statements about why he left his identity certificate and exit permit in the United States. It found the applicant's testimony evolved regarding who apparently destroyed the documents and when, which undermined the applicant's credibility and his explanation for not presenting key identity documents. It also rejected the applicant's explanation that he was told the identity certificate was not needed because his identity number was in the 2017 monastery letter, finding the explanation unreasonable and inconsistent with the fact that the applicant submitted several documents in which other information was repeated. The RPD concluded that the applicant "deliberately left behind in the USA key identity documentation in order to preclude Canadian authorities from examining the documents and their contents." The RPD found this seriously undermined the applicant's personal credibility and precluded it from assessing important identity documents that could have helped assess whether his identity had been established.

[18] These travel documents, and the inability to confirm the applicant's travel history from them, were particularly important given other information on the record. Biometric information received from the US showed the applicant had entered the US in 2017, but did not show a later entry in 2018, when the applicant claimed he returned to the US from India. The RPD found the applicant had not provided credible evidence that he had not been in the US since 2017. It also

found that since the applicant had not filed the evidence he gave to US authorities to establish his identity, the RPD could not rely on the biometric information from the US to establish his identity.

[19] The RPD drew a further negative inference from the applicant's inability to explain why he had applied for a "*bona fide* Tibetan refugee certificate" from a Tibet resource centre in the US before coming to Canada, given his friend's advice that he did not need to bring the identity certificate. The RPD found it inconsistent to apply for a new identity document while leaving behind identity documents he already had. I note as an aside that in its decision, the RPD appears to use the term "RC" to refer to this "refugee certificate" which, as counsel explained at the hearing, is actually just a letter from the resource centre confirming the individual is a Tibetan, and not an Indian registration certificate. In any event, how the RPD referred to the document is immaterial to its reasoning.

[20] The RPD then turned to the issue of the two different birth dates the applicant had used. It reviewed the applicant's evidence, and raised a concern that the 1969 birth date was being put forward for reasons related to the fact that the Canadian citizen who the applicant said was his sister was born in 1973. In any event, the RPD stated that given the other credibility issues, even if the date of birth discrepancy were explained by the changes in the records at the monastery, there was still a lack of credible evidence to establish his identity.

[21] Given the lack of credible documentation, the issues raised by the inconsistent and evolving testimony, and the lack of reasonable explanation for not providing basic identity

documents, the RPD found the applicant had failed to provide credible and reliable evidence to establish his identity.

C. *The RPD's decision was reasonable*

[22] Having reviewed the record and the applicant's arguments, I find that the RPD's conclusion that the applicant had not established his identity was reasonable.

[23] Leaving aside the arguments based on the post-hearing documentation and the translations, which were withdrawn, the applicant makes two primary arguments.

[24] First, he argues the RPD failed to consider the applicant's monastery ID card, which included a picture of the applicant and his 1969 date of birth.

[25] I agree with the Minister that although the RPD did not refer to the monastery ID card specifically, it did address the various documents issued by the monastery collectively, including the ID card. After noting the applicant's evidence that the monastery had changed his birth date to 1973, the RPD noted that it had asked the applicant how the monastery was now able to provide documents with his actual date of birth. The transcript shows that question, and the applicant's answer, related to both the monastery's letter and the ID card, which were produced by the monastery at the applicant's request after his arrival in Canada. The only document the applicant claimed to have showing a 1969 birth date and issued before he arrived in Canada was the old Green Book, which was untranslated. Read in context, I cannot conclude the RPD overlooked or failed to consider relevant evidence regarding the applicant's identity.

[26] Second, the applicant argues the RPD failed to consider evidence related to his sister and father. At the port of entry, the applicant referred to his father, a Convention refugee in Canada, and his sister, a Canadian citizen. The CBSA officer's notes of this interview referred to the father and sister by their names and client identity numbers, stating that the father referred to the applicant in his basis of claim form. The CBSA officer concluded on a balance of probabilities that the applicant was the father's son, and that he therefore fell under an exemption to the Safe Third Country Agreement and was eligible to claim refugee protection in Canada despite entering from the US. The applicant argues it was unreasonable for the RPD not to consider and address this evidence going to his identity.

[27] I am not persuaded. As the Minister points out, and the applicant accepts, the evidentiary record before the RPD was not the same as that before the CBSA officer at the port of entry. Notably, the applicant did not file with the RPD the father's basis of claim form, and did not obtain testimony from the person identified as the sister, who had personally attended at the port of entry. The RPD expressly referred to the difference in the record, stating that it "was not provided with this Basis of Claim form, and so cannot confirm this information or determine when this statement was made by the father." The RPD found that its inability to know when the statement was made "and independently verify the details" rendered the information insufficient to establish the claimant's identity. Contrary to the applicant's arguments, the RPD did directly consider and address the conclusions of the CBSA officer. Based on the record before the RPD, I am not satisfied that its analysis was unreasonable.

[28] It may be that the applicant is who he says he is. It certainly appears that some technical and procedural issues led to evidence that may have been relevant to the applicant's identity not being put before the RPD. Nonetheless, section 106 of the *IRPA* and Rule 11 of the *RPD Rules* set out a clear obligation on an applicant to provide acceptable documentation of identity or a reasonable explanation for not doing so, at the risk of adverse credibility findings. Here, the applicant appears to have made a choice to destroy, or at least leave behind in the US, the original of a central identity document. It was reasonable for the RPD to reject the applicant's explanation, to have serious concerns about his credibility as a result, and to conclude that the other limited evidence put forward, which itself included a material discrepancy regarding his birth date, did not meet the applicant's onus to establish his identity.

V. Conclusion

[29] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that no question meeting the requirements for certification arises in the matter.

[30] Finally, at the request of the Minister, and in accordance with subsection 4(1) of the *IRPA* and subsection 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-3353-20

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. The style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3353-20

STYLE OF CAUSE: YESHI KALSANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 29, 2023

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: SEPTEMBER 21, 2023

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