Federal Court  Cour fédérale

Date: 20250528

Docket: IMM-1989-22

Citation: 2025 FC 953

Ottawa, Ontario, May 28, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

EHIMWENMA CYNTHIA INNEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview and Relevant Facts

[1] The Applicant is seeking a judicial review of the rejection of her refugee protection appeal by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada.

[2] The Applicant is a citizen of Nigeria who made a refugee claim on the basis of her sexual orientation as a bisexual woman. The Refugee Protection Division [RPD] rejected her claim on finding that she had not credibly established her sexual orientation. Even though in her written

argument the Applicant contested the credibility findings of the RPD, with which the RAD had also agreed, at the judicial review hearing, counsel for the Applicant conceded that the Applicant's testimony at the RPD was riddled with material inconsistencies.

[3] At the Refugee Appeal Division [RAD], the Applicant attempted to file new documents. The RAD did not accept the new documents [new evidence, mainly because it deemed the new evidence to lack credibility. The Applicant's focus at the judicial review hearing was based on the rejection of the new evidence. She argued that by rejecting her new evidence, the RAD arrived at an unreasonable and unfair decision.

[4] The Applicant's new evidence consisted of her affidavit dated January 11, 2022. She had stated the following in her affidavit: "I know that I am not involved in same sex activity. But I also know that I have nothing against gay people and I cannot judge them for who they are".

[5] At the judicial review hearing, the Applicant explained that she had made the above statement in the context of becoming a born again Christian who had decided not to engage in same-sex activities. Counsel for the Applicant conceded that the Applicant had not provided any context, including her commitment to Christian teachings as born again Christian to the RAD.

II. Decision

[6] I dismiss the Applicant's judicial review application because I find the decision made by the RAD to be reasonable and reached in a fair manner.

III. Standard of Review

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

[8] 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), at paras 12-15;95 [*Vavilov*]). The starting point for a reasonableness review is the reasons for 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).

[9] 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).

[10] 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 at para 54 [CPR]). 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).

IV. Analysis

A. *Did the RAD deal with the rejection of new evidence in a fair and reasonable manner?*

[11] In her memorandum and during the judicial review hearing, the Applicant maintained that it was unfair and unreasonable for the RAD to reject her new evidence because of her statement on not being a bisexual woman.

[12] The new evidence the Applicant had attempted to file, consisted of the Applicant's affidavit, WhatsApp text messages between the Applicant and her cousin, a Western Union receipt showing that the Applicant had sent money, photos of Applicant's cousins, as well as a few other documents.

[13] In its reasons, the RAD applied the criteria set out in section 110(4) of *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the factors set out in *Singh v Canada (Citizenship and Immigration)*,2016 FCA 96 [*Singh*], including the credibility, relevance and newness of the evidence. The RAD agreed that the new evidence was new in the sense that they related to events after the RPD decision. They alleged that the Applicant's cousin had asked her to send him money to help organize a new party. The police raided the party, arrested the cousin and alleged that the party involved "gay activities". Since the Applicant had sent his cousin

money, the authorities had allegedly accused her of funding, aiding and abating the party and had ordered her to present herself for interrogation.

[14] In applying the factors in *Singh*, the RAD pointed to the material inconsistency with the core of her claim. This being that she stated she was not a sexual minority, while her entire claim was based on being bisexual, and used this to reasonably impeach the credibility of the new evidence.

[15] At the judicial review, the Applicant argued that the RAD unreasonably perceived a contradiction when none existed. While she had engaged in same-sex activities in the past, as a new-born Christian, she was committed to a life more aligned with the religious teachings that forbade same-sex activities. This explanation was not before the RAD. In fact, as the Applicant conceded, there was nothing in the record before the RAD to provide any context to the Applicant's statement, which in the absence of a reasonable explanation, is contradictory.

[16] What is relevant here is that in an application for judicial review, the Court's role is to examine the record before the administrative decision-maker to determine whether the decision of the administrative decision-maker was reached in a reasonable and procedurally fair manner considering the legal and factual context before the decision-maker. Therefore, unless exceptional circumstances exists, documents that were not available to the RAD are not admissible on judicial review, and the Court should not consider them (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at para 19 [*Association of Universities*]).

[17] In *Association of Universities* at paragraphs 19 and 20, the Federal Court of Appeal recognized three (3) exceptions to this general rule: (1) the new evidence contains general contextual information; (2) the new evidence responds to questions of procedural fairness; or (3) the new evidence highlights the complete absence of evidence before the administrative decision-maker.

[18] The Applicant has not made any argument as to which of any of these exceptions apply. As a result, I have not considered the new evidence on judicial review. I find it to be reasonable and fair that the RAD did not try to speculate that there was no contradiction, when there was a material contradiction on the record that went to the heart of the Applicant's claim.

[19] The RAD provided clear and detail explanation of how it reviewed the new evidence in the context of the requirement of section 110(4) and Rule 29(4) of the *Refugee Appeal Division Rules*, SOR/2012-257. I find that the RAD's finding was reasonable and the explanation followed a clear chain of reasoning.

[20] The Applicant argues that even if there was a contradiction, once the member identified it, he had a duty to convoke the Applicant to a hearing and ask for an explanation, and then evaluate the reasonableness of the explanation.

[21] I find that the Applicant is conflating the restrictions set out in the admission of the new evidence under section 110(4) of IRPA with the possibility of holding a hearing under section 110(6). The admission of new evidence is a condition precedent to the RAD's ability to hold a new hearing under section 110(6). The Applicant did not point to any authority that would have supported her position that the RAD had a duty to hold an exploratory hearing for the purposes

of evaluating the credibility of the new evidence to see whether it should be admitted on credibility.

[22] The RAD clearly explained and dealt with the requirement of section 110(6) of the IRPA and found that as it had not admitted any new documentary evidence, the requirements of the section were not met, and an oral hearing could not be held. The RAD further relied on the jurisprudence of this Court, including *A.B. v Canada (Citizenship and Immigration)*, 2020 FC 61 at para 17, to find that I was not necessary to hold a hearing for the purposes of evaluating the credibility of the new evidence. I find that this was a reasonable interpretation of section 110(6) of the IRPA.

[23] The Applicant argued that by not admitting the new evidence and/or holding an oral hearing, in effect, the RAD breached the principles of procedural fairness. To put it differently, the Applicant is arguing that by applying the law and the restrictions set out in sections 110(4) and 110(6) of IRPA, the Applicant reached an unfair decision, which is an argument I reject.

[24] The Applicant conceded that her testimony and the RPD was riddled with contradiction. I also find that the RAD's independent assessment of the credibility factors followed a clear chain of reasoning and engaged with all of the Applicant's arguments. Therefore, I find the RAD's analysis of the Applicant's credibility to be reasonable.

V. Conclusion

[25] The RAD reasons are transparent, intelligible and justified. They were reached in a procedurally fair manner. The Application for judicial review is, therefore, dismissed.

[26] The parties did not propose a certified question, and I agree that there is no question to be certified.

JUDGMENT IN IMM-1989-22

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

DOCKET:	IMM-1989-22
STYLE OF CAUSE:	EHIMWENMA CYNTHIA INNEH V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VIDEOCONFERENCE
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