

Federal Court



Cour fédérale

Date: 20221214

Docket: IMM-1554-22

Citation: 2022 FC 1724

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 14, 2022

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

KOFFI ADJASSODE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, a Togolese national, is seeking judicial review of a decision rendered on January 21, 2022, by the Refugee Appeal Division (RAD) rejecting his claim for refugee protection. The RAD rejected the new evidence submitted by the applicant and upheld the decision by the Refugee Protection Division (RPD) that he was not credible.

I. Background

[2] The applicant alleges that he fears being arrested and killed by the Togolese authorities because of his involvement in the Pan-African National Party (PNP).

[3] The PNP allegedly allowed the applicant to organize demonstrations in 2017–2018 criticizing the Togolese government. On December 6, 2017, the applicant was exposed to tear gas during a demonstration in the city of Lomé. Fearing for his life, he hid in the bush for about twenty days. The applicant was then sheltered by an individual named Mr. Thomas until June 30, 2019.

[4] During the period that he was living in hiding, the applicant went back and forth between his own home and that of Mr. Thomas. His wife then informed him that he had received a summons for the purposes of a judicial or administrative inquiry. Fearing that he would be kidnapped by the government, the applicant returned to the home of Mr. Thomas to hide until the local elections of June 30, 2019.

[5] On November 24, 2019, the applicant left Togo for the United States, where he stayed for a few days before travelling to Canada to seek refugee protection.

[6] On September 10, 2021, the RPD rejected the applicant's claim for refugee protection, having identified omissions and inconsistencies in his evidence. The RPD found that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[7] The applicant appealed that decision to the RAD.

II. The RAD decision

[8] The RAD refused to admit the two new items of evidence filed by the applicant in accordance with subsection 110(4) of the IRPA: (1) a sworn statement by the applicant dated November 10, 2021 (the statement); and (2) a letter from his immigration officer. It concluded that the statement contained no facts that had arisen since the RPD had rejected the refugee protection claim. According to the RAD, the statement supports the applicant's arguments regarding the errors allegedly committed by the RPD. It was of the view that the applicant's arguments on this issue were included in his appeal memorandum and that it would take them into account in the course of its analysis. As for the letter from the immigration officer, the RAD found it on the RPD's record and therefore concluded that the letter did not constitute new evidence within the meaning of subsection 110(4) of the IRPA.

[9] The RAD held that the RPD had not erred in finding that the applicant's credibility was undermined by an accumulation of omissions and inconsistencies and a contradiction in his evidence. The determinative findings of the RAD are as follows:

1. The RPD was attentive to the applicant's testimony and neither misled him nor distorted his words. The RPD questioned him about the date on which he had been gassed during a demonstration, whether it had been on December 6, 2017, or December 6, 2018. It referred in its decision to the applicant's explanations but did not find them reasonable. On appeal, the RAD accepted that the applicant had stated that the date on which he had been gassed was December 6, 2017. However, in response to a question asked by the RPD, it was the applicant who changed his testimony regarding the date of the demonstration (to December 6, 2018). Moreover, Mr. Thomas specifically wrote in his letter in support of the claim for refugee protection that he had taken in the applicant after the demonstrations of December 6, 2018.

2. The applicant testified that he had lived in hiding in Mr. Thomas's home for six or seven months and that he had emerged from this hiding place after the local elections of June 2019. The period from December 6, 2017, to June 30, 2019, is about 18 months, not six or seven months. The applicant's explanations that he had miscalculated or that he had gone back and forth between his own home and Mr. Thomas's were not convincing. Even accepting that the applicant may have returned home twice, the difference between the two periods remains too great.
3. The applicant omitted from his BOC Form the fact that he had lived with Mr. Thomas. The RAD did not accept the applicant's arguments to the effect that he had not paid attention to the form or read it carefully.
4. The applicant contradicted himself with respect to the dates of his summonses. In addition, his explanation of his decision to resume his professional and political activities after the December 2018 and June 2019 elections is not acceptable, since he had already received several summonses in September 2018.
5. The RPD asked the applicant to explain why the authorities had not intervened between his return home in late June 2019 and his departure from Togo on November 24, 2019. The applicant responded that he had been bothered by the police, who had prohibited him from holding a meeting with a few young people. The applicant omitted this piece of information from his BOC Form, and his explanation that it was simply a prohibition was not acceptable.
6. The summonses that were filed in evidence do not establish that the applicant was being pursued on account of his political activities. They simply establish that he had been summoned to appear before a judicial or administrative inquiry without specifying the nature of the inquiry.

[10] Thus, the RAD confirmed the RPD's determination and upheld the rejection of the claim for refugee protection.

III. Analysis

[11] The applicant submits that the RAD erred because it (1) failed to analyze all the elements set out in subsection 110(4) of the IRPA in its analysis of the statement, and (2) rendered an unreasonable decision.

[12] The RAD's refusal to admit the applicant's new evidence and the merits of the decision are subject to review on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 9; *Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at paras 27–28). Where the applicable standard is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision “is based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

The applicant's statement – subsection 110(4) of the IRPA

[13] The applicant submits that the RAD's failure to consider the three criteria set out in subsection 110(4) of the IRPA is a reviewable error warranting this Court's intervention. According to the applicant, the RAD analyzed only the first criterion of the subsection. It stated only that the statement “does not contain any events that arose after the rejection of your refugee protection claim”. The RAD did not seek to determine whether the facts were not reasonably available, or if they were, whether the applicant could not reasonably have been expected to present them at the time of the rejection.

[14] The respondent agrees that the RAD erred in its analysis of subsection 110(4). However, the respondent argues that the omission is moot because the RAD took into account the submissions and arguments presented by the applicant over the course of its consideration of the

appeal. The analytical error committed by the RAD and the exclusion of the statement therefore had no impact on its ultimate conclusions (*Vavilov* at para 100).

[15] I agree with the respondent's submissions.

[16] It is important to bear in mind that an analysis of the admissibility of new evidence before the RAD begins with the premise that the appeal of an RPD decision is intended to be a paper-based appeal (*Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at para 59).

[17] The applicant submits that the facts set out in his statement were not reasonably available before listening to the hearing and receiving the RPD's decision. According to the applicant, the statement is important because it explains how the RPD distorted his testimony. However, a RAD appeal is not a second chance to submit evidence to answer weaknesses identified by the RPD (*Kumar v Canada (Citizenship and Immigration)*, 2022 FC 1440 at para 16; *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at para 15). The fact that the applicant experienced shock after receiving the RPD's decision is not a new fact within the meaning of subsection 110(4) of the IRPA (*Marin v Canada (Citizenship and Immigration)*, 2016 FC 847 at para 27).

[18] In any event, the RAD stated in its decision that it would take into account the applicant's submissions regarding any errors allegedly committed by the RPD in rejecting the claim for refugee protection. A comparison of the applicant's statement and his appeal memorandum shows that all the submissions raised in the statement are included in the appeal memorandum.

For example, the applicant submits in both his statement and his memorandum that the RPD committed a determinative error in distorting his words relating to the dates on which he had been gassed during a demonstration and therefore began living with Mr. Thomas. The applicant notes that it was not until he read the decision and listened to the recording of the hearing that he was able to become aware of the error committed by the RPD.

[19] The RAD provided in its decision a detailed list of the determinative errors allegedly committed by the RPD. In my view, this list addresses the relevant arguments raised by the applicant in his memorandum. While the RAD may have erred in its analysis of the criteria set out in subsection 110(4), this error has no importance because the information in the statement was integrated into the applicant's appeal memorandum, and the submissions set out in the memorandum were considered by the RAD. I therefore conclude that the RAD did not commit a reviewable error by refusing to admit the statement.

Reasonableness

[20] The applicant claims that the RAD failed to consider certain items of evidence, in particular, his argument to the effect that the RPD misled him and destabilized him by questioning him about the date of the demonstration that triggered the events at issue. I note that these two statements feature prominently in the appeal memorandum.

[21] The applicant's argument is not persuasive. In my view, the RAD provided adequate reasons for its conclusion and did not disregard any important evidence or submissions. The RAD considered whether the RPD "misled you, distorted your words and ignored part of your

testimony and your explanations”. The RAD held that these arguments were not well founded and that the RPD had exhibited a consistent attitude of courtesy at the hearing. The RAD then explained the reasons on which its conclusion was based. It described the questions asked by the RPD, the applicant’s answers, the two versions of his BOC Form in the record and the differences between the two versions with respect to the date of the demonstration. The RAD also explained the importance of Mr. Thomas’s letter. It specified how the letter and the applicant’s testimony contradicted his statement that the demonstration had taken place on December 6, 2017. The RAD then described the inconsistencies regarding the duration of the period in which the applicant hid in Mr. Thomas’s home. The letter suggests a different factual matrix than that which emerges from the applicant’s evidence.

[22] The RAD concluded that the applicant contradicted himself with respect to the dates of the summonses that he filed in evidence. Moreover, the RAD noted that the RPD had asked him to explain his decision to resume his professional and political activities after the 2018 elections and June 2, 2019, after he had already received several summonses. The RAD held that his explanation was not acceptable. It is not the role of this Court to reweigh and balance the evidence to reach a conclusion favourable to the applicant.

[23] Finally, like the RPD, the RAD attributed no weight to the applicant’s documentary evidence. In its view, once the RPD found the applicant not to be credible, it could also call into question the credibility of the documentary evidence presented. With respect to the summonses, even beginning from the presumption that they were genuine, the RAD held that they did not establish that the applicant was wanted because of his political activities, and, moreover, the

applicant never stated that he had had problems because of the summonses, despite his decision to return home and resume his activities.

[24] In short, I find that the RAD did not fail to assess the applicant's documentary evidence. First, it was open to the RAD to assess the evidence in the context of the overall claim (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 26). Second, the RAD considered the summonses, the contradictions with respect to the dates of the summonses arising from the applicant's testimony and the extent of his political activities despite his claim that he had received multiple summonses.

[25] Having reviewed all of the RAD's reasons, I am of the view that the applicant has failed to establish that the decision was unreasonable, and the application for judicial review will therefore be dismissed. No question of general importance is certified.

JUDGMENT in IMM-1554-22

THIS COURT'S JUDGMENT is as follows:

1. This application for judicial review is dismissed.
2. No question of general importance is certified.

“Elizabeth Walker”

Judge

Certified true translation
Francie Gow

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1554-22

STYLE OF CAUSE: KOFFI ADJASSODE v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 24, 2022

JUDGMENT AND REASONS: WALKER J.

DATED: DECEMBER 14, 2022

APPEARANCES:

Saïd Le Ber-Assiani FOR THE APPLICANT

Philippe Proulx FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hasa Attorneys FOR THE APPLICANT
Counsel
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec