

Federal Court



Cour fédérale

Date: 20240603<sup>12</sup>

Docket: IMM-3932-23

Citation: 2024 FC 833

Ottawa, Ontario, June 3, 2024

**PRESENT:** Madam Justice Azmudeh

**BETWEEN:**

**MARTIN BYARUGABA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Under section 72(1) of the Immigration and Refugee Protection Act [IRPA], the Applicant, Martin Byarugaba [the “Applicant”], is seeking a Judicial Review of the rejection of his refugee protection appeal by the Refugee Appeal Division [“RAD”] of the Immigration and Refugee Board of Canada [“IRB”]. The Judicial Review is granted for the following reasons.

[2] The Applicant is a citizen of Uganda. He alleges to have become a member of the Forum for Democratic Change (FDC) party in 2015 who helped the party with mobilization. This

brought him to the attention of the ruling party, the National Resistance Movement Party (NRM), who wanted to recruit him. The Applicant refused and continued his activities with the FDC. The NRM started threatening him. The Applicant was ultimately arrested, questioned and abused. He fears persecution at the hands of the Ugandan authorities for his political opinion.

[3] The RPD heard the case on January 6 and March 16, 2019 and subsequently denied it on credibility. A first RAD panel upheld the RPD findings, but the case was returned to the RAD for redetermination on consent of the parties. This is now the judicial review of the second RAD decision, which upheld the RPD.

## II. Decision

[4] I grant the Applicant's judicial review application because I find the decision made by the RAD to be unreasonable.

## III. Standard of Review and Issues

[5] The issues before this Court is whether the RAD decision is reasonable and whether it was reached in a procedurally fair manner.

[6] I find that the standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [*Vavilov*]).

[7] Regarding questions of procedural fairness, as Mr. Justice Regimbald recently wrote in (*Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para. 11:

the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada*

(Citizenship and Immigration), 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [Canadian Pacific Railway]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to “shoehorn the question of procedural fairness into a standard of review analysis is ... an unprofitable exercise” (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that “[p]rocedural fairness is not sacrificed on the altar of deference” (*Canadian Pacific Railway* at para 56).

#### IV. Analysis

##### **Did the RAD member reach her decision in a procedurally fair manner?**

[8] A material credibility finding by the RAD was based on a perceived inconsistency with information on the website as provided on the Justice Care Uganda (JCU) letter. The RAD member’s own internet research led her to that perceived discrepancy. As she stated in paragraph 33 of her reasons, the member stated that she conducted that research.

[9] The Applicant alleges, and I agree with him, that in not disclosing the content of the research to allow him an opportunity to respond, the RAD member breached the principles of natural justice. The Respondent on the other hand relies on a number of cases to argue that “it is well established that extrinsic evidence from the internet may be used when it comes from publicly accessible website or is otherwise reasonably available and if it comprises information that is not novel or significant or does not change the decision.” (*Harripersaud v Canada (Citizenship and Immigration)*, 2022 FC 1368, at paras 54-57; *Mancia v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9066 (FCA), [1998] 3 FC 461; *Joseph v Canada (Minister of Citizenship and Immigration)*, 2015 FC 904, at paras 53-54; *Bradshaw v Canada (Minister of Citizenship and Immigration)*, 2018 FC 632).

[10] I disagree with the Respondent's characterization that a further attack on the Applicant's credibility, one that the member relies on in her reasons, is peripheral to a case where the member has identified credibility as the only determinative issue. Secondly, the Respondent relies on cases decided by immigration or visa officers, and not the IRB, which as a quasi-judicial body has developed well-defined procedural rules and deals with the fundamental rights those appearing before it (*Baker*). If the member sees it necessary to conduct her own research and wants to rely on that research, they have a duty to disclose it to the parties and give them an opportunity to respond. The member's failure to do this amounts to a breach of procedural fairness that taints the process.

[11] Since the member breached her duty to reach the decision fairly, I will not assess the reasonableness of the decision. The new panel of the RAD should not see this as a finding that the credibility assessment was reasonable and must engage in their own independent assessment of the determinative issue. In fact, in light of the finding of a breach of procedural fairness, the new panel of the RAD should not be privy to the current RAD decision under review to ensure that their assessment of the RPD decision is independent and untainted by the RAD reasoning.

V. Conclusion

[12] For the foregoing reasons the Application for Judicial Review is granted.

[13] There is no question to be certified.

**JUDGMENT IN IMM-3932-22**

**THIS COURT'S JUDGMENT is that**

1. The application for Judicial Review is granted. This matter is sent back to the RAD for redetermination by a newly constituted panel and in accordance with these reasons.
  
2. There is no question for certification.

"Negar Azmudeh"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3932-23

**STYLE OF CAUSE:** MARTIN BYARUGABA v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 27, 2024

**REASONS FOR JUDGMENT  
AND JUDGMENT:** AZMUDEH J.

**DATED:** JUNE 3, 2024

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