Federal Court Cour fédérale

Date: 20220426

Docket: IMM-3077-21

Citation: 2022 FC 610

Ottawa, Ontario, April 26, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

BRHANE GHEBRIHIWET ZERIHAYMANOT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant claims to be a citizen of Eritrea who fled that country after deserting from mandatory national service. The Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB) found the applicant had not credibly established his identity since he only produced an Eritrean birth certificate that lacked credibility, did not produce other

documents that ought to have been available, and did not sign a form authorizing the Minister to obtain information regarding his status from foreign authorities. In doing so, the RAD found further identity documents submitted by the applicant on appeal inadmissible, because they were not new, they could have been filed previously, and they raised credibility concerns.

[2] The applicant seeks judicial review of the RAD's decision, arguing the RAD unreasonably rejected the new evidence, made unreasonable findings regarding identity, and unfairly raised new credibility issues he did not have a chance to address.

[3] I conclude the RAD's decision was reasonable and fair. The RAD's explanation for why it declined to admit the new documents was justified, transparent, and intelligible, as was its explanation for concluding that the Eritrean birth certificate did not satisfactorily establish the applicant's identity. The RAD also did not unfairly raise a new issue regarding the credibility of the birth certificate, and the applicant's argument that he did not have a copy of the sample birth certificates contained in the National Documentation Package (NDP) for Eritrea does not accord with the evidence in the record.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] The applicant raises a number of arguments and challenges to the RAD's decision, which fall within the following three main issues:

A. Did the RAD err in rejecting the applicant's new evidence?

B. Did the RAD err in its assessment of the applicant's Eritrean birth certificate?

C. Was it unfair for the RAD to rely on credibility issues not identified by the Refugee Protection Division (RPD) of the IRB?

[6] The first two of these issues are reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 29, 74(1). Reasonableness review requires the Court to assess whether the decision is reasonable in outcome and in reasoning, considered in relation to the factual and legal constraints that bear on it: *Vavilov* at paras 81, 83, 87, 99. A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the administrative setting, the record before the decision maker, and the submissions of the parties: *Vavilov* at paras 81, 85, 91, 94–96, 99, 127–128.

[7] The third issue is a matter of procedural fairness. Such issues are reviewed by assessing whether the procedure was fair in all of the circumstances, an assessment that may be considered to apply the correctness standard, or no standard at all: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

III. Analysis

A. *The RAD reasonably rejected the new documents submitted by the applicant*

(1) The applicant's refugee claim and the RPD's decision

[8] The applicant claims to have deserted from mandatory national service in Eritrea and to have escaped from prison there after being detained for his desertion. He says he fled Eritrea in March 2013, ultimately travelling to Italy where he was given a form of refugee protection. He left Italy in 2017 ending up in the United States, where his claim for asylum was rejected. He crossed irregularly into Canada and sought refugee protection in March 2018.

[9] The RPD heard the applicant's claim in January 2020. The Minister intervened in the hearing, arguing the applicant was not eligible for refugee protection given his status in Italy and was not credible. The RPD concluded the applicant was not excluded from refugee protection based on his status in Italy, a finding that was not challenged before the RAD or in this Court. However, the RPD found the applicant had not established his identity on a balance of probabilities. In particular, the RPD questioned the credibility of the one official identity document filed by the applicant, purporting to be an Eritrean birth certificate, and was not satisfied the applicant had made reasonable efforts to obtain other identity documents.

[10] The RPD's assessment of the birth certificate was based on a comparison with a sample birth certificate contained in the NDP for Eritrea published by the IRB. The RPD noted the applicant's document did not include one of the official stamps seen in the sample, and did not

include a public registration number, a certificate number starting with letters followed by numbers, his home address or nationality. The RPD also noted the widespread use of fraudulent identity documents in Eritrea and concluded there was "insufficient evidence to establish the authenticity of the copy of the birth certificate," and therefore did not place substantial weight on it.

[11] The RPD also did not accept the applicant's explanation for not signing an authorization form that would allow the Canada Border Services Agency (CBSA) to inquire with the Italian authorities about his status, and found the applicant had obstructed the CBSA's efforts to retrieve his Italian immigration records as a result. While the applicant had also filed support letters from two brothers and copies of his parents' national identity cards, the RPD found that this evidence did not overcome the lack of government-issued identity documents that could have been obtained.

(2) The RAD's refusal to consider new documents on appeal

[12] On his appeal to the RAD, the applicant sought to file three new documents: (i) a copy of his national identity card; (ii) a copy of his baptismal certificate; and (iii) a copy of an Eritrean student report card. He argued the documents arose after the rejection of the claim, and that he reasonably believed that the documents he had submitted to the RPD would be sufficient, such that he could not have been expected to present the three documents.

[13] Subsection 110(3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] provides that appeals to the RAD generally proceed without a hearing and on the record that was

before the RPD: *Singh* at paras 35, 48. A refugee claimant may only present new evidence on appeal if it meets the criteria set out in subsection 110(4) of the *IRPA*:

Evidence that may be presented	**Éléments de preuve admissibles**
110 (4) On appeal, the person who is the subject of the appeal may present only evidence that <u>arose after the rejection of their claim</u> or that was <u>not reasonably available</u>, or that the person <u>could not reasonably have been expected in the circumstances to have presented</u>, at the time of the rejection.	**110 (4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve <u>survenus depuis le rejet de sa demande</u> ou qui <u>n'étaient alors pas normalement accessibles</u> ou, s'ils l'étaient, <u>qu'elle n'aurait pas normalement présentés, dans les circonstances</u>, au moment du rejet.
[Emphasis added.]	[Je souligne.]

[14] The Federal Court of Appeal has held that these statutory conditions "leave no room for discretion on the part of the RAD" and must "be narrowly interpreted": *Singh* at para 35. In addition to these express statutory conditions, the Court of Appeal recognized a number of implicit criteria for admission of new evidence, generally known as the "*Raza* criteria" or "*Raza* factors," namely credibility, relevance, and materiality: *Singh* at paras 38–49, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13–15.

[15] The RAD held that the applicant did not establish that the three documents met the criteria for admissibility. It found the documents purported to have been created before the rejection of the applicant's claim. It rejected the argument that the applicant could not reasonably have been expected to have presented the documents at the time of the rejection of his claim

since “he had legal representation; the Basis of Claim (BOC) form is clear that documentation of identity is required; and the issue of identity was clearly identified and canvassed at his hearing.”

[16] The RAD went on to find there were credibility issues arising from the documents. It noted the applicant provided no explanation of how he obtained the documents or where they came from, and gave no corroboration of their provenance. This, despite his evidence before the RPD that the baptismal certificate had been seized by US authorities, and that he did not have a national identity card from Eritrea, had never applied for one, and would not be able to apply for one from abroad. The national identity card provided also had a date of birth that was different from that in the applicant’s BOC form. Noting that its role was not to provide an opportunity to complete a deficient record before the RPD, the RAD found the documents inadmissible.

(3) The RAD’s rejection of the evidence was reasonable

[17] The applicant argues the RAD’s rejection of the three new documents was unreasonable, raising three principal arguments. For the reasons below, I am not satisfied the applicant has met his burden to show the RAD’s decision was unreasonable: *Vavilov* at para 100.

(a) *Legal representation*

[18] The applicant first argues it was unreasonable for the RAD to rely on the fact that he was represented by counsel before the RPD as a basis for rejecting the new documents. He argues that this unreasonably uses the presence of legal representation as a justification for a denial of rights, and effectively puts the applicant in a worse position for having a lawyer, thereby

undermining the right to legal representation. He goes further to suggest that this line of reasoning, which he contends is frequently adopted by the RAD, shows hostility to experienced counsel, undercutting the efficiency of hearings before the IRB.

[19] I cannot agree. The RAD was assessing the applicant's contention that he could not have been expected to present additional identity documents to the RPD before his claim was refused. The RAD rejected the argument, effectively concluding the applicant would have known of the need to present the documents before the RAD, given his legal representation, the BOC form, and the identification of the issue at the hearing. In my view, the fact that the applicant was represented was relevant to this issue and the RAD reasonably considered it along with other factors.

[20] As the applicant points out, the RAD's reasons do not expressly set out why it referred to the existence of counsel. However, in the context of the applicant's assertion, the rationale is readily apparent. Absent contrary evidence, it is reasonable to expect that a legal representative has explained at least the basic tenets of a refugee claim to their client. This includes the obligation to provide acceptable documentation regarding the refugee claim, including as to identity, the onus on the claimant to prove their claim, and the need to put their "best foot forward" to do so: *IRPA*, ss 100(4), 106; *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*], Rule 11; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1004 at para 23. As a result, representation by counsel may be a relevant factor in considering a claimant's assertions about the process, such as an assertion that they did not believe they needed to file further identity documents. As the Minister notes, this Court has adopted the same

reasoning in other cases: *Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459 at para 24; see also *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 47, citing *Gao v Canada (Citizenship and Immigration)*, 2014 FC 59 at para 45; *Huang* at para 23.

[21] Contrary to the applicant's arguments, this does not put refugee claimants who have legal representation at a disadvantage, nor deny them rights they would otherwise have. It simply assesses the particular factual circumstances of a claimant when they make assertions about their understanding, beliefs, and expectations associated with the refugee claim process.

[22] The applicant argues that a legal representative would equally know and be able to advise their client with respect to the presumption that an official foreign identity document is valid and accurate, discussed further below: *Bouyaya v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1042 at para 7; *Ramalingam v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 (FC) at para 5. He suggests this means a represented party could reasonably expect to be able to rely on a document such as the Eritrean birth certificate provided as being sufficient proof of identity.

[23] I cannot accept this contention for two reasons. First, the presumption of validity of foreign identity documents co-exists with, but does not displace, the onus on an applicant to file "acceptable" identity documents and to put their best foot forward before the RPD. Second, the presumption is a rebuttable one where there is valid reason to doubt the authenticity of the document: *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at

para 19; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 103 at para 9; *Sahota v Canada (Citizenship and Immigration)*, 2015 FC 756 at para 49. Here, as discussed further below, the RPD clearly identified concerns with the birth certificate. Counsel's assumed knowledge of the presumption therefore cannot make it unreasonable for the RAD to consider that the applicant had legal representation when assessing whether he could have been expected to file further documents.

(b) *Presumption of authenticity*

[24] This latter point leads to the applicant's second main argument regarding the rejection of the new documents. He contends that both the RPD and the RAD failed to apply the presumption of authenticity in their consideration of the Eritrean birth certificate. He argues he could not reasonably have expected the RPD to fail to apply the presumption, and that the RAD had to consider the presumption in assessing whether the applicant could have reasonably expected that the RPD would question the credibility of the birth certificate.

[25] I see no error in the RAD's reasoning arising from the presumption of authenticity.

[26] As noted above, the presumption in question is that a foreign identity document is presumed to be valid unless there is evidence to suggest otherwise or reason to doubt its credibility. In the present case, the RPD found there were a number of reasons to doubt the credibility of the Eritrean birth certificate, based primarily on differences between the document and the sample birth certificate contained in the NDP for Eritrea. These issues were identified by the RPD, to the extent of specifically inviting counsel to make submissions on the discrepancies

identified at the hearing between the applicant's birth certificate and the sample in the NDP. If the applicant had been unaware before the hearing that the credibility of the birth certificate was in issue, he was clearly aware of it by the end of the hearing. In such a case, the *RPD Rules* provide for the possibility of filing evidence after a hearing: *RPD Rules*, Rule 43.

[27] The applicant argues that he believed his submissions on this issue were sufficient to satisfy the RPD. However, absent some confirmation or indication to that effect from the RPD, an applicant cannot rely on such a belief as a reason not to file other available evidence of identity. The fact that the RPD may reach a credibility finding that is contrary to a refugee claimant's submissions does not make it a "surprise ruling" as the applicant contends.

[28] The applicant points to the RPD's statement in its reasons that "the panel finds that there is insufficient evidence to establish the authenticity of the copy of the birth certificate." He argues this erroneously ignores the presumption and reverses the onus, and that the RAD should have considered this error in assessing whether it was reasonable to expect him to file the additional documents. However, to the extent that the RPD erred, the applicant did not raise this error before the RAD, either in submissions regarding the new documents or in submissions on the merits of the appeal.

[29] The *Refugee Appeal Division Rules*, SOR/2012-257 [*RAD Rules*] require an appellant putting forward a new document to make "full and detailed submissions" regarding how the document meets the requirements of subsection 110(4) of the *IRPA*: *RAD Rules*, Rule 3(3)(*g*)(iii). In the present case, the applicant's only submission on the issue was that he

"reasonably believed that the documentary evidence he had brought with him at the hearing" was sufficient and he "would not have been able to anticipate the need to provide further documentary evidence." The applicant also asserted that the documents arose after the rejection of the claim, an assertion rejected by the RAD and not at issue on this application. Having failed to identify the RPD's alleged error as a reason that the requirements of subsection 110(4) of the *IRPA* were met, the applicant cannot now fault the RAD for failing to consider that issue in assessing the admissibility of the documents: *Vavilov* at paras 94, 127–128; *Lawal v Canada (Citizenship and Immigration)*, 2021 FC 964 at para 20.

(c) *Credibility*

[30] As noted above, the RAD also had concerns about the credibility of the new documents, particularly in the absence of explanation regarding their provenance and in light of the applicant's testimony. The applicant argues these credibility findings were unreasonable.

[31] Given the RAD's conclusion that the documents did not meet the explicit statutory factors, a conclusion I have found reasonable, its assessment of their credibility cannot affect the admissibility of the documents. To be admissible under subsection 110(4), documents must meet the express statutory factors: *Singh* at para 35.

[32] In any case, I am not satisfied that the RAD's decision was unreasonable. The applicant points to passages from the RPD hearing transcript that provide a possible explanation of how the applicant got the documents, namely that they were old documents obtained by his brother from the family home in Eritrea. However, no such explanation was provided to the RAD as part

of the applicant’s obligation to provide detailed submissions on how the documents meet the requirements of subsection 110(4). To the contrary, the applicant’s submission was that the documents “arose after the rejection of the claim.” Nor does the applicant’s current explanation address the RAD’s concerns that he testified that he had never had an Eritrean national identity document, and that the document presented bore a different birth date than his own.

[33] I also do not accept the applicant’s argument that the RAD made observations about credibility without making an actual credibility finding. Having identified the specific “credibility issues” it had and finding that the inconsistencies “further diminish the credibility” of the national identity card, the RAD expressly found that “the new evidence does not meet the criteria for acceptance.” This, in my view, is a sufficiently clear finding that the documents were not credible enough to be admitted as new evidence.

[34] I therefore conclude that the RAD’s decision not to admit the new evidence proffered by the applicant was reasonable.

B. *The RAD’s assessment of the birth certificate was reasonable*

(1) The RAD’s reasoning

[35] Having rejected the new documents, the RAD proceeded to assess the applicant’s argument that the RPD erred in finding he had not established his identity. The applicant’s submissions to the RAD on this issue focused primarily on his request that the RAD reconsider the conclusion in light of the newly presented evidence, and his argument that the failure to sign

the form authorizing the CBSA to make inquiries of the Italian authorities should not be held against his credibility.

[36] The RAD nonetheless reviewed the birth certificate that had been before the RPD, and agreed that it should be given limited weight. As the RPD had done, the RAD compared the applicant's tendered birth certificate with samples provided in the NDP. The RAD found that it could not agree with the RPD's conclusion regarding the lack of official stamps, since the evidence in the NDP only stated that birth certificates "can" include these stamps. However, it found the applicant's birth certificate did not include the name of the official signing the document, as seen in samples in the NDP, and that it appeared to be issued in 2008 and "taken from the birth record of the year 2008," which was both language different from that in the sample birth certificates and 17 years after the applicant's claimed date of birth. The RAD found these factors reduced the credibility and reliability of the birth certificate.

(2) The RAD's conclusion was reasonable

[37] The applicant argues it was unreasonable for the RAD to rely on the absence of the signing official's name and the "taken from the birth record of the year 2008" language. He notes that the evidence in the NDP does not indicate that Eritrean birth certificates are invariably identical to the samples given, and even states that there is no "standard form" for birth certificates in Eritrea: NDP for Eritrea (August 30, 2019), Item 3.9, Response to Information Request ERI105012.E, "Eritrea: Birth certificates issued by the Public Registration Office of Zoba Maekel [Maakel] (Central Zone); including whether the certificate has a standard format and appearance (2013-November 2014)," December 2, 2014.

[38] While this evidence does state that there is no standard format or appearance of birth certificates, it does not state that Eritrean birth certificates can be entirely dissimilar. To the contrary, the evidence notes that an official at the US Embassy in Asmara stated that "there is a 'template' [for the Eritrean birth certificate] in the sense that the form looks somewhat alike but each region is slightly different" [emphasis added]. As noted above, while it was clear at the hearing that the RPD had concerns about the differences between the applicant's birth certificate and the NDP sample, the applicant did not seek to file any further information regarding the form of Eritrean birth certificates, either from his region or otherwise, before the RPD or before the RAD. I cannot conclude in the circumstances that it was unreasonable for the RAD to compare the applicant's submitted birth certificate to the samples given in the NDP.

[39] I note that the Court was hindered in its ability to assess the RAD's comparison by the fact that the sample birth certificates in the NDP were not included in the record on this application. This is a matter discussed further below in addressing the applicant's procedural fairness arguments.

[40] The applicant also argues that the RAD, like the RPD, did not apply the presumption that official foreign documents are valid. He notes that while the RAD referred to the credibility and reliability of the birth certificate, it did not state whether its credibility concerns were sufficient to rebut the presumption of validity and, indeed, did not use the word "rebut" in its decision.

[41] While the RAD did not refer specifically to the presumption of validity of official foreign documents, its reasons must be read in the context of the appeal brought by the applicant and the

submissions made to it: *Lawal* at para 20. As noted above, although the validity of the birth certificate was squarely in issue before the RPD and was central to the RPD's determination, the applicant made no reference in its submissions to the RAD to the presumption of validity on which he now relies. It is therefore not surprising that the RAD did not address the presumption directly. In any event, I cannot conclude that the RAD's reasoning conflicted with the presumption. As noted above, the presumption is rebutted where there are reasons to doubt the credibility of the document purporting to be a foreign official document. Here, both the RPD and the RAD clearly and reasonably identified why it doubted the credibility of the document. To find the RAD's decision unreasonable for not using the specific language of rebutting the presumption would be to inappropriately engage in a "treasure hunt for error": *Vavilov* at para 102.

[42] I am therefore not satisfied that the applicant has met his onus to show the RAD's analysis of the birth certificate was unreasonable.

C. *The RAD's decision was procedurally fair*

[43] The applicant argues the RAD's decision failed to respect the duty of fairness because it relied on new credibility issues not identified by the RPD without giving the applicant the opportunity to respond to them, and because it relied on sample Eritrean birth certificates that were not available to the applicant. I am not convinced by either argument.

(1) The RAD did not raise a new issue

[44] The applicant argues that it was unfair for the RAD to rely on the absence of the signing official's name and the language in the birth certificate without giving him an opportunity to address those issues, since they were not issues identified by the RPD. The applicant argues that he was entitled to rely on the concerns listed by the RPD as the only ones at issue before the RAD.

[45] I disagree. As the Minister points out, this Court has held that the RAD is tasked with undertaking its own review of evidence, and may make additional or different credibility findings with respect to a document without this being a new issue that triggers a breach of procedural fairness: *Gadafi v Canada (Citizenship and Immigration)*, 2021 FC 1011 at para 24; *Tan v Canada (Citizenship and Immigration)*, 2016 FC 876 at para 40. I agree with the Minister's assessment that the RAD merely commented on additional ways in which the applicant's birth certificate did not match the samples in the NDP, and did not raise a new issue.

(2) The RAD did not rely on a document unavailable to the applicant

[46] The applicant contends that both the RPD and the RAD's reliance on the sample birth certificates in the NDP were unfair since the applicant did not have those samples. This argument stems from the fact that the sample birth certificates that were attached to the Responses to Information Requests [RIR] at issue are not reproduced in the certified tribunal record (CTR) and are not available as part of the NDP published online on the IRB's website. Rather, the RIRs that appear in the online version of the NDP include the following note:

> Please note that some RIR have attachments which are not electronically accessible here. To obtain a copy of an attachment, please e-mail us.

[47] I cannot accept the applicant's contention that there was any unfairness in the present circumstances. Rule 33(1) of the *RPD Rules* requires the RPD to provide copies of documents it wants to use at a hearing to the parties. However, Rule 33(2) specifies that for country documentation, disclosure may be made by providing a list of documents or indicating where a list can be found on the IRB website:

Disclosure of documents by Division	**Communication de documents par la Section**
33 (1) Subject to subrule (2), if the Division wants to use a document in a hearing, the Division must provide a copy of the document to each party.	**33 (1)** Sous réserve du paragraphe (2), pour utiliser un document à une audience, la Section en transmet une copie aux parties.
Disclosure of country documentation by Division	**Communication de documentation relative à un pays par la Section**
(2) The Division may disclose country documentation by providing to the parties <u>a list of those documents or providing information as to where a list of those documents can be found on the Board's website</u>.	**(2)** La Section peut communiquer la documentation relative à un pays en transmettant aux parties <u>une liste de ces documents ou en transmettant des renseignements concernant l'endroit où une liste de ces documents se trouve sur le site Internet de la Commission</u>.
[Emphasis added.]	[Je souligne.]

[48] This Court has recognized that documents contained in the NDP are "publicly available," and that applicants are deemed to be aware of them and be aware that they may be relied on by

the IRB: *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 257 at paras 28–30; *Khokhar v Canada (Citizenship and Immigration)*, 2018 FC 555 at para 24; *Ding v Canada (Citizenship and Immigration)*, 2014 FC 820 at para 12. I note that this principle predates the public posting of the NDP on the internet, the Court of Appeal having held in 1998 that "fairness does not dictate that [an applicant] be informed of what is available to him in documentation centres" [emphasis added]: *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 at paras 22, 26.

[49] The index for the NDP for Eritrea was disclosed in the RPD's consolidated list of documents. The CTR also contains the first page of the list of documents in the NDP for Eritrea. I need not consider whether this, combined with the notice reproduced above regarding the availability of attachments, would alone constitute fair disclosure of attachments that are not available on the IRB website, since it is clear from the record that the RPD directed the applicant to the sample birth certificate and that the applicant, or at least his counsel, had the document.

[50] During the course of questions to the applicant, the RPD stated that they compared the birth certificate to a sample birth certificate in the NDP. They advised counsel that "it's the attachment to NDP item 3.12." Counsel gave no sign that they did not have the document. Further, during submissions with respect to the discrepancies between the documents, counsel referred to the sample, noting that the technical data in the document started with "AS," indicating it came from Asmara. This is a clear sign that counsel was not only made aware of the document but had a copy of it. The document was clearly part of the record before the RPD and

available to the parties. Although it was not marked as a separate exhibit, it is part of the NDP that was identified in the list of documents.

[51] In any event, to the extent the applicant considered there was unfairness because he did not have a copy of the document, the applicant could have raised that issue with the RAD. He did not do so. Further, if counsel before the RAD, who was not counsel before the RPD, did not have a copy of the document for purposes of the appeal to the RAD, a copy could have been obtained from the IRB, given the clear reference to it in the RPD's decision and the express notice that documents not posted online can be obtained by contacting the IRB. There is no indication that either the applicant or counsel before the RAD took any steps to do so, or that they expressed any concern to the RAD that they did not have the sample birth certificate referred to by the RPD.

[52] In these circumstances, the submission of counsel before this Court, who was again new counsel, that he did not have a copy of the document is unpersuasive. Prior counsel had the document, it was before the RPD and the RAD, and it could have been readily obtained. While I agree that it would have been preferable for a copy of the document itself to have been reproduced as part of the RPD record transmitted to the RAD and/or the CTR of the RAD transmitted to this Court, I cannot conclude that the RAD's process was unfair in all the circumstances: *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 at para 16; *Canadian Pacific Railway Company* at para 54.

IV. Conclusion

[53] I therefore conclude there are no grounds to interfere with the RAD’s decision, either on grounds of unreasonableness or unfairness. The application for judicial review is therefore dismissed.

[54] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-3077-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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