Federal Court  Cour fédérale

Date: 20220826

Docket: IMM-6350-20

Citation: 2022 FC 1230

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 26, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

MELAY, FABIO MUKENDI
MATONDO, OLGA VENGO
MELAY, IAN GABRIEL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] Fabio Mukendi Melay and his wife, Olga Vengo Matondo, and their minor son Ian Gabriel Melay [the applicants] are citizens of Angola. The applicants are seeking judicial review of a decision of the Refugee Protection Division [RPD] dated October 7, 2020. In that decision,

the RPD rejected the applicants' claims for refugee protection on grounds of credibility and determined that the applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The applicants allege that they fear persecution by the Angolan authorities, including the secret police, because of the involvement of the principal applicant, Mr. Melay, in an oil sector union and in two demonstrations.

[3] In this application for judicial review, the applicants submit that the RPD made the following reviewable errors: (i) the RPD breached procedural fairness; (ii) the RPD was wrong to impugn Mr. Melay's credibility by rejecting his testimony on the grounds that it was not supported by the documentary evidence; (iii) the RPD drew arbitrary and speculative conclusions regarding the applicants' testimony; and (iv) the RPD erred in the way it addressed the issue of the disappearance of Mr. Melay's uncle.

[4] For the following reasons, the application for judicial review is dismissed.

II. Issues and standard of review

[5] The applicants raised numerous questions, which I will restate as follows:

(a) Did the RPD breach procedural fairness?

(b) Is the RPD's decision reasonable and, specifically, is it reasonable with respect to credibility and the assessment of the evidence?

[6] Regarding procedural fairness, the Federal Court of Appeal stated in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] that matters of procedural fairness may not necessarily lend themselves to a standard of review analysis. Rather, the role of this Court is to determine whether the proceedings were fair in all the circumstances (*Canadian Pacific* at paras 54–56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[7] The standard of review applicable to RPD decisions on credibility and the assessment of evidence is reasonableness. A reasonable decision is one that is justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, SCC 65 at para 85 [*Vavilov*]). The burden is on the party challenging the RPD's decision to show that it is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court 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" and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100). Reasonableness review is not a "line-by-line treasure hunt for error". A reviewing court must simply be satisfied that the decision maker's reasoning "adds up" (*Vavilov* at paras 102, 104).

III. Analysis

A. *Breach of procedural fairness*

[8] The applicants submit that the RPD's finding as to their credibility is arbitrary because it is based on [TRANSLATION] "assumptions, speculation, and answers to questions that [the RPD] never asked the applicants". The applicants argue that they were not given the opportunity to address the RPD's concerns about their credibility and that this undermines natural justice and procedural fairness.

[9] The documents submitted to the RPD by the applicants included two articles in Portuguese that had not been translated. The applicants claim that these two articles in Portuguese were inadmissible as evidence because they had not been translated into French or English. The applicants allege that either the RPD should not have considered these two articles or it erred in not having had them translated before relying on them to impugn the applicants' credibility.

[10] The respondent submits that the RPD's failure to question the applicants on every aspect of their claims did not make the process unfair. The respondent argues that (1) the applicants knew their credibility was at issue; (2) the RPD's findings were either raised at the hearing or evident from the documents the applicants had submitted; and (3) the articles did not provide new information that the applicants could not reasonably have known or extrinsic evidence that they did not already know or had not previously presented.

[11] In response to the applicants' argument regarding the news articles in Portuguese, the respondent submits that the applicants are overstating the importance that the RPD placed on the two articles. Moreover, the respondent argues that the applicants' first language is Portuguese

and that the applicants could have expected the RPD would refer to them because they were included in the documents that the applicants had filed with the RPD.

[12] Having considered the applicants' submissions, I am of the opinion that the applicants have failed to meet their burden of showing that procedural fairness was breached. It is true that the panel could have proceeded differently with regard to referring to the two Portuguese articles, but I do not think that this is a sufficient error to set aside the decision. In other words, considering all the circumstances, I do not find that the proceeding was unfair.

B. *Reasonableness of decision: Credibility of applicants, assessment of evidence*

[13] Credibility findings and the assessment of evidence are owed considerable deference by the Court. As my colleagues, justices Simon Fothergill, Shirzad A. Ahmed and Nicholas McHaffie, have stated, credibility assessments are part of the fact-finding process, and credibility determinations are afforded deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Credibility determinations lie within "the heartland of the discretion of triers of fact […] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22).

[14] It is trite law that, absent exceptional circumstances, the reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

[15] In effect, the errors that the applicants allege are that the RPD essentially rejected Mr. Melay's testimony because it was not supported by the documentary evidence and that the RPD drew arbitrary and speculative conclusions regarding the applicants' testimony.

[16] The respondent submits that the RPD clearly identified and explained the contradictions, gaps and inconsistencies in the applicants' evidence and testimony, and between the applicants' evidence and the national documentation package. The respondent argues that it was reasonable for the RPD to draw a negative inference as to the credibility of the applicants because they failed to provide evidence that they could reasonably have obtained to support central elements of their story.

[17] In my opinion, the applicants are asking this Court to reweigh the evidence and come to a different conclusion. While the applicants may not agree with the RAD's findings, it is not for this Court to reassess or reweigh the evidence in order to make findings that would be favourable to them (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[18] Indeed, the RPD did err in referring to a domestic flight from Cabinda to the capital city instead of a boat from Cabinda to Soyo and then a plane to the capital, Luanda. However, the

Supreme Court of Canada states, “Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep” (*Vavilov* at para 100). The Supreme Court strongly discourages a “line-by-line treasure hunt for error” (*Vavilov* at para 102).

[19] In my view, the RPD’s reasons, read holistically and in the context of the relevant evidence, reveal a rational chain of analysis and do not reveal any fatal flaws in their overarching logic (*Vavilov* at paras 102–103). Consequently, I conclude that the applicants’ arguments on the reasonableness of the decision are tantamount to a request to reweigh the relevant evidence, which the Supreme Court cautions reviewing courts against doing (*Vavilov* at para 125).

IV. Conclusion

[20] I am satisfied that, when read holistically and contextually, the RPD’s decision meets the reasonableness standard set out in *Vavilov*. Moreover, the applicants have failed to demonstrate a breach of procedural fairness. Consequently, the application for judicial review is dismissed. No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-6350-20

THIS COURT'S JUDGMENT is as follows:

1. The applicants' application for judicial review is dismissed.
2. The style of cause is amended to designate the Minister of Citizenship and Immigration as the appropriate respondent.
3. There is no question for certification.

"Vanessa Rochester"
Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6350-20
STYLE OF CAUSE:	MELAY, FABIO MUKENDI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	APRIL 13, 2022
JUDGMENT AND REASONS:	ROCHESTER J
DATED:	AUGUST 26, 2022

APPEARANCES:

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