Federal Court  Cour fédérale

Date: 20240729

Docket: IMM-10836-23

Citation: 2024 FC 1207

Ottawa, Ontario, July 29, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

RAMZI M T ALBADRAWSAWI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a Refugee Appeal Division [RAD] decision, dated August 7, 2023 [Decision], finding that the Refugee Protection Division [RPD] committed a reviewable error by failing to consider Rule 28(1)(a) of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules], and notify the Minister of Immigration, Refugees and Citizenship

Canada [Minister] of a possible inadmissibility concern regarding the Applicant's claim, and returning the matter to the RPD for redetermination by a differently constituted panel.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the applicant has failed to discharge his burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Background Facts

[3] Mr. Ramzi M T Albadrasawi [Applicant] is a stateless Palestinian. He and his family claimed refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, LC 2001, c 27 [IRPA].

[4] On March 6, 2023, the Applicant and his family members' refugee claims were accepted without a hearing by the RPD under the Immigration and Refugee Board's Chairperson's *Instructions Governing the Streaming of Less Complex Claims at the Refugee Protection Division* in a file-review process. The RPD took notice of the Applicant's previous employment as an assistant in the Fatah-lead government in its decision but it did not mention Rule 28 of the RPD Rules nor the potential requirement to notify the Minister of the Applicant's claim.

[5] The RAD allowed the Minister's appeal in its August 7, 2023 Decision. The RAD found that the RPD committed a reviewable error by failing to consider notifying the Minister that the Applicant may be inadmissible due to his former affiliation with Fatah, as required under

paragraph 28(1)(a) of the RPD Rules. The RAD remitted the matter to the RPD for redetermination.

[6] Only the RPD's decision concerning the Applicant was in question and remitted, the RAD did not interfere with the RPD's decision regarding the Applicant's family members.

III. Decision Under Review

[7] In its August 7, 2023 Decision, the RAD explained the purpose of Rule 28 of the RPD Rules: ensuring that the Minister is given the opportunity to intervene in claims where there is a possibility that the claimant is inadmissible, based on the evidence before the RPD. The RAD found that Rule 28 required the RPD to make a finding as to whether it "believes" that a claimant may be inadmissible. According to the RAD, the RPD must provide reasons to justify why, when there are grounds that a claimant may be inadmissible, it nevertheless does not "believe" under Rule 28 that the claimant "may be inadmissible" and therefore no notification to the Minister is necessary. On the other hand, when the RPD makes a finding of "belief" that a claimant could be inadmissible, the RPD is then required to notify the Minister.

[8] The RAD noted that the Applicant worked for Fatah for seven years. It also took note of the documentary evidence, including document 1.9 of the National Documentation Package for Occupied Palestinian Territory, indicating that there are militant elements that remain within Fatah. Lastly, it cited jurisprudence of this Court that found that there are "reasonable grounds to believe that Fatah is a terrorist organization" (*Anteer v Canada (Citizenship and Immigration)*, 2016 FC 232 at para 48; *Khalil v Canada (Public Safety and Emergency Preparedness)*, 2011 FC

1332 at paras 53-54; *Saleh v Canada (Citizenship and Immigration)*, 2010 FC 303 at paras 9, 19-20).

[9] In this case, the RPD only noted that the Applicant "worked as an assistant in the Fatah-led government" at paragraph 7 of its reasons. There are no other reasons as to whether the RPD considered Rule 28 and whether it came to a conclusion that it did not "believe" that Rule 28 was engaged.

[10] The RAD held that it could not presume that the RPD turned its mind to the issue of the Applicant's potential inadmissibility. The RPD's reasons do not demonstrate that the RPD simply did not believe that Rule 28 was engaged and that a notice to the Minister was therefore not necessary. The RPD was silent on the evidence regarding Fatah and on the application of Rule 28. The RAD therefore held that that there was no indication that the RPD considered the issue of the Applicant's admissibility and Rule 28. Consequently, the RAD remitted the decision back to the RPD for reconsideration as to whether a notification to the Minister was required under Rule 28 because of the Applicant's affiliation with Fatah (RAD Decision at para 41).

IV. Issues and Standard of Review

[11] The only issue before the Court is whether the RAD's decision, allowing the appeal and remitting the matter to the RPD for redetermination, is reasonable.

[12] The standard of review applicable to the merits of the RAD's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*] at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at paras 7, 39–44). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[13] When the decision maker sets out their reasons, it is not enough for the decision to be justifiable; it must be justified by reasons that establish the transparency and intelligibility of the decision-making process (*Mason* at paras 59–60; *Vavilov* at paras 81, 84, 86). The Court must determine whether, by examining the reasoning followed and the result obtained, the decision is based on an internally coherent and rational chain of analysis that can be justified in light of the legal and factual constraints to which the decision maker is subjected (*Mason* at paras 8, 58–61; *Vavilov* at paras 12, 15, 24, 85–86). The decision will be unreasonable if it lacks internal logic or if the reviewing court is unable to follow the decision maker's reasoning without "encountering any fatal flaws in its overarching logic" (*Mason* at para 65, citing *Vavilov* at para 102).

[14] Accordingly, on judicial review under the standard of reasonableness, the reviewing court must assess the reasons for the decision "holistically and contextually" in light of the history and context of the proceedings, the evidence adduced, and the main arguments of the parties (*Mason* at para 61; *Vavilov* at paras 91, 94, 97). The Court's role is not to reweigh the evidence presented

to the decision maker, to question their exercise of discretion, or to make its own interpretation of the law. It is up to the decision maker to fulfil these roles. As long as the decision maker's interpretation of the law is reasonable and the reasons for their decision are justifiable, coherent and intelligible, the Court must show deference (*Vavilov* at paras 75, 83, 85–86, 115–124).

V. Analysis

[15] The parties agree that the determining issue in the present case is the application of Rule 28, not its interpretation. The parties agree that Rule 28 requires the RPD to form a belief regarding potential inadmissibility grounds and that if the RPD forms such a belief, then it must notify the Minister under Rule 28.

[16] In this case, the issue is whether the RPD considered potential inadmissibility grounds and dismissed them (albeit implicitly in its reasons). If that is the case, then the RPD did not believe that any inadmissibility grounds existed, and Rule 28 and the necessity to notify the Minister were not triggered. Alternatively, as argued by the Respondent, the RPD failed to consider the issue at all and must reconsider it.

[17] Rule 28 of the RPD Rules reads as follows:

Notice of possible inadmissibility or ineligibility	**Avis de la possibilité d'une interdiction de territoire ou d'irrecevabilité**
28 (1) The Division must without delay notify the Minister in writing and provide the Minister with any relevant information if the Division believes that	**28 (1)** La Section, sans délai, avise par écrit le ministre et lui transmet tout renseignement pertinent si elle croit, selon le cas :
(a) a claimant may be inadmissible on grounds of security, violating human or	**a)** que le demandeur d'asile pourrait être interdit de territoire pour raison de sécurité

international rights, serious criminality or organized criminality; **(b)** there is an outstanding charge against the claimant for an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years; or **(c)** the claimant's claim may be ineligible to be referred under section 101 or paragraph 104(1)(c) or (d) of the Act.	ou pour atteinte aux droits humains ou internationaux, ou pour grande criminalité ou criminalité organisée; **b)** qu'il y a une accusation en instance contre le demandeur d'asile pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans; **c)** que la demande d'asile pourrait être irrecevable en raison de l'article 101 ou des alinéas 104(1)c) ou d) de la Loi.
Disclosure to claimant **(2)** The Division must provide to the claimant a copy of any notice or information that the Division provides to the Minister.	**Communication au demandeur d'asile** **(2)** La Section transmet au demandeur d'asile une copie de tout avis ou renseignement que la Section a transmis au ministre.
Continuation of proceeding **(3)** If, within 20 days after receipt of the notice referred to in subrule (1), the Minister does not notify the Division that the proceedings are suspended under paragraph 103(1)(a) or (b) of the Act or that the pending proceedings respecting the claim are terminated under section 104 of the Act, the Division may continue with the proceedings.	**Continuation des procedures** **(3)** Si le ministre n'avise pas la Section, dans un délai de vingt jours suivant la réception de l'avis visé au paragraphe (1), qu'il y a sursis à l'étude de la demande d'asile en vertu des alinéas 103(1)a) ou b) de la Loi ou qu'il est mis fin à l'affaire en cours en vertu de l'article 104 de la Loi, la Section peut continuer les procédures.

[18] The Applicant argues that the RPD is presumed to have considered the totality of the evidence before it and does not need to provide reasons on every argument presented (*Vavilov* at para 128; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1999] 1 FC 52 at para 16), and indeed demonstrated that it was aware that the Applicant had been an employee of Fatah (RPD Decision at para 7). Therefore, the RPD made a finding, at least implicitly, that it did not "believe" that the Applicant's employment with Fatah

raised any concern regarding his inadmissibility and as such, made a finding that Rule 28 did not apply.

[19] The Applicant then argues that the RAD ought to have given deference to the RPD's decision and its implicit finding that the requirement to notify the Minister under Rule 28 was not triggered. The Applicant submits that it is unreasonable for the RAD to insist that the RPD "make their implicitly clear ruling on Rule 28 into an explicit one" (Applicant's memorandum of argument at para 38).

[20] The Applicant also submits that there was no breach of the Minister's right to procedural fairness, under Rule 28 or otherwise, because the Minister was aware of the Applicant's association with Fatah for over ten months before the RPD's decision as a result of the open transfer of information between the RPD and the Minister through the file review process under the *Instructions Governing the Streaming of Less Complex Claims at the Refugee Protection Division*, but failed to intervene in due course.

[21] In my view, the RAD's decision is reasonable. First, as submitted by the Respondent, the decision under review and for which the standard of review of reasonableness applies is that of the RAD. As such, the Court must show deference to the RAD, and not to the RPD, in this judicial review. As long as the RAD's reasons for its decision are justifiable, coherent and intelligible and the outcome of its decision reasonable on the basis of the record before it and the reasons of the RPD, then the Court must defer to the RAD's conclusion (*Vavilov* at paras 75, 83, 85–86, 103, 115–126).

[22] The RAD pointed to objective evidence, including jurisprudence from this Court and documentary evidence, notifying that Fatah may be a terrorist organization and which could have signalled that Rule 28 and the duty to notify the Minister was triggered. The Applicant himself recognized that the RPD did not acknowledge this relevant jurisprudence in its decision.

[23] However, as the RAD noted, the RPD did not engage substantively with Rule 28, and never even mentioned the Rule in its reasons. The RPD merely noted that the Applicant had previously been employed by Fatah (at paragraph 7 of the RPD's reasons) and quoted the objective documentary evidence that mentions the organization. Those quotes, however, explained the reasons why the Applicant could qualify as a refugee, but did not discuss the activities of Fatah nor that it could be considered to be a terrorist organization, thereby raising potential inadmissibility grounds that require notification to the Minister under Rule 28.

[24] The RAD, as stated above, granted the appeal because in its view and on the basis of the record before it and the reasons of the RPD, the RPD failed to apply Rule 28. On the other hand, if the RPD did consider Rule 28 (as argued by the Applicant), then the RPD did not provide adequate reasons to justify its decision as to why it did not believe that there may be inadmissibility issues as required under Rule 28, and why the Minister did not need to be notified. The failure to provide adequate reasons is also a ground for the RAD to grant the Minister's appeal.

[25] It was therefore reasonable for the RAD to find that the reasons of the RPD did not sufficiently demonstrate that the RPD turned its mind to the important matter as to whether there could be inadmissibility grounds relating to the Applicant's claim that required notification to the

Minister. In other words, the RPD has not provided adequate reasons as to why Rule 28 was not engaged in this case and why, notwithstanding this Court's jurisprudence and other objective evidence discussing the activities of Fatah, the RPD did not believe that any inadmissibility grounds were raised by the Applicant's claim.

[26] With the documentary evidence and existing jurisprudence discussing the activities of Fatah that could raise a question as to the admissibility of the Applicant, it was open to the RAD to find that the RPD's silence on the application of Rule 28 prevented the RAD from concluding whether or not the RPD indeed turned its mind to this issue. It was reasonable for the RAD to find that it would be speculative for it to rely on the assumption, as suggested by the Applicant, that the RPD considered the entire evidence, and without providing any reasons, that the evidence on record was sufficient for the RPD to make an implicit finding that Rule 28 did not apply and that the RPD had no admissibility concerns.

[27] On the Applicant's argument that the Minister ought to have been aware of the Applicant's claim and the Applicant's affiliation with Fatah for over ten months as a result of the open transfer of information between the RPD and the Minister, the RAD reasonably found that the Minister's failure to intervene is not relevant. It noted that it is possible that the Minister did not have all the information required to make an informed decision and that the RPD is not absolved from its obligation under Rule 28 simply because of its notice to the Minister that the claim would be adjudicated under the file review process. The RAD compared this case to *Canada (Citizenship and Immigration) v Ahmed*, 2015 FC 1288 [*Ahmed*], and cited the following finding by Justice Mactavish on the argument of the Minister's failure to intervene:

> [19] I am not, however, reviewing the decision of the Minister to intervene or not intervene in this case. I am reviewing the failure of the Board to provide notice to the Minister as required by Rule 26(1). Given my finding that the information that was before the Board was sufficient to trigger the Board's obligation to notify the Minister of the potential exclusion issue, I am satisfied that it was unfair for the Board to proceed to a hearing into the merits of Mr. Ahmed's refugee claim without having first provided the Minister with the requisite notice.
>
> (*Ahmed* at para 19)

[28] The RAD's conclusion in this regard is reasonable. While *Ahmed* dealt with Rule 26, Rule 28 is equivalent, albeit in a different context. While in that case, and contrary to this one, the applicant's membership in a paramilitary organization was not mentioned in the decision under judicial review, *Ahmed* remains applicable because the record contained evidence on the applicant's membership in a paramilitary organization that should have been enough for the decision maker to inquire further and potentially provide notice to the Minister. Likewise, in this case, while the RPD did mention that the Applicant had been employed by Fatah, that is not sufficient to justify, on its own, that no inadmissibility grounds may be raised, considering the jurisprudence of the Court on Fatah as well as the objective evidence.

[29] Consequently, the Applicant has not discharged his burden to demonstrate that the RAD's decision is unreasonable. The RAD's reasoning as to why it could not conclude that the RPD turn its mind to a potential requirement to notify the Minister of inadmissibility grounds under Rule 28 is intelligible, transparent and justified (*Vavilov* at paras 15, 98), and the outcome reached by the RAD on the RPD's consideration of Rule 28 is reasonable, on the basis of the existing record and RPD reasons before it (*Vavilov* at paras 103, 125–126).

VI. Conclusion

[30] The RAD's decision is justified in light of the factual and legal constraints of this case (*Mason* at para 8; *Vavilov* at para 99).

[31] For these reasons, the application for judicial review is dismissed.

[32] No question of general application has been submitted for certification, and the Court agrees that there is none.

JUDGMENT in IMM-10836-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10836-23
STYLE OF CAUSE:	RAMZI M T ALBADRAWSAWI v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JULY 17, 2024
JUDGMENT AND RESONS:	RÉGIMBALD J.
DATED:	JULY 29, 2024

APPEARANCES:

Prasanna Balasundaram	FOR THE APPLICANT
Gregory George	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Downtown Legal Services Barristers and Solicitors Toronto (Ontario)	FOR THE APPLICANT
Attorney General of Canada Toronto (Ontario)	FOR THE RESPONDENT