Federal Court Cour fédérale

Date: 20240628

Docket: IMM-5253-23

Citation: 2024 FC 1016

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 28, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

DIEGO FERNANDO MURILLO ARBOLEDA, MARIANA TARQUINO RICAURTE and LUZ ADRIANA RICAURTE LOPEZ

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicants, Diego Fernando Murillo Arboleda, Mariana Tarquino Ricaurte and Luz Adriana Ricaurte Lopez [applicants], filed an application for judicial review of a decision made

by the Refugee Appeal Division [RAD] on March 29, 2023 [Decision], confirming the decision by the Refugee Protection Division [RPD] that the applicants are neither Convention refugees nor persons in need of protection, within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The determinative issue before the RPD and RAD was the internal flight alternative [IFA].

[2] This application for judicial review is allowed for the following reasons.

II. Issue and standard of review

[3] The main issue is whether it was unreasonable for the RAD to reject the refugee protection claim because of an IFA.

[4] The parties agree that the standard of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 10, 25 [*Vavilov*]). I share the view that the standard of reasonableness is the appropriate standard of review in this case.

[5] To prevent the Court from intervening on judicial review, a decision must bear the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99). Whether a decision in a given situation is reasonable will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be described as unreasonable if the administrative decision maker has misinterpreted the evidence on record (*Vavilov* at paras 125, 126).

[6] The burden is on the party challenging the decision to show that it is unreasonable. It 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" (*Vavilov* at para 100; *Guerrero Jimenez v Canada (Citizenship and Immigration)*, 2021 FC 175 at para 11).

III. Applicable law

[7] In *Rasaratnam v Canada (Minister of Employment and Immigration)(CA)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 [*Rasaratnam*], the Federal Court of Appeal established a two-pronged test to determine whether an IFA exists.

[8] In *Rasaratnam* and in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589, the Federal Court of Appeal developed the two prongs that can be used to determine whether a refugee protection claimant can avail himself or herself of an IFA (*Rodriguez Sanchez v Canada (Citizenship and Immigration)*, 2023 FC 426 at para 37):

> • There is no serious possibility of the refugee protection claimant being persecuted (under section 96 of the IRPA) or exposed to a danger or a risk under section 97 of the IRPA (according to a "more likely than not" standard) in the proposed IFA area.
>
> • The conditions in that area must be such that it would not be unreasonable, in all the circumstances, including those particular to the refugee protection claimant, for him or her to seek refuge there.

[9] The bar for establishing that an IFA is unreasonable is very high. Refugee protection claimants have the burden of demonstrating, using actual and concrete evidence, that there are conditions that would jeopardize their life or safety in the event that they relocate to the proposed

IFAs (*Ranganathan v Canada (Minister of Citizenship and Immigration)(CA)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15).

IV. Analysis

[10] According to the applicants, the RAD's reasons are intelligible and insufficient, since the RAD was not attentive to the issue submitted before it (*Alexion Pharmaceuticals Inc. v Canada (Attorney General)*, 2021 FCA 157 at para 20 [*Alexion*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 147 at paras 21–22 [*Singh*]). The applicants argue that the RAD failed to assess the fear that the applicant identified: the risk associated with his profile as a social and/or union leader in the context of an IFA assessment. In addition, the applicant argues that the RAD failed to provide reasons that would enable the parties to understand its analysis of subsection 97(1) of the IRPA.

[11] The RAD is obligated to conduct an independent assessment of the record before it (*Huruglica v Canada (Citizenship and Immigration)*, [2016] 4 FCR 157; *Oyadeyi v Canada (Citizenship and Immigration)*, 2021 FC 1159 at para 11). The RAD must assess the RPD's process and the key, determinative findings in order to reach its own conclusions.

[12] The respondent argues that the Decision is reasonable when the reasons are read as a whole. According to the respondent, the applicants' argument, regarding their fear resulting from his profile as a social and/or union leader, was not presented before the RAD. For this reason, the respondent argues that the Court should not deal with this argument.

[13] However, in referring to the applicants' submissions before the RAD, I note that the applicants did in fact challenge the RPD decision that determined that the applicants [TRANSLATION] "were not targeted . . . due to the applicant's profile as a social and/or union leader". Therefore, this is an issue that was in fact submitted on appeal before the RAD.

[14] The applicants argue that the RAD erred by failing to consider the submissions regarding the fear due to the applicant's profile as a social and/or union leader, and in this respect, the RAD omitted a key issue from its IFA analysis. The applicants allege that this omission by the RAD made the Decision unreasonable.

[15] I concur with the applicants. In applying the principles of judicial review, the fact that a decision maker failed to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the RAD was actually alert and sensitive to the matter before it (*Vavilov* at para 128).

[16] In *Alexion*, the Federal Court of Appeal stated that a tribunal "must ensure that a reasoned explanation is discernible on the key issues—the issues on which the case will turn and the issues of prime importance raised in the parties' submissions" (*Alexion* at para 70).

[17] The profile of a claimant and the characteristics of the agents of persecution are important factors in an IFA assessment (*Montano Alarcon v Canada (Citizenship and Immigration)*, 2022 FC 395 at para 48). The RAD's reasons must therefore be sufficiently clear to understand how these facts were assessed when analyzing an IFA.

[18] In the case at hand, although the RAD's reasons show that it decided the issue of fears [TRANSLATION] "because of his police reports" and ["his failure to comply with demands", the fear "due to his profile" was not addressed.

[19] In *Singh* at paragraph 22, the Court clarified that "[t]he key issues encompass what constitutes the key or substantive issue of a party's submissions, which actually forms the basis upon which an applicant anchors his or her claim". The RAD must do more than "simply recite statutory language, summarize arguments and regurgitate boilerplate phrases", as highlighted by Diner J in *Galusic v Canada (Public Security and Emergency Preparedness)*, 2020 FC 223 at para 42. The case law confirms it: the RAD must go beyond simply reciting what the RPD concluded on this key issue, which is what it did here.

[20] Certainly, the Court agrees that it is not necessary for the RAD to produce long conclusions in its reasons. However, the RAD's reasons on a central aspect of the dispute must allow the parties to sufficiently understand the reasoning about the key issues that were raised. "Reasonableness" is not synonymous with "voluminous reasons": simple, concise justification will do (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17).

[21] In this case, I conclude that the Decision is unreasonable because the RAD failed to assess the risk of persecution because of the principal applicant's profile, a key argument that the applicants submitted before the RAD. This risk is relevant to the IFA assessment. As a result, the Decision does not meet the requirements of the reasonableness standard (*Vavilov* at paras 93, 103, 104).

V. Conclusion

[22] For the above reasons, I allow the application for judicial review. Having concluded that the RAD's reasons on a key issue were determinative, there is no need for me to deal with the other arguments to allow the application for judicial review.

[23] The parties did not propose any questions for certification, and I agree that there are none.

JUDGMENT in IMM-5253-23

THIS COURT ORDERS as follows:

1. The application for judicial review is allowed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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