

Federal Court



Cour fédérale

Date: 20240604

Docket: IMM-3930-23

Citation: 2024 FC 804

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 4, 2024

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

JESUTONDIN KPAGBE SAGBOHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jesutondin Kpagbe Sagbohan is a citizen of Benin who arrived in Canada in May 2018 with a study permit. He withdrew from his studies in January 2019 while remaining in Canada. In April 2021, he allegedly received threatening letters from the uncle of an ex-girlfriend with

whom he allegedly had a child, and from her new spouse (we will come back to these letters later).

[2] He therefore filed a claim for refugee protection on April 28, 2021, alleging that he feared these individuals and his ex-girlfriend's family, who are threatening him for having had a child out of wedlock with her.

[3] He alleges that on September 10, 2016, while waiting for his girlfriend at the airport, two police officers assaulted him and took him to the police station, where he was threatened and attacked. After this incident, the applicant fled to his uncle's house in Ouidah. In his initial account, he stated that he stayed there for only a few days, whereas at the hearing before the RPD, he testified that he stayed there for six months.

[4] The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] rejected the applicant's claim for refugee protection, as they found that it lacked credibility. It is the RAD's decision that is the subject of this application.

II. Impugned decision

[5] First, the RAD noted that the applicant's credibility was tested on a number of crucial points: his delay in claiming refugee protection, his behaviour, which was inconsistent with that of an individual who fears for his life, a number of contradictions that were not satisfactorily explained, and a total lack of documentary evidence to corroborate his story.

[6] The applicant stated that the fear he felt at the time of writing his account explained the contradictions noted by the RAD regarding the length of his stay in Ouidah. The RAD was not satisfied with this explanation. Living in hiding in one's own country for six months is not a trivial matter, and the applicant had ample time to amend or clarify his account.

[7] According to his Basis of Claim Form, the applicant attended university and worked as a stock manager in Porto-Novo during the 15-month period following the first episode of violence. The RAD was of the view that the applicant adjusted his testimony to explain the absence of incidents during that period, which undermined his credibility as to the alleged fear.

[8] The RAD also concluded that the applicant did not establish the existence of his agents of harm or the existence of the threats. Although he testified that he received two threatening letters in April 2021, he did not keep them; he tore them up and threw them away because he was so angry. The lack of documentary evidence strengthens the RAD's findings.

[9] Finally, the RAD drew a negative inference from the applicant's delay in claiming refugee protection, which he only did two years after he failed to meet the conditions of his study permit.

III. Issue and standard of review

[10] The sole issue raised by this application for judicial review is whether the RAD erred in its analysis of the applicant's credibility. The standard of review applicable to this issue is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

IV. Analysis

[11] It is well known that the analysis of a claimant's credibility is a matter for the RAD and the RPD before it. The Court will intervene only if its findings of fact are perverse or capricious or made without regard for the evidence.

[12] However, in this case, the RAD's conclusions are rational and based on the evidence before it.

[13] The RAD noted several contradictions and omissions that undermine the applicant's credibility.

[14] First, the applicant waited three years after arriving in Canada to claim refugee protection. The applicant argues that he did not have to as he had temporary status and he did not have to fear being returned to his country. However, the applicant only had temporary status until January 2019, when he ceased to comply with the conditions of his study permit. In this case, it was open to the RAD to conclude that waiting more than two years was an important factor to consider in determining the applicant's credibility (*Gyawali v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1122 at para 16).

[15] This conclusion was all the more necessary when this factor was considered in light of all the evidence.

[16] The applicant alleges that what motivated him to file a claim for refugee protection in April 2021 was receiving threatening letters from his ex-girlfriend's uncle and her new spouse. However, he did not keep these letters. It was open to the RAD not to accept his explanations, which are, frankly, difficult to understand.

[17] There is also a considerable discrepancy between the applicant's account and the testimony he provided to the RPD regarding the length of his stay in Ouidah and his presence at the university and his place of work, whereas he alleges that he lived in hiding during that same period. As this element was central to the applicant's claim for refugee protection, it was reasonable for the RAD not to accept the applicant's explanations.

[18] As noted by Justice Denis Gascon in *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 43, “[t]he trier of fact may decide to assign little or no weight to the evidence, and hold that the legal standard has not been met. In the same vein, the presumption of truth or reliability of statements made by refugee applicants, as expressed in *Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (FCA), cannot be equated with a presumption of sufficiency”.

[19] The contradictions and inconsistencies raised by the RAD, and by the RPD before it, are central to the applicant's claim for refugee protection. They are not minor and their accumulation renders the RAD's decision perfectly reasonable.

V. Conclusion

[20] As the applicant has failed to persuade me that the RAD erred in its assessment of the evidence, his application for judicial review is dismissed.

[21] The parties did not propose any question of general importance for certification, and no such question arises from the facts of this case.

JUDGMENT in IMM-3930-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
Daniela Guglietta

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3930-23

STYLE OF CAUSE: JESUTONDIN KPAGBE SAGBOHAN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 9, 2024

JUDGMENT AND REASONS: GAGNÉ ACJ

DATED: JUNE 4, 2024

APPEARANCES:

Gracia Mouboli Bakonga FOR THE APPLICANT

Larissa Foucault FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gracia Mouboli Bakonga FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec