Federal Court  Cour fédérale

Date: 20220512

Docket: IMM-4408-20

Citation: 2022 FC 706

Toronto, Ontario, May 12, 2022

PRESENT: Madam Justice Go

BETWEEN:

MAMUKA PILASHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Mamuka Pilashvili, a citizen of Georgia, made a refugee claim under s. 96 and s. 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, on the grounds that he had borrowed money from a loan shark (S.A.) who was now threatening his life.

[2] In his claim, the Applicant alleged that he borrowed money from S.A. in October 2013 to operate his business. The Applicant alleged that the loan was for US$50,000, and he believed the interest rate was 3% per month, although the loan document said it was 3% per year. After a year and 2 months, the Applicant had paid US$21,000 as interest, and US$15,000 of interest remained to be paid as well as the initial US$50,000.

[3] In December 2014, the Applicant was injured in a car accident. As a result, he was no longer able to work to pay back the loan. The Applicant alleged that S.A. came to his house in March 2015 to give him three months to repay the loan. Three months later, the Applicant was attacked and found himself waking up in a hospital being questioned by police. The Applicant described other incidents of threat between 2015 and 2016, including S.A. coming to his house and threatening his life, and the Applicant getting assaulted and being sent to hospital. After the last attack, the Applicant got a Canadian visa through an agent based on false documents.

[4] The Applicant arrived in Toronto in October 2016 and made a refugee claim at the airport.

[5] In December 2017, the Applicant's son told him that S.A. had come to the house of the Applicant's ex-wife, demanding to know where the Applicant was and threatening to kill him, while threatening the Applicant's ex-wife and children.

[6] The Refugee Protection Division [RPD] found that discrepancies and omissions in the Applicant's testimony undermined his credibility. The Refugee Appeal Division [RAD] upheld most of the RPD's negative credibility findings and dismissed the appeal [the Decision].

[7] As part of his appeal, the Applicant sought to submit new evidence to the RAD, namely letters from his ex-wife and his ex-wife's neighbour regarding certain threats by S.A. after the RPD decision was issued. The RAD refused to admit the new evidence.

[8] For reasons set out below, I grant the application.

II. Issues and Standard of Review

[9] The Applicant argues that the RAD erred in: (1) refusing to accept new evidence, (2) considering the medical/psychological evidence, (3) assessing the loan agreement, and (4) finding the moneylender's actions to be implausible.

[10] I will address the first two issues only.

[11] The parties agree that the reasonableness standard applies, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[12] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The onus is on the Applicant to demonstrate that the decision is

unreasonable (*Vavilov* at para 100). To set aside a decision on this basis, “the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

III. Analysis

A. *Did the RAD unreasonably assess the medical evidence?*

[13] Before the RPD, the Applicant submitted a medical note from a doctor in Canada confirming that he had paraesthesia of the right side with complete loss of function in the right hand as a result of a car accident. The medical note also stated that the Applicant suffered from schizophrenia, epilepsy and obsessive compulsive disorder, for which he was taking medications. The RPD found that the medical note did not give details on the doctor’s expertise or the number of consultations with the Applicant. The RPD had adjourned the hearing once in order for the Applicant to obtain evidence to this effect, but no further information had been provided. As such, the RPD gave the note little weight, but noted that the Panel was nonetheless sensitive to the Applicant’s physical and psychological limitations during testimony, as well as giving communication and memory challenges consideration in assessing credibility.

[14] The RAD found that the RPD erred in giving the medical note “little weight”, but that this error did not taint its decision, as the RPD took the state of the Applicant’s health into account.

[15] First, the Applicant argues that the RAD erred in finding that the RPD accounted for his mental health when assessing credibility. As the RPD gave little weight to the medical report, the Applicant argues that it could not have given proper consideration to his mental health when assessing his credibility. Further, the RPD specifically rejected his explanations for discrepancies in his testimony when he explained that the discrepancies were due to his medical condition.

[16] Second, the Applicant argues that when the RAD found there was "no evidence that he was unable to understand the nature of the proceedings", this indicated that the RAD did not apply the medical evidence to the issue of credibility. In the Applicant's view, the issue is not whether he knew where he was or what he was doing—rather, the issue is whether some of the contradictions could be explained by virtue of his medical condition, whether his memory was impaired, and whether he may have made innocent mistakes. As such, the Applicant argues that the RAD did not answer the question that the medical report spoke to.

[17] The Applicant cites *Sivaraja v Canada (Citizenship and Immigration)*, 2015 FC 732 [*Sivaraja*] at para 31 in support. I note the paragraph cited by the Applicant refers to the applicant's submission and not the Court's analysis. However, at para 48 the Court stated:

> [48] The Board was informed by a doctor's letter that the Applicant "suffers from memory impairment" and some of the incidents referred to took place a number of years ago. Hence, a medical diagnosis of memory impairment could have gone a long way to explaining many of the omissions and inconsistencies identified and discussed by the Board. However, the Board discounted the medical evidence of memory impairment so that it was effectively left out of account when the Board addressed the other evidence and the Applicant's explanations for the discrepancies. In my view, the doctor's letter was improperly and unreasonably discounted by the Board.

[18] As the Respondent rightly points out, the medical note did lack specific details regarding how the Applicant's medical condition might have affected his ability to testify, and the Applicant also failed to provide further evidence about his mental health conditions after the RPD adjourned the hearing for that purpose. Nevertheless, the medical note did indicate that the Applicant was suffering from "recurrent headache, loss of concentration, reduced memory, difficulty in expressing himself and problem with perception", all of which relate to the Applicant's cognitive ability and may have an impact on his ability to give evidence.

[19] I agree with the Respondent that the medical note is not a *carte blanche* and that the RAD must still conduct its own assessment of credibility based on the evidence. However, I find that once the RAD had found the RPD erred in giving the medical note "little weight", it was unreasonable for the RAD to simply accept, without further analysis or explanation, that the RPD had taken the state of the Applicant's health into account when assessing credibility.

[20] I also agree with the Applicant that the issue in this case was not about whether the Applicant had difficulties communicating at the hearing, or whether the RPD allowed the Applicant to take breaks, as the RAD noted. I find the RAD erred by failing to consider how a medical diagnosis of memory impairment could have explained the omissions and inconsistencies identified, which rendered the Decision unreasonable: *Sivaraja* at para 45.

[21] As the Applicant acknowledged, what could the RAD have done with the medical note is not something he could comment on, nor can I. But to accept that the Applicant has mental health issues and then find that the RPD had taken it into account after explicitly finding that the

RPD had erred by rejecting the medical evidence, was unreasonable. The RAD's analysis, in my view, lacked the requisite justification and intelligibility.

B. *Did the RAD err in refusing to accept the new evidence?*

[22] The Applicant argues that the RAD erred in not admitting the new evidence, i.e. the letters from the Applicant's ex-wife and her neighbour recounting threatening visits from S.A. The RAD stated as follows:

> [13] I do not accept these two documents as evidence because I find that they do not meet the test for credibility.
>
> [14] For reasons that will be explained under the *Analysis* heading, I agree with the RPD's finding, namely, that the appellant's essential allegations are not credible. Therefore, I do not find the content of either document to be credible. Moreover, they are simple handwritten letters, not sworn under oath, from sources that are not known to the panel. They are not, for example, documents from official sources or organizations known to the panel.

[23] I find two errors with the RPD's reasons for rejecting the new evidence.

[24] First, by stating that it agreed with the RPD's finding that the appellant's essential allegations are not credible and therefore it did not find the content of the letters to be credible, the RAD was engaged in circular reasoning.

[25] The Supreme Court in *Vavilov* at para 104 cautions against circular reasoning. I also noted in *Homauoni v Canada (Citizenship and Immigration)*, 2021 FC 1403 at para 56 that the RAD in that case engaged in circular reasoning when it rejected a report that it found to be based

on the applicant's self-reporting, on the basis that the applicant was not credible, without engaging in any analysis about the RPD's credibility findings.

[26] The Respondent argues it was not an error to use the RAD's broader credibility finding as a reason for rejecting the new evidence, because the RAD was required to consider the credibility of the letter and because this was not the only reason why the RAD found the letters to lack credibility—the RAD also considered that they were unsworn and handwritten by individuals unknown to the RAD.

[27] I reject this argument. First, as explained below, I find the RAD erred by rejecting the letters on the basis that they were unsworn and handwritten by individuals unknown to the RAD. Second, the RAD did not in fact engage in any analysis of the letters in the context of the broader credibility finding, as it rejected the letters because it had already found the Applicant not to be credible.

[28] The Respondent has not pointed to any case law which suggests the RAD must only admit sworn statements, or statements only from sources known to the RAD. Indeed, the Respondent acknowledges that there are no such requirements. Further, as the Applicant notes, evidence should not be disregarded simply because it emanates from individuals connected to the persons concerned: *Cruz Ugalde v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 458 at para 26. This, in my view, reinforces the Applicant's position that the RAD should not have rejected the letters because they came from sources unknown to the RAD. Taking the RAD's position to its logical conclusion, if the RAD would only admit evidence from "known"

sources, this could lead to the exclusion of evidence provided by anyone who is not acting in any "official" capacity, or connected to any "known" organization.

[29] Further, in this case, the authors of the letters identified themselves by name and their relationship to the Applicant, as well as by attaching copies of their national identify cards. The RAD's finding that the sources of the letters were unknown was thus made without regard to the evidence before it.

IV. Conclusion

[30] The application for judicial review is granted.

[31] There is no question for certification.

JUDGMENT in IMM-4408-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different decision maker.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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