Federal Court  Cour fédérale

Date: 20220927

Docket: IMM-7777-21

Citation: 2022 FC 1340

Ottawa, Ontario, September 27, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MOHAMED CAMARA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Mohamed Camara (the Applicant) seeks to have judicially reviewed a decision of the Refugee Appeal Division (RAD) which confirmed the decision of the Refugee Protection Division finding that the Applicant is neither a refugee nor a person in need of protection. The judicial review application was made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act]. For the reasons that follow, the judicial review application must fail.

I. The facts

[2] The Applicant was born in July 1982. He is a citizen of Liberia. During the civil war in Liberia, but before it reached where he was living with his parents, he was sent by his father to live with a friend in Guinea. That was in 1990. He learned later that his family perished in Liberia shortly thereafter.

[3] Mr. Camara left Guinea in 2007 for Cuba. He left Cuba for Mexico a few days later. In Mexico, he seemingly worked; he crossed the border into Texas in December 2008 with the assistance of smugglers. He was detained in Texas for more than a year; he sought unsuccessfully asylum but remained in the United States for some 10 years. The Applicant crossed the US-Canada border on September 10, 2018. He made a refugee claim and two basis of claim forms were filed, one on September 17, 2018 and the other on September 28, 2018. Neither one of the forms provide any precision as to the reasons why sections 96 and 97 of the Act should apply to him.

II. Decisions

[4] The RPD found that the Applicant did "not face a serious possibility of persecution on a Convention ground or that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to Liberia" (RPD decision, para 11).

[5] The Applicant was found to be credible. His claim was denied because he did not establish that he would face a prospective risk if he were to return to Liberia. The grounds for fearing persecution must be in the future and not in the past, says the RPD. Similarly, under section 97 of the Act, a claimant must establish a personal risk to his life or a risk of cruel and unusual treatment or punishment going forward. Instead, the Applicant invoked a lack of connection in Liberia and the absence of family ties. That concludes the RPD does not constitute a risk to the claimant's safety.

[6] The decision under review is of course that of the RAD. It confirmed the RPD decision.

[7] The Applicant raised two new issues before the RAD: there is a forward-looking risk of persecution or harm in Liberia, and the "compelling reasons" exception of section 108(4) applies to him.

[8] First, the RAD could not find evidence to support the contention that there exists a forward-looking risk if the Applicant were to return to his country of nationality. The fact that the Applicant's parents died during the civil war does not establish a forward-looking persecution or risk of harm. Similarly, the lack of persons known to the Applicant in his country of nationality does not either support a claim for refugee status, although that may be relevant in seeking a different relief. In fact, the Applicant was incapable to articulate a fear in Liberia. The RAD writes that "(t)his evidence surrounding the death of his parents does not demonstrate that any individual or group is interested in pursuing the Appellant, nor does it establish that he faces

a serious possibility of forward-looking persecution or a risk of harm, on a balance of probabilities" (RAD decision, para 8).

[9] The argument according to which fear may come from the fact that Mr. Camara is part of the Mandingo minority who are seen as distinct from the majority of the Liberian population, because of their religion and the language spoken, did not fare any better. Instead, the RAD considered that "the objective evidence which he points to does not establish that Mandingos or Muslims face a cumulation of significant and repeated instances of discrimination in Liberia which would rise to the level of substantial and constitute persecution" (RAD decision, para 10). In effect, the evidence did not support an argument that there is general insecurity in Liberia.

[10] The Applicant also argued that the "compelling reasons" exception applied to him. It is by the combination of paragraphs 108(1)(e) and subsection 108(4) of the Act that the Applicant submits that there is a benefit for him drawn from the combination of these provisions in his case. Here are these provisions:

Rejection	**Rejet**
108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
…	[…]
(e) the reasons for which the person sought refugee protection have ceased to exist.	e) les raisons qui lui ont fait demander l'asile n'existent plus.
…	[…]

Exception	**Exception**
(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.	**(4)** L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[11] The RAD found that section 108(4) of the Act does not apply to Mr. Camara because his circumstances did not fall within the "compelling reasons of s. 108(4)". It is said that the "evidence does not establish that the Appellant qualified as a Convention refugee or a person in need of protection when he left Liberia" (RAD decision, para 14). The Applicant does not even allege that he was targeted in Liberia and he did not leave Liberia based on a fear felt indiscriminately by citizens of Liberia as a consequence of the civil war. Leaving Liberia at the beginning of the civil war does not establish a serious possibility of persecution or the danger of torture, a risk to life or cruel and unusual treatment or punishment at the time.

[12] There is no, or very limited, evidence concerning the circumstances leading to the death of the Applicant's parents. After quoting from *Villegas Echeverri v Canada (Citizenship and Immigration)*, 2011 FC 390 [*Villegas Echeverri*] at para 37, the RAD concludes that "(n)either of these criteria [evidence establishing some direct persecution of a specific applicant or persecution of an applicant's family as a social group before considering the potential application of section 108(4)] have been met since the Appellant did not experience past persecution or harm

in Liberia, and the evidence does not establish that the circumstances surrounding the death of his parents amounted to persecution" (RAD decision, para 15). In other words, the argument based on section 108(4) fails for lack of evidence.

III. Argument and analysis

[13] No one disputes that this case is subjected to the standard of review of reasonableness. The Court concurs.

[14] The Applicant argues first that the RAD did not take into account his testimony and his personal circumstances in concluding that he will not face a risk of cruel and unusual treatment or punishment if returned to Liberia.

[15] With respect, the Court has not been able to find anything other than a disagreement with the assessment of the evidence made by the RAD. It is not for the Court, which operates on the principle of judicial restraint (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at para 13) and takes a posture of respect concerning the role to be played by an administrative tribunal (*Vavilov*, at para 14) to assess the merits of the decision under review. The burden is rather on an applicant to satisfy the reviewing court that the decision lacks in terms of justification, transparency and intelligibility.

[16] In essence, the Applicant suggests, more than he demonstrates, that he would be an alien in his own country of nationality because of his familiarity with the Mandingo language, spoken essentially in Guinea, but also present in Liberia, and the fact that he is a Muslim. The

memorandum of fact and law puts the concern as “Being a Muslim in Liberia seems to be something frowned on which again is a personalized feature of the Applicant who is a Muslim” (para 17). Given the evidence offered by the Applicant, that is an accurate description of the situation facing the Applicant, which is far removed from what is required to satisfy the requirements of section 97 of the IRPA. The Applicant failed his burden to show 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). Deference is owed to the decision and nothing offered by the Applicant was sufficient to disregard deference. Flaws, if any, must be more than merely superficial or peripheral to the merits of the decision. In the case at bar, it is not even clear that these are flaws shown by the Applicant.

[17] As for his second argument, the Applicant seeks to resort to section 108(4) of the Act, the text of which can be found at paragraph 10 of these reasons for judgment. It is perhaps paradoxical to argue in the same case that an applicant is deserving to be granted his refugee claim because of an alleged forward-looking risk of persecution or harm, and then to invoke the protection of section 108(4) which can find application only if the reasons for which the person sought refugee protection have ceased to exist, in the words of section 108(1)(e). Put differently, the two arguments may not be able to co-exist easily: either the reasons to seek refugee protection exist or they don’t. Be that as it may, I have dealt with the section 108(4) argument purely in the alternative.

[18] Section 108 provides for when refugee protection must be rejected. Paragraph 108(1)(e) is one of the circumstances where refugee protection is not available. Others are reavailing (a), voluntarily reacquiring nationality (b), new nationality is acquired and the person enjoys the protection of that country (c) and re-establishing in the country left (d). In all these circumstances, the Act declares that the claim for protection "shall be rejected".

[19] Paragraph 108(1)(e) addresses the circumstances where the reasons for seeking refugee protection in the first place have ceased to exist. In the case at bar, it seems that the reasons for seeking refugee protection never even existed because they had already ceased to exist when the claim was made. Section 108(4) states that even if those circumstances for seeking refugee protection have ceased, there may be "compelling reasons" for refusing to return someone to that country due to such previous persecution, torture, treatment or punishment. I must say that I am at a loss to understand how the possible relief of section 108(4) can apply to the Applicant.

[20] First off, I entertain doubts that the case of Mr. Camara is covered by section 108 of the IRPA. My concern is that in order for "the reasons for which the person sought refugee protection [to] have ceased to exist", these reasons would appear to be those for which refugee protection was sought by a particular applicant. The French version of section 108(1)(e) is to the same effect. Here, the Applicant never even experienced the conditions that have ceased to exist. Strictly speaking, the conditions for which protection is sought never existed for this Applicant. A reading of paragraph 108(1)(e) together with subsection 108(4) suggests that the conditions for which Mr. Camara sought protection in the first place are relevant to trigger the application of section 108(4). It is those same reasons that can allow for the application of subsection 108(4)

where the previous persecution, torture, treatment or punishment suffered by Mr. Camara is such that he would not be returned to his country of nationality. To put it another way, it is the persecution suffered by the Applicant himself that can be the basis for the relief made available by subsection 108(4), not that suffered by someone else.

[21] Nevertheless, I acknowledge some case law in this Court which seems to have found that the provision's scope is broader (e.g. the plight of family members) than a strict reading of section 108 may suggest. In the case at hand, the matter can be resolved without needing to revisit the provision's scope. It will suffice to consider whether the RAD decision is reasonable in view of the evidence relative to family members offered in support of an application of this provision.

[22] The RAD found that the reasons given in this case for falling within the four corners of section 108(4) were not compelling within the meaning of the subsection due to a lack of evidence. The only thing that is known is that the Applicant left Liberia at a young age and that his parents were killed during the civil war. There is a need, says the RAD, to have credible evidence of some direct past persecution of the Applicant, which is not present on this record, or persecution of this applicant's family as a social group before the possibility of resorting to section 108(4) is triggered. In a word, the basic needed evidence is not present.

[23] There is no doubt that there must be a measure of severity of previous persecution, torture, treatment or punishment in order to reach a level of "compelling reasons". The persecution must reach the level of "appalling and atrocious", as the weight of the jurisprudence

would suggest (*Villegas Echeverri*, above), or something to be examined, on a case-by-case basis, that would still require situations truly exceptional or extraordinary. It remains that, in this case, the evidence that could satisfy the high threshold was inexistent. The Applicant did not suffer persecution, torture or treatment and punishment contemplated by section 108(4). There is nothing known about the death of the parents and evidently the RAD refused to speculate.

[24] On judicial review, the Applicant had to show that these findings on the part of the RAD were not reasonable. There must have been serious shortcomings such that the justification, transparency and intelligibility can be seen as lacking (*Vavilov*, at para 100). That was not achieved by the Applicant. At best, there was a disagreement of a general nature expressed by the Applicant without the granularity necessary to establish any evidentiary basis that his situation met the threshold of "appalling and atrocious", or truly extraordinary or exceptional.

[25] The Court has read the transcripts of the hearings before the RPD. The foundation for an argument that section 108(4) applies is non-existent. The Applicant did not have any information about the death of his parents. Indeed, the decision of the RPD does not even mention the so-called "compelling reasons" exception. There was no new evidence before the RAD. The argument was introduced for the first time before the RAD, but solely on the basis of the evidence before the RPD. The Court cannot find in that evidence how it can be said that the RAD acted unreasonably in view of the lack of evidence sufficient to trigger a consideration of section 108(4). The burden on the Applicant has not been discharged.

[26] The purpose of section 108(4) is to provide relief for persons who, despite the fact that conditions in their country of nationality that would justify an asylum claim do not exist anymore, their refugee claim will not be rejected for reasons of a compassionate nature. The law allows for deciding to prevent someone from being sent back to a place where the person has suffered appalling or atrocious persecution even though those conditions have ceased to exist. The Applicant himself in the case at hand did not suffer persecution, torture, treatment or punishment. He left Liberia before the war reached him. Assuming the extension of the compassionate regime to situations where the immediate family members of an applicant have suffered the persecution, torture, treatment or punishment such that a person should not be returned to that country, it is still the burden of an applicant to present evidence about that the immediate family members to reach the requirement of "compelling reasons". The RAD has not been shown to have concluded as it did in an unreasonable fashion, in view of the lack of evidence concerning the Applicant's immediate family. That evidence was a *sine qua non* to the trigger of section 108(4).

IV. Conclusion

[27] As a result, the judicial review application must be dismissed. There is not a serious question of general importance to be certified.

JUDGMENT in IMM-7777-21

THIS COURT'S JUDGMENT is:

1. The judicial review application is dismissed.

2. There is no question to be certified pursuant to section 74 of the Act.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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