Federal Court Cour fédérale

Date: 20240118

Docket: IMM-2466-22

Citation: 2024 FC 74

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 18, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

ABDALLAH ABDALLAH ELNOUR EL SENOUSSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA], of a Refugee Protection Division (RPD) decision dated February 18, 2022 (the Decision). The RPD allowed the application for cessation

of refugee protection made by the Minister of Citizenship and Immigration (the Minister) pursuant to paragraph 108(1)(a) of the IRPA and rejected the applicant's claim for refugee protection.

[2] For the reasons outlined below, the application for judicial review should be allowed. The RPD's analysis of the evidence is not reasonable.

II. Background

[3] The applicant is a 50-year-old citizen of Chad. In 2009 he filed a refugee protection claim against Chad. The RPD granted him refugee status on March 9, 2012. He obtained permanent residency in Canada in the refugee class on October 22, 2015.

[4] The applicant travelled to Cameroon, with a Canadian travel document, from November 16, 2014, to April 21, 2015. When he returned to Canada, he was intercepted by a Canada Border Services Agency (CBSA) officer and was found to be in possession of three documents which, according to the Minister and the RPD, show that the applicant had re-established himself in Chad:

a) authorization of a 15-day leave of absence from work from the health delegation of N'Djamena in Chad, from March 6 to 20, 2015;

b) a paystub from the N'Djamena department of public health as an official for October 2014; and

c) a document ordering a name change dated 2004 according to which the applicant named "Abdallah El-Nour El-Senoussi" was henceforth named "Abdallah Nour Sounou".

[5] According to the traveller history in the Integrated Customs Enforcement System (ICES), the applicant entered Canada three times through Pierre Elliott Trudeau International Airport between 2013 and 2018.

[6] The Minister argued that the applicant is a person described in paragraphs 108(1)(a) (as a person who has voluntarily reavailed themself of the protection of their country of nationality) and 108(1)(d) (as a person who has voluntarily become re-established in the country that the person left).

[7] The parties submitted their evidence, and the hearing was held on November 29, 2021.

III. Impugned RPD decision

[8] The applicant confirmed that the three documents on which the Minister relied were in his possession when he returned to Canada on April 21, 2015. However, he testified that those documents had been put in his suitcase unbeknownst to him and that he was surprised when the

officer found the documents in his suitcase. He categorically denied having returned to Chad since he obtained his protected person status in Canada, and he testified that he went to Cameroon on a family visit.

[9] The applicant raised several inconsistencies in the documents. According to the paystub, the applicant had worked in Chad in October 2014, but the applicant was working in Canada during that period. He submitted as evidence a letter from his former Canadian employer as well as paystubs, including the paystub for the period from October 12 to 25, 2014, as well as emails exchanged with his employer. The RPD noted that according to the paystub from his former Canadian employer, the respondent worked 40 hours during the period covered, that is, from October 12, 2014, to October 25, 2014, but that the letter from his former employer in Canada states only that the respondent worked [TRANSLATION] “during the 2014 season”.

[10] The applicant noted that the leave of absence authorization was issued on April 2, 2015, for a leave that had already taken place from March 6 to 20, 2015, and that furthermore, the applicant returned to Canada on April 21, 2015. The applicant also stated that he had never heard the name “Abdullah Nour Sounou”, the name indicated on the change of name order.

[11] The RPD concluded that the documents were authentic and that the applicant’s explanation, that he did not recognize the documents and that he did not know how they got into his suitcase, was implausible.

[12] The RPD noted that the applicant travelled outside of Canada on two other occasions, including the trip to Cameroon from November 2015 to January2018. The RPD questioned him about this, and the applicant's counsel objected, claiming that she did not see the relevance and that the Minister had not filed anything in relation to those trips. The RPD dismissed those objections and noted that following that dismissal the applicant became more hesitant to answer basic questions about the trips, saying that like his counsel, he did not understand the questions and asked if he was required to reply. The RPD decided to move on to another line of questioning, with the possibility of coming back to the trips in question or giving the respondent more time to better prepare (which was not done).

[13] However, the RPD concluded that "if the respondent had nothing to hide, he should have been ready to answer the basic questions about those trips, which were duly referred to in the Minister's allegations and the evidence filed by the Minister", and it drew a negative inference from this regarding the credibility of the applicant's testimony.

[14] The RPD considered that the applicant had not provided a credible explanation to justify the documents in his possession and therefore concluded that the applicant had returned to Chad and that he was employed as an official with Chad's department of public health. It also gave greater probative value to the documents in evidence, including in particular the paystub, the authorization of leave, and the change of name order, issued by the Chadian authorities on behalf of the applicant, than it did to the applicant's testimony.

[15] The RPD concluded that the applicant voluntarily reavailed himself of Chad's protection, considering the cumulative conditions for that determination: voluntariness, intention and reavailment (having actually obtained Chad's protection).

IV. Issues and standard of review

[16] There are two issues in this case:

A. Did the RPD breach the principle of procedural fairness?

B. Is the RPD's decision reasonable?

[17] The standard of review in terms of the validity of the decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]) and that matters of procedural fairness are evaluated on the correctness standard, or rather, that the issue is to determine whether the decision-maker complied with the duty of procedural fairness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[18] A reviewing court must develop an understanding of the decision-maker's reasoning process to determine whether the decision as a whole is reasonable. To make this determination, the reviewing 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).

V. Analysis

A. *Did the RPD breach the principle of procedural fairness?*

[19] The applicant notes that in the application for cessation of refugee protection the Minister made to the RPD, the allegations are based on his trip to Cameroon from November 16, 2014, to April 2, 2015, and on the three documents that were in his suitcase when he returned to Canada. Nevertheless, the Minister insisted on asking the applicant multiple questions about the other trips noted in his history. The applicant's counsel objected to the questions about the other trips because the application for cessation of refugee protection was not based on those trips and that it was a fishing expedition on the part of the Minister.

[20] The applicant submits that the RPD breached the principle of procedural fairness in stating that "in the panel's opinion, if the respondent had nothing to hide, he should have been ready to answer the basic questions about those trips, which were duly referred to in the Minister's allegations and the evidence filed by the Minister". The applicant argues that the RPD erred by drawing "a negative inference regarding the credibility of the respondent's testimony." because of his hesitation to discuss facts that the RPD itself considered to be non-determinative.

[21] The respondent maintains that the RPD was free to dismiss the applicant's objections to the questions about those other trips, because they were mentioned in the Minister's evidence. According to the respondent, there is no breach of procedural fairness under the circumstances,

because the other two trips were not determinative since the Minister had met his burden of proof given the other evidence on file (as discussed below).

[22] I do not agree with the applicant's argument on this point. The other two trips are noted in the Minister's allegations, and the RPD did not breach procedural fairness by noting the applicant's objections and testimony on this matter. That said, I agree that the RPD erred in law by drawing a negative inference as to the applicant's credibility based on a point that the Court described as non-determinative.

[23] The Court has noted "that a negative credibility finding cannot be founded on minor contradictions that are secondary or peripheral to the refugee protection claim" (*Alex-Alake v Canada (Citizenship and Immigration)*, 2021 FC 208 at para 13; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 20–26). In this case, I am of the opinion that it is unreasonable for the RPD to draw a negative inference from the fact that the applicant was "vague and elusive" when answering basic questions about those non-determinative trips.

B. *Is the RPD's decision reasonable?*

[24] The applicant submits that the decision is unreasonable because the RPD did not consider all of the evidence presented at the hearing and its analysis of documents was unreasonable. The RPD failed to consider the uncontested evidence that the applicant could not have been in Chad in October 2014, that there are errors in the leave of absence authorization, and that the document ordering a name change was dated 2004, well before his refugee

protection claim. Without a real engagement with the evidence on file, the RPD cannot conclude that he obtained protection from the Chadian state by working for the government during that period.

[25] The applicant put a great deal of emphasis on the first point, in that it was impossible for him to be Chad in October 2014. He notes that he went to Cameroon on November 16, 2014, as reflected in the travel documents and the Traveller Passage Report filed by the Minister. He testified that he travelled with a refugee travel document and that the Minister never found a Chadian passport during the search. In addition, the documents filed by the applicant showed that he was working in Canada in October 2014.

[26] The applicant argues that the fact that he could not travel to Chad with a refugee travel document and without a Chadian passport and the fact that he did not arrive in Cameroon until November 16, 2014, show that it was impossible for him to have worked in Chad in October 2014, as shown by the paystub on which the RPD relied. Hence, that paystub cannot be authentic and true as the RPD concluded. The applicant states that the RPD erred in law by failing to consider this evidence, and that it is a fatal error because the RPD's conclusion in terms of the application of paragraph 108(1)(a) of the IRPA is based on the conclusion that he worked for the Chadian government.

[27] The respondent submits that the RPD noted all of the evidence, and the applicant's submissions, and that the RPD is free to conclude that the applicant voluntarily reavailed himself of Chad's protection. There is no question that the RPD ignored an important document, or the

applicant's allegations; however, the respondent states that the RPD processed them in a clear and detailed manner. The respondent maintains that the RPD's conclusion that the applicant worked for the Chadian government as an official, and that this fact shows a close tie to the Chadian authorities, is clearly based on the evidence on file. Moreover, the respondent notes that the weighing of the evidence and the weight given to certain pieces of evidence are not issues on which the Court should intervene (*Nallathamby v Canada (Citizenship and Immigration)*, 2010 FC 1131 at paras 14 and 15).

[28] According to the respondent, the RPD's decision is first and foremost a pure assessment of the evidence in relation to the applicant's allegations and explanations. As the RPD concluded, the explanations provided the by applicant went beyond the limits of credulity particularly because it was difficult to believe that an unknown person had placed three different documents, issued by Chadian authorities on three different dates, into the applicant's suitcase while he was at the airport in another country.

[29] To begin the analysis of this matter, it is preferable to go back to the initial principles coming out of the *Vavilov* decision. Specifically, I note that *Vavilov* focuses on the importance of the reasons, because they explain the decision-maker's reasoning process. The statements of the Supreme Court in paragraph 86 are fitting:

> In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning,

> an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

[30] I agree with the respondent that the RPD mentioned all the relevant pieces of evidence, as well as the applicant's arguments. However, the problem is that the RPD did not significantly address the content of the two key documents on which it based its conclusion that the applicant had worked for the Chadian government.

[31] The crucial error, in my opinion, is the fact that the RPD does not explain how the applicant could have worked in Chad in October 2014 without a Chadian passport, travelling with a refugee document with which he could not enter Chad, when he did not arrive in Africa until November 2014. The documentation submitted by the Minister is conclusive in that the applicant left Canada and arrived in Cameroon on November 16, 2014. The paystub found in the Applicant's suitcase covers the period of October 2014. The RPD found that document to be authentic but did not explain how the paystub can establish the applicant's presence in Chad, or the fact that he worked for the Chadian government as an official in October 2014, considering the fact that he did not leave Canada until November 15, 2014.

[32] Moreover, the RPD does not explain how it was able to conclude that the leave of absence authorization is authentic, given the fact that the document authorizing a period of leave in March 2015 was issued in April 2015. The RPD did not analyze the applicant's argument as to the obvious problems with that document.

[33] I agree that the RPD's reasoning does not demonstrate an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). The decision is not based on reasoning that is both rational and logical (*Vavilov* at para 102). I am not satisfied that the RPD's reasoning on the points described above "adds up" (*Vavilov* at para 104).

VI. Conclusion

[34] For all these reasons, the RPD's decision is unreasonable. The application for judicial review is allowed. The decision is set aside, and the matter is referred back to a differently constituted panel for redetermination.

[35] There are no questions of general importance for certification.

JUDGMENT in IMM-2466-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.

2. The decision is set aside, and the matter is referred back to a differently constituted panel for redetermination.

3. There are no questions of importance for certification.

"William F. Pentney"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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