Federal Court Cour fédérale

Date: 20250626

Docket: IMM-10412-24

Citation: 2025 FC 1154

Ottawa, Ontario, June 26, 2025

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ATO OPPONG-SAGOE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant Ato Oppong-Sagoe is a citizen of Ghana. He seeks judicial review of an adverse pre-removal risk assessment [PRRA] conducted by a Senior Immigration Officer [Officer].

[2] The Applicant entered Canada on February 2, 2018 and applied for refugee protection in August 2019. He claimed to have a well-founded fear of persecution in Ghana due to his sexual orientation as a bisexual man.

[3] On December 29, 2020, the Applicant was convicted and sentenced on three counts of Operation While Impaired, contrary to s 320.14(1) of the *Criminal Code*, RSC 1985, c C-46. He was reported pursuant to s 44 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 as inadmissible to Canada for serious criminality under s 36(1)(a). As a result, the Applicant was no longer eligible to pursue a refugee claim. A deportation order was issued against him on February 1, 2021.

[4] On April 27 and July 21, 2023, the Applicant was convicted and sentenced on additional charges of impaired driving that were unrelated to the incidents that resulted in his previous conviction.

[5] On August 28, 2023, the Applicant was offered a PRRA by the Canada Border Services Agency. The Applicant relied on the narrative contained in the Basis of Claim [BOC] form he had submitted in support of his refugee claim, legal submissions by his former counsel, country condition reports, and three letters of support.

II. Decision under Review

[6] The Officer observed that the Applicant's BOC narrative was four years old, and there was nothing to demonstrate that he continued to be pursued by either the police or his community in Ghana. The Officer noted that the BOC narrative was unsworn and uncorroborated, and gave it little weight.

[7] The letters of support were unsigned and/or undated, and were not accompanied by any documentation to confirm the authors' identities. The Officer observed that the letters contained only hearsay evidence concerning the Applicant's sexual orientation, and there was no evidence that the Applicant was involved in the gay or bisexual community in Canada. It also appeared that the Applicant now had a daughter who was born in 2023.

[8] The Officer concluded that the Applicant had not demonstrated that he would be at risk in Ghana due to his sexual orientation.

III. Issues

[9] This application for judicial review raises the following issues:

A. Was the Officer's decision procedurally fair?

B. Was the Officer's decision reasonable?

IV. Analysis

[10] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[11] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The ultimate question is whether an applicant had a full and fair chance to be heard (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18).

A. *Was the Officer's decision procedurally fair?*

[13] The Applicant says that the Officer's decision was procedurally unfair due to the ineffective representation he received from his former counsel.

[14] In order to demonstrate that the incompetence of counsel resulted in a breach of procedural fairness, an applicant must establish that: (a) the representative was given notice and a reasonable opportunity to respond; (b) the representative's conduct was negligent or incompetent; and (c) this resulted in a miscarriage of justice (*El Khatib v Canada (Citizenship and Immigration)*, 2025 FC 49 at paras 10-11).

[15] The Applicant's current counsel provided his former counsel with notice of his intention to raise the issue of ineffective representation in accordance with the Court's *Protocol on Allegations against Authorized Representatives in Citizenship, Immigration and Refugee Cases before the Federal Court* [*Protocol*]. The Applicant's former counsel submitted two letters, the first dated September 5, 2024 and the second dated October 24, 2024. The first letter was in response to the Applicant's application record, while the second was in response to the Applicant's reply memorandum.

[16] The *Protocol* does not contemplate a response from former counsel to an applicant's reply memorandum. On October 28, 2024, Associate Judge Martha Milczynski directed that former counsel's second letter be placed before the judge presiding over the leave application to decide whether it should be admitted. On March 12, 2025, Justice William Pentney granted leave to commence the application for judicial review, but did not address the admissibility of the second letter.

[17] On April 22, 2025, after leave had been granted, the Applicant's former counsel submitted an affidavit with exhibits. Former counsel did not seek leave of the Court to intervene in the application. Nor did he seek leave to file the affidavit and exhibits.

[18] In *Brown v Canada (Citizenship and Immigration)*, 2024 FC 105 [*Brown*], Justice John Norris accorded no evidentiary value to letters from former counsel whose contents contradicted factual allegations contained in the applicant's affidavit (at paras 40-47). Justice Norris observed (at para 45):

> It was entirely appropriate for former counsel to provide her initial responses to the allegations of ineffective assistance in letter form. However, now that leave has been granted and the application must be determined on its merits, the Court must make findings of fact. Where, as in the present case, central factual issues are in dispute, this can only be done on the basis of evidence.

[19] The Applicant's current counsel says the Court should disregard his former counsel's second letter and subsequent affidavit. Neither was submitted in compliance with the *Protocol*. While there was sufficient time for the parties to cross-examine former counsel on his affidavit, current counsel opted instead to object to its admissibility.

[20] The preamble to the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*, which encompass the *Protocol*, states that a judge "retains the discretion to depart from these guidelines having regard to the particular circumstances of a given case." In *Ahuja v Canada (Citizenship and Immigration)*, 2025 FC 33, Justice Janet Fuhrer observed that the *Protocol* "strives to balance the potential harm to an

applicant by reason of incompetent counsel, if shown, with the potential harm to an authorized representative, especially if the allegations are not established" (at para 6).

[21] The affidavit of former counsel was served on the parties well in advance of the hearing. The factual assertions in the affidavit are largely the same as those contained in the letters from former counsel. Considering the Court's decision in *Brown*, the need to balance competing interests, and the potentially serious professional ramifications of incompetence allegations, the second letter and affidavit of former counsel are admitted into evidence. The Court is mindful that the factual assertions made by the Applicant and his former counsel have not been tested by cross-examination.

[22] According to the affidavit of the Applicant:

> 8. I realize now that many of the issues that the PRRA officer commented on could have been addressed if my previous lawyer had better represented me. For instance, when I sent him the supporting letters, he did not tell me to get them signed and dated, and to obtain ID documents. These are the main reasons why the officer dismissed them. Also, my lawyer did not review the letters with me, because if he had, we could have addressed the discrepancies between the letters and my narrative, which the officer also raised. When my current lawyer mentioned this issue to me, I was able to obtain the ID documents for one of the authors of the letter. The other author, Zimbert, said he would send me the ID and a signed version of his letter, but I haven't received it yet, and because I am detained I have not been able to contact him. Attached hereto and marked as "Exhibit E" is a copy of the ID from Derrick.
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> 9. The PRRA officer also commented that instead of submitting a sworn affidavit, my lawyer submitted my BOC narrative from 2018. The officer commented that a sworn affidavit would have been better, and that it would have been up to date, since the narrative was over 5 years old when it was submitted. Again, my lawyer never sat with me to question me about any new

> developments since I arrived in Canada. If he had, I could have told him that I am on two social media dating apps, and that I have had sexual relations with men in Canada. Attached hereto and marked as "Exhibit F" is a copy of my profile on one of these apps. Again, if I weren't detained, I could have tried to reach out to one of the men that I had a relation with.
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> 10. The officer also mentions that there is no letter from Peter, my boyfriend in Ghana. I recently reached out to Peter through a mutual friend, and I was told that he does not want to get involved as he is already in trouble.
>
> 11. Finally, my previous lawyer spent less than an hour preparing me for my hearing. And as I said, he never sat down with me [to] review my BOC narrative or to ask me about recent events in Canada in order to prepare an updated affidavit. If he had, I also could have explained why it took me some time to file a refugee claim and the relationship I have with the mother of my child in Canada. Nor did my lawyer ask me questions about the letters I received, and the evidence they contained, some of which was not in my BOC narrative. I think that if some of these things had been done, my chances of getting a positive decision would have increased significantly.

[23] According to the affidavit of the Applicant's former counsel:

> 6. I first met with the Applicant on September 7, 2023 and discussed his fear of returning to Ghana.
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> 7. I informed the Applicant that he needed to provide proof that he is part of the LGBTQ community.
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> 8. I asked the Applicant whether he belonged to an LGBTQ organization; if he was connected to an LGBTQ social app; attended pride parade, LGBTQ restaurants or hangouts and whether he was in a gay relationship.
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> 9. I also informed the Applicant that he needed to prove that his life was in danger in Ghana; that there was no police protection for him and that there was no internal flight alternative.
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> 10. After listening to the Applicant's story, coupled with the fact that he informed me that he had no evidence that [*sic*] regarding his sexual orientation and had no real proof that his life was in

> danger in Ghana I told the Applicant that I believed that he had a weak case and that I was hesitant to take him on as a client.
>
> 11. I decided to help the Applicant as he told me that he did not have anyone else to help him and that he needed to file his PRRA application within one week.
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> 12. I met with the Applicant a few days later and I informed the Applicant that there was a strict deadline to file the PRRA application and evidence and that he needed to obtain proof for his PRRA of his sexual orientation and that his life was in danger in Ghana as PRRA submissions needed to be received before September 27, 2023.
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> 13. The Applicant informed me that he was single, was not dating anyone, and had no proof about his sexual orientation, but would try to obtain evidence that his life was in danger in Ghana.
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> 14. On September 18, 2023 I emailed the Applicant to remind him that he needed to provide evidence to support his fear of returning to Ghana, such as police reports, letters from a lawyer, friend, family confirming that his life was in danger (Exhibit "A").
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> 15. On September 21, 2023 the Applicant informed me that he is still trying to contact people back home to get proof, but that he has lost contact with them. I again informed the Applicant that he needed to provide more evidence that his life is in danger in Ghana (Exhibit "B").
>
> 16. On September 17, 2023 and September 22, 2023 the Applicant provided me with three unsigned letters to support his fear in returning to Ghana. I reviewed the letters with the Applicant and told the Applicant that the letters had information in it [*sic*] that was not in his basis of claim narrative and that the letters needed to be signed.
>
> 17. The Applicant informed me that there was no time for him to get the letters signed and that I should just submit them as he had no other evidence.

[24] The principal disagreements between the Applicant and his former counsel concern (a) whether the letters of support should have been signed, dated, and accompanied by identification

documents; (b) whether the Applicant should have submitted an updated affidavit describing his sexual involvement with men in Canada and ongoing risk of persecution in Ghana.

[25] The Applicant's affidavit provides further information to substantiate the authenticity of only one of the three letters of support. There continues to be no corroborated evidence of the Applicant's sexual behaviour in Canada, beyond a screenshot of his profile on a dating app. There is nothing to indicate any ongoing risk to the Applicant in Ghana beyond the letters of support he submitted previously.

[26] The Applicant bears the onus of rebutting the "strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance". The wisdom of hindsight has no place in this assessment (*R v GDB*, 2000 SCC 22 at para 27; *Aksoy v Canada (Citizenship and Immigration)*, 2025 FC 24 at para 14; *Ahmed v Canada (Citizenship and Immigration)*, 2024 FC 1978 at para 10).

[27] The burden of proof to demonstrate the incompetence of counsel is a heavy one. The evidence must be so clear and unequivocal and the circumstances so deplorable that the resulting injustice caused to the claimant is blatantly obvious (*Sachdeva v Canada (Citizenship and Immigration)*, 2024 FC 1522 at para 22; *Tjaverua v Canada (Citizenship and Immigration)*, 2014 FC 288 at para 15).

[28] In this case, the evidence of incompetence consists of counsel stating one thing and the Applicant stating another. This is insufficient to meet the high threshold of incompetence

(*Vardalia v Canada (Citizenship and Immigration)*, 2022 FC 300 at paras 35-38, citing *Khan v Canada (Citizenship and Immigration)*, 2016 FC 855). Regardless of any shortcomings in the representation the Applicant may have received from his former counsel, he continues to be unable to produce any corroborated or convincing evidence of his sexual involvement with men in Canada or elsewhere, or a risk of persecution in Ghana.

[29] The Applicant has not established incompetence by his former counsel.

B. *Was the Officer's decision reasonable?*

[30] The Applicant argues that the Officer made a veiled credibility finding based on the lack of corroborative evidence. He says that his BOC narrative was equivalent to a sworn statement, and benefited from a presumption of truth. He maintains that the Officer could not reject his claims of persecution without first convening an oral hearing.

[31] The Applicant's BOC narrative was tantamount to sworn testimony (*Ghannadi v Canada (Citizenship and Immigration)*, 2014 FC 879 at para 22), and should have been accepted as true unless there were reasons to doubt its veracity. These could include credibility concerns stemming from inconsistencies, omissions, contradictions, or the implausibility of an applicant's account of events (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 1625 at paras 20-21; *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC 302 at 305; *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at para 36).

[32] Even if the Applicant's narrative benefited from a presumption of truth, it was not entitled to a presumption of sufficiency. Evidence may be found insufficient if it has little probative value, is uncorroborated, or lacks detail (*Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 [*Sallai*] at paras 55-56; *Mcphee v Canada (Citizenship and Immigration)*, 2023 FC 1371 at para 30).

[33] The Officer's reasons suggest an overriding concern with the insufficiency of evidence, rather than the Applicant's credibility. The Officer observed that the Applicant did not provide up-to-date information regarding whether the police and his community were still looking for him. The Applicant did not provide testimony from his alleged boyfriend in Ghana or substantiate the boyfriend's identity. The letters of support were lacking in detail. In particular, the letter from the Applicant's cousin provided ambiguous and uncorroborated information about the alleged agents of persecution, and the events described were not confirmed by any documentation.

[34] The Officer's reasons included the following conclusion:

> A careful examination of the applicant's personal narrative and all the [*sic*] three supporting letters has led me to the finding that the applicant has not provided sufficient corroborating information and tangible evidence to support his alleged risks of persecution from the police, his employer, and his church. Consequently, the applicant has not established his fear of persecution based on his sexual orientation.
>
> Equally important as the alleged risks of persecution is the applicant's sexual orientation. Nevertheless, based on the submitted documents, the applicant has not established with meaningful evidence that he is bisexual.

[35] The onus was on the Applicant to support his claim with sufficient evidence and to put his best foot forward. Insufficient evidence is a valid reason to find an absence of risk in a claimant's country of origin (*Sallai* at para 56).

[36] The Applicant has not identified serious shortcomings in the Officer's decision or demonstrated that it was unjustified or lacking in transparency or intelligibility. The decision was therefore reasonable, and the application for judicial review must be dismissed.

[37] Given the lack of merit in the Applicant's arguments, his request for an extension of time in which to commence this application for judicial review must also be dismissed.

V. Conclusion

[38] The motion for an extension of time and the application for judicial review are dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the motion for an extension of time and the application for judicial review are dismissed.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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