

Federal Court



Cour fédérale

**Date: 20211108**

**Docket: IMM-4157-20**

**Citation: 2021 FC 1202**

**Ottawa, Ontario, November 8, 2021**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**AMBAYA MAHAMAT TAHIR**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ambaya Mahamat Tahir, is a 28 year-old citizen of Chad who reports that he fears persecution in Chad due to his Gorane ethnicity.

[2] The Refugee Protection Division [RPD] concluded Mr. Tahir was neither a Convention refugee nor a person in need of protection. In a decision dated August 14, 2020, the Refugee Appeal Division [RAD] confirmed the RPD's decision and dismissed the appeal.

[3] Mr. Tahir now applies under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for review of the RAD decision. He argues the Court's intervention is warranted on four grounds: the RAD (1) unreasonably and unfairly refused to admit new evidence; (2) unreasonably upheld the RPD's negative credibility findings; (3) erred in failing to make a finding in respect of his ethnicity; and (4) unreasonably assessed his subjective fear of persecution in Chad.

[4] The Respondent submits that the proceedings before the RAD were fair and the decision is reasonable.

[5] As explained below, I am satisfied that the RAD fairly and reasonably addressed the Applicant's new evidence. However, I am persuaded that the RAD erred in assessing the Applicant's credibility and subjective fear. These errors undermine the reasonableness of the RAD's decision. The Application is granted.

## II. Background

[6] Mr. Tahir alleges that his father is Gorane but he grew up in N'Djamena with his Arabic-speaking maternal uncle. He states that as a result, he has a limited grasp of the Gorane language.

[7] Mr Tahir reports that in November 2016, while travelling to visit family in northern Chad, government forces suspected him of being involved with rebel forces in that region. He reports he was detained and subjected to torture for almost two weeks before he escaped.

[8] In December 2016, after his escape, and with the help of his uncle, Mr. Tahir obtained a passport and, in early January 2017, a visa permitting him to visit the United States. He left Chad on March 15, 2017 for Cameroon and then travelled to the United States, where he arrived on March 27, 2017. He irregularly entered Canada on May 15, 2017, and made a refugee protection claim.

### III. The RPD Decision

[9] At the outset of the RPD hearing, Mr. Tahir sought admission of a letter dated June 26, 2017, from Ali Massar Ali, a friend of Mr. Tahir's uncle. The RPD refused to admit the letter, relying on Rule 36 of the *Refugee Protection Division Rules* SOR/2012-256. The RPD held that no explanation had been provided for the delay in submitting the letter and that it was of little probative value.

[10] The RPD was satisfied that Mr. Tahir was a citizen of Chad but concluded that he was not a credible witness and the evidence did not establish that he was of Gorane ethnicity. The RPD also concluded that his delays in leaving Chad and in entering Canada were inconsistent with a subjective fear of persecution in Chad.

[11] In finding Mr. Tahir not to be credible, the RPD identified the following inconsistencies:

- A. Mr. Tahir indicated in his Basis of Claim [BOC] form that he speaks Gorane. However, during the hearing, he stated that he only speaks Gorane “not a lot,” “not a 100%,” and “a little bit”. In response to the RPD’s request for an explanation, Mr. Tahir explained that he had grown up with his Arabic-speaking maternal uncle. The RPD rejected this explanation, finding it was unreasonable for Mr. Tahir to report he spoke Gorane in his BOC and then testify he does not, particularly in the face of the warning found on page 1 of the BOC form advising it is a serious offence to provide false or misleading information. The RAD concluded that this inconsistency considerably affected the Applicant’s credibility.
- B. Mr. Tahir reported that he was a member of a Non Governmental Organization [NGO] and submitted a letter dated April 20, 2018, in which the Director of the NGO states that he hopes Mr. Tahir’s application for protection will succeed. However, Mr. Tahir’s testimony had been that the NGO was not aware of his intention to leave Chad.
- C. When questioned as to why he did not claim protection in the United States, Mr. Tahir cited anti-immigration sentiment and that he had intended at the time he left Chad to seek protection in Canada. When asked about the delay in leaving the United States, Mr. Tahir indicated that he needed someone to travel with him because he did not know Canada or English. The RPD rejected this explanation, noting this was not Mr. Tahir’s first trip in a foreign country and that French, a language he speaks, is one of Canada’s official languages.

#### IV. The RAD Decision

[12] The RAD first addressed Mr. Tahir’s request to admit a number of documents as new evidence. The first document was the June 26, 2017 letter the RPD had refused to admit. The RAD found this letter, having been put before the RPD, was not new evidence as provided for at paragraph 3(3)(c) of the *Refugee Appeal Division Rules*, SOR/2012-257. The RAD noted that Mr. Tahir had not argued an error on the part of the RPD in refusing to admit the letter and therefore found no reason to conclude the RPD had erred.

[13] The RAD then addressed the remaining new evidence. The RAD found that two additional letters, although dated after the RPD decision, disclosed evidence that pre-dated the

RPD decision. Mr. Tahir had failed to establish the evidence was not reasonably available or that he could not have been reasonably expected to have presented it before the RPD. Having failed to satisfy subsection 110(4) of the IRPA, the RAD rejected the two letters. In considering a warrant and summons dated after the RPD's decision, the RAD found the documents were neither trustworthy nor credible and rejected them on this basis.

[14] The RAD found that the inconsistencies between Mr. Tahir's BOC and his testimony relating to his command of the Gorane language and the conflict between his testimony and the evidence relating to his communication with the NGO undermined his credibility.

[15] The RAD further noted that in his interview with border officials, Mr. Tahir stated he had decided not to apply for refugee protection in the United States because it was a hard and long process. The RAD found this statement to be inconsistent with Mr. Tahir's testimony before the RPD where he indicated that he had decided to come to Canada to make a refugee claim even before leaving Chad. The RAD then considered Mr. Tahir's delays in leaving Chad and the United States. The RAD rejected the explanations provided for the delays as unreasonable. The RAD further noted that the United States visa contradicted Mr. Tahir's submission that he did not face a risk of removal from the United States prior to him entering Canada. The RAD noted the expiration date on the visa was April 2, 2017, well before his departure from the United States on May 14, 2017.

V. Standard of Review

[16] The standard of review is not in dispute. The RAD's assessment of the evidence and its credibility findings are reviewable on a reasonableness standard (*Canada (Attorney General) v Vavilov*, 2019 SCC 65 at para 30 [*Vavilov*]).

[17] In determining the reasonableness of a decision, reviewing courts are not to reweigh or reassess the evidence. A court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it. A court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker, attempt to ascertain the range of possible conclusions, conduct a new analysis or seek to determine the correct solution to the problem. Instead, the reviewing court must consider only whether the decision made by the decision maker, including both the rationale for the decision and the outcome to which it led, was unreasonable (*Vavilov* at paras 83 and 125).

VI. Analysis

A. *The RAD did not err in its treatment of new evidence*

[18] Mr. Tahir argues on this Application that the RPD erred in failing to admit the June 26 letter on the basis that he provided the RPD with an explanation for the delay and the RPD failed to make further inquiries to ascertain the circumstances. It is submitted the RAD erred in not being alive to these issues, as the RAD was required to independently assess the issue.

[19] While there may be merit to Mr. Tahir's submissions as they relate to the RPD decision, the RAD was not presented with this argument. Instead, Mr. Tahir requested that the RAD admit the document on the basis that it was new evidence. The RAD addressed the issue raised, decided it was not new evidence and, in the absence of submissions to the contrary, concluded there was no basis upon which to find the RPD had erred in refusing to admit the letter. This conclusion was reasonably available to the RAD and is supported by reasons that are justified, transparent and intelligible.

[20] It was also reasonable for the RAD to reject both the warrant and summons. The RAD noted the shortcomings with both documents, noted inconsistencies between the documents and the evidence and clearly identified the factual basis for finding it unlikely that the Government would issue a summons where seeking an individual who had escaped custody. The argument that the RAD's concerns with the credibility or authenticity of the warrant and summons triggered the requirement for an oral hearing reflects a misapprehension of subsection 110(6) of the IRPA. As held by Justice Shirzad Ahmed in *AB v Canada (Citizenship and Immigration)*, 2020 FC 61, the RAD is not required to hold an oral hearing to assess the credibility of new evidence:

[17] In view of the jurisprudence, the Applicants have advanced a misconstrued conception of the application of subsections 110(4) and 110(6) of the *IRPA*. The RAD is not required to hold an oral hearing to assess the credibility of new evidence—it is when otherwise credible and admitted evidence raises a serious issue with respect to the general credibility of the applicant that the determination of an oral hearing becomes relevant. A “credibility finding” on the admissibility of new evidence is not equivalent to a credibility assessment on the Applicants.

[21] The RAD's authenticity concerns about the warrant and the summons did not trigger a requirement to hold an oral hearing.

[22] The RAD's conclusion that the August 22, 2019 letter failed to disclose evidence meeting the requirement of subsection 110(4) of the IRPA was also reasonable. The argument that the letter was admissible new evidence because it related to Mr. Tahir's ethnicity, the RPD having found Mr. Tahir had failed to establish his ethnic identity, is without merit.

[23] Mr. Tahir's ethnicity was central to his claim and in issue before the RPD. He was required to put his best evidentiary foot forward. Not having done so, Mr. Tahir could not place better evidence before the RAD. Subsection 110(4) of the IRPA makes this clear; only evidence arising after the rejection of a claim, evidence not reasonably available to the applicant, or evidence the applicant could not reasonably have contemplated having to rely on, may be admitted by the RAD. That the letter makes reference to the warrant and summons also does not render it admissible, particularly in light of the RAD having reasonably concluded these documents were neither trustworthy nor credible.

B. *The RAD's findings are unreasonable*

[24] In adopting the RPD's credibility findings, the RAD fails to engage with Mr. Tahir's submissions on appeal. For example, in challenging the RPD's negative credibility finding arising from Mr. Tahir's capacity to speak Gorane, submissions were made that language is not the sole determinant of ethnic identity in Chad, that ethnicity in Chad is determined by reference to a father's ethnicity and that Mr. Tahir's father was born in, and remained in, northern Chad. In



adopting the RPD's finding that the evidence was contradictory and the explanation provided – that Mr. Tahir had been raised by his Arabic-speaking maternal uncle – unreasonable, none of these submissions were addressed or grappled with by the RAD.

[25] Similarly, the Applicant argued before the RAD that the RPD's negative credibility finding arising out of his interactions with the NGO were based on a misapprehension of Mr. Tahir's evidence. Again, the RAD does not acknowledge or address these submissions in adopting the RPD's negative credibility finding.

[26] It also appears the RAD misapprehended the evidence as it related to Mr. Tahir's status in the United States. The RAD relied on the conclusion that Mr. Tahir had no status in the United States in finding that his actions were inconsistent with a subjective fear of persecution. The documentary evidence does show Mr. Tahir's United States visa expired on April 2, 2017, as the RAD noted. However, Mr. Tahir argued before the RAD that he retained status in the United States at the time he entered Canada. In rejecting this submission, the RAD does not address the passport stamp evidencing Mr. Tahir's entry into the United States on March 2, 2017. This stamp is in turn annotated with the date of September 26, 2017, suggesting Mr. Tahir was not at risk of removal from the United States at the time he entered Canada.

[27] For a decision to reflect the principles of justification and transparency, an administrative decision maker's reasons must meaningfully account for the central issues and concerns raised by the parties (*Vavilov* at para 127). The RAD has failed to do so in this instance. The decision is unreasonable.

[28] The Applicant raises other concerns about the reasonableness and fairness of the RAD's decision. I need not deal with them in light of my conclusions above.

VII. Conclusion

[29] The Application is granted. The parties have not identified a question of general importance for certification, and none arises.

**JUDGMENT IN IMM-4157-20**

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

1. The Application is granted;
2. The matter is returned for redetermination by a different decision maker; and
3. No question is certified.

“Patrick Gleeson”

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Judge

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

**DOCKET:** IMM-4157-20

**STYLE OF CAUSE:** AMBAYA MAHAMAT TAHIR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 12, 2021

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** NOVEMBER 8, 2021

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