

Federal Court



Cour fédérale

Date: 20210317

Docket: IMM-5523-19

Citation: 2021 FC 232

Ottawa, Ontario, March 17, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

YZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, YZ is a citizen of Ethiopia who identifies as a lesbian. She claims refugee protection, and fears persecution, based on sexual orientation. The Applicant alleges she became aware of her orientation while at school when she lived in South Africa with her mother who brought her to the United States of America to undergo conversion therapy. They stayed with a family friend from whose home the Applicant left to come to Canada and claim protection.

[2] Following a hearing, the Refugee Protection Division [RPD] refused the Applicant's claim for refugee protection. The RPD found that she is neither a Convention refugee nor a person in need of protection, and further, that her claim to fear persecution in Ethiopia as a lesbian has no credible basis. The Applicant now seeks judicial review of that decision, requests that it be set aside and redetermined by a different panel.

[3] The main issue for determination by this Court is the reasonableness of the RPD's decision. More specifically, the Applicant argues that the RPD's adverse credibility and implausibility findings, treatment of the evidence, failure to consider the central claim and to be guided by the Chairperson's Guideline 9 (regarding SOGIE - sexual orientation, gender identity and expression), and no credible basis finding, are all unreasonable.

[4] The presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. A reasonable decision is one "based on an internally coherent and rational chain of analysis" and justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, at para 85. To avoid judicial intervention, the decision also must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, at para 99. The Court must avoid reassessing and reweighing the evidence before the decision maker; a decision may be unreasonable, however, if the decision maker "fundamentally misapprehended or failed to account for the evidence before it": *Vavilov*, at paras 125-126. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100.

[5] Bearing in mind that the Court's role on judicial review is not to reweigh the evidence, and having considered the record and the parties' submissions, I find that several of the RPD's implausibility findings involve unfounded speculation, thus rendering the decision unreasonable. For the more detailed reasons that follow, I therefore grant this judicial review application.

[6] My analysis begins with the Applicant's request for anonymization, which I am prepared to grant in part, followed by a review of the RPD's decision in the context of the record and the parties' submissions.

II. Analysis

(a) *Applicant's Motion for Anonymization*

[7] Shortly before the hearing of this matter, the Applicant brought a motion in writing for an order making the identity of the Applicant anonymous "in all documents and recorded entries that are prepared by the Court and which may be made available to the public." The Respondent takes no position on whether the Court should grant the request.

[8] The Applicant argues she may face harm if returned to Ethiopia where consensual same-sex sexual activity is illegal and can be punishable by jail time up to 15 years. In support, the Applicant points to the US Department of State 2018 Country Reports on Human Rights Practices: Ethiopia which suggests that, while there were no reports of persons incarcerated or prosecuted for engaging in same-sex sexual activity, individuals generally do not identify

themselves as LGBTI (lesbian, gay, bisexual, transgender, and intersex) because of severe societal stigma and illegality.

[9] Although the RPD found several serious credibility issues regarding the Applicant's claim, I find the stigma and illegality attached in Ethiopia to individuals who identify as LGBTI puts the risk of harm above "mere inconvenience or embarrassment" and thus warrants the anonymization of the Applicant's identity in the case before me: *Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 681, at para 21. I also am persuaded by the fact that the Applicant left Ethiopia at a relatively young age, when she completed grade 8, to live with her mother in South Africa. There is no evidence in this matter that she has any experience with Ethiopian laws and society as an adult.

[10] I find, however, the Applicant's request for anonymization overbroad. In my view, the concerns about the Applicant's identity becoming known, particularly upon the publication of this decision on the Federal Court's website, are adequately addressed by identifying the Applicant as YZ in the style of cause, which shall be amended accordingly, and in the Judgment and Reasons.

(b) *Adverse Credibility and Implausibility Findings*

[11] Based on the record and the Applicant's testimony, I find many of the RPD's credibility findings are not unreasonable and would not warrant the Court's intervention. The same cannot be said, however, regarding the RPD's implausibility determinations.

[12] Plausibility findings should be made in the clearest of cases, such as where the alleged facts are “outside the realm of what reasonably could be expected or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant”: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] FCJ No 1131 [*Valtchev*]. Implausibility determinations demand a more rigorous review than credibility findings which are accorded considerable deference: *Yu v Canada (Citizenship and Immigration)*, 2015 FC 167 at para 10. Absent a reliable and verifiable evidentiary base against which to assess alleged facts, implausibility determinations may amount to little more than impermissible unfounded speculation: *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 11, citing *Gjelaj v Canada (Minister of Citizenship and Immigration)*, 2010 FC 37 at para 4, [2010] FCJ No 31.

[13] In my view, the RPD ventured into unfounded speculation, in several respects, rendering the decision unreasonable. First, the Applicant testified that her stepfather sent her passport to her in Canada, after her mother, who had possession of the passport when they went to the USA, returned to South Africa. The RPD found it was not credible that her mother would allow her step-father to obtain and forward the passport, given the mother’s feelings about her alleged lifestyle. I find, however, there is nothing inherently implausible about the step-father forwarding the passport. At the very least, it is not the “clearest of cases” demanded by *Valtchev*. Also concerning is the RPD’s reference to the Applicant’s alleged sexual orientation as a “lifestyle,” regardless of the veracity of her claim. Though not mentioned specifically, the reference verges on stereotyping of the sort described in Chairperson’s Guideline 9 at para 6. See also *Trembliuk v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1264 at para 5.

[14] The RPD then found “[i]t is more likely than not that your mother is supportive of you obtaining status in Canada and therefore sent your passport and whatever other documents you need to support your claim to you here in Canada.” There is no evidence whatsoever in the record to support this wholly speculative statement by the RPD.

[15] Second, the RPD found it not credible that the Applicant would have access to her mother’s purse to steal her birth certificate moments before her mother left the home in which they were staying in the USA to visit relatives. I similarly find it is not inherently implausible that the Applicant’s mother would leave her purse unattended at times and, thus, this too is not the “clearest of cases.”

[16] Third, the RPD questioned why the Applicant’s mother would go through the expense of going to the USA and ask a family friend once there, about how conversion therapy works, seemingly without researching it and calling the friend beforehand. I find the assumption that the mother did not research conversion therapy before coming to the USA is speculative.

[17] Fourth, the RPD concluded that because of the Applicant’s age, on a balance of probabilities others coached her and encouraged her to lie. I also find this sentiment wholly speculative and unsupported by the evidence on record.

[18] Because my findings are determinative, I will not address the remaining issues.

III. Conclusion

[19] Based on the foregoing, I therefore grant the Applicant's judicial review application. The RPD's decision is set aside and a different panel will redetermine the matter.

[20] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances of this matter.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Applicant as YZ.
2. This judicial review application is granted.
3. The RPD's decision is set aside and a different panel will redetermine the matter.
4. There is no serious question of general importance for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5523-19

STYLE OF CAUSE: YZ v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 31, 2020

**REASONS FOR JUDGMENT
AND JUDGMENT:** FUHRER J.

DATED: MARCH 17, 2021

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