

Federal Court



Cour fédérale

Date: 20241031

Docket: IMM-11556-23

Citation: 2024 FC 1733

Ottawa, Ontario, October 31, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

EDMOND RADY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Edmond Rady, the Applicant, seeks the judicial review of the Refugee Appeal Division [RAD]’s decision dated August 29, 2023 [Decision]. The RAD dismissed Mr. Rady’s appeal of the Refugee Protection Division [RPD]’s decision that concluded he is 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 [the Act].

[2] For the reasons that follow, Mr. Rady's application for judicial review will be dismissed. In brief, he did not demonstrate that the intervention of the Court is justified under the applicable standard of review.

II. Context

[3] On November 26, 2021, Mr. Rady, a citizen of Lebanon, arrived in Canada as a visitor, and on March 1, 2022, he filed for refugee protection, claiming fear, *inter alia*, at the hands of members of the Liberal Democratic Party in Lebanon following an assault which allegedly took place on June 30, 2019, in the aftermath of an assassination attempt of a government minister.

[4] On March 15, 2023, the RPD rejected Mr. Rady's claim. The RPD found the determinative issue to be one of credibility and that Mr. Rady was not credible regarding material elements of his claim. More specifically, the RPD found that Mr. Rady's testimony was confused, vague and evasive regarding (1) the agent of persecution; (2) the names of the assailants; (3) his father's store having been attacked; (4) his alleged abscondment from work; and (5) the four-month delay in claiming protection after his arrival in Canada and the explanation provided to justify it.

[5] Mr. Rady appealed the RPD decision to the RAD arguing, essentially, that the RPD had erred in its credibility assessment. Mr. Rady then also raised issues of natural justice and submitted that during the hearing (a) he was denied a fair chance to explain details and he felt pressured to answer within a short, limited time; and (b) the interpreter made mistakes in the

interpretation, using unrelated words and incomplete interpretation of the statements of the claimant, citing two examples from the RPD transcript.

[6] On August 29, 2023, the RAD rejected Mr. Rady's appeal and confirmed the RPD decision. The RAD found that (1) there was no denial of natural justice or procedural fairness; and (2) the RPD's credibility assessment was correct.

[7] On the issue of natural justice and procedural fairness, the RAD confirmed having reviewed the audio recording of the hearing. First, on the allegation that the RPD did not provide Mr. Rady enough time to explain, the RAD found that the length of the hearing (3 hours and 15 minutes), the questions posed by the RPD or interpretation issues did not deny Mr. Rady the opportunity to fully present his case and be heard by the RPD, or to respond to issues raised by the RPD. The RAD particularly noted that (1) the appeal submissions failed to indicate what details Mr. Rady was unable to provide or to present an affidavit as proposed new evidence setting out the information he would have provided had he not been denied the opportunity to do so as he claimed; and (2) counsel at the hearing did not state that he had further questions or that he would have asked further questions if there was more time. On this second point, the RAD added that if counsel determined that there were further details Mr. Rady wanted to provide the RPD, counsel also could have requested an adjournment of the hearing and a second hearing date to be scheduled.

[8] Second, on the allegation of mistakes in the interpretation during the hearing, the RAD found that the two errors raised on appeal were the only two errors noted on the record, and that Mr. Rady did not assert that other errors were made. Moreover, the RAD found these errors in

interpretation were minor and immediately addressed by the interpreter, who offered alternative interpretations.

[9] On the credibility issue, the RAD assessed (1) the four-month delay in claiming protection once in Canada; (2) the license plate and identification of his assailants; (3) the medical note; (4) the letter from Mr. Rady's father and the forward-facing risk; (5) the motivation of Mr. Rady's assailants; (6) the persecution due to failure to prosecute Mr. Rady's complaint; (7) the risk of similarly situated individuals; and (8) Mr. Rady's abscondment from employment. The RAD found no error in the RPD's assessment and thus confirmed the RPD's conclusion that Mr. Rady is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act. The RAD dismissed Mr. Rady's appeal accordingly.

[10] Before the Court, Mr. Rady now seeks judicial review of the RAD Decision.

III. Analysis

[11] Before the Court, Mr. Rady submits that the RAD (1) erred in its examination of his credibility by essentially (a) overemphasizing a minor discrepancy in the timing of events, (b) being over-vigilant in its microscopic examination of the evidence, and (c) considering peripheral issues to unreasonably reject his explanations of discrepancies or implausibility; (2) breached procedural fairness because Mr. Rady was not adequately informed by his consultant about the refugee protection application process and because the RPD and the RAD downplayed the impact of the presence of an ineffective interpreter; and (3) made erroneous findings when assessing the documentary evidence, i.e., the medical note, his father's letter,

pictures depicting gun shots on the store of his father, the letter from the president of the municipality and the notification regarding his employment.

[12] At the hearing of this application, Mr. Rady stressed that two arguments were overarching and determinative: (1) the transcript of the hearing is inaccurate and numerous facts are missing from the record because of the bad interpretation; and (2) his counsel is to be faulted for the way the proceedings failed. These arguments cannot succeed.

[13] First, in regard to the arguments alleging errors in the interpretation and in the transcript, as the Minister outlines, errors in translation are to be raised at the first opportunity and they must be demonstrated. A blanket statement that the translation was entirely inaccurate is insufficient to meet this burden. Additionally, as Mr. Justice Denis Gascon outlined in *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 [*Paulo*]: “[r]egarding the significance of errors, the standard requires that translation or interpretation errors influence ‘the heart of the RPD’s decision’, ‘[give] rise to one or more of the determinative findings’ and ‘affect a central aspect of the RPD’s conclusions’ to lead the Court to find that a deficient translation is a breach of procedural fairness (*Thsunza v Canada (Citizenship and Immigration)*, 2014 FC 1150 at para 41).” Further, Justice Gascon summarized that an alleged translation error must not be “immaterial, insignificant or inconsequential” and noted that the onus is on the applicant to prove the alleged error had an impact on the RAD’s findings (*Paulo* at paras 29, 32).

[14] In this case, as it was the case in *Shani v Canada (Citizenship and Immigration)*, 2017 FC 253, there is no evidence beyond Mr. Rady’s bald assertion to support the argument that discrepancies in his evidence are attributable to interpretation errors and the record does not

identify examples of errors save for the two presented by counsel and addressed by the RAD, reasonably. Therefore, there is no evidence of any other alleged interpretation error nor that, even assuming said did exist, that it was material, significant or consequential in the RAD's findings.

[15] Second, regarding Mr. Rady's allegation that his counsel is at fault, as noted by Justice Gascon in *Reyes Contreras v Canada (Citizenship and Immigration)*, 2023 FC 1453 [*Reyes*], the burden of proof to demonstrate counsel incompetence is very high: "evidence of counsel's incompetence must be so clear and unequivocal and the circumstances so deplorable that the resulting injustice caused to the claimant is blatantly obvious" (*Mbaraga v Canada (Citizenship and Immigration)*, 2016 FC 580, at para 25)" and "[t]he incompetence and the alleged prejudice must ... be clearly established" (*Dukuzumuremyi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 278, at para 19)" (*Reyes* at para 37). At paragraph 38 of *Reyes*, Justice Gascon further highlights the tripartite test applicable in considering the allegations of ineffective or incompetent representation, said test requires the applicant to meet the three following cumulative criteria:

- A. corroborate the allegation by giving notice to the former counsel and providing him with an opportunity to respond;
- B. establish that the former counsel's act or omission constituted incompetence without the benefit and wisdom of hindsight;
and
- C. establish that the outcome would have been different but for the incompetence (*Abuzeid v Canada (Citizenship and Immigration)*, 2018 FC 34, at para 21; *Badihi v Canada (Citizenship and Immigration)*, 2017 FC 64 [*Badihi*], at para 17, citing *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250, at para 84).

[16] The first element of the tripartite test can be met by following the Court's protocol on Allegations against authorized representatives in Citizenship, Immigration and Refugee Cases before the Federal Court included in the Court's Consolidated Practice Guidelines for Citizenship, Immigration and refugee Protection Proceedings. Mr. Rady did not follow the protocol, despite having been forewarned by the Minister's Memorandum at leave, and his explanation that he did not want to harm his former counsel is unconvincing. He thus does not meet the first element of the test which is in and of itself fatal. In addition, Mr. Rady has adduced no admissible evidence or arguments regarding the other two elements of the test. Mr. Rady has simply not met his burden.

IV. Conclusion

[17] Mr. Rady's two overarching arguments are unfounded. Mr. Rady confirmed that his other arguments depended on the success of these two overarching ones, consequently, his application fails. Mr. Rady has not shown the RAD Decision to be unreasonable, as was his burden. On the contrary, I am satisfied that the 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" (*Vavilov* at para 85).

[18] Mr. Rady's application for judicial review will be dismissed.

[19] No question of general importance was proposed and I agree that none arises.

JUDGMENT in IMM-11556-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

“Martine St-Louis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11556-23

STYLE OF CAUSE: EDMOND RADY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 23, 2024

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: OCTOBER 31, 2024

APPEARANCES:

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