Federal Court  Cour fédérale

Date: 20231222

Docket: IMM-5909-22

Citation: 2023 FC 1750

Ottawa, Ontario, December 22, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

FELIX ETTA EYONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Felix Etta Eyong, is a citizen of Cameroon who belongs to the English-speaking minority. He was a member of the Southern Cameroons National Council [SCNC] and the Southern Cameroons Youth League [SCYL] commencing in 1995 for approximately six years. During that time, he spent approximately three years as the Secretary for the SCYL in Mamfe and then approximately three years in that same position in Limbe.

[2] In 2018, he arrived in Canada and sought refugee protection alleging persecution by the government of Cameroon. His refugee claim was suspended following a report issued under paragraph 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the Respondent filing a referral for an admissibility hearing before the Immigration Division [ID] of the Immigration and Refugee Board of Canada.

[3] The Applicant seeks judicial review of the resulting decision by the ID on May 24, 2022, whereby the ID found the Applicant to be inadmissible to Canada under paragraphs 34(1)(b) and 34(1)(f) of the IRPA [Decision]. The combined effect of these paragraphs is to make a permanent resident or a foreign national inadmissible on security grounds for being a member of an organization where there are reasonable grounds to believe the organization engages, has engaged or will engage in the act of engaging in or instigating the subversion by force of any government. The ID concluded that the Applicant was a member of the SCNC and the SCYL, two organizations for which there are reasonable grounds to believe engage, have engaged in or will engage in or instigate the subversion by force of the government of Cameroon. In particular, the ID regarded the takeover of the Buea radio station by armed activists in 1999 and proclaiming the independence of English-speaking regions of Cameroon to be an act of subversion by force.

[4] The Applicant submits that the Decision is unreasonable. The Applicant relies primarily on *Numvi v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 396 [*Numvi*], in which Justice Alan S. Diner concluded that it was not reasonable for the ID to not consider contradictory evidence in the record that did not support the conclusion that there were

reasonable grounds to believe that SCNC was involved in the Buea radio station takeover. The Applicant submits that there is evidence that the SCNC espouses non-violence and thus should not be portrayed as a terrorist or subversive organization. The Applicant pleads that *Numvi* changed the law and it is not reasonable to find him inadmissible almost 25 years after the event, aimed at giving the Anglophone community a voice, took place.

[5] The Respondent submits that the Decision is clear, detailed, transparent and reflective of the evidence. The ID reasonably concluded that there are reasonable grounds for believing that the SCNC and the SCYL have engaged in subversion by force against the government of Cameroon. The Respondent argues that the Applicant is simply seeking to reweigh the evidence and that his reference to terrorism is irrelevant as the ID did not find that acts under paragraph 34(1)(c) of the IRPA were committed.

[6] The Respondent pleads that the Applicant's reliance on *Numvi* is misplaced, because in *Numvi* the applicant was a member of the SCNC but not the SCYL. In *Numvi*, Justice Diner attributed the takeover to the SCYL and concluded that it was not reasonable to attribute the actions of the SCYL to the SCNC as the evidence on the ties between the two organizations was mixed. This issue does not arise in the present case, in the Respondent's view, because the Applicant was a member of both organizations.

[7] For the reasons that follow, and despite the able submissions of counsel for the Applicant, this application for judicial review is dismissed. The Applicant has failed to persuade me that the Decision is unreasonable.

II. Issue and Standard of Review

[8] The Applicant does not challenge the ID's conclusion that he was a member of both the SCNC and the SCYL, and as such, membership is not at issue (34(1)(f) of the IRPA). Rather, the issue is whether the ID reasonably concluded that the Minister had met his burden of proving that there are reasonable grounds to believe that the SCYL and the SCNC are organizations that engage, have engaged or will engage in or instigate the subversion by force of the government of Cameroon as per section 34(1)(b) of the IRPA.

[9] The standard of review of the ID's findings with respect to whether or not there are reasonable grounds to believe that an organization engaged in subversion by force of a government for purposes of paragraph 34(1)(b) of the IRPA is reasonableness (*Numvi* at para 8; *Zahw v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 934 at para 22 [*Zahw*]; *Ntebo v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 403 at para 10).

[10] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

III. Analysis

[11] Pursuant to section 33 of the IRPA, the standard of proof that applies to inadmissibility determinations on security grounds under section 34 of the IRPA is "reasonable grounds to believe". In *Shohan v Canada (Citizenship and Immigration)*, 2023 FC 515, Justice Mandy Aylen succinctly described this standard:

> [33] …"Reasonable grounds to believe" is more than mere suspicion but less than the civil standard of balance of probabilities [see *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 349 at paras 11-13]. Reasonable grounds will exist where there is an objective basis for the belief, based on compelling and credible information [see *Mugesera*, supra at para 114]. Put differently, reasonable grounds to believe are established where there is a bona fide belief of a serious possibility, based on credible evidence [see *Hadian v Canada (Citizenship and Immigration)*, 2016 FC 1182 at para 17, citing *Chiau v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16793 (FCA), [2001] 2 FC 297 (FCA) at para 60].

[12] The question before this Court is not whether there were "reasonable grounds to believe" the Applicant is inadmissible on security grounds. Rather, this Court must consider whether the ID's conclusion that there were "reasonable grounds to believe" that the SCNC and the SCYL engage, has engaged or will engage in the acts referenced in paragraph 34(1)(b) of the IRPA – was in itself reasonable (*Rahaman v Canada (Citizenship and Immigration)*, 2019 FC 947 at para 9; *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at para 13 [*Alam*]). There is no requirement for the ID to find that the Applicant participated in or was directly complicit in the acts of alleged subversion (*Alam* at paras 33-35; *Zahw* at para 32).

[13] The IPRA does not define the expression “subversion by force of any government” and there is no universally accepted definition of the expression (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at para 65 [*Najafi*]). The jurisprudence of this Court, however, has accepted that the most common definition of subversion is the changing of a government or the instigation thereof through the use of force, violence or criminal means (*Eyakwe v Canada (Citizenship and Immigration)*, 2011 FC 409 at para 30; *Zahw* at para 34). The Federal Court of Appeal has confirmed that Parliament intended the expressions “subversion by force of any government” in paragraph 34(1)(b) to have a broad application (*Najafi* at para 78).

[14] The Applicant submits that the ID was robotically following older case law without truly weighing the evidence before it. In the Applicant’s view, the ID was dismissive of his testimony regarding the takeover of the Buea radio station and failed to take into account that nothing has happened since that incident over two decades ago. The Decision is not justified as it disregarded the views of the Applicant and whether the SCNC and SCYL remain a threat today.

[15] I agree with the Respondent that the Applicant’s argument on this point is an impermissible request to reweigh the evidence. The ID considered the Applicant’s version of events that it was not a takeover. The ID chose, however, to give more weight to the objective documentary evidence given the Applicant was not present at the radio station. The ID considered numerous independent sources that portrayed the event in a similar manner, namely that armed activists seized the Buea radio station, disarmed the guards, took hostages, and forced the technician to broadcast a proclamation of independence for three hours. The ID concluded

that the takeover amounted to an act of subversion by force because by proclaiming the independence of English-speaking regions of Cameroon, it was clearly intended to contribute to the process of overthrowing a government. The ID highlighted the marches that were organized following the takeover, and the various statements threatening the use of force and calling for those involved in the military, police, gendarmerie and other similar organizations to defend the newly proclaimed republic's sovereignty. Taking into account the evidence before the ID, I am not persuaded that the ID's findings are unreasonable. The ID was entitled to prefer the objective documentary evidence over the testimony given by the Applicant.

[16] As to the fact that the takeover of the Buea radio station took place over two decades ago, the Applicant has not referred me to any authority that indicates that this is a factor to be considered. The Applicant pleads that it is unconscionable that an event years ago can render him inadmissible today. By this token, he submits, Nelson Mandela would have been inadmissible to Canada for his actions during apartheid.

[17] Parliament has not provided for a prescribed period after which an event or act no longer renders an applicant inadmissible pursuant to section 34 of the IRPA. It is therefore not for this Court to do so. While paragraph 34(1)(b) of the IRPA is to be applied broadly, the possibility of relief does exist. The Federal Court of Appeal in *Najafi* highlighted that the Minister has the ability to exempt any foreign national caught by the broad language of the provision and noted that the mechanisms in subsections 42.1(1) (Application to the Minister) and 42.1(2) (Minister's own initiative) of the IRPA could be used to protect "members of organizations whose admission to Canada would not be detrimental or contrary to national interest because of the organization's

activities in Canada and the legitimacy of the use of force to subvert a government abroad." (at paras 80-81).

[18] The Applicant also raises the fact that neither the SCNC or the SCYL have been listed as terrorist organizations by Canada, and as such they should not be considered as terrorist or subversive organizations.

[19] I agree with the Respondent that terrorism is not at issue in the present matter. The ID noted that an allegation of terrorism was not raised. The matter was not considered under paragraph 34(1)(c) (engaging in terrorism). In addition, this Court has confirmed that the listing of an organization as a terrorist organization pursuant to the Criminal Code is not a prerequisite to a finding of inadmissibility under paragraph 34(1)(f) of the IRPA (*Anteer v Canada*, 2016 FC 232 at paras 43-44).

[20] I turn now to Justice Diner's decision in *Numvi*, which the Applicant pleads is analogous to the present case. In *Numvi*, the applicant had submitted that the ID erred by attributing the take over of the Buea radio station by armed activists to the SCNC when the evidence in the record was not conclusive and attributed it as much to the SCNC as to the SCYL (at para 12). The applicant in *Numvi* equally argued that it was unreasonable of the ID to impute the actions of one organization, SCYL, to another, SCNC, given the divergence in the philosophies of the two organizations (*ibid*).

[21] Justice Diner concluded that, based on the documentary evidence before him, it was not reasonable of the ID to not take into account the contradictory evidence that reflected the extent to which the SCNC was implicated in the takeover of the Buea radio station and demonstrated that the SCNC was fragmented at the time. Furthermore, he agreed with prior decisions of this Court that attributed the taking of the Buea radio station to the SCYL rather than the SCNC and which recognized that the SCNC and the SCYL were two separate groups (at para 17).

[22] The Respondent submits that the ID recognized that the evidence does not clearly explain the nature of the relationship between the SCNC and the SCYL, and stated that actions by one organization cannot be mechanically attributed to the other. The Respondent pleads that the applicant in *Numvi* was only a member of the SCNC, while in the present case, the Applicant was a member of both organizations.

[23] Contrary to the submissions of the Applicant, I do not find Justice Diner's conclusions in *Numvi* applicable in the present case. I find the ID reasonably considered the evidence before it, highlighted the differences between the two groups, considered the level of involvement of the groups in the takeover, and ultimately concluded that the Applicant, a member of both the SCNC and the SCYL, was inadmissible pursuant to paragraphs 34(1)(b) and (f) of the IRPA.

IV. Conclusion

[24] For the foregoing reasons, I conclude that the Decision meets the standard of reasonableness set out in *Vavilov*. This application for judicial review is therefore dismissed. No

serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-5909-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and

2. There is no question for certification.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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