

Federal Court



Cour fédérale

**Date: 20190807**

**Docket: IMM-5656-18**

**Citation: 2019 FC 1057**

**Ottawa, Ontario, August 7, 2019**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**YACOUB AHMED MOHAMED VALL**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicant, Mr. Yacoub Ahmed Mohamed Vall, is a citizen of Mauritania. He claims to be persecuted by his ex-wife's family because he comes from a lower tribe. His current wife, Ms. Vatimetou Sidi Heiba, alleges to have fled Mauritania to escape forced marriage.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected Mr. Vall, Ms. Heiba and their daughter's claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for lack of credibility. The Refugee Appeal Division [RAD] rejected their appeal for the same reasons [RAD Decision].

[3] Mr. Vall now seeks judicial review of the RAD Decision. He argues that the RAD erred in rejecting his claim for refugee protection on the basis that it lacked credibility. He asks this Court to set aside the decision and to return the case to the RAD so that his request can be reassessed by a differently constituted panel.

[4] The sole issue raised by Mr. Vall's application for judicial review is to determine whether the RAD's negative credibility findings were reasonable. For the reasons that follow, I will dismiss this application. Having considered the RAD's findings, the evidence before the panel and the applicable law, I can find no basis for overturning the RAD Decision. The contradictions and implausibilities in Mr. Vall's testimony and evidence reasonably support the RAD's negative credibility findings, and the RAD's reasons have the qualities that make the decision reasonable in that it falls within a range of possible, acceptable outcomes defensible in respect of the facts and the law. There are therefore no grounds to justify this Court's intervention.

## II. Background

### A. *The factual context*

[5] According to Mr. Vall, he met his ex-wife, Fati, in a poor neighborhood of Mauritania's capital in 2006. Fati was living there with her aunt while she was studying and working in the capital. She was a member of a noble tribe, the Ewlad Ibery tribe, while Mr. Vall was a member of the lower Zenaga tribe. They got married secretly in January 2007 and had a son. They stayed hidden from Fati's family who was living in a remote village. Mr. Vall alleged that, in March 2009, Fati's parents located them and came to the capital to confront their daughter. She called Mr. Vall to warn him not to come back to their home because he would get killed. Two days later, Fati and their son were taken by force to an unknown place to Mr. Vall. He searched for them during seven months in the capital and learned in October 2009 that they had been taken to Fati's family's village. When he arrived at the village, his wife and son had left and a group of people were waiting for him, but he decided not to confront them and left. In January 2010, Fati's family got a court to cancel their marriage and an arrest warrant was issued against Mr. Vall, who was to be incarcerated for two years and to pay a penalty of 2 million oukia. He went into hiding while a friend obtained him a visa to the United States [US]. He left Mauritania in February 2010 and claimed refugee protection in the US.

[6] According to Ms. Heiba, she refused to marry a man chosen by her family in March 2012. The wedding, initially planned for August 2012, was postponed indefinitely because she was depressed and suicidal. In October 2014, she convinced her father to let her go visit her brother in the US, where she claimed refugee protection.

[7] Mr. Vall and Ms. Heiba met in the US, got married and had a daughter. Ms. Heiba's father was allegedly furious when he learned about that and threatened to kill her and her daughter. Both Mr. Vall and Ms. Heiba's refugee claims in the US were rejected. In August 2016, they came to Canada and asked for refugee protection. The RPD rejected their claim in December 2016.

**B. *The RAD Decision***

[8] In its decision dated October 24, 2018, the RAD rejected the appeal and confirmed the RPD's negative credibility findings.

[9] The RAD refused to accept a psychological report as new evidence and refused to hold an oral hearing pursuant to subsections 110(4) and (6) of the IRPA. This part of the RAD Decision is not contested.

[10] Turning to Mr. Vall's credibility, the RAD reviewed all the RPD's findings and noted that six elements affected his credibility:

- a) His US visa application indicated that he was from the Ewlad Ibery tribe, allegedly to facilitate obtaining the visa. However, Mr. Vall indicated that he always identified as a member of the Zenaga tribe, he gave no direct answers to the RPD's questions on this issue, he did not signal this false information in his asylum application in Canada, and he did not signal the US authorities mistaken finding in this regard;

- b) While Mr. Vall stated himself that lower tribes lived in poor neighborhoods, he gave vague and evasive answers as to why her ex-wife's aunt, who was also from the noble Ewlad Ibery tribe, was living in a poor neighborhood. The RAD mentioned that this was not a crucial element of the analysis, but that it suggested a hesitant testimony;
- c) The US visa application, allegedly completed by a friend, contained an error on the year of birth of Mr. Vall's ex-wife Fati;
- d) It was unlikely that an imam would proceed to the marriage without a guardian for Fati, under the threat that they would otherwise live in sin. Also, Mr. Vall later adjusted his testimony to say that he had convinced the imam to proceed;
- e) It was implausible that Fati's family only learned of the marriage in 2009, since Fati was living with her aunt who was against the marriage and who would have alerted the parents earlier; and
- f) It was incoherent that Mr. Vall would have searched for his wife and son for seven months in the capital only, without looking for them in Fati's family's village.

[11] Regarding Ms. Heiba, the RAD noted the following elements affecting her credibility:

- a) The threat posed by his father seemed exaggerated. It was implausible that a very conservative father would send his daughter to the US, a country of liberty and temptations. Moreover, the father agreed to postpone the wedding by more than two years;

- b) Despite the RPD's request, Ms. Heiba did not provide the US first instance negative decision on her refugee claim; and
- c) Regarding a possible internal flight alternative, Ms. Heiba gave an erratic testimony and adjusted her testimony, saying first that her father would look for her and adding later that he already contacted the police to find her.

[12] Finally, with respect to Mr. Vall and Ms. Heiba's daughter, the RAD noted that returning alone to the US, her country of citizenship, would not affect her health or safety and is not sufficient to be granted protection under sections 96 or 97 of the IRPA.

**C. *The standard of review***

[13] With regards to the RAD's assessment of credibility, the jurisprudence has already established that the applicable standard of review is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at para 35; *Damte v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 763 at para 18). There is as such no need to proceed to a further analysis of the standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 62).

[14] Under the standard of reasonableness, the reviewing court must show deference to the decision under review, so long as it is justified, transparent and intelligible and falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). In other words, the reasons behind a decision are reasonable if they

“allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 16).

[15] The standard of reasonableness requires to show deference to the decision-maker as it is “grounded in the legislature’s choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing” (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 33; *Dunsmuir* at paras 48-49). Under a reasonableness review, when a question of mixed fact and law falls squarely within the expertise of a decision-maker, “the reviewing court’s task is to supervise the tribunal’s approach in the context of the decision as a whole. Its role is not to impose an approach of its own choosing” (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 57). A high degree of deference is particularly required when, as in this case, the impugned findings relate to the credibility and plausibility of a refugee claimant’s story, given the RPD and the RAD’s expertise in that regard and their role of trier of fact (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 15).

### **III. Analysis**

[16] Mr. Vall argues that each of the RAD’s findings regarding his credibility contain reviewable errors. I disagree. In *Lawani*, at paragraphs 20 to 26, I have summarized the main principles governing the manner in which an administrative tribunal like the RPD or the RAD must assess the credibility of refugee applicants. Applying these principles, I conclude that, on

every front, the RAD Decision falls within the scope of possible, acceptable outcomes. In the case of Mr. Vall, the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of his refugee claim amply support the negative conclusion reached by the RAD about Mr. Vall's credibility (*Lawani* at para 21). The adverse credibility findings did not stem from minor contradictions that were secondary or peripheral to Mr. Vall's refugee protection claim, but instead went to the very heart of it.

**A. *Tribe name and ex-wife's date of birth***

[17] Mr. Vall first submits that the RAD erred in finding that his credibility was undermined by false information he provided in his US visa application, and by rejecting his explanation that a friend completed the visa application. He asserts that writing the higher tribe name increased his chances of obtaining the visa and was deliberate, while his ex-wife's date of birth was a simple mistake made by his friend. He refers to the presumption of truthfulness established in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA), and submits that it is unreasonable to expect all claimants to study their visa applications if completed by a friend or a smuggler. Further, he argues that it is unreasonable to draw a negative credibility inference from the use of false or improperly obtained documents, when their use was required to flee persecution (*Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at paras 41-44; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 11).

[18] I am not persuaded by Mr. Vall's arguments. Inconsistencies, contradictions and omissions in the evidence, such as the evidence pertaining to Mr. Vall's tribe and to his ex-wife's



date of birth, are a well-accepted basis for a negative credibility finding (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)).

[19] I accept that there may be circumstances where it would be unreasonable to expect claimants to review the information on their visa applications, such as when the applicant does not understand the language of the form. However, there is no exemption to the principle that an applicant must provide true information, for the sole reason that a third party completed the paperwork. Since Mr. Vall did not explain why he did not review the visa application, even though he signed it, it was reasonable for the RAD to draw a negative credibility inference from the mistakes contained in it.

[20] Regarding the tribe name, Mr. Vall not only alleges that he did not know what his friend had written, but also that writing the more noble tribe name increased his chances of obtaining a US visa and therefore should not affect his credibility. While it is true that no negative credibility inference should be made when the use of false information or fraudulent documents was required to flee persecution, it was open to the RAD to reasonably draw an adverse credibility inference from the fact that Mr. Vall did not disclose in his Canadian refugee claim that he had used a false tribal name to escape Mauritania. At that time, he was well aware of what his friend had written in his US visa application, since the negative decision on his US claim mentioned this discrepancy. Hiding this fact to the Canadian authorities, once he was on Canadian soil, cannot be said to have helped him escape persecution.

[21] Given all of that, I am satisfied that the RAD could reasonably find that the presumption of truthfulness was rebutted, because of Mr. Vall's inconsistencies and omissions (*Lawani* at para 21).

**B. *Absence of a guardian for the marriage***

[22] Concerning the absence of a guardian for his marriage, Mr. Vall contends that he did not change his testimony, since the question about the need to have a guardian only came up after he explained that they had asked the imam to marry them without a guardian. He also claims that the RPD erred in stating that he testified a guardian was not required when he always asserted that a guardian was indeed needed. Moreover, he alleges that the requirements of a legal marriage are not always followed, according to country conditions evidence, and that this is therefore an implausibility finding made without relying on supporting evidence (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 [*Valtchev*]). Mr. Vall adds that the imam may very well have chosen to marry them to ensure they would not live in sin, and that the RPD member had already determined that the story was not credible before he could finish testifying.

[23] I do not agree. After reading the transcript of the RPD hearing provided by the Minister and listening to the audio recording, I note that Mr. Vall's testimony contains many contradictions. Contrary to what he submits, he did mention that a guardian was not always required, as evidenced by the very fact that he got married to Fati without one. Furthermore, his explanations indeed evolved, as he first said that he convinced the imam to proceed without a guardian because they would otherwise live in sin, and then stated that two adults could proceed

without a guardian, that the guardian is not necessary when he cannot be present or does not approve the marriage, and finally that the guardian can be replaced by two witnesses. These inconsistencies are sufficient to support the RAD's negative credibility inference.

[24] The RAD also said that it was unlikely that an imam would ignore the requirement to have a guardian and marry a couple under the threat that they would otherwise live in sin. Contrary to Mr. Vall's submissions, this finding is not contradicted by the evidence and as such respects the principle established in *Valtchev* that implausibility findings must be supported by the evidence (*Valtchev* at paras 8-9, 17). As rightly pointed out by the Minister, the country conditions evidence submitted by Mr. Vall concerns forced marriage and have little weight regarding the necessity to have a guardian present at a marriage. The RAD's implausibility finding was reasonable in light of the evidence available.

[25] I am mindful that caution is required regarding implausibility findings in refugee cases (*Valtchev* at para 9). Implausibility findings should be made only in the clearest of cases and with showing sensitivity to cultural differences, and the RAD must always sufficiently set out its reasons for making such findings (*Lawani* at para 26). I am satisfied that the RAD's assessments were made in clear and unmistakable terms with detailed explanations on why, in the eyes of the panel, Mr. Vall's evidence was missing the mark and stood outside the realm of what could reasonably be expected.

**C. *Place of residence of Fati's aunt***

[26] With regards to the place of residence of Fati's aunt, Mr. Vall argues that he did give a detailed explanation: her teacher training required her to live there. He further pleads that poorer neighborhoods do have some members of noble tribes living there.

[27] Again, I am not convinced by Mr. Vall's reading of the evidence. I instead find that the RAD's conclusion is consistent with Mr. Vall's testimony on the differences between the tribes and the fact that he lived in a poor neighborhood because he was from a lower tribe. I do not dispute that Mr. Vall did explain that his ex-wife was studying to become a teacher and that this was the reason she was living with her aunt. However, when asked why the aunt was living in a poor neighborhood if she was from the same noble tribe, he gave no clear answer, contributing to his overall hesitant testimony.

**D. *Timing of the discovery of the couple by Fati's family and the discovery by Mr. Vall of his wife and son***

[28] Mr. Vall further argues that the RAD failed to review the RPD's errors with regards to the timing of Fati's family discovering their relationship and the timing of Mr. Vall locating his wife and son. Mr. Vall explains that the family knew about their relationship but could not locate them. He contends that the RAD failed to give weight to the fact that they were living under a low profile, that Fati's family was from a remote village, and that Fati had stopped communicating with her family. Moreover, he asserts that he testified having considered that Fati

and their son could have been taken anywhere, but that he began his search in the capital and kept a low profile to avoid danger.

[29] Here, Mr. Vall is asking this Court to re-weigh the evidence, but that is not the role of the Court on judicial review (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [Kanthasamy] at para 112; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61). The RAD did consider Mr. Vall's explanations and chose to give them little weight. The long delay before Fati's family located them was found to be implausible, since Fati's aunt knew about their relationship. Similarly, the RAD found incoherent that Mr. Vall would have searched several months for his wife and son without looking for them in Fati's family's village. Given those inconsistencies and implausibilities, I find that the negative credibility inferences were reasonable.

#### **E. *Supporting documents***

[30] Lastly, Mr. Vall pleads that the RAD failed to give weight to certain supporting documents, namely Fati's birth certificate, their son's birth certificate, and the annulment of marriage ordered by the court. He claims that the RAD cannot make a negative credibility finding where there is independent and credible documentary evidence capable of supporting a positive determination (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 [Sellan]). He submits that the RAD failed to ascertain the authenticity of documents that appear to be genuine and to independently assess the supporting documents. Besides, he argues that the RAD cannot simply disregard evidence that does not support its finding (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (FC) (QL) [Cepeda-

*Gutierrez*]; *Zheng v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 140 (FC) (QL)). Mr. Vall further submits that it is an error to reject the documents based on separate credibility findings, since documentary evidence must be considered before reaching a conclusion on credibility (*Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 [*Ren*] at paras 24-25; *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 [*Chen*] at paras 20-21).

[31] I cannot agree with Mr. Vall as none of the supporting documents address or counter the RAD's credibility findings. Mr. Vall correctly states that the RAD has a duty to independently analyze the evidence (*Huruglica* at para 103). I also acknowledge that, in doing so, the RAD must consider documentary evidence supporting an applicant's story before reaching a conclusion on the applicant's credibility (*Ren* at para 25; *Chen* at para 20). Determining credibility and then looking into evidence submitted to corroborate a refugee claimant's story would circumvent the purpose of corroborating evidence, which is precisely to support the story when there are doubts as to its credibility. Here, however, I find nothing suggesting that the RAD did not consider the two birth certificates and the annulment of marriage before reaching a conclusion on Mr. Vall's credibility.

[32] A decision will be reasonable even if it does not mention all of the arguments or evidence, so long as "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland Nurses* at para 16). The more important a piece of evidence is, the

more it becomes likely that a failure to mention and analyze it will render the decision unreasonable (*Cepeda-Gutierrez* at para 17).

[33] In its decision, the RAD mentions the annulment of marriage and Fati's birth certificate, but not the son's birth certificate. However, none of these three documents were critical to the credibility findings, as the RAD did not contest that the marriage was annulled, that Fati was born on the date written on her birth certificate, or that Mr. Vall and Fati had a son. On Fati's date of birth specifically, what the RAD found problematic was the incorrect information provided in the US visa application. Filing the birth certificate with the correct date on it does not cure this problem. The rest of the RAD's negative credibility inferences relate to the tribe name, the absence of a guardian at the marriage, the neighborhood in which Fati and her aunt were living, the time it took for Fati's family to find them, and the time it took for Mr. Vall to find his wife and son. The documents submitted do not contradict or shed further light on any of those findings.

[34] I make one additional remark on the *Sellan* decision relied on by Mr. Vall. This decision does not stand for the principle that the RAD cannot make a negative credibility finding where there is independent and credible documentary evidence capable of supporting a positive determination, as Mr. Vall argued. Rather, the Federal Court of Appeal stated that "where the [RPD or the RAD] makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim" (*Sellan* at para 3). This means that if there is independent and credible documentary evidence, a claim may be

accepted even if the applicant is found not to be credible. It does not mean that a negative credibility finding cannot be made in the first place. Here, the submitted documents do not show why Mr. Vall should have been granted protection under section 96 or 97 of the IRPA, despite his story not being credible.

[35] In summary, on every front, the RAD provided careful, comprehensive and well-considered reasons explaining why Mr. Vall was not found credible. The cumulation of multiple inconsistencies led the RAD to conclude to its adverse credibility finding. The test for reasonableness dictates that the reviewing court must start from the decision and the decision-maker's reasons, with the recognition that the administrative decision-maker has the primary responsibility to make the factual determinations. A judicial review is not a "line-by-line treasure hunt for error" and a reviewing court must instead approach the reasons and outcome of a tribunal's decision as an "organic whole" (*Kanthasamy* at para 138; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53). When the RAD Decision is read as a whole, and not through a piecemeal approach, I am satisfied that the RAD engaged in a thorough and detailed assessment of the evidence, and that its findings are reasonable. The question before the Court is not whether another outcome or interpretation might have been possible. The question is whether the conclusion reached by the decision-maker falls within the range of acceptable, possible outcomes.



**IV. Conclusion**

[36] For the foregoing reasons, Mr. Vall's application for judicial review is dismissed. I detect nothing irrational or arbitrary in the RAD's factual findings. I instead find that the RAD's analysis of Mr. Vall's lack of credibility has the required attributes of transparency, justifiability and intelligibility, and is not tainted by any reviewable error. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within the range of acceptable, possible outcomes which are defensible in respect of the facts and the law. This is the case here.

[37] The parties did not raise any serious questions of general importance for certification in their submissions, and I agree that there is none.

**JUDGMENT in IMM-5656-18**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed, without costs.
2. No serious question of general importance is certified.

"Denis Gascon"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5656-18

**STYLE OF CAUSE:** YACOUB AHMED MOHAMED VALL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 24, 2019

**JUDGMENT AND REASONS:** GASCON J.

**DATED:** AUGUST 7, 2019

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