

Federal Court



Cour fédérale

**Date: 20220221**

**Docket: IMM-360-21**

**Citation: 2022 FC 229**

**Ottawa, Ontario, February 21, 2022**

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

**BETWEEN:**

**VASILI MCHEDLISHVILI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The applicant seeks to judicially review a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated December 4, 2020. The RAD confirmed the decision of the Refugee Protection Division [RPD] which found that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant is a citizen of Georgia who fled to Canada in May 2016. He sought protection on the basis that he would be persecuted for his political opinion in Georgia. The determinative issue for both the RPD and the RAD was credibility. The applicant challenges both the fairness of the procedure followed by the RAD as well as the reasonableness of its credibility findings.

[3] For the reasons that follow, the application is granted.

## II. **Background**

[4] The applicant is from Tbilisi, Georgia. He fears persecution in Georgia due to his support for the United National Movement [UNM] political party. He arrived in Canada in May 2016 and sought refugee protection shortly thereafter on June 7, 2016, on this basis. His brother also made a claim in Canada on November 9, 2017, on similar grounds. The claims were joined and heard together by the RPD.

[5] Although the brother's claim was based on a separate set of facts, the RPD relied on both brothers' testimony and supporting documents to arrive at its credibility determination. Credibility was identified as the determinative issue in both claims. The RPD Member accepted general country evidence that supporters of the UNM party were targeted in Georgia, but the Member did not accept that the applicants personally faced such a risk because they had not established that they had experienced such targeting or that they had political profiles that would put them at risk of future targeting. Police and medical documents submitted in support of the claim, if genuine, were not sufficient to overcome the credibility concerns.

[6] The applicant appealed that decision to the RAD. His brother was unable to do so as his claim had been filed under an exception to the Safe Third Country Agreement. An application for leave and for judicial review of the RPD decision with respect to the brother was denied.

[7] On appeal to the RAD, the applicant raised three issues with the RPD's credibility determination. First, that the RPD failed to separately address the credibility of the two brothers claims. Second, that the RPD failed to make a clear finding on the weight and credibility of a supporting document, a letter, aside from describing it as "vague" and lacking detail. And third, that the RPD's adverse credibility finding was based on the lack of corroborative evidence from the Ministry of Internal Affairs [MIA] to whom a complaint had allegedly been made, to the exclusion of other documentary and oral evidence that supported the claim.

[8] The applicant tendered several documents to the RAD as new evidence. These included his affidavit dated November 15, 2019, an affidavit of his brother made on the same date and a copy of a document from the MIA dated November 3, 2015.

### III. **Decision under review**

[9] The RAD found that the new evidence was inadmissible. The MIA document had been issued almost 4 years prior to the RPD decision rendered in October 2019. The RAD considered that the explanation provided by the applicant for why it had not been presented to the RPD was not reasonable in the circumstances. Moreover, the RAD had concerns about the authenticity of the document. It appears that the RAD did not accept the two affidavits as new evidence because they related to the MIA document.

[10] The RAD upheld the RPD's general credibility finding against the applicant citing the lack of corroborative evidence from the MIA and the vagueness of the letter from the applicant's friend. The supporting police and medical reports were found to be insufficient to establish politically motivated persecution. The RPD had erred, in the RAD's estimation, by failing to clearly outline the specific concerns it had with the documents. On its own review of each document, the RAD found them to be fraudulent.

#### IV. Issues and Standard of Review

[11] As a preliminary matter, the applicant submitted updated translations of two police reports on this application for judicial review as not new evidence, but simply more accurate translations of documents provided to the RPD. They were tendered in support of the applicant's argument that the RAD erred in drawing a negative inference from the police documents because these mistakes were clearly translation errors that do not undermine the authenticity of the reports. The respondent did not object to the admission of the new translations, and I am satisfied that they fall within the first exception to the general principle set out in *Canada (Attorney General) v Sharma*, 2018 FCA 48 at para 8. They will provide assistance to the Court in determining this matter.

[12] Neither the RPD nor the RAD took issue with inconsistencies in the applicant's testimony but focused on his Basis of Claim form [BOC] and supporting documentary evidence.

[13] The issues raised by the applicant can be condensed into the following:

- 1) Was the RAD's decision to refuse to admit new evidence reasonable?
- 2) Was the RAD required to give the applicant notice of its credibility concerns regarding his police and medical documents?
- 3) Is the RAD's determination that the applicant did not establish his claim with credible evidence reasonable?

[14] The parties agree, as do I, that the standard of review of the substance of the RAD decision is reasonableness.

[15] Further to *Canada v Vavilov*, 2019 SCC 65 [*Vavilov*], reasonableness is the presumptive standard of review for the merits of an administrative decision. This includes the issue in relation to the RAD's decision to refuse or accept new evidence on appeal (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 336 at para 5; *Simone v Canada (Citizenship and Immigration)*, 2021 FC 1345 at para 13; *Khan v Canada (Citizenship and Immigration)* 2020 FC 438 at para 21); as well as the RAD's determination on issues of credibility (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93; *Janvier v Canada (Citizenship and Immigration)* 2020 FC 142; *Gao v Canada (Citizenship and Immigration)* 2021 FC 271).

[16] With regard to the fairness of the RAD's procedure, the reviewing court must determine whether the process followed by the decision-maker was fair having regard to all of the relevant circumstances, including those identified in *Baker v Canada (Citizenship and Immigration)* 1999 CanLII 699; *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54.

V. **Analysis**

A. *The RAD's decision to refuse to accept the new evidence was reasonable.*

[17] The applicant has raised a number of concerns with the RAD's treatment of the MIA document. He contends that the similarity between his BOC form and the document stems from the fact that he was given the information in 2015 but was unable to obtain a copy until later. The RAD's issue with the lack of detail in the MIA document is based on speculation and is contrary to the presumption of the genuineness of government documents. And, he argues, there is no contradiction between the dates specified in the MIA document and the police reports.

[18] The RAD's refusal to admit the MIA document into evidence while then confirming the RPD's adverse credibility inference from a lack of corroborative evidence regarding the alleged MIA investigation amounts to circular reasoning, the applicant submits.

[19] I am inclined to agree with the applicant that at first impression this does look like circular reasoning. Nonetheless, the RAD provides thorough reasons for refusing to accept the MIA letter as new evidence. The RAD then goes on to outline the Member's additional concerns with the authenticity of the document. One of those concerns, which related to the date for closing of the investigation, was clearly based on a factual error by the RAD. However, that analysis is distinct from the RAD's assessment of the admissibility of the document which was unaffected by the error.

[20] The applicant's explanation for the similarity of wording between the BOC form and the MIA document contradicts his own testimony as well as the submissions made in support of the new evidence on appeal to the RAD. At the RPD hearing, the applicant stated that he could not provide a report from the MIA because he did not personally file the complaint and had not attended the MIA while in Georgia. Thus, it was reasonable for the RAD not to accept the applicant's explanation as to why the content of his BOC and the MIA document were so similar.

*B. The RAD was not required to give the applicant notice of its credibility concerns regarding his police and medical reports as a matter of fairness*

[21] The test for whether procedural fairness requires notice, and thus an opportunity to be heard, is whether the RAD raised a new issue on appeal. A new issue is one that is legally and factually distinct from the grounds of appeal advanced and which cannot reasonably be said to stem from issues raised on appeal. This is dependent on the nature of the issue and its relationship to the issues raised by the parties on appeal: *R v Mian*, 2014 SCC 54 at para 54.

[22] In this instance, the determinative issue for the RPD was credibility as it was on appeal to the RAD. Where credibility is at the heart of the RPD's decision and the grounds for appeal to the RAD, the RAD is entitled to make independent findings without having to question the claimant or give him or her the opportunity to make submissions. This was not a new issue and a close review of the RPD's findings indicate that it was also concerned about the authenticity of the documents. Where the RAD departed from the RPD was in expressly declaring them to be fraudulent. This was not procedurally unfair to the applicant.

*C. The RAD's determination that the applicant did not establish his claim with credible evidence was not reasonable*

[23] I agree with the applicant's submissions that the RAD's treatment of the medical and hospital reports was unreasonable. Two of three of the findings leading to the RAD's credibility assessment in relation to these reports are unsupported by the record.

[24] While I would not go as far as the applicant to describe the RAD's assessment of the medical reports as factually inaccurate, the justification provided for its findings with respect to those documents is unclear and unintelligible. The RAD found there to be a number of errors on the face of the medical reports such as their description of the applicant's place of employment; their use of nonmedical terminology and that they each describe different injuries. On a plain reading of the three documents, it is not clear which terminology is nonmedical or that they describe different injuries in different parts of the reports.

[25] Perhaps most telling is that the RAD failed to address the fact that these reports appear to follow a standardized format, a fact which provides an alternative explanation for their similarities than that they are fraudulent. This is similar to the argument which the applicant makes with reference to the police reports. The updated translations of those police reports bolsters the applicant's arguments as they demonstrate that spelling errors may not have been contained in the original documents and that the RAD engaged in an overly microscopic analysis when assessing the credibility of the applicant's supporting evidence.



VI. **Conclusion**

[26] In the result, I am satisfied that the RAD's findings in relation to the applicant's medical and police reports are unreasonable and that the matter must be returned for reconsideration by a differently constituted panel.

[27] No serious questions of general importance were proposed, and none will be certified.

**JUDGMENT IN IMM-360-21**

**THIS COURT'S JUDGMENT is that** the application is granted, and the matter is remitted to the Refugee Appeal Division to be reconsidered by a differently constituted panel.

No questions are certified.

"Richard G. Mosley"

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Judge

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

**DOCKET:** IMM-360-21

**STYLE OF CAUSE:** VASILI MCHEDLISHVILI V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD VIA VIDEOCONFERENCE - TORONTO

**DATE OF HEARING:** JANUARY 19, 2022

**JUDGMENT AND REASONS:** MOSLEY J.

**DATED:** FEBRUARY 21, 2022

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