

Federal Court



Cour fédérale

Date: 20250124

Docket: IMM-9684-23

Citation: 2025 FC 153

Ottawa, Ontario, January 24, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

AMIN RAZAK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Amin Razak [Applicant], a citizen of Ghana, seeks judicial review of a July 11, 2023 decision [Decision] of the Refugee Protection Division [RPD]. The RPD found the Applicant was not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD rejected the

Applicant's refugee claim on credibility grounds and determined that his claim is manifestly unfounded pursuant to *IRPA* section 107.1.

[2] This application for judicial review is dismissed. Numerous significant credibility findings, including findings of fraud and document forgery, reasonably led the RPD to determine the claim is manifestly unfounded.

II. Background

[3] The Applicant claimed fear of persecution based on three separate grounds: 1) from his former girlfriend's father who did not approve of the relationship; 2) from the leader of the mosque, his father, and the Muslim community because he converted to Christianity for his former girlfriend; and 3) from his father and community because he was wrongly accused of being gay. At the end of the first sitting of the RPD hearing, the Applicant also alleged he feared persecution because he is bisexual.

[4] The Applicant submitted two different narratives, which will be discussed further below. Generally, the Applicant stated that he left Ghana in June 2014 and entered the United States in September 2015. He was detained for approximately six months and unsuccessfully filed a refugee claim. The Applicant remained in the United States until August 2018, irregularly entered Canada on August 27, 2018, and filed a refugee claim.

III. Decision

[5] The RPD hearings took place on December 20, 2022 and May 16, 2023. The Minister intervened on identity and credibility grounds. On July 11, 2023, the RPD rejected the Applicant's refugee claim, finding it manifestly unfounded based on fraudulent documents and several negative credibility findings, as summarized below.

[6] The Applicant did not provide any original primary identification documents. Instead, he submitted a copy of his passport, a certified copy of entry in register of births, and a voter card. The Applicant also produced two identity witnesses at the hearing, his maternal aunt and one other relative. On examination, the RPD found the voter card was forged. The remaining identification documents and witness testimony were insufficient to establish the Applicant's identity on a balance of probabilities.

[7] The RPD also found two of the documents submitted by the Applicant in support of his persecution claim were forged. A "Persons Wanted" notice from Ghana police, and an affidavit purportedly prepared by the Applicant's brother. Two affidavits were submitted in the same package with the fraudulent documents, affidavits of the Applicant's former girlfriend and a friend of the Applicant's elder brother. The RPD found these affidavits unreliable and gave them no weight.

[8] The RPD's remaining reasons address multiple significant credibility issues.

[9] First, the RPD noted two versions of the Applicant's basis of claim [BOC] narrative. The first BOC narrative, provided by former counsel, differed from the second BOC narrative, which the Applicant provided to his new counsel at the second RPD hearing.

[10] Second, the Applicant made inconsistent statements about his sexual orientation. The Applicant's first BOC narrative and part of entry statements differed from his statements in the hearing and second BOC narrative.

[11] Third, the second BOC narrative stated that the Applicant and his partner were attacked on June 4, 2012 [June 2012 Attack] and his partner was killed. The first BOC narrative only stated that the Applicant and his gay friend were attacked.

[12] Fourth, the two BOC narratives were inconsistent regarding whether the Applicant sought medical attention after the June 2012 Attack, impacting the reliability of a medical document indicating the Applicant's attendance at hospital.

[13] Fifth, the Applicant's second BOC narrative conflicted with his testimony regarding the dates of his same-sex partner relationship.

[14] Sixth, the Applicant's BOC narrative was inconsistent with his brother's affidavit regarding the reason and motive for another attack on November 20, 2012.

[15] Seventh, the Applicant's testimony alleged he was attacked at his place of work in Accra, an event omitted from both BOC narratives.

[16] Eighth, both BOC narratives alleged the Applicant's family members pursued and found him in Accra in January 2014. This is inconsistent with the affidavit provided by a friend of the Applicant's older brother, stating this event occurred in June 2014.

[17] Ninth, it was highly implausible that the Applicant's father was pursuing him and would issue a notice on January 7, 2012 only four days after assisting the Applicant to register his birth.

[18] Finally, the Applicant alleged his father issued a notice offering a reward for information about the Applicant, believing the Applicant had fled the country. The RPD determined this is implausible since the Applicant also stated he was living with his family at that time.

[19] A letter and photos from Sunshine House in Winnipeg established on a balance of probabilities the Applicant started attending Sunshine House programs and events in July 2022. However, this evidence was not sufficient to overcome the myriad of inconsistencies and credibility concerns regarding the Applicant's sexuality.

IV. Issues and Standard of Review

[20] This matter raises the following issues:

1. Did the RPD make reasonable credibility findings?
2. Was the RPD finding the claim manifestly unfounded reasonable?

[21] The Applicant makes no explicit submissions on the standard of review but applies a reasonableness standard in their submissions. The Respondent submits the Decision is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

V. Analysis

A. *Did the RPD make reasonable credibility findings?*

(1) Applicant's Position

[22] Adverse credibility findings alone are insufficient grounds to reject potentially corroborative evidence (*Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at para 18). The corroborative evidence in this case was dismissed, at least in part, because the Applicant's evidence was not believed.

[23] The RPD can only disregard corroborative evidence where it emanates from the Applicant's testimony, or where the Applicant's evidence is found implausible. The RPD erred by concluding the affidavit of the Applicant's brother was forged, partially based on the testimony of the Applicant. The fact that the Applicant's brother was in Istanbul when his supporting identification was issued, and then in Ghana at the time of the affidavit, is an insufficient basis for finding forgery.

[24] Furthermore, the RPD failed to consider the first BOC narrative is not a final draft. Both BOC narratives were completed with the support of Mr. McIntosh, from the law firm of the Applicant's counsel. There is no contradiction regarding the hospital visit. When reading both BOC narratives it is clear the Applicant's brother took him to a distant hospital because the Applicant could not attend the local hospital. The Decision is therefore unreasonable in its comparison of the two BOC narratives without considering the nature of the second BOC narrative as the final draft copy.

(2) Respondent's Position

[25] General findings of lack of credibility can affect all relevant evidence submitted by a claimant, including documentary evidence, ultimately causing the rejection of a refugee claim (*Gebetas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1241 at para 29).

[26] The RPD's credibility findings are based on numerous inconsistencies between the evidence and the Applicant's testimony. The RPD found the affidavit submitted by the Applicant's brother was a forgery. The Applicant was unable to show whether they were in fact brothers or cousins. Additionally, the Applicant's voter card did not match the name on his birth certificate. The Applicant testified to using his birth certificate as proof of identity to obtain the voter card, however, the birth certificate was issued after the voter card. Though the Applicant offered explanation for some of these inconsistencies, the RPD found no reasonable explanation was provided.

[27] Similarly, the letter from the Applicant's father seeking information on the Applicant's whereabouts, dated January 7, 2012, was issued four days after the Applicant's father registered the Applicant's birth to support his passport application. The RPD found it implausible that his father wanted to find and punish the Applicant four days after assisting his passport application. The RPD also note the Applicant provided inconsistent statements about where he was living before moving to Accra. The RPD did not misapprehend the Applicant's residency evidence. Rather, the RPD reasonably found the Applicant was living with his family at that time.

[28] The Applicant's arguments on the "Persons Wanted" document are without merit. First, regardless of the Applicant's exact location in Kumasi, the evidence shows he was living in Kumasi undiscovered by police. Second, contrary to the Applicant's assertions, the RPD did conduct an independent assessment of the evidence. The RPD examined independent information on Ghana police services, finding inconsistencies with the "Persons Wanted" document. Third, the Minister's representative is not required to call a witness. Fourth, the RPD obtained information showing Patrick Eden Timbilla as the acting Regional Police Commander in 2012 when the "Persons Wanted" document was allegedly issued. The RPD found this inconsistent with the document naming Paul Boakye Yiadom. It is therefore irrelevant that the Ghana Police Service website shows the current Chief of Police is Afful Boakye-Tiadom.

[29] Finally, the Applicant's current counsel makes an evidence-free assertion suggesting former counsel submitted an earlier draft of the Applicant's BOC narrative. There is no evidence from Applicant's former counsel about this. The Applicant testified he did not know why there

were two different versions. The Applicant also testified he made no amendments to his narrative with an interpreter or former counsel.

(3) Conclusion

[30] The RPD made reasonable credibility findings on the evidence before it. The record established the RPD independently assessed the potentially corroborative evidence. It did not make its findings simply because the Applicant was not believed.

[31] The RPD noted inconsistencies in the content of the affidavit of the Applicant's brother compared to the Applicant's testimony. Inconsistencies in the timing of his brother's presence in Ghana, made it reasonably doubtful that his brother was in Ghana at the time he allegedly swore the affidavit there.

[32] On the issue of the voter card, I agree with the Respondent. The RPD did not erroneously claim the Applicant failed to provide explanation. Instead, the RPD determined the Applicant's explanation was not a reasonable one.

[33] Regarding the letter from the Applicant's father, the RPD took issue with the inconsistencies in the Applicant's testimony and BOC narratives. The Applicant testified he moved back in with his family until November 2012, about eleven months after the letter was allegedly issued. Both BOC narratives and the Applicant's testimony confirmed he moved to Accra eleven months after the letter issued. However, when asked why his father was looking for him and issued the letter if the Applicant was living with his family at that time, the Applicant

said he left his family and was living in Accra. The RPD did not make its implausibility finding because it did not believe the Applicant, rather his testimony and narratives made the timing and circumstances of the letter implausible.

[34] The Applicant's argument about whether he was living with family in Kumasi misses the point again. The Applicant was living in Kumasi for eleven months, then living in Accra for a year and a half without issue despite the alleged "Persons Wanted" document being published. As noted by the Respondent, the RPD independently assessed the document and had concerns about the identity of the Regional Police Commander of the Ashanti region at the relevant time. The Applicant makes submissions on the current identity of the Regional Commander of the Ashanti region. However, even if the Applicant's submissions were relevant to the identity of the person who held that role in 2012, this was not in evidence before the RPD.

[35] I also agree with the Respondent that the Applicant's submissions on the variance between the two BOC narratives is speculative and not grounded in the evidence before the RPD. The RPD reasonably assessed the content of the two narratives and found inconsistencies between the second BOC narrative, the first BOC narrative, and his port of entry interview.

B. *Was the RPD reasonable in finding the claim manifestly unfounded?*

(1) Applicant's Position

[36] Case law does not establish a distinction between a manifestly unfounded claim and a claim with no credible basis (*IRPA* s 107(2)). Accordingly, a claim cannot be manifestly

unfounded if it has a credible basis. The RPD failed to assess whether the claim had a credible basis prior to determining whether the claim was manifestly unfounded. The remainder of the Applicant's evidence not addressed by the RPD is sufficient to establish a credible basis. For instance, the letter from Sunshine House provides a credible basis for the claim and shows the Applicant is a bisexual man.

[37] A claim is manifestly unfounded if it is clearly fraudulent. However, there must be dishonesty to support a finding of fraud (*Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 [*Warsame*] at paras 24, 28-30). Finding that the Applicant gave evidence that he knew to be false requires two prior findings: a finding of the true facts, and a finding that the Applicant knew the true facts. However, neither of these prior findings occurred regarding the evidence given by the Applicant, which was material to the outcome.

[38] The RPD made its conclusion on fraud based only on lack of credibility. This is a distinguishable concept from fraud. The RPD did not determine a number of findings of fact, such as: whether the Applicant converted to Christianity; whether he risked persecution from his father and the Muslim community; or whether the Applicant knew that he did not face a risk of persecution. The RPD also did not make findings of fact on the Applicant's sexuality, whether he was accused of being gay, or whether he risks persecution for either of those grounds.

(2) Respondent's Position

[39] The Applicant's arguments concerning the lack of distinction between a manifestly unfounded claim and one that has no credible basis are inconsistent with the jurisprudence. This

court recognizes a meaningful distinction between the two (*Samuel v Canada (Citizenship and Immigration)*, 2023 FC 1020 at para 34 [*Samuel*]). There is no merit to the Applicant's position that the RPD was required to engage with the question of whether his claim had a credible basis in order to determine that his claim was manifestly unfounded.

[40] Jurisprudence confirms that a manifestly unfounded claim is one that is "clearly fraudulent" in relation to its material aspects (*Samuel* at para 34; *Warsame* at para 31; *Tacoa Veljovic v Canada (Citizenship and Immigration)*, 2023 FC 1069 at para 66).

[41] The RPD's conclusions on the dishonest representations and forged documents going to the core of the Applicant's claim are consistent with the meaning of "fraudulent conduct". The Applicant's claim is rife with material inconsistencies, omissions, and contradictory evidence. There are major discrepancies with the evidence, including falsehoods and submission of fraudulent documents. These evidentiary difficulties go to material aspects of his claim, such as whether the Applicant is at risk due to his sexual orientation, the risk of persecution at the hands of his family, or the risk of persecution at the hands of his former girlfriend's father. It was beyond reasonable for the RPD to find the Applicant sought to obtain refugee status by fraudulent means. Accordingly, the RPD's conclusion that the claim is manifestly unfounded is also reasonable.

(3) Conclusion

[42] The RPD finding the claim manifestly unfounded is reasonable.

[43] The RPD is not required to make a finding that the claim had no credible basis prior to finding the claim manifestly unfounded. This Court consistently applies a distinction in the analyses for manifestly unfounded claims and claims with no credible basis (*Warsame* at paras 23-31; *Samuel* at paras 32-40; *Elangovan v Canada (Citizenship and Immigration)*, 2023 FC 1351 at paras 19-22). There is no authority for the proposition that a decision-maker must first find a claim has no credible basis prior to finding the claim manifestly unfounded. The focus of these analyses is distinct, even if the outcome is the same.

[44] The threshold to find that a claim manifestly unfounded is high (*Ahmad v Canada (Citizenship and Immigration)*, 2019 FC 11 at para 30). The RPD must first be of the opinion that the claim is clearly fraudulent, then state that the refugee claim is manifestly unfounded and give its reasons (*Warsame* at para 23).

[45] The Applicant submits the RPD made its conclusion of fraud based only on finding a lack of credibility. I disagree. The record confirms the RPD based its finding on the existence of two narratives with inconsistencies between the Applicant's testimony and the documentary evidence. The Applicant's testimony raised concerns that at least part of his allegations are fabricated. This finding was not based solely on a lack of credibility on the part of the Applicant.

[46] The RPD explained significant inconsistencies in the Applicant's allegations with respect to all three grounds of his claim. Four documents submitted by the Applicant were found to be forged. Two affidavits and a letter from the hospital were found to be highly unreliable. This demonstrates the RPD reasonably engaged with and assessed the evidence.

[47] The Applicant has not demonstrated a reviewable error on the part of the RPD's Decision that the claim was manifestly unfounded.

VI. Conclusions

[48] The application for judicial review is dismissed for the reasons set out above.

[49] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-9684-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9684-23

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