Federal Court Cour fédérale

Date: 20220614

Docket: IMM-6349-21

Citation: 2022 FC 885

Ottawa, Ontario, June 14, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

RAYMOND MARIE TCHEUMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated August 24, 2021, which confirmed the refusal of his refugee claim by the Refugee Protection Division (RPD), as he was found to be neither a Convention refugee nor a person in need of protection pursuant to the *Immigration and Refugee Protection Act*, SC 2011, c 27, ss 96–97(1) [*IRPA*].

[2] For the reasons that follow, the application is dismissed.

II. **Background**

A. *Facts*

[3] The Applicant is a Catholic francophone citizen of Cameroon of Bamiléké ethnicity. He lived with his wife and children in Douala, located in the francophone region of the country. His wife is anglophone. Their children were raised and taught in both languages. His two eldest daughters are pursuing studies abroad in the United States and Canada. His wife and other children continue to reside in Cameroon.

[4] Documents in the record are in both English and French. The underlying proceedings were conducted in French. This application was argued and heard in English.

[5] The Applicant fears persecution by Cameroonian authorities based on his ethnicity, as well as persecution by francophone and anglophone extremists due to his imputed profile. The Applicant also fears the violence perpetrated by Boko Haram and separatist groups in Cameroon.

[6] The Applicant alleged that he experienced several traumatic events in Cameroon in 2017 and 2018. These consisted of the following incidents:

- In September 2017, he was taken off a bus travelling through the anglophone region of the country and threatened because he was francophone;
- In December 2017, unknown assailants assaulted him. He suspects that the attack was orchestrated by former work

colleagues who lost their employment or were reprimanded following acts that he denounced (or was presumed to have denounced) to their employer some years previously; and

- In February 2018, his daughter's school was set on fire, and he attributes this to anglophone secessionists.

[7] After the last incident, the Applicant left Cameroon and travelled to Canada on a visitor visa on March 8, 2018. He claimed protection on May 30, 2018.

[8] The Applicant and his daughter, who is studying in Canada, both testified at the hearing. The daughter who gave evidence was not in Cameroon when the alleged events occurred but testified as to what she had learned from friends and family.

B. *RPD Decision*

[9] In a decision dated March 13, 2020, the RPD rejected the Applicant's refugee claim, as the panel determined that he did not demonstrate the objective basis of his fear of persecution based on ethnicity, language or political opinion, nor his fear of reprisals by former colleagues. Thus, his claim under ss 96 and 97 of the *IRPA* was not established on the balance of probabilities.

[10] The RPD made the following findings with respect to the Applicant's fear of persecution based on his Bamiléké ethnicity and imputed political opinions:

- The Applicant and his wife were not involved in politics and were not partisans of any political group;

- The Applicant did not demonstrate that there was a serious possibility that the Bamilékés were targeted by the government, regardless of their political opinions;

- The objective documentary evidence did not support the claim that Bamilékés are at serious risk of persecution in Douala;

- The incident that occurred on a bus while travelling through the anglophone part of the country was not indicative of the treatment that he would face elsewhere in Cameroon, notably in his city of residence, Douala;

- The Applicant did not demonstrate that there was a serious possibility that he would be targeted by the authorities or political partisans of the government due to his ethnicity or imputed political opinions.

[11] The RPD concluded that the Applicant did not establish the objective basis of his fear of persecution in Douala on the basis of language or perceived language, and this conclusion was supported by the following findings:

- There is coexistence between anglophones and francophones in Douala, and the anglophones living there are not subjected to treatment amounting to persecution;

- The documentary evidence indicates that Douala does not face a particular risk of being targeted by separatists;

- The ethnic and language-based violence is largely in the northern regions and in the North-West and South-West of the country, and thus the evidence does not indicate that the Applicant faces a serious possibility of persecution in Douala;

- The Applicant did not provide objective evidence to demonstrate that the fire at his daughter's school was of a criminal nature or caused by anglophone secessionists;

- The Applicant's wife returned to Cameroon following a recent trip to the United States, and his wife as well as several of his children – all of whom are anglophone – continue to reside in Douala.

[12] With respect to the Applicant's fear of persecution by Boko Haram, the RPD found that the Applicant did not put forward any specific allegations and concluded that the group is primarily active in the north of Cameroon; thus, the Applicant did not demonstrate a serious possibility of persecution by Boko Haram in Douala.

[13] For the foregoing reasons, the RPD concluded that the Applicant had not established his claim of persecution under s 96 of the *IRPA*. Next, the RPD concluded that the Applicant did not establish his claim for protection under s 97 of the *IRPA*, as it found that the Applicant had not demonstrated on a balance of probabilities that he had been targeted in the incident of December 2017 for reasons related to a work dispute. The RPD noted that the Applicant had left the workplace in question in 2010, seven years before the alleged assault, that the identity of the aggressors was unknown, and that no other incidents of this nature took place prior to his departure from Cameroon.

III. **Decision under Review**

[14] On appeal to the RAD, the Applicant argued that the RPD erred by ignoring the cumulative effect of the discrimination to which the Bamilékés are subject in Cameroon, and submitted new evidence showing that ethnic tension between the Bamiléké minority and the Bétis majority had worsened since the RPD's decision and needed to be considered in light of the cumulative nature of the multiple conflicts. The Applicant asserted that he should not have to wait until the violence reaches Douala before seeking protection in another country.

[15] The RAD admitted the nine new documents submitted by the Applicant and concluded that it was not necessary to hold a hearing as the new evidence did not raise issues regarding the Applicant's credibility. However, the RAD found that these new documents did not establish that the actual political climate in Cameroon was such that discrimination or acts of violence against persons of Bamiléké ethnicity had taken on important dimensions, and concluded that the targeting of Bamilékés remained isolated incidents that did not represent a movement amongst the general population. The RAD concluded that the Applicant did not demonstrate that the discrimination faced by persons of Bamiléké ethnicity cumulatively rises to the level of persecution.

[16] The RAD also found that the Applicant had not established that the conflict with Boko Haram had an impact on persons of Bamiléké ethnicity that was different from that of other citizens of Cameroon.

[17] In assessing the three incidents alleged by the Applicant which led him to flee his country, the RAD found that the cause of the December 2017 attack and of the February 2018 school fire was not known and there was insufficient evidence to establish a prospective risk of return based on these incidents. The RAD also found that the September 2017 bus incident was insufficient to establish that he would face a risk elsewhere in the country, notably in Douala.

[18] In its decision dated August 24, 2021, the RAD upheld the decision of the RPD and found that despite recent heightened tensions between Bamilékés and Bétis, the Applicant had

not shown on the balance of probabilities that there was a serious possibility he would be persecuted or faced a risk to his life or a risk of cruel and unusual treatment or punishment.

IV. **Issues and Standard of Review**

[19] This application raises the following issues:

A) Did the RAD commit a breach of procedural fairness?

B) Was the decision of the RAD reasonable?

[20] The parties agree that the standard of reasonableness applies to the merits of the RAD's decision. I concur. None of the situations that allow for a departure from the presumption of the reasonableness standard are applicable in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 17, 25; *Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27.

[21] A reasonable decision is "based on an internally coherent and rational chain of analysis" and "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85. It must encompass the characteristics of a reasonable decision, namely, justification, transparency and intelligibility: *Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47 and 74; *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13.

[22] The reviewing court must adopt a deferential approach and intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the

administrative process": *Vavilov* at para 13. Perfection is not the standard. It is not for the Court to transform a review on the reasonableness standard to correctness review: *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at paras 36-40 [*Mason*]. The party challenging the decision bears the burden of showing that it is unreasonable: *Vavilov* at para 100. Respect for the role of the administrative decision maker requires a reviewing court to adopt a posture of restraint on review: *Vavilov*, paras 24, 75.

[23] In his written argument, not pressed at the hearing, the Applicant submitted that the RAD did not apply the proper legal test in considering the appeal from the RPD decision and that this called for the correctness standard because it has an impact on the administration of justice: *Vavilov* at para 58; *Chen v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 425 at para 16. However, the present matter does not address a question of central importance to the legal system as a whole as the applicable standards of proof and legal tests are well-established and uncontroversial. The resolution of this question does not go beyond the interests of the parties in the present matter. Thus, the presumption of reasonableness is not rebutted.

[24] As for the alleged breach of procedural fairness, the parties agree that correctness is the applicable standard of review. I prefer to describe it differently. Having regard to all of the circumstances and focusing on the nature of the substantive rights involved and the consequences for the individual affected, this Court must determine whether the procedure followed by the decision-maker was fair: *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47. This standard involves no deference to the decision-maker.

V. **Analysis**

A. *Did the RAD commit a breach of procedural fairness?*

[25] In his written argument, the Applicant submits that certain segments of the audio recording of the RPD hearing relied on by the RAD in its decision were inaudible and led to an incomplete transcript. The Applicant argues that the RAD's failure to mention the incomplete nature of the transcript constitutes a breach of procedural fairness.

[26] This argument was not pressed at the hearing. I advised the parties that having read the transcript, I was not persuaded that the snippets of indiscernible audio that the transcriptionist could not make out were material to the decision reached by the RAD. These snippets did not constitute defects or gaps that raised a serious possibility of a denial of a ground or appeal as discussed in *Canadian Union of Public Employees, Local 301 v Montreal (City)*, [1997] 1 SCR 793 at para 81 and the other cases cited by the Applicant. They consisted of brief moments when the voice of a speaker dropped off and was not captured by the audio recording system.

[27] Aside from this, the Applicant had failed to raise any concerns about the quality of the audio recording in his appeal submissions nor did he file a transcript before the RAD. The transcript in the Certified Tribunal Record was prepared by the Tribunal when leave to apply for judicial review of the RAD decision was granted. This Court has consistently held that it is inappropriate to grant judicial review based upon a ground not raised before the RAD: *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 24; *Ogunmodede v Canada (Citizenship and Immigration)*, 2022 FC 94 at paras 23-30 [*Ogunmodede*]; *Enweliku v Canada*

(Citizenship and Immigration), 2022 FC 228 at paras 27, 42. Subject to limited exceptions which do not apply here, applicants are precluded from raising new arguments on judicial review that was not raised before the administrative decision maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26.

[28] I am satisfied that there was no breach of procedural fairness.

B. *Was the decision of the RAD reasonable?*

(1) Did the RAD apply incorrect tests in its s 96 and s 97 analyses?

[29] The Applicant's argument that the RAD applied the incorrect legal test and subjected him to a higher standard of proof is based on the RAD's choice of words in several paragraphs of the decision. In paragraph 2, for example, the RAD wrote:

> Malgré des incidents récents inquiétants…la situation n'a pas atteint un point tel qu'il serait raisonnable de conclure, selon la prépondérance des probabilités, qu'il existe une possibilité sérieuse que l'appelant soit persécuté parce qu'il est Bamiléké.
>
> [Abridged and emphasis added]

[30] The Applicant contends that persecution upon return to Cameroon need only be proven on the lesser standard of reasonable chance and that it is only past occurrences of persecution that must be proven on the balance of probabilities.

[31] The Applicant argues that the RAD also imposed a more stringent standard of proof at paragraph 15 of its decision, wherein it required proof of a movement of collective hatred

amongst Cameroon society in general directed at the Bamilékés, which is more stringent than the "reasonable chance yardstick" standard required by jurisprudence. And at paragraph 22, the Applicant submits that the RAD improperly applied the test of s 96 of the *IRPA* at paragraph 22 of the decision by requiring the Applicant to prove that the Bamilékés face a greater risk of persecution than other groups in Cameroon.

[32] The Applicant further submits that the RAD erred in its articulation of the test at paragraph 24 of the decision, wherein it found that the Applicant had failed to establish that he is personally threatened with a threat to his life or the risk of suffering cruel and unusual treatment or punishment. The Applicant asserts that the RAD improperly integrated the s 97 *IRPA* criterion of a personal risk into its s 96 analysis: *Alhezma v Canada (Citizenship and Immigration),* 2016 FC 1300 at paras 18-19.

[33] The Court agrees with the Respondent that the RAD decision must be read as a whole and not microscopically. A reviewing court must not engage in a "line-by-line treasure hunt for error" or adopt the attitude of a literary critic all too willing to find shortcomings: *Vavilov* at para 102; *Mason* at para 37. Rather the Court must search for "sufficiently serious shortcomings" that are "sufficiently central or significant", by examining the decision as a whole: *Vavilov* at paras 15, 85, 99-100, 116, 122.

[34] Considering the RAD's reasons as a whole does not lead to the conclusion that the decision was rendered on the basis of the incorrect legal test or standard of proof.

[35] Paragraph 2 of the RAD's s decision does not impose the more stringent standard of proof of "balance of probabilities" for establishing the possibility of persecution in Cameroon, but rather, summarizes the decision as a whole in general terms.

[36] Paragraph 15 of the RAD's decision does not require that the Applicant prove the existence of a movement of collective hatred against Bamilékés, but rather, indicates that the RAD was not satisfied that the record provides evidence that amounts to something more than isolated incidents.

[37] At paragraph 22 of its decision, the RAD does not improperly apply the test of s 96 of the *IRPA* by requiring the Applicant to prove that the Bamilékés face a greater risk of persecution than other groups in Cameroon. Rather, the RAD properly applied the test of s 96 of the *IRPA* by requiring the Applicant to show that as a member of the Bamiléké ethnicity, he faced a risk of persecution from Boko Haram that was different from that of the rest population.

[38] The Tribunal's conclusion, in paragraph 24, does not indicate that the RAD improperly integrated the s 97 *IRPA* criterion of personal risk into its s 96 analysis. In a summary wrap up of its analysis, the RAD states its conclusions on both the s 96 and s 97 grounds in two separate sentences.

(2) Implicit credibility findings and denial of a hearing?

[39] The Applicant argues that the RAD misapprehended or made implicit credibility findings as to the cause of the fire that burned down the Applicant's daughter's school by doubting the

testimony provided by the Applicant and his other daughter, and by concluding that it was not at all clear what the cause of the fire was. He contends that if the RAD did not believe his testimony, it was incumbent on the RAD to convene a hearing. Furthermore, the Applicant asserts that the RAD misapprehended the Applicant's testimony regarding the attack he endured in December 2017 by failing to grapple with his contention that it was likely to have been ethnically motivated given the country conditions evidence and the Applicant's testimony.

[40] As discussed by Mr. Justice Gascon in *Huang v Canada (Minister of Citizenship and Immigration)* 2018 FC 940 at paras 41-42, a finding of insufficient probative evidence, which goes to the nature and quality of the evidence and its probative value, should not be confused with an adverse finding of credibility. Here, neither the RPD nor the RAD questioned the Applicant's credibility or that of his daughter. The RAD's finding that there was insufficient evidence to substantiate their testimony regarding the motives of the perpetrators responsible for the incidents that occurred in Cameroon does not amount to a veiled negative credibility finding. The RAD found that the Applicant did not discharge his onus of establishing the motives for the incidents on the balance of probabilities. This does not mean that the RAD did not believe the Applicant or his daughter, but the evidence they provided must also meet the applicable standard of proof which in the view of the RAD it failed to do. There is no basis on the record for the Court to interfere with that finding.

C. *Adequacy of the justification, transparency and intelligibility of the decision.*

[41] The Applicant contends that the RAD engaged in circular reasoning by accepting the argument that he was not required to wait for the violence against his ethnic community to reach

his city of residence, Douala, and then in concluding a few paragraphs later that he had failed to establish that he was at risk in Douala. This was in spite of the fact that two of the three alleged incidents occurred there.

[42] The Applicant further submits that the RAD failed to justify its decision and articulate the rationale for its conclusions. The Applicant asserts that the RAD merely stated its conclusion without articulating its analysis when it accepted the Applicant's new evidence demonstrating a rise of ethnic tensions, the state of turmoil in Cameroon following the election and the fact that the Bamilékés are the main group targeted by hate speech, but ultimately found that there was insufficient evidence of any prospective risk arising from the Applicant's ethnicity.

[43] The Court agrees with the Respondent that the RAD's decision is sufficiently justified, transparent and intelligible. The RAD accepted that tensions remained in Douala between the Bamilékés and the Bétis, the ethnic majority, but was not satisfied on the evidence that the Applicant faced a serious, forward-looking possibility of persecution.

[44] The RAD's reasons do not explicitly address the probative value of the daughter's testimony before the RPD. But the RAD was not obliged to refer to all of the evidence submitted in a lengthy tribunal record. It is arguable that when the RAD declares that « il n'est pas du tout clair d'après la preuve présentée quelle fut la cause des deux derniers incidents » the Member was not referring to the daughter's testimony. However, the Applicant made no allegation in his appeal submissions that the RPD failed to give proper weight to the daughter's testimony. And her evidence was based on the beliefs of others with whom she had spoken from Canada. In my

view, it is reasonable to infer from the RAD's analysis that consideration was given to her evidence but it simply did not contribute much to the overall basis of the claim.

[45] As the RAD states, it is unclear who was responsible for the December 2017 assault or for the school fire. With respect to both incidents, the RAD found that the Applicant had failed to discharge his onus of establishing the motives for those events on the balance of probabilities. In my view it is reasonable to conclude that this finding incorporated all of the evidence submitted in support of the Applicant's claim including the daughter's evidence.

[46] It is one thing to accept that the Applicant was attacked by unknown assailants whom he believed to be connected to job-related events some seven years earlier, and to find that the school was set on fire, and another to find that there is a connection between them or that they are indicators that the Applicant faces a serious risk of persecution. Moreover, the documentary evidence regarding mounting tensions and aggressions between the ethnic groups is insufficient to demonstrate that they will continue to occur, expand in scope or be more than isolated incidents.

[47] It was reasonable for the RAD to not provide a detailed cumulative assessment of the evidence regarding discrimination against the Bamilékés, as the Applicant did not identify any particular incidents of discrimination against him in his submissions, apart from the suspension of a contract. As this Court explained in *Kanawati*, the RAD's decision must be assessed in the context of how the applicants framed their appeal: *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 23. The RAD cannot be faulted for failing to engage with

arguments that the applicants did not raise or support with evidence on appeal: *Lawal v Canada (Citizenship and Immigration)*, 2021 FC 964 at para 20.

VI. **Conclusion**

[48] On the basis of the foregoing reasons, I am satisfied that the RAD decision meets the reasonableness standard and that there was no breach of procedural fairness. Accordingly, the application will be dismissed.

[49] No serious question of general importance was proposed and none will be certified.

JUDGMENT IN IMM-6349-21

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6349-21
STYLE OF CAUSE:	RAYMOND MARIE TCHEUMA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	APRIL 13, 2022
JUDGMENT AND REASONS:	MOSLEY J.
DATED:	JUNE 14, 2022

APPEARANCES:

Sadaf Kashfi Molly Joeck	FOR THE APPLICANT
Suzanne Trudel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Edelmann & Co. Law Offices Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT