

Federal Court



Cour fédérale

Date: 20240122

Docket: IMM-853-23

Citation: 2024 FC 103

Ottawa, Ontario, January 22, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SIMONE ALECIA WILTSHIRE

Applicant

and

**THE MINISTER CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Jamaica who reports a fear of persecution in that country based on sexual orientation.

[2] The Refugee Protection Division [RPD] found the Applicant not to be a Convention refugee or a person in need of protection, citing the cumulative effect of identified credibility concerns.

[3] In a decision dated December 22, 2022, the Refugee Appeal Division [RAD] dismissed the Applicant's appeal finding that credibility was the determinative issue. The RAD agreed with the RPD's credibility assessments.

[4] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD's decision.

[5] The Applicant submits the RAD erred on numerous grounds. In my opinion, and as is explained in more detail below, the RAD did not err in finding the Applicant had failed to credibly establish her profile as an individual at risk due to her sexual orientation. That finding was reasonable and, in light of the Applicant's allegations of risk, was determinative of the claim. The Application is therefore dismissed.

II. Background

[6] The Applicant reports that, since her teenage years, she has had feelings for women, but was also aware that her family would perceive this as unacceptable. The Applicant reported in her Basis of Claim [BOC] narrative that her mother advised her to marry a man and have children in order to keep her safe and make her father happy.

[7] The Applicant originally came to Canada in 2008 on a work visa, but found the work to be difficult and returned to Jamaica. She returned to Canada in July 2014, reporting that she faced pressure to marry one of the fathers of her children in Jamaica and that, having refused to do so; the father spread rumours about the Applicant's sexual orientation. The Applicant married in Canada in January 2018. She separated from her husband shortly thereafter, and in February 2020, made a claim for protection.

III. Decision of the RPD

[8] In March 2022, the RPD rejected the Applicant's claim. The RPD found that the Applicant had established her identity, but found that material aspects of the Applicant's testimony contradicted and were inconsistent with the evidence, including the Applicant's statements in her BOC documentation.

[9] The RPD addressed the identified contradictions between the testimony and the evidence as it related to the Applicant's sexual orientation, the treatment of the Applicant by family members, and the threats received by the Applicant from her family and society. In addition, after addressing the testimony of the Applicant's current partner, the RPD held that it was not persuaded the Applicant was in a current relationship and that, in any event, the current partner's testimony was insufficient to overcome the RPD's serious credibility concerns.

[10] The RPD acknowledged that, although the credibility concerns might individually be insufficient to negate the claim, their cumulative effect resulted in an insufficiency of credible evidence upon which to base a determination that the Applicant was a Convention refugee.

[11] In the course of the hearing before the RPD, and under questioning by counsel, the Applicant recanted much of the inconsistent testimony she had previously provided, explaining she was nervous and did not understand the questions being posed. The RPD rejected the Applicant's explanation for recanting prior testimony. The RPD found this further undermined the Applicant's overall credibility and concluded the presumption of truthfulness had been rebutted.

[12] The RPD concluded, on a balance of probabilities, that: (1) the Applicant was never threatened due to her sexual orientation in Jamaica; (2) the Applicant failed to establish her sexual orientation as a lesbian/bisexual individual; (3) she is not lesbian/bisexual; and (4) she is not perceived in Jamaica as a lesbian/bisexual individual or is not threatened as a result.

IV. Decision under review

[13] In confirming the RPD's decision and dismissing the Applicant's appeal, the RAD found that credibility was the determinative issue. The RAD agreed with the RPD's credibility concerns and confirmed the RPD's negative credibility determinations.

[14] After reviewing the record, the RAD noted that the Applicant's testimony was inconsistent with the evidence the Applicant had provided in support of her claim. The RAD agreed with the RPD – inconsistencies in the evidence relating to harassment and threats experienced in Jamaica and the Applicant's relationship with family members were sufficient to rebut the presumption of truthfulness.

[15] The RAD further concluded the RPD did not err in failing to undertake an IRPA section 97 analysis. Having concluded the Applicant had failed to demonstrate she was lesbian/bisexual or perceived as such in Jamaica, no further analysis of risk relating to sexual orientation was required and no other allegation of risk had been advanced.

[16] The RAD further found that the RPD was not required to consider documentary evidence outlining the risk to gays and lesbians in Jamaica. This because the Applicant had failed to establish a well-founded fear based on sexual orientation.

V. Issues and standard of review

[17] The Applicant raises the following issues in arguing the decision is unreasonable:

- A. the persecution analysis is flawed;
- B. adequate reasons to support the findings were not provided;
- C. there was a failure to properly assess the documentary evidence; and
- D. there was a failure to conduct a separate section 97 analysis.

[18] In my view, the Application raises a single issue:

- A. Did the RAD reasonably conclude that the Applicant had failed to present sufficient credible and reliable evidence to establish her reported profile as a lesbian/bisexual woman?

[19] The RAD's credibility determinations and assessment of the evidence are to be reviewed on the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10, *Manenga v Canada (Citizenship and Immigration)*, 2022 FC 233 at para 9). Reasonableness review focuses on the decision made and the justification provided. The party inviting a court to intervene has the burden of demonstrating the decision's shortcomings are such that they result in the decision failing to exhibit the requisite degree of justification, intelligibility and transparency. Reasons will be unreasonable if, when read holistically and in light of the record, they fail to reveal a rational chain of analysis that demonstrates, within the constraints of the facts and law, the hallmarks of justification, transparency and intelligibility (*Vavilov* at paras 15, 85, 97, 100 and 103).

VI. Analysis

[20] The Applicant has advanced a series of arguments and relied on extensive jurisprudence from this Court in support of the view that the RAD erred in its persecution analysis by failing to properly assess country condition evidence and by failing to undertake a separate section 97 analysis.

[21] I generally take no issue with the Applicant's summary and interpretation of the jurisprudence cited. However, the determinative issue was whether the Applicant had established her profile. Having concluded the Applicant had not done so, a further risk analysis was not required.

[22] The Applicant argues the RAD failed to justify its credibility findings with transparent, intelligible and internally coherent reasons. The Applicant alleges that, in affirming the RPD's decision, the RAD failed to make findings of fact and failed to address major points raised in the Applicant's submissions, particularly those submissions that challenged the RPD's credibility findings.

[23] The RAD's decision is unquestionably concise, but as this Court has noted, the adequacy or sufficiency of reasons is not measured by the pound. The test is whether the reasons explain why the decision was reached. Reasons need not be comprehensive; they only need to be comprehensible (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 41).

[24] I will now turn to the reasons provided. First, the RAD notes it has undertaken an independent review of the audio recording and the record that was before the RPD. The RAD's reasons acknowledge the Applicant's submissions relating to the RPD's credibility findings, specifically noting that the Applicant was of the view that the RPD made "erroneous credibility findings and ignored or misconstrued the evidence before it." The RAD then addresses the RPD's analysis and finds the RPD's reasons to be clear, detailed and complete, having accurately reflected the evidence. The RAD states that it agreed with many of the RPD's credibility findings "for the same reasons provided by the RPD."

[25] Assessing the RAD's reasoning and chain of logic requires a reading of the RAD's decision in conjunction with the RPD's decision. This does not render the RAD's decision unreasonable. It was open to the RAD, having independently considered the record, to then adopt

as correct the findings and supporting analysis of the RPD. *Vavilov* teaches that reasons are to be considered holistically and read in light of the record (para 103). While the RAD is required to undertake an independent review of the evidence, it need not engage in a repetitive analysis where the RAD is in agreement with both the outcome reached and the reasoning relied upon by the RPD.

[26] The Applicant does not directly dispute the inconsistencies identified by the RPD and confirmed by the RAD. Instead, the Applicant argues that the decision maker was required to consider the explanations provided. The record discloses that those explanations, to the extent provided, were considered.

[27] Inconsistencies between the evidence and within the Applicant's testimony were brought to the Applicant's attention by the RPD. For example, in her testimony, the Applicant reported not having experienced discrimination or threats in Jamaican society, yet she was unable to explain why she reported in her BOC that she had been subjected to death threats in Jamaica. In her testimony, the Applicant explained that she had not experienced discrimination or received threats because she had not disclosed her sexual orientation. She could not explain why her BOC reported she had been subjected to death threats in Jamaica beyond indicating that the BOC statements were a mistake. The Applicant then later recanted that evidence and explained the recantation by stating that the RPD's questions were not understood and that she was nervous. The RPD considered but rejected this explanation, providing reasons for doing so, as did the RAD.

[28] Other inconsistencies arose in respect of evidence relating to the nature of the Applicant's relationship with family members, including her mother and father, and the harassment she experienced due to her sexual preferences in Jamaica. Family members were among the reported agents of persecution. Again, the inconsistencies involved evidence relating to the alleged harassment and persecution central to the claim, and the RAD reasonably concluded the inconsistencies related to material aspects of the claim. The RAD, in turn, reasonably held, as had the RPD, that the presumption of truthfulness had been rebutted in relation to "key credibility concerns."

[29] The RAD also considered and addressed the Applicant's assertion that the RPD had failed to take account of the Applicant's vulnerability. The RAD noted that the RPD's questioning was respectful and that the *Chairperson's Guideline 9: Proceedings before the Immigration and Refugee Board of Canada involving Sexual Orientation and Gender Identity expression (2017)* was appropriately applied.

[30] The Applicant submits the RAD erred by failing to expressly address arguments made before the RAD that advanced alternative explanations for the inconsistencies in the Applicant's evidence, or that advanced alternative interpretations of the evidence. I disagree. The RAD did consider the explanations provided before the RPD. The alternative explanations advanced on appeal did not differ in kind from the explanations provided to the RPD – the Applicant did not understand the questions posed. The RAD was not required to address every argument advanced by the Applicant.

[31] In short, while I would have preferred more detailed reasons, the RAD's failure in this regard is not sufficient to warrant intervention.

VII. Conclusion

[32] For the above reasons, the Application is dismissed. The parties have not identified a question of general importance and none arises.

JUDGMENT IN IMM-853-23

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-853-23

STYLE OF CAUSE: SIMONE ALECIA WILTSHIRE v THE MINISTER
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 4, 2023

JUDGMENT AND REASONS: GLEESON J.

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