Federal Court  Cour fédérale

Date: 20240731

Docket: IMM-5084-23

Citation: 2024 FC 1216

Ottawa, Ontario, July 31, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

SCOTT JULIUS OLATUNJI EFUNBAJO

Applicants

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, Scott Julius Olatunji Efunbajo, is seeking a Judicial Review of the rejection of his refugee protection appeal by the Refugee Appeal Division (the "RAD") of the Immigration and Refugee Board of Canada (the "IRB"). The Judicial Review is dismissed for the following reasons.

[2] The Applicant is a citizen of Nigeria. Both the Refugee Protection Division (the "RPD") and the RAD, whose decision is under judicial review, found that the Applicant was excluded under Article 1E of the Convention Relating to the Status of Refugees (the "Convention") because of a previous permanent residence status in Spain.

[3] The Applicant does not dispute the legal test applied by the RAD to those with a previous permanent residence status. However, he disputes the RAD's factual finding that he had permanent residence status in Spain.

[4] On one hand, the Applicant argues that the RAD unreasonably relied on an NDP document to find that he was a permanent resident, when an underlying document referred to that NDP suggested that he might have only had a wok permit. On the other hand, he argues that by not allowing the underlying document to be disclosed as a new document, the RAD breached its duty of procedural fairness. As such, he argues that the judicial review ought to be granted.

[5] Exclusion is a threshold issue, meaning that it is a crucial legal question that must be satisfied before other legal considerations can be examined. As such, it was not necessary for the RAD to engage with the merits of the claim against Nigeria, unless it was concerned about potential errors in the assessment of the exclusion issue that would render the decision unfair or unreasonable. I find that the RAD assessment on exclusion was reasonable and fair in this case, and it was therefore reasonable to not continue further.

II. Standard of Review and Issues

[6] The Applicants raised two issues: a) whether the RAD breached its duty of procedural fairness and, b) whether the RAD decision is reasonable.

[7] Reasonableness review is a deferential standard, and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [*Vavilov*], at paras 12-15 and 95). The starting point for a reasonableness review is the reasons for the decision. Pursuant to the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Vavilov,* at para 85).

[8] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov,* at para 100).

[9] With respect to issues of procedural fairness, the standard of review is not deferential. It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*], at para 54). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct". Rather, the

reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*CPR*, at para 56). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791, at para 16).

III. Analysis

A. *Legal Framework*

[10] According to section 98 of the IRPA, a person who is excluded under Article 1E of the Convention is neither a Convention refugee nor a person in need of protection. Section E of Article 1 of the Convention provides as follows:

> This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[11] For this ground of exclusion to apply, the person must have taken up residence in a country outside the country of his or her nationality and have been recognized as having the rights and obligations which are attached to the possession of the nationality of that country (*Shamlou v Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (FCTD), at page 152).

[12] The framework of analysis for Article 1E was set out in *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 (CanLII), [2011] 4 FCR [*Zeng*], at paragraph 28:

> [28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

B. *Was the RAD's decision procedurally fair?*

[13] The Applicant does not dispute the legal analysis of the RAD with respect to those with permanent residence status. However, he challenges the factual finding that the Applicant ever had permanent residence status in Spain. More specifically, he argues that the RAD unreasonably interpreted Item 3.6 of the National Documentation Package on Spain, which is Response to Information Request ESP105326.E ("RIR") and compiled by the IRB. It refers to a Spanish law, Decree 557/2011 (the "Decree"). According to the Applicant, the Decree opens the possibility that the Applicant was a work permit holder and not a permanent resident. The Applicant had provided a copy of the Decree and its English translation to the RAD, and had applied to have it admitted as new evidence under s. 110(4) of IRPA, to substantiate his argument. He argues that the RPD had relied on the same RIR, and by not admitting the Decree, the RAD did not allow him to respond to RPD's finding that he was a permanent resident of Spain.

[14] I agree with the Respondent that the RAD applied the test for new evidence correctly to conclude that the document was dated 2011 and not new under the restrictive test of s. 110(4) of IRPA.

[15] More importantly, I also find that this document would not be determinative to the RAD's finding. While the Decree makes references to temporary residence and employment, it does not negate the more complete conclusion of the RIR on the interpretation of permanent residence status in Spain. Moreover, the very evidence before the RAD contradicts that the Applicant's status was obtained due to employment in the first place. The following is an exchange at the RPD hearing:

> **MEMBER:** I am going to ask you some questions about your residency status in Spain. When you left Spain, what was your resident status?
> **CLAIMANT:** I have a permanent residence that I got expired in 2018 in America.
> **MEMBER:** And when did you first get permanent residents in Spain?
> **CLAIMANT:** It was in 2001, when I got into Spain, as a minor, I was 17 years old that is why they gave me papers.

[16] The Applicant then testified to how he studied to become a carpenter in Spain, and then worked as one. All of this, together with a copy of the Applicant's residency card, which contained the notation *"*Residencia de larga duración", which the RIR indicated was for permanent residents, was before the RAD. The RPD had questioned the Applicant at length on his status in Spain and at no point did he suggest that his status was linked to his employment. Therefore, while I agree with the Applicant that the RAD cannot solely rely on a layperson's legal interpretation of his status, I find that the RAD's conclusion in this case, that the Applicant had permanent residence in Spain, was based on the totality of the evidence. The RAD was

responsive to the Applicant's argument but rejected it and it clearly explained its rationale in its reasons:

> [23] The Appellant argues on appeal that the RPD erred in its exclusion analysis by finding that he had permanent status in Spain when he actually had a work permit which only allowed him to remain temporarily in Spain. He submits that when he left Spain because he could not find work, it was not a personal choice, but a condition set by the legislation and regulations that had the effect of extinguishing his right of residence and his right to remain in Spain.
>
> [24] I reject these arguments. They are not grounded in the evidence. Contrary to the Appellant's arguments on appeal, he did not provide a Spanish work permit card to the RPD or testify that he had temporary work authorization. Rather, he testified that he had permanent resident status in Spain and provided a copy of his permanent resident card. I note that the back of the residence permit indicates "residencia larga duracion," which is confirmed by objective evidence to refer to permanent resident status.

[17] I therefore find that by not admitting the Decree as a new evidence in the circumstances of this case, the RAD acted fairly.

C. *Was the RAD's decision reasonable?*

[18] Applicant does not dispute the legal analysis of the RAD with respect to those with permanent residence status. However, he challenges the factual finding that the Applicant ever had permanent residence status in Spain. He argues that by not admitting the Decree into evidence, in addition to breaching its duty of procedural fairness, the RAD based its decision on an erroneous and incomplete interpretation of the Spanish law that the Applicant was a permanent resident of Spain.

[19] For reasons mentioned above, I have found that the RAD made its conclusion on the totality of the evidence before it, including the documentary evidence (both in the National Documentation Package and the Applicant's residence card), as well as the Applicant's testimony on the nature and duration of his stay in Spain. The RAD provided a detailed chain of reasoning as to how it reached its decision. The decision was responsive to the totality of the evidence and the arguments raised by the parties. I find that the RAD applied the correct test in assessing the exclusion under article 1E of the Convention.

[20] I find that the Applicants are in effect asking this Court to reweigh the evidence, which is not this Court's role. (*Vavilov*, at para 125)

[21] I find that the RAD's decision was therefore reasonable.

IV. Conclusion

[22] The Application for Judicial Review is therefore dismissed.

[23] There is no question to be certified.

JUDGMENT IN IMM-5084-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SCOTT JULIUS OLATUNJI EFUNBAJO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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