Federal Court  Cour fédérale

Date: 20250106

Docket: IMM-8253-23

Citation: 2025 FC 35

Ottawa, Ontario, January 6, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MARLENE AMARA PALMER-POWIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Marlene Amar Palmer-Powis, seeks judicial review of a decision of the Refugee Appeal Division (the "RAD") dated June 13, 2023, in which the RAD confirmed the decision of the Refugee Protection Division ("RPD") that the Applicant is not a refugee or person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the RAD erred by refusing to admit new evidence about the incompetence of her former counsel and finding that her counsel's incompetence had not resulted in an infringement of her procedural rights.

[3] For the reasons that follow, I find that the RAD's decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

[4] The Applicant is a citizen of Jamaica. She seeks refugee protection because her violent ex-husband threatened to kill her after she arrived in Canada in 2016. The Applicant hired Mr. Robin Edoh (the "Former Counsel") to assist her with her claim.

[5] Shortly afterwards, the Former Counsel presented the Applicant with a fabricated Basis of Claim ("BOC") form and narrative. The Applicant noticed errors in the BOC, but signed the document because she "trusted that her representative was doing the right thing and following the correct process."

[6] The Applicant's RPD hearing took place in November 2022. During the hearing, the Applicant struggled to respond to the RPD's questions because she was unfamiliar with the false allegations in her BOC.

[7] In February 2023, the Applicant's claim was dismissed on the basis of credibility. The Former Counsel referred the Applicant to another individual to appeal the RPD's decision.

[8] The Applicant sought a second opinion. After meeting her current counsel, the Applicant realized that her Former Counsel was incompetent and that she could raise the issue of his incompetence to the RAD.

[9] On June 13, 2023, the RAD refused the Applicant's appeal. The RAD did not admit the Applicant's new evidence about her Former Counsel's incompetence, finding that the Applicant failed to exercise due diligence by not alerting the RPD of this issue during the two months that its decision was in reserve. The RAD also rejected the Applicant's allegations about a breach of her procedural rights, as these allegations were "entirely dependent on the new evidence that the RAD has not admitted." This is the decision that is presently under review.

III. **Preliminary Issue**

[10] The Applicant sought to adduce a decision of the Discipline Committee of the College of Immigration and Citizenship Consultants (the "CICC Decision") as fresh evidence in this application. Although this document was not before the RAD, the Applicant submits that it ought to be admitted as it establishes "background information" and "does not engage in spin or advocacy" (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 20 ("*Bernard*"); *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45, cited in *Bernard* at para 21).

[11] I disagree. The Applicant relies on this document to bolster the truthfulness of her allegations. The CICC Decision therefore does not fall under the background information exception and will not be considered in this judgment (*Bernard* at para 20; *Association of*

Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at para 19).

IV. **Issue and Standard of Review**

[12] The sole issue in this application is whether the RAD's decision is reasonable.

[13] The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 ("*Vavilov*")). I agree.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent

exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

V. **Analysis**

[16] The determinative issue in this application is whether the RAD's decision to not admit the Applicant's new evidence is reasonable.

[17] The Applicant submits that the RAD erred by rejecting her new evidence. She maintains she "could not reasonably have been expected" to present her new evidence earlier, as her Former Counsel advised her against doing so and she reasonably relied on his professional judgment (*IRPA*, s 110(4)).

[18] The Respondent submits that the RAD made no reviewable error. Highlighting the Applicant's inaction during the reserve period, the Respondent submits that the Applicant could "reasonably have been expected" to have brought her new evidence following the RPD hearing in November 2022 (*IRPA*, s 110(4)).

[19] I agree with the Respondent.

[20] The record shows that the Applicant had noted several issues with her Former Counsel's advice prior to the RPD's decision. When reviewing her BOC, the Applicant "noticed that there was information [she] had not provided [her Former Counsel] and that was not accurate, including incidents that had never occurred." While gathering evidence for her claim, she was

"surpris[ed]" that her Former Counsel advised her not to seek a letter of support from her sister, who had been told by the Applicant's ex-husband that he wanted to kill the Applicant. The Applicant states that "[she] did not receive any preparation" for the RPD hearing. During the hearing, she "felt like… [she] didn't know how to answer any of the [RPD's] questions" and "it was clear that the [RPD] was concerned about inconsistencies" in her testimony. When she raised this issue with her Former Counsel, "he told [her] that the BOC narrative is what [her] responses should be based on" and that, "[she] should not say that [she] had not written the [BOC]." The Applicant left the hearing "[feeling] disappointed because [she] did not feel as though [she] had the chance to tell [her] story."

[21] These statements support the RAD's finding that, despite her reliance on her Former Counsel, "[the Applicant] knew during the RPD Hearing that her counsel's incompetent railroading and advice were causing her claim serious trouble." I therefore find no reviewable error in the RAD's determination that "[the Applicant's] inaction in raising her" concerns to the RPD during the reserve period was "inconsistent with reasonable diligence." The RAD rightly found that the Applicant "could… reasonably have been expected" to present her new evidence to the RPD after the hearing in November 2022 (*IRPA*, s 110(4)).

[22] As the Applicant's allegations about procedural fairness were "entirely dependent" on her new evidence, the RAD did not err by dismissing the Applicant's submissions on this issue.

VI. **Conclusion**

[23] For these reasons, I find that the RAD's decision is reasonable. The RAD's findings were justified in light of the facts and subsection 110(4) of the *IRPA* (*Vavilov* at para 99). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-8253-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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