Federal Court Cour fédérale

Date: 20240125

Docket: IMM-6279-22

Citation: 2024 FC 121

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 25, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

ANNE CHRISTIANE OSSOMO NGANDZIGUI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant is a citizen of Cameroon. She is seeking judicial review of a Refugee Appeal Division [RAD] decision dated May 26, 2022, dismissing her appeal and confirming the decision of the Refugee Protection Division [RPD] dated December 30, 2021, rejecting her refugee protection claim. The RAD concluded that the applicant is neither a Convention refugee

nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RPD concluded that the applicant did not establish a prospective risk of persecution upon her return to Cameroon. The RAD dismissed the applicant's appeal and confirmed the RPD's decision.

[3] For the following reasons, the application for judicial review is dismissed. The RAD's decision is clear, justified, and intelligible in relation to the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 8; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99). The applicant did not discharge her burden of showing that the RAD's decision was unreasonable.

II. Factual background

[4] Anne Christiane Ossomo Ngandzigui [applicant] is claiming refugee protection in Canada on the ground that, on her return to Cameroon, she will be at risk of violence from her former spouse and some of his family members.

[5] The conflict between her and her former spouse began in 2011, leading to the couple's separation and expulsion from the family home in December 2011. The dispute led to a legal battle between the applicant, her former spouse and her sister-in-law that lasted until February 2019.

[6] The applicant first arrived in Canada in 2019, for a family visit. She returned to Cameroon and came back to Canada a second time in 2020. She claimed refugee protection in Canada on that second visit, pursuant to section 96 and subsection 97(1) of the IRPA.

[7] Before the RPD, the applicant submitted facts that were not in her Basis of Claim Form [BOC Form]. She testified that her children were expelled from the home of her former spouse (the children's father) in March 2020, that she was abused by her former spouse in November 2011, and that she suspects that her former spouse is a member of the Famlà sect.

[8] In its decision dated December 30, 2021, the RPD found the applicant credible but ultimately rejected her refugee protection claim. The RPD was not satisfied that the applicant faces a prospective risk of persecution or a threat from her former spouse if she returns to Cameroon.

[9] In an independent analysis of the case, the RAD did not identify any errors in the RPD's prospective risk analysis. The RAD confirmed the RPD's decision and dismissed the applicant's appeal in its decision of May 26, 2022.

III. Standard of review and issue

[10] The only issue before the Court is whether the RAD's decision that the applicant did not demonstrate that she would face a prospective risk of persecution in Cameroon is reasonable.

[11] The applicable standard of review is reasonableness (*Vavilov* at paras 10, 25; *Mason* at paras 7, 39–44). A reasonable 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; *Mason*, at para 8), and is justified, intelligible, and transparent (*Vavilov* at para 99; *Mason*, at para 59). A reasonableness review is not just a "'rubber-stamping' process"; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable if the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at paras 125–26; *Mason* at para 73). Finally, the burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

IV. Analysis

[12] It is well established that a person claiming refugee status must prove on a balance of probabilities that he or she has a "reasonable subjective fear of persecution and that this subjective fear is objectively well-founded" (*Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 [*Ward*]; *Alvarez Contreras v Canada (Citizenship and Immigration)*, 2009 FC 398 [*Alvarez Contreras*] at para 16).

[13] The analysis of the refugee protection claimant's fear of persecution "must be forward looking" (*Thavachchelvam v Canada (Citizenship and Immigration)*, 2013 FC 83 [*Thavachchelvam*] at para 16). The prospective risk assessment may be conducted in light of alleged past events, while keeping in mind that these past incidents of persecution are not, in and of themselves, sufficient to prove the prospective risk of persecution (*AB v Canada (Citizenship and Immigration)*, 2015 FC 450 [*AB*] at para 29; *Natynczyk v Canada (Minister of Citizenship and Immigration)*, 2004 FC 914 [*Natynczyk*] at para 71).

[14] In the case at hand, the applicant submits that the RAD erred when it improperly dealt with her fear in relation to her former spouse's membership in the Famlà sect. In the applicant's opinion, the RAD should have analyzed his alleged membership in the Famlà sect separately from the overall risk of persecution by her former spouse and his family. In other words, the RAD's silence on her former spouse's membership in the Famlà sect makes the decision unreasonable.

[15] The applicant also submits that the RAD erred in concluding that she had not been abused by her former spouse or his family since 2011. The applicant claims that this is not true and that she was a victim of judicial persecution between 2011 and 2019. Furthermore, since the legal proceedings were unsuccessful, she again fears that she will suffer repercussions when she returns to Cameroon.

[16] In the applicant's view, the date from which the prospective fear should be assessed is 2019. She submits that since the end of the legal proceedings against her former spouse in 2019, she no longer has any support or recourse to protect herself from his threats, especially since she cannot rely on her sons to protect her because they were themselves abused by their father and were expelled from his home in March 2020.

[17] In addition, the applicant submits that the RAD should have relied on past incidents—the nine years of persecution she allegedly suffered, the domestic violence, the judicial persecution, and the fear of being sacrificed by the Famlà sect—to determine the prospective risk she would face if she returned to Cameroon (*Natynczyk* at para 71). The applicant is of the view that since the RAD found her credible and she was able to establish certain central elements of her refugee

protection claim, the RAD should have given her the benefit of the doubt as to her prospective fear (*Chan v Canada (Minister of Employment and Immigration)*, 1995 CanLII 71 (SCC) [*Chan*]).

[18] In my opinion, the RAD reasonably concluded that the applicant had not established that she would face a prospective risk of persecution by her former spouse and his family if she returned to Cameroon.

[19] First, conferral of refugee protection is a mechanism for protecting individuals from future harm, not providing redress for past harms (*Xiao v Canada (Citizenship and Immigration)*, 2021 FC 386 [*Xiao*] at para 19; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 [*Canadian Association*] at para 75). Therefore, a refugee protection claimant must prove a subjective fear of persecution and an objective basis for this fear (*Cobian Flores v Canada (Citizenship and Immigration)*, 2010 FC 503 [*Cobian Flores*] at para 26). To assess this fear, it may be relevant to rely on past incidents, but these are not determinative or sufficient in and of themselves to establish a prospective risk (*AB* at para 29; *Natynczyk* at para 71).

[20] After conducting its own analysis of all the evidence on the record, the RAD dismissed the applicant's appeal and endorsed the RPD's conclusion. In my view, its conclusions based on the evidence presented are reasonable. The RAD relied on the following facts:

A. There is no evidence that the applicant had been abused since 2011, even though she lived near her former spouse and sometimes bumped into him in public.

B. The judicial proceedings ended in 2019, and there is no evidence or reason to believe that new proceedings will be initiated.

C. The past harassment of the applicant, in the form of insults and threats, has never materialized and does not amount to persecution. The insults and threats were general and ambiguous in nature, and the applicant no longer receives threatening telephone calls, which was a form of intimidation.

D. The evidence does not show a continued desire by the former spouse or his family to harm the applicant should she return to Cameroon.

E. In light of these findings, the applicant does not face a risk of persecution as a woman in Cameroon.

[21] It was also reasonable for the RAD to conclude that the applicant's fear because of her former spouse's alleged membership in the Famlà sect was not objectively well-founded given that the applicant had not met her burden of proving that she had been physically abused by her former spouse since 2011. Above all, there was no tangible evidence of the former spouse's membership in the Famlà sect because by the applicant's own admission, these were merely suspicions on her part.

[22] In the case at hand, the applicant is essentially asking the Court to reweigh and reassess the evidence before the RPD. However, this is not the Court's role on judicial review (*Zhang v Canada (Citizenship and Immigration)*, 2023 FC 1308 at para 36; *Vavilov* at paras 124–25). As my colleague Grammond J. explains in *Contreras Callado v Canada (Citizenship and Immigration)*, 2024 FC 79 at para 7:

> [7] On judicial review, the Court's role is not to judge the matter anew or to substitute its opinion for that of the RAD, but rather to ensure that the RAD's decision was reasonable. With respect to factual issues, the Court will only intervene if the RAD has "fundamentally misapprehended or failed to account for the evidence before it": Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653. The issues raised by Ms. Contreras are essentially questions of fact. In my view, Ms. Contreras has not demonstrated that the RAD's conclusions were unreasonable, in the sense that they are not supported by the evidence.

[23] The same conclusion applies in the case at hand. The RAD relied on the evidence on the record to reach its conclusion, and the applicant has not satisfied me that the RAD erred in its reasoning in such a way that would make the decision subject to judicial review.

V. Conclusion

[24] I am of the view that the RAD's decision as a whole is reasonable and justified in relation to the factual and legal constraints of the case (*Vavilov* at para 99).

[25] For these reasons, the application for judicial review is dismissed.

[26] No question of general importance has been submitted for certification, and the Court is of the view that none arise.

JUDGEMENT in IMM-6279-22

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Guy Régimbald"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6279-22
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