

Federal Court



Cour fédérale

Date: 20230824

Docket: IMM-5516-22

Citation: 2023 FC 1140

Ottawa, Ontario, August 24, 2023

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

FELIX SAWYER

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Court has for review the decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] dismissing an appeal of the decision of the Refugee Protection Division [RPD] that the Applicant, Mr. Sawyer, is neither a Convention refugee nor a person in need of protection. For the reasons that follow, the RAD decision is unreasonable in light of the facts and therefore set aside.

[2] As a preliminary matter, the Court notes that the Minister of Citizenship and Immigration is responsible for administering the *Immigration and Refugee Protection Act*, SC 2001 c 27, and so the name of the Respondent, listed on the record as the “Minister of Immigration, Refugees and Citizenship Canada,” shall be amended accordingly with immediate effect.

[3] Mr. Sawyer’s Basis of Claim [BOC] Narrative and his oral testimony before the RPD was that he required protection from people representing the kingmakers and elders of Akyem Oda, Ghana. He claimed that these people informed him in January 2019 while he was in Accra, Ghana, that he was chosen to be the next Sub-Chief of Development—a role he refused citing his Christian beliefs. Mr. Sawyer stated that he had to flee because they would not accept his refusal and sought to harm and kill him. He fled Accra for Kumasi, Ghana, and stayed with a friend starting February 12, 2019. He stated that while he and his friend were at church on February 17, 2019, three community members from Akyem Oda went looking for him at the friend’s home in Kumasi. They issued a threat through the friend’s co-tenant that Mr. Sawyer would accept the Sub-Chief of Development position, or his dead body would arrive for burial. Deciding he had to flee Ghana, Mr. Sawyer left for Ethiopia by plane on March 12, 2019, eventually arriving in Canada on March 21, 2019.

[4] The determinative issue for the RPD was credibility. It found that Mr. Sawyer was nominated as Sub-Chief of Development as alleged, but that there were discrepancies, inconsistencies, and omissions in his evidence and testimony. These were determined to undermine his assertion that he would face persecution or harm if he returned to Ghana.

[5] While the RAD did not accept all of the RPD's findings, it too found that the central element of Mr. Sawyer's claim was not established due to issues of credibility.

[6] In this application, Mr. Sawyer submits that the RAD: (1) "erred in its analysis of new evidence and its failure to convoke a new hearing," and (2) "erred in its credibility analysis and findings."

[7] At the hearing, counsel for Mr. Sawyer accepted that these issues must be reviewed on the standard of reasonableness as established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. He stressed the Supreme Court's observation at paragraph 85 of *Vavilov* that "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker."

[8] Mr. Sawyer filed the following with the RAD as new evidence:

- a. Affidavit of Kyeremateng Emmanuel sworn December 10, 2021;
- b. Affidavit of the Appellant's brother Sawyer Alfred Wilkinson sworn December 13, 2021, with attached General Medical Form dated November 25, 2021 and photos;
- c. Affidavit of the Appellant's mother Doris Opoku Asante sworn December 13, 2021;
- d. Affidavit of the Appellant's aunt Takyiwaa Asante sworn December 13, 2021;
- e. Letter of Authorization from the Appellant to the Commander of the Ghana Immigration Service dated November 19, 2021;
- f. Travel History Letter dated November 22, 2021; and
- g. Receipt issued by the Ghana Immigration Service dated November 22, 2021.

[9] The RAD noted that subsection 110(4) of the Act permits it to accept “only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.”

[10] In this case, the RAD rejected much of the newly tendered evidence. The RAD stated that even if it could be argued that Mr. Sawyer could not reasonably have been expected to bring this evidence prior to the hearing, the RPD’s concerns relating to his credibility were raised at the hearing. Mr. Sawyer did not explain why he failed to provide the clarifying evidence in the 28 days after the hearing that led up to and included the date the RPD rejected the claim.

[11] Subsection 110(4) speaks to evidence “that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.” The challenge with that exception, as was noted by counsel, is that when a claimant is questioned about conflicting evidence and provides a response, the claimant has no way of knowing that it has not been accepted until the decision is rendered. He asserts that is what happened here.

[12] Mr. Sawyer says that the explanations he gave to the RPD are reasonable in his culture. That they would be rejected by the RPD as unreasonable is a finding he could not reasonably have been aware of earlier. The new evidence he presented to the RAD, and which it rejected, confirmed his evidence as to certain material facts that weighed large in both the RPD and the RAD decisions.

[13] I have some sympathy for this submission. In my view, the RAD should not be hasty in rejecting evidence that corroborates testimony at the RPD on the basis that the RPD had questioned the claimant on an apparent inconsistency, and he provided an explanation that was not obviously impossible to believe. This is especially the case here where the RPD member does not reject the explanation at the hearing. If the reasoning of the RAD is widely applied, then cautious counsel may consider asking the RPD panel if they are satisfied with the response(s) or expect additional post-hearing evidence. This way of proceeding would result in longer and possibly unnecessary delays.

[14] I agree with both the RPD and the RAD that aspects of the testimony and evidence appears inconsistent and required explanation. It is up to those decision-makers and not this Court to provide a rational analysis as to whether the explanation is believed or not.

[15] Having said that, there is one aspect of the RAD decision that I find particularly disturbing.

[16] Mr. Sawyer testified that he left Ghana for Ethiopia on March 12, 2019 and that he had spent the last two weeks with his friend in Ghana, hiding from the agent of persecution. He pointed to a stamp in his passport that showed that he arrived in Ethiopia on March 12, 2019. The RPD noted that there was also an exit stamp in his passport from Kotoka airport, Accra, Ghana, dated February 12, 2019. When questioned, Mr. Sawyer testified that he flew directly from Kotoka airport to Ethiopia on March 12, 2019, and the exit stamp must have had the incorrect date. The RPD did not accept that testimony:

He put forth that there is no way he could have left Accra on February 12th and have arrived a month later in Ethiopia. The panel notes that there is no such correlation between the two stamps. That is, the claimant could have both left Accra on February 12th, 2019, with any destination, and also have entered Ethiopia on March 12th, 2019. The panel also notes that Ghana is part of the Economic Community of West African States (ECOWAS) and it is possible to enter another ECOWAS member country without having an entry stamp affixed.

[17] Mr. Sawyer tried to provide evidence that the date was wrongly entered in his passport, but it was rejected by the RAD. He produced a travel history from Ghana Immigration Service showing that he left Ghana on March 12, 2019 via Ethiopian Airlines.

[18] After rejecting this as failing to meet the requirements of subsection 110(4) of the Act, the RAD goes on:

In the alternative, even if it could be argued that this evidence meets the requirements of s. 110(4), it is not credible as to its source and circumstance and therefore does not meet the requirements of *Singh/Raza*. The Letter of Authorization is dated November 19, 2021 and authorizes the Appellant's brother to obtain his travel history. The travel history from the Ghana Immigration Service references a letter dated November 22, 2021 which has not been produced, and the addressee is not the Appellant's brother, but the Faith Salvation Church in Agona Asaman, Ashanti Region, which is not mentioned in the Letter of Authorization. There is no explanation provided for these discrepancies. As such, the proposed new evidence is not credible as to its source and circumstance and on this basis cannot be accepted.

[19] The RAD erred in stating that the letter dated November 22, 2021, was not produced. It is found at page 74 of the certified tribunal record and reads as follows:

FAITH SALVATION CHURCH
P.O. BOX 13
AGONA ASAMAN
ASHANTI REGION
22ND NOVEMBER 2021

THE COMMANDER,
GHANA IMMIGRATION SERVICE
KOTOKA INTERNATIONAL AIRPORT
ACCRA

Dear Sir,

APPLICATION OF TRAVEL HISTORY

I wish to apply for travel history of my brother; Felix Sawyer bearer of passport number G1064344 who is currently in Canada.

This is to enable him facilitate his documentations.

Attached to this letter are our passport bio-data pages for your perusal.

Thank you.

Yours Faithfully,

SAWYERR ALFRED WILKINSON

[20] The return address on the letter of request explains why the documentation was sent to the Faith Salvation Church in Agona Asaman, Ashanti Region. That was the address provided by the brother when he made the request.

[21] I agree with counsel for Mr. Sawyer that, in the circumstances, he could not reasonably anticipate that the RPD would reject his explanation of an incorrect date on the exit stamp in favour of the speculative suggestion that he may have left Ghana on February 12, 2019, for any

African country within the Economic Community of West African States. That suggestion was never put to him by the RAD or the RPD.

[22] Although the RAD states that it would have rejected Mr. Sawyer's evidence even if he had been in Ghana until March 12, 2019, it is impossible to assess the impact of this finding on the decision-maker's ultimate determination. This is especially true given that the RAD's credibility assessment turned in part on whether Mr. Sawyer was in Kumasi on February 17, 2019, to receive the alleged threat through the friend's co-tenant, as noted in paragraph 34 of its reasons. Mr. Sawyer's evidence can explain that he indeed was in Ghana on that date. While it is not for the Court to determine the weight of the evidence on the credibility finding, the total rejection of this new evidence by the RAD in the circumstances creates a failure of justification in light of the facts. The decision is therefore unreasonable.

[23] It is unsafe to permit the RAD decision to stand. The application is allowed and the RAD decision under review is set aside.

JUDGMENT IN IMM-5516-22

THIS COURT'S JUDGMENT is that:

1. The name of the Respondent is amended to the Minister of Citizenship and Immigration, with immediate effect;
2. The application is allowed and the decision under review is set aside;
3. Mr. Sawyer's appeal to the Refugee Appeal Division is to be determined by a different member; and
4. No question was proposed for certification, and there is none.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5516-22

STYLE OF CAUSE: FELIX SAWYER v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 22, 2023

JUDGMENT AND REASONS: ZINN J.

DATED: AUGUST 24, 2023

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