Federal Court  Cour fédérale

Date: 20191105

Docket: IMM-6276-18

Citation: 2019 FC 1385

Ottawa, Ontario, November 5, 2019

PRESENT: Mr. Justice McHaffie

BETWEEN:

FRANK KOFI GEORGE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Frank Kofi George's application for refugee protection was refused by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada. The RPD found Mr. George's claim of persecution to be implausible, found him to be not credible, and discounted the evidence that corroborated his story because of those credibility findings.

[2] Credibility and plausibility findings by a decision maker are entitled to deference. The critical role of fact-finders, the advantages that they have in their review and assessment of evidence, and the value of preventing re-litigation all require that credibility findings not be disturbed lightly. Nonetheless, credibility findings must be reasonable: they must be principled, reasoned, rational, and based on the evidence.

[3] In the present case, the RPD made its plausibility finding without reference to relevant evidence, and without apparent consideration of the cultural context in which Mr. George's fear of persecution arose. It made further credibility findings based on asserted contradictions that did not exist, and on an inconsistent and even misstated version of Mr. George's evidence. It summarily dismissed all of the corroborative evidence presented by Mr. George, on the basis of it being "self-serving" and on the basis of the credibility findings made before it was considered. And it gave no substantive consideration to the evidence presented by Mr. George regarding a medical condition that may have affected his evidence.

[4] These aspects of the RPD's analysis are inconsistent with the principles that this Court has established to govern plausibility and credibility findings in applications for refugee protection. The effect of these errors is to render the RPD's decision unreasonable. It is therefore set aside and Mr. George's application for refugee protection is referred back to the RPD for redetermination.

II. Mr. George's Refugee Application

[5] Mr. George is a citizen of Ghana. Upon arriving in Canada in July of 2012, he was detained for travelling under a false passport, and sought refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. His application was ultimately heard and rejected by a member of the RPD in the fall of 2018.

[6] The core of Mr. George's claim for refugee protection is that he fears persecution by authorities of the Gonja tribe from the Yendi region in northern Ghana. Although his father was a member of that tribe, Mr. George was raised away from the tribe by other family members and rejects the tribe's traditional practices, which include genital mutilation and facial scarification. Mr. George fears that if found in Ghana by the tribe's "Asafo" group, which he describes as a tribal police group, he will be scarred, tortured or killed. He believes that the tribal authorities were responsible for the disappearance and presumed death of his father when he was young.

[7] Although he first left Ghana for the United States in 1999, Mr. George asserts that his particular fear of the Asafo arose in 2005. When he was in Ghana that year, he discovered that members of the Yendi Gonja were present in Accra, that they had been instructed to pursue tribe members, and that they had come looking for Mr. George. Later the same year, Mr. George claims that his uncle was murdered by the Asafo group because of his unwillingness to allow his children to undergo Gonja rituals, and that Mr. George's daughter faced an attempted kidnapping from her childcare facility in Ghana.

[8] During the six years that his application was pending, Mr. George filed a number of amendments to his claim and supporting documentation. Given the credibility findings of the RPD and my conclusions regarding the reasonableness of those findings, I will review those amendments and the procedural history in some depth.

A. *2012 Claim for Refugee Protection Form and Personal Information Form*

[9] Mr. George initially completed a Claim for Refugee Protection (IMM 5611) form upon his detention in July 2012. That form indicated that he had arrived in Toronto after travelling from the US to Togo via Accra, returning after an 11-week visit in Togo, again via Accra and a night in Amsterdam waiting for a flight. As part of that form, Mr. George indicated that he had been refused entry to the US in 2005 after entering from Mexico; that he had been removed to Ghana in 2005 as a result; and that in 2006 he was convicted of immigration offences upon re-entry to the US. At the same time, though, Mr. George indicated in the "Occupations" section of the form that he had been employed by a communications company in Alexandria, Virginia from January 2005 to September 2007.

[10] In August 2012, while represented by counsel, Mr. George filed a Personal Information Form (PIF) in support of his application. In a narrative attached to the PIF, Mr. George again indicated that he was deported to Ghana in January 2005. He said that after being deported to Ghana, he stayed first with his uncle, Dr. Pino Akotia, but when his uncle reported that Asafo members had left a threatening note, he went into hiding at a guesthouse owned by a friend, Foster Ogordor, until he left again for the US.

[11] Although the 2005 deportation and subsequent stay in Ghana are described at some length in the narrative, neither the 2005 travel nor an earlier trip to Ghana in 2004 is reflected in the body of the PIF form. Rather, in response to a question requiring a list of all countries Mr. George had travelled to in the past 10 years, he indicated that he had been in New York and Virginia from January 1999 to January 2005, and in Virginia from January to May 2005. The January to May 2005 period is listed as a separate line in the form, with the "Purpose of travel" listed as "Visit." This period coincides with the time period that Mr. George says he was in Ghana, but the form states the "Visit" was to Virginia and not Ghana. Similarly, the "Work Experience" portion of the form repeated that he had been employed in Alexandria from January 2005 to September 2007.

B. *2013 Amendment to the Personal Information Form*

[12] In June 2013, with the assistance of new counsel, Mr. George filed an amendment to his PIF. That amendment consisted of a statement from Mr. George that described the attempted kidnapping of his daughter by Gonja tribe members in November 2005. It also provided more detail regarding Mr. George's immigration history in the US. This included repeating that he had been removed from the US to Ghana in January 2005, returning unlawfully later that year by crossing the US-Mexico border with his driver's license and student ID card.

[13] The 2013 amendments also indicated that Mr. George had been identified as being in the US illegally after a traffic stop in 2006. He applied for a Withholding of Removal and was recognized by a US immigration judge as a person facing a clear probability of persecution in Ghana. Despite this status, and despite knowing he would not be able to re-enter the US,

Mr. George described his voluntary travel to Togo (via Ghana) in 2012 to visit his seriously ill mother. It was this travel that led to Mr. George's arrival in Canada and his claim for refugee protection here.

C. *2014 Amendment to the Personal Information Form and Documentary Evidence*

[14] In January 2014, in advance of the hearing of his refugee claim scheduled for later that month, Mr. George filed a further amendment of his PIF, together with documentary evidence he intended to rely on at the hearing. The amendment included a correction to the original PIF form, changing the list of dates that he was in the US and adding the handwritten notation "(in Ghana 02/2005 to 05/2005)," although the "Work Experience" section remained unchanged. These corrections to the PIF form were described by Mr. George in a revised written statement as correcting mistakes made by Mr. George's former lawyer in completing the form.

[15] The written statement also provided more detail regarding Mr. George's removal to Ghana in 2005. This included a description of his travel to Ghana in 2004 to visit his ailing grandmother. Mr. George stated that he tried to return from this trip via Mexico, which resulted in his apprehension at the border and ultimate removal from the US in January 2005. It further provided information regarding a brain tumour that was diagnosed in 2010 or 2011, leading to surgery in 2013, which Mr. George indicated affected his memory and thought processes, including in completing the PIF.

[16] The documents that Mr. George filed in 2014 included copies of various records such as his birth, school and marriage certificates and the decision from the US Department of Homeland

Security regarding his claim for Withholding of Removal from the US. He also filed letters from an Ottawa neurosurgeon confirming his surgery, and letters and declarations from nine other individuals, including his uncle Dr. Akotia, his friend Mr. Ogordor, other relatives and friends, and the owner and an employee of the childcare centre who described the attempted kidnapping.

D. *2016 and 2018 Updates to the Personal Information Form and Documents*

[17] The January 2014 hearing was rescheduled, since Mr. George's former counsel had requested a postponement before his new counsel had filed the additional information. In advance of another hearing date in March 2016, Mr. George filed a further amendment to his PIF through an additional statement and further documentary evidence. The statement essentially updated Mr. George's evidence, noting his continued fear despite the passage of time. The further documents included medical information regarding the impacts of Mr. George's brain tumour, including impacts on his memory; new letters from Mr. George's wife, uncle and a friend; and information about the state of affairs in Ghana.

[18] The hearing was again postponed, however, and ultimately rescheduled for September 2018. Before the 2018 hearing, Mr. George filed an updated medical letter and further country documents.

III. Rejection of Mr. George's Application

[19] The RPD determined that Mr. George is neither a Convention refugee under section 96 nor a person in need of protection under subsection 97(1) of the *IRPA* and therefore denied his claim for refugee protection.

[20] The determinative issue in the RPD's decision was Mr. George's credibility. The RPD made findings with respect to the plausibility of Mr. George's account and the credibility of both his personal evidence and the documentary evidence he filed in support of his application. These adverse findings can be grouped into four categories.

[21] First, the RPD made a finding of implausibility with respect to Mr. George's story as a whole, finding it "implausible that after being outside his country for so many years, the agents of persecution are still looking for him."

[22] Second, the RPD pointed to Mr. George's travel to Ghana in 2004 to visit his grandmother; and his transit via Ghana in 2012 to visit his mother in Togo, which it found were inconsistent with someone who fears for his life in Ghana. Similarly, Mr. George's failure to seek refugee protection in either Mexico in 2004 or 2005 or in the Netherlands in 2012 were found to be inconsistent with that of someone who fears for his life in Ghana.

[23] Third, the RPD referred to three occasions during the hearing in which the member "confronted" Mr. George with information from the record, and was not satisfied with

Mr. George's answers. Two of these related to Mr. George's assertion that he was in Ghana in 2005, and one related to the question of seeking refugee protection in Mexico.

[24] Fourth, the RPD discounted all of the letters and statements from ten individuals that were filed to corroborate Mr. George's account and support his application. Two of these were rejected as being "self-serving letters." The remainder were given no probative value "given the claimant's overall lack of credibility."

[25] The RPD noted that it had considered the medical evidence filed with respect to Mr. George's state of health, making the following statement:

> Also, with respect to the claimant's state of health and the letter from Dr. Moller in Ontario, who mentions memory loss, the panel finds that it is important to mention that in its analysis of the case, the panel took the claimant's state of health into account, and at the hearing, his lawyer mentioned in her submissions that the claimant had testified well. [Emphasis added.]

IV. Issue and Standard of Review

[26] Mr. George challenges the RPD's credibility findings, its rejection of the witness statements and letters, and its treatment of the medical evidence.

[27] The RPD's decision, including its credibility findings, is reviewable on a standard of reasonableness. As Justice Teitelbaum remarked in *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at paragraph 13, the RPD's "credibility and plausibility analysis is central to its role as trier of facts and that, accordingly, its findings in this regard should be given significant deference." Both the RPD's expertise and its opportunity to hear the witness testify and assess all

of the evidence points to a deferential approach to credibility findings, including those pertaining to plausibility: *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42.

[28] While *Dunsmuir v New Brunswick*, 2008 SCC 9, instructs that there is only a single deferential standard, namely the reasonableness standard, credibility findings are often described as being entitled to "considerable deference" (*e.g., Moriom v Canada (Citizenship and Immigration)*, 2015 FC 588 at para 16), "significant deference" (*e.g.*, *Rahal* at para 22), or a "high degree of deference" (*e.g.*, *Su v Canada (Citizenship and Immigration)*, 2019 FC 1052 at para 19). While this does not change the standard of review, this language recognizes that in applying the reasonableness standard, fact-finders are to be given considerable latitude in their credibility findings, and determinations of credibility are to be interfered with only rarely. This is seen in the Court's approach to reviewing the reasonableness of credibility findings, which is not to conduct a "microscopic analysis" of each and every ground provided by the panel but to assess whether the reasons as a whole "do not appear capricious or arbitrary": *Martinez v Canada (Citizenship and Immigration)*, 2009 FC 798 at para 16.

[29] At the same time, reasonableness requires that plausibility and credibility findings be made rationally on the basis of the evidence, including consideration of evidence that might support the plausibility or credibility of a witness's account. Credibility and plausibility findings "cannot be based on speculation or conjecture and must be adequately explained," and the RPD is required "to refer to evidence which could refute their implausibility conclusions and explain why such evidence does not do so": *Hassan v Canada (Citizenship and Immigration)*, 2010 FC 1136 at paras 12-13.

[30] Despite the deferential approach that must be brought to the RPD's findings on refugee applications, and in particular to credibility assessments, I find the RPD's decision to be unreasonable.

V. Analysis

A. *The RPD's Implausibility Finding*

[31] The RPD commenced its analysis of Mr. George's claim by stating that "[t]he panel rejects the claimant's allegations, finding them not credible because, in its opinion, it is implausible that after being outside his country for so many years, the agents of persecution are still looking for him."

[32] It is open to the RPD to make credibility findings on the basis of the plausibility of a claimant's assertions, and to base the assessment of plausibility on their "common sense." At the same time, as Justice Gleason, then of this Court, stated in *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at paragraph 11, the RPD "should provide a 'reliable and verifiable evidentiary base against which the plausibility of the Applicants' evidence might be judged', otherwise a plausibility determination may be nothing more than 'unfounded speculation'…" [Citations omitted.]

[33] Justice Gleason also observed at paragraph 44 of *Rahal* that "a finding of implausibility must be rational and must also be duly sensitive to cultural differences. It must also be clearly expressed and the basis for the finding must be apparent in the tribunal's reasons." To similar

effect is Justice Muldoon's comment in *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776 at para 7:

> A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

[34] The stated basis for the RPD's finding of implausibility is clear from its reasons: it did not believe that members of the Asafo group of the Yendi Gonja tribe would continue to persecute Mr. George given the passage of time. However, the RPD gives no "verifiable evidentiary basis," or indeed any basis, for why this disbelief was justified in either the cultural context or the context of the evidence filed.

[35] In essence, the RPD was implicitly invoking its assessment that a police group from a Ghanian tribe that practices scarification and genital mutilation, and is alleged to pursue and even kill tribe members who do not accept those practices, would only do so for a certain period of time. The RPD does not explain why its temporal conclusion is justified in this atypical context. Nor did the RPD consider whether the evidence filed by Mr. George supported the plausibility of his fears in this context.

[36] In this regard, the evidence filed by Mr. George included:

- a statement made in 2007 by Kpotsai Addae, a friend of Mr. George and a member of the Gonja tribe, that "[t]he Asafo group (the clan police) is always looking for the escapees to form them to submit to the ritual practices";

- a letter from his mother in 2013 indicating she was still living in Togo since she was worried about her safety from the Gonja tribesmen;

- a letter from his uncle Prosper in 2014 indicating that "[t]hings are still the same" and that his mother could not return to Ghana;

- another statement from his mother, undated but clearly made between 2012 and 2014, saying that "my son Frank will be captured and killed if he is found in Ghana or anywhere around by members of the Asafo group";

- his own statement from his 2016 amendment to his PIF that "[t]he passage of time means nothing to these people";

- another letter from Mr. Addae in 2016 indicating that Mr. George remained at risk and that "[t]hree Gonja tribe runaways were recently captured by the Asafo"; and

- a letter from 2016 from his uncle, Dr. Akotia, indicating that the situation remained the same and that the Asafo group "will do anything to capture him when he is found in Ghana."

[37] The RPD gave no apparent consideration to this evidence when assessing the plausibility of Mr. George's continued fear of persecution notwithstanding the passage of time. Rather, as discussed further below, the RPD dismissed all of this evidence, giving it no probative value, on the basis of "the claimant's overall lack of credibility." There is no small element of circular reasoning in this, as the RPD found Mr. George's primary assertion implausible without consideration of the evidence that might affect that plausibility finding, and then disregarded that

evidence on the basis of the credibility finding. Justice Rennie, then of this Court, explained in *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at paragraph 20, that "[i]t is impermissible to reach a conclusion on the claim based on certain evidence and dismiss the remaining evidence as inconsistent with that conclusion": see also *Momanyi v Canada (Citizenship and Immigration)*, 2018 FC 431 at paras 34-35.

[38] I find the RPD's cursory conclusion of implausibility, undertaken without assessment of relevant evidence, and without apparent consideration for the cultural and factual context in which the stated fear of persecution arose, to be unreasonable.

[39] In reaching this conclusion, I need not rely on the observation in *Valtchev* that plausibility findings should only be made in the "clearest of cases": *Valtchev* at para 7; *Liu v Canada (Citizenship and Immigration)*, 2018 FC 1027 at para 19. That observation—which I recognize has been questioned in *Kallab v Canada (Citizenship and Immigration)*, 2019 FC 706, but which nonetheless appears to reflect the preponderance of the jurisprudence of this Court—would simply reinforce the conclusion.

[40] If the other credibility findings made by the RPD had been reasonable and sufficient to justify the wholesale exclusion of the contrary evidence, the unreasonableness of the implausibility finding might not have rendered the decision as a whole unreasonable. However, as discussed below, the RPD's other credibility findings were also flawed.

[41] On this issue, I decline the Attorney General's invitation to consider other elements of the record which might have been—but were not—considered by the RPD as the basis for an adverse credibility finding. In reviewing the reasonableness of the RPD's credibility findings, this Court must be able to assume that the reasons that the RPD made those findings are those given by the RPD. The potential to consider the reasons that "could be offered" in support of a decision does not allow the Court to rewrite an administrative decision and replace unreasonable grounds with other grounds for purposes of the reasonableness analysis: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54.

B. *The RPD's Credibility Findings Regarding Mr. George's Prior Travel*

[42] The RPD found Mr. George's travel to Ghana in 2004 to see his grandmother and his 2012 visit to his mother in Togo to be inconsistent with someone who feared for his life in Ghana. However, the 2004 travel predated the events in 2005 that Mr. George asserts led to his fears, so it cannot reasonably affect the credibility of Mr. George's fear or his evidence. The voluntary travel in 2012, which included brief transit via Ghana, is more directly relevant, although again the RPD did not consider the evidence that described that travel, notably a 2015 letter from Mr. George's wife Rosemary George, again assigning that evidence no probative value on the circular basis of having already determined Mr. George's credibility.

[43] The RPD also made adverse credibility findings based on Mr. George's failure to claim refugee protection in Mexico in 2004 and in May 2005, or in the Netherlands in 2012. There is no doubt that a failure to claim refugee status in another country is a relevant factor in assessing a claimant's subjective fear of persecution, and may also go to credibility, although this Court

has recognized that it is not determinative: *Dawoud v Canada (Citizenship and Immigration)*, 2015 FC 1110 at para 41.

[44] While failure to claim refugee status may be relevant, assessment of that factor must be reasonably undertaken. In this regard, the RPD's reliance on Mr. George's failure to seek protection in Mexico was not reasonable. As noted above, the travel in 2004 was prior to the events in 2005 that gave rise to Mr. George's asserted fears, so it is unreasonable to rely on it to doubt the credibility of those fears.

[45] With respect to May 2005, the RPD's finding is intertwined with its assessment of evidence at the hearing regarding Mr. George's deportation to Ghana in 2005. This is discussed in the following section. For the present, it is sufficient to note that the RPD concluded that Mr. George remained in the US in 2005, while at the same time relying on him being in Mexico and failing to claim refugee status.

C. *The RPD's Credibility Findings Based on Responses at the Hearing*

[46] The RPD referred to three exchanges during the course of the hearing as further grounds for the adverse credibility finding. The assessment of such *viva voce* evidence is at the heart of the role of the RPD, and findings of credibility based on that assessment are therefore rarely to be disturbed. In the present case, however, the nature of the findings and the circumstances in which they were made show an unreasonable approach by the RPD, ignoring corroborative evidence, misstating the evidence in one case, and finding contradictions where none existed.

While the Court should not engage in a "microscopic analysis" of such credibility findings, a review of these findings in the context of the evidence shows significant flaws.

[47] First, the RPD challenged Mr. George's assertion that he was detained by immigration authorities upon his return to the US in January 2005, a detention that Mr. George states led to his deportation to Ghana later that month. The RPD confronted Mr. George with his answers to the "Work Experience" section of the PIF form, which indicated that he was employed in Alexandria from January 2005 to September 2007. Mr. George responded that the "Work Experience" statement was a mistake. That assertion conformed with Mr. George's earlier statement from his January 2014 amendment, which corrected elements of the PIF form as described above and claimed that the errors occurred "when my previous lawyer prepared it in haste." The RPD rejected Mr. George's assertion that the "Work Experience" statement was a mistake, finding it not credible because "it is too easy to blame a third party," and because the information about working in the US at this time was confirmed in the original IMM 5611 form.

[48] While the existence of a material inconsistency may ground a credibility finding, the fact of and explanation for an inconsistency must be reasonably considered. In the present case, Mr. George's PIF form contained both the statement that he had been deported to Ghana in 2005 and the indication that his work experience for a communications firm in Alexandria had covered the same period. Thus clearly either the dates in the "Work Experience" statement were in fact a mistake, as Mr. George stated, or Mr. George's entire narrative that he had been detained by immigration authorities in the US and deported to Ghana in January 2005 was a fabrication. The RPD apparently relied on the "Work Experience" statement to the exclusion of all other

evidence, concluding that the statement in the PIF "shows that from January 2005 to January 2012, he was working in the United States, which means that he did not live in hiding in Ghana in 2005 as he claims in his narrative at question 31 of his PIF." [Emphasis added.]

[49] The claim that Mr. George was deported to Ghana in 2005, however, was consistent with a number of other pieces of evidence, notably a "Reasonable Fear Determination" made by US immigration authorities in December 2006. In that determination, a US asylum officer noted that "On January 27, 2005, applicant was deported pursuant to an Order of Expedited Removal. Applicant re-entered the United States without inspection in May of 2005." [Emphasis added.] Despite this statement from US immigration authorities, made six years prior to the PIF form being completed, the RPD appears to have accepted the line in the "Work Experience" section of the form as determinative of the fact that Mr. George never left the United States, and dismissed any effort to explain that line as a clerical mistake.

[50] In addition to the statement by the US immigration authority in the Reasonable Fear Determination, Mr. George's claim that he was deported to Ghana in January 2005 and returned in May 2005 was consistent with other documentary evidence, namely:

- Mr. George's original interview with the Canada Border Services Agency upon arrival in July 2012 (before the PIF form was completed);

- other statements by Mr. George in the IMM 5611 form from July 2012 ("Ordered to leave the USA in 2005. Removed to Ghana in 2005");

- a declaration made by Dr. Akotia in 2006 and his 2016 letter;

- the 2007 statement of Mr. Addae;

- a 2006 letter from Mr. Ogordor; and

- the 2015 letter from Rosemary George.

[51] Given the extent of the evidence with respect to Mr. George's time in Ghana in January to May 2005, dismissing the entire trip to Ghana on the basis that a line in a form was completed differently and that "it is too easy to blame a third party" for a mistake is overly superficial and unreasonable.

[52] The RPD's second reference to Mr. George's evidence at the hearing also related to the 2005 travel to Ghana:

> What is more, when confronted with his uncle's letter, which indicates that he lived in hiding at his home in Ghana from January to March 2005, the claimant stated that he was sorry, but that he later went to live in a guest home belonging to a friend named Foster Ogordor.
>
> The panel rejects the claimant's explanations, finding them not credible because, in its opinion, the claimant was trying to somehow justify the contradiction raised by the panel. That said, the panel gives no probative value to the letter from the claimant's uncle, which it finds to be a self-serving letter.
>
> [Emphasis added. Footnote omitted.]

[53] The letter referred to by the RPD is identified in a footnote as Dr. Akotia's declaration made in 2006. The RPD's account of the exchange as set out above does not accurately reflect what happened at the hearing in dealing with this document. After discussing the error in the PIF described above, the transcript of the RPD hearing continues as follows:

> BY THE MEMBER: But if I check the letter affidavit from your uncle, C-16 — you have it?
>
> BY THE COUNSEL: (inaudible)
>
> BY THE MEMBER: If I check at the fourth paragraph, your uncle said you are living in your, home — in his home sorry, the January 2005 until March 2005. Where were you after March if you stay in Ghana until May?
>
> BY THE CLAIMANT: Oh, yeah, please after I had the threats when I was out, when my uncle informed me that, oh they drop a threat note, so based on that, with the help of my friend, I got ---
>
> BY THE MEMBER: Give me the answer directly.
>
> BY THE CLAIMANT: Okay.
>
> BY THE MEMBER: You were where?
>
> BY THE CLAIMANT: My uncle informed me that they had dropped a note ---
>
> BY THE MEMBER: Yes, I know.
>
> BY THE CLAIMANT: --- so instead of continuing to live with my uncle I went into hiding at Hardway Guesthouse at Agado's (ph) place, and friends helped me to leave.
>
> BY THE COUNSEL: The Hardway Guesthouse letter, page 35.
>
> BY THE MEMBER: And what was the name of your friend?
>
> BY THE CLAIMANT: Foster. Last name is Agado.
>
> [Emphasis added.]

[54] Contrary to the RPD's reasons, at no point in this exchange did Mr. George state that he was "sorry" or give any other impression that his account had been contradicted or that an apology was necessary. To the contrary, Mr. George responded to the RPD's question by giving evidence that was consistent with his other statements and with the third party statements, namely that he had stayed with his uncle until March, and then went into hiding with

Mr. Ogordor after his uncle told him that the Asafo had visited his uncle and threatened him, staying at Mr. Ogordor's guesthouse until he returned to the US (via Mexico) in May. This account is found in Mr. George's original statement attached to his PIF, and in each of his subsequent statements.

[55] It appears from the reasons and the transcript that the RPD thought that putting this declaration to Mr. George was "confronting" him with a "contradiction" since Dr. Akotia referred to Mr. George staying with him from January to March, 2005, while Mr. George had indicated that he was in Ghana from January to May. However, the declaration was in fact consistent with Mr. George's account as described above. Indeed, paragraph five in Dr. Akotia's declaration, immediately after the one cited by the RPD, states "[t]hat he left my house at short notice to live incognito for fear of his life at the Hardway Guest house, when he got to know his Clan Members had come to the house to enquire of him and had left behind a disturbing message."

[56] The RPD's belief that pointing to Dr. Akotia's declaration showed a "contradiction" suggests that the RPD was not familiar with the evidence at the time of the hearing. Pointing to a non-existent contradiction and then dismissing Mr. George's consistent response by incorrectly suggesting that he had apologized, and that he was "trying somehow to justify the contradiction," is unreasonable. This is all the more so when the documents showing that there was no contradiction—the very declaration from Dr. Akotia that was put to Mr. George and the letter from Mr. Ogordor—were simply dismissed as "self-serving" without further explanation. As

discussed further below, this summary dismissal was itself unreasonable and compounded the RPD's error.

[57] The third exchange during the hearing that the RPD relied on for its credibility findings involved the question of claiming protection in Mexico in May 2005. As noted above, given the RPD's conclusion that Mr. George never left the US in 2005, it seems inconsistent to also rely on him being in Mexico and not claiming protection there. Leaving this aside, the RPD found Mr. George's response on this lacked credibility and rejected the explanation for the following reason:

> When asked why he did not claim protection, the claimant stated that he did not claim protection because he did not want to live in Mexico, as his wife and children are in the United States and he wants to live with them. The panel then pointed out to him that his family members were no longer with him in Canada. Obviously caught off guard by that, the claimant simply stated "yes."

[58] The RPD appears to be suggesting that the fact that Mr. George's family is currently in the US while he is in Canada undermines his statement that he did not seek protection in Mexico in 2005 because he wanted to be with them. However, the fact that Mr. George is currently separated from his family can have no bearing on the credibility of his explanation that he wanted to return to them in 2005 rather than seek asylum in Mexico. Given the irrelevance of the observation in the circumstances, Mr. George's reaction to it also cannot be a reasonable basis for an adverse credibility finding.

[59] Again, the fact that Mr. George did not seek protection in Mexico in 2005, or in the Netherlands in 2012 during a brief airport layover, may be a factor to be considered in assessing

Mr. George's claim. However, the reasons given by a claimant for not seeking protection must be assessed, and the RPD's assessment of that explanation in this case was not reasonable.

D. *The RPD's Rejection of Supportive Documentary Evidence*

[60] The RPD gave "no probative value" to fourteen declarations, statements and letters from ten separate individuals. Five of these individuals, accounting for eight of the documents, were relatives of Mr. George: his mother, step-father, wife and two uncles. Two of the individuals, accounting for three of the documents, were friends of Mr. George: Mr. Ogordor and Mr. Addae. The remaining three letters were from a church overseer and from two people at the childcare centre where the attempted abduction of Mr. George's daughter was stated to have taken place.

[61] As noted above, two of these documents were discounted as "self-serving letters," namely the 2006 declaration from Dr. Akotia and the 2006 letter from Mr. Ogordor, each of which spoke to Mr. George's stay in Ghana in 2005. As Mr. George points out, Justice Ahmed recently affirmed that this Court "has repeatedly held that any letter written in support of an applicant could be characterized as self-serving, and evidence is not to be attributed little weight on this basis alone": *Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313 at para 24; see also *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24 at paras 4-6; *Varon v Canada (Citizenship and Immigration)*, 2015 FC 356 at para 56. While the Attorney General refers to this Court's decision in *El Bouni v Canada (Citizenship and Immigration)*, 2015 FC 700 at paragraph 25, I am satisfied that Justice Ahmed's statement in *Nagarasa* reflects the applicable law: see *Momanyi* at paras 32-33. Rejecting these two documents simply as "self-serving" is unreasonable.

[62] The RPD gave the remainder of the supporting documents no probative value "given the claimant's overall lack of credibility," with no other discussion of them other than to identify them in a list. In doing so, the RPD engaged in the reasoning recognized as unreasonable in *Chen* and *Momanyi*: adopting a conclusion on credibility without full consideration of the evidence, and then dismissing the evidence on the basis of the finding of credibility. Further, the RPD gave no indication why Mr. George's credibility inherently affected the credibility of the other witnesses, whether his family and friends, or third parties with no interest in the outcome (notably the owner and employee of the childcare facility who described the kidnapping attempt of Mr. George's daughter).

E. *The RPD's Consideration of the Medical Evidence*

[63] Finally, the RPD stated that "in its analysis of the case, the panel took the claimant's state of health into account." However, there is no indication as to how this state of health was taken into account or how it affected the RPD's analysis. The RPD noted that counsel had made the submission that Mr. George had testified well, but did not otherwise address the substance of the evidence. The concerns regarding Mr. George's condition were not limited to his ability to testify, but included the assertion that his brain tumour affected his memory and thought processes when preparing his refugee claim. As an identified inconsistency in that claim was a primary ground for the RPD's credibility finding, the RPD's limited observation regarding Mr. George's evidence at the hearing was insufficient to address the issue.

[64] Given the potential impact of the medical evidence on the RPD's credibility findings, the RPD's statement that it had "considered" the evidence was inadequate. The situation is like that

in *Fidan v Canada (Citizenship and Immigration)*, 2003 FC 1190 at paragraph 12, and the words of Justice von Finckenstein in that case are apposite:

> In this case, credibility was also the "linchpin" to the Board's decision. Nonetheless, the Board failed to indicate, how, if at all, the psychological report was considered when making its credibility finding. The Board was obliged to do more than merely state that it had "considered" the report. It was obliged to provide some meaningful discussion as to how it had taken account of the applicant's serious medical condition before it made its negative credibility finding. The failure to do so in this case constitutes a reviewable error and justifies the matter being returned to a newly appointed Board. [Emphasis added.]

[65] The RPD in this case similarly provided no "meaningful discussion" as to how it had taken account of Mr. George's medical condition in its credibility finding. This is unreasonable and provides a further basis on which to return the matter to the RPD for redetermination.

VI. Conclusion

[66] While the Court is necessarily reluctant to interfere with a credibility finding made by the RPD, the errors made by the RPD render its credibility findings unreasonable and the decision based on those findings cannot be sustained. The RPD's decision will be set aside and Mr. George's application for refugee protection will be sent back to the RPD for redetermination by a different officer.

[67] Neither party suggested that a question be certified. I agree that no certifiable question arises in the matter. In the interests of consistency and in accordance with section 4(1) of the *IRPA* and section 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection*

Rules, SOR/93-22, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-6276-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed and Mr. George's application for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* is sent back for redetermination by a different officer.
2. The style of cause is amended to name the respondent as the Minister of Citizenship and Immigration, in place of the Minister of Immigration, Refugees and Citizenship.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6276-18
STYLE OF CAUSE:	FRANK KOFI GEORGE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 17, 2019
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	NOVEMBER 5, 2019

APPEARANCES:

Laura Setzer	FOR THE APPLICANT
Adrian Johnston	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Laura Setzer Barrister and Solicitor Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT