

Federal Court



Cour fédérale

Date: 20250122

Docket: IMM-16238-23

Citation: 2025 FC 129

Ottawa, Ontario, January 22, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

KOBA SHUBASHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks refugee protection in Canada. The Immigration and Refugee Board [IRB], at both its first instance and appeal divisions, rejected the Applicant's claim for protection in Canada. The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] found that the Applicant failed to credibly establish that he has a well-founded fear of persecution. He now seeks judicial review of the appeal decision.

[2] The Applicant is a citizen of Georgia. His refugee claim was based on his fears of a business partner and his influence on the authorities in Georgia that could have him “arrested and/or killed” in that country.

[3] The RPD rejected the case on credibility. After conducting its own independent assessment of the evidence, the RAD agreed with the RPD and upheld the RPD decision on November 24, 2023. The Applicant then applied to this Court to judicially review the RAD’s decision.

II. Decision

[4] I dismiss the Applicant’s judicial review application because I find the decision made by the RAD, reasonable as a whole.

III. Standard of Review and Issues

[5] The only issue before this Court is whether the RAD decision is reasonable.

[6] The standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

IV. Analysis

A. *Was the RAD analysis reasonable?*

[7] The RAD applied the right legal test when reviewing the RPD decision on the correctness standard of review after independently assessing the evidence.

[8] In the credibility assessment, the RAD engaged in certain analyses that were unreasonable because it focused on peripheral, microscopic, or just inaccurate chains of reasoning. Even though I find that the RAD's overall findings and conclusion were reasonable, certain problematic credibility findings deserve mentioning because if the RAD analysis were limited to them, the decision would become unreasonable.

[9] For example, both the RPD and the RAD spent considerable energy explaining why the Applicant was not credible when there was a perceived discrepancy in his evidence on whether the authorities in Azerbaijan had detained or arrested him. In the Applicant's narrative, and in Georgian translated to French, he first stated he was stopped in some capacity by the Azerbaijan Police in 2007. This was translated to "arrêter" in French, meaning to be arrested but also stopped. He later testified that he was not arrested or detained but that the Police stopped him for several hours and confiscated his goods. It is hard to understand why the RAD applied a precise legal interpretation of commonly used words such as detention for a lay Applicant, particularly when dealing with multiple languages and interpretations. The RAD assumed that any discrepancy was evidence of lack of credibility. The RAD ignored the potential context, such as differences in languages or varied understandings of technical terms. This rendered the RAD analysis on the subject unreasonable. This is particularly problematic when the record is clear that the Applicant's answer in Georgian was first translated to the French word "arrêter", which could mean either "stopped" or "arrested", and that his evidence was consistent with being stopped. The issue was the member assumed there was a credibility on this point, when it could have been a translation or term use issue, and the record was already consistent with the French translation. The English-speaking decision-maker assumed that the translation to arrested was evidence of the Applicant's inconsistency.

[10] Another discrepancy that both the RPD and the RAD viewed as significant, was the discrepancy on whether 2007 or 2008 was the year when the Applicant's problems first started. They both expected exact precision, over 15 years later, when there was no evidence to suggest the exact date was ever reinforced in any way that would make it particularly memorable. As the Applicant correctly pointed out, the Applicant's narrative clearly spoke to a sequence of events that made the precision with the date either trivial, or at least, deserving of some analysis by the RAD. The RAD's obsession with the exact date overlooked a potential assessment of the date in the context of a logical sequence of events presented by the Applicant, the passage of time and the Applicant's overall fear based on a series of problems over a long period of time.

[11] Contrary to the Respondent's argument, this is not an attempt to reweigh the evidence but rather to highlight the RAD's failure to consider the broader context in assessing an issue it deemed central to its credibility finding. Expecting precision with the date of an event from 15+ years ago, without accounting for context, reduces the evaluation to a checklist exercise. This Court has warned against reducing credibility assessment to a trivia quiz (*Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at paras 13 – 14).

[12] However, there was also legitimate credibility concerns that were reasonably assessed on material facts that would render the RAD decision reasonable, as a whole. The RAD found an omission in the Basis of Claim Form [BOC] on being hit by the car by the agent of harm to be material. At the Port of Entry [POE], the Applicant had provided information and detail on the way he was hit by the car, however, the BOC was silent on it. The Applicant argued that caution must be used when assessing credibility against the POE notes, intended to determine eligibility.

I agree with the Applicant in principle, that caution should be applied in assessing the discrepancy with the POE notes. However, this logic applies mainly when the POE does not contain enough details, and the circumstances of the examination may point to certain issues. However, there is no question that in the BOC the Applicant must provide the material facts on the basis of their alleged fear. In this case, the Applicant confirmed at the outset of the RPD hearing that their BOC was true, complete, and correct. One would, therefore, reasonably expect to see all material facts mentioned. The RAD assessed the Applicant's explanation for the omission, being that the POE contained inaccuracies, and found that it did not explain the omission from the BOC. I find that the RAD analysis was reasonable.

[13] In 2019, the Applicant alleged that he suffered a beating at the hands of his persecutor, i.e. his business partner, that resulted in hospitalization. However, his BOC did not mention it. The RAD found this to be a material omission that undermined his credibility. I find that this is reasonable, considering that a 2019 beating that allegedly resulted in hospitalization was the basis for the Applicant's allegation of persistent problems over the years.

[14] The RAD also based its reasoning on the absence of corroboration. In this case, the entire alleged fear was based on the wrath of the business partner towards the Applicant. There were legitimate credibility concerns with the Applicant's evidence, and it was reasonable for the RAD to expect to see that the business partnership existed. There was no evidence to substantiate the business in question or the partnership relationship with the alleged persecutor.

[15] Despite the RAD not demonstrating an explicit understanding that corroboration is only required when the claimant's credibility is already in doubt, it was nevertheless reasonable to expect corroboration of material facts once there were serious credibility issues, as identified above.

[16] In *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968

[*Senadheerage*], Justice Grammond provides a thorough analysis of when corroboration is necessary. In summary, a decision maker can only require corroborative evidence if (1) the decision maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant's credibility, implausibility of the applicant's testimony or the fact that a large portion of the claim is based on hearsay; and (2) the evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it (*Senadheerage* at para 36).

[17] Credibility findings should not be made based strictly on the absence of corroborative evidence (*Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 6 [*Ndjavera*]). However, when there is a valid reason to question a refugee claimant's credibility, further negative credibility inferences can be drawn if the claimant is unable to provide an explanation for the lack of reasonably expected corroborative evidence (*Ndjavera* at para 7). Where corroborative evidence should reasonably be available to establish essential elements of a claim and there is no reasonable explanation for its absence, a decision-maker can draw a negative inference of credibility based on the claimant's lack of effort to obtain

such corroborative evidence (*Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 33, 35).

[18] The central fact of this case was the Applicant's fear of his business partner. Therefore, once the Applicant's credibility was impeached, it was reasonable for the RAD to find the absence of any documents to substantiate the existence of the business and/or the business partner to be a material omission. It was the Applicant's evidence the business partner and the business were prominent, so it was reasonable for the RAD to expect relevant documentation to be available. The RPD asked the Applicant whether he had any business documents, and he had stated that he did not. The RAD also found some discrepancy on whether attempts were made to contact a Gaga Jinkeradze, who could potentially assist. The Applicant was represented by counsel, who did not ask why he had not provided the business documents, and the RPD found it to be unreasonable that no document was available. The RAD considered the relevant evidence and the RPD's analysis to find that it was correct. Given the context of the Applicant's own evidence that he did not have any documents, I find the RAD analysis on expecting corroboration in the circumstance, to be reasonable.

[19] For all these reasons, despite a number of unreasonable credibility findings, I find that the RAD's overall decision to be reasonable.

V. Conclusion

[20] For the foregoing reasons the Application for Judicial Review is dismissed.

[21] There is no question to be certified.

JUDGMENT IN IMM-16238-23

THIS COURT’S JUDGMENT is that

1. The application for Judicial Review is dismissed.
2. There is no question for certification.

“Negar Azmudeh”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16238-23

STYLE OF CAUSE: KOBA SHUBASHVILI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 28, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: JANUARY 22, 2025

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