

Federal Court



Cour fédérale

Date: 20250210

Docket: IMM-5005-24

Citation: 2025 FC 253

Ottawa, Ontario, February 10, 2024

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

BLEDAR DEDJA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Refugee Protection Division [RPD], dated November 15, 2023 [Decision]. The RPD found the Applicant's refugee claim to be manifestly unfounded pursuant to s 107.1 of IRPA.

II. Background Facts

[2] The Applicant is a 28-year-old citizen of Albania. In his Basis of Claim [BOC], the Applicant says he is the youngest of four brothers in a conservative family. He alleges he is bisexual and fears persecution from his family. He says he previously faced physical and verbal abuse from his brothers and father in the past because of his sexual orientation, and that threats from his brother and father on May 12, 2022 prompted him to leave the country.

[3] The Applicant left Albania on May 12, 2022, and during a four-month period, he stayed in Montenegro and Austria and successively in Germany, Iceland and Spain. While in Spain, the Applicant boarded a ship on September 24, 2022, which reached the Port of Montreal on October 4, 2022.

III. Decision Under Review

[4] The RPD found the Applicant was not a Convention refugee or person in need of protection pursuant to sections 96 and 97(1) of IRPA. The determinative issues were the Applicant's omission to seek asylum in a third country and credibility.

A. *Omission to Seek Asylum in a Third Country*

[5] The RPD held the Applicant's omission to seek asylum in a third country demonstrates "a lack of subjective fear as an alleged member of the LGBTQ+ community".

[6] The RPD considered the fact that the Applicant did not seek asylum in any of the five countries he travelled through on his way to Canada (Montenegro, Austria, Germany, Iceland, and Spain), which are signatories of the Geneva Convention and /or its protocol, and at least four of which are of recognized democratic character and respect of the rule of law including the rights and freedom of sexual minorities. The RPD found the Applicant's explanations for his omission to claim asylum at the first opportunity to be unreasonable.

(1) Other Credibility Findings

[7] The RPD also found the Applicant to be not credible on a number of other points, encompassed under two primary categories: 1) his sexual orientation and 2) his relationship with his family members.

(2) Sexual Orientation

[8] The RPD found the Applicant's claim was not credible, most notably because of his failure to disclose his sexual orientation to two Canada Border Services Agency [CBSA] officers, the discrepancy between his port of entry [POE] interview responses and his BOC, and, importantly, his denial of persecution based on sexual orientation and references instead to socio-economic factors and being bullied for wearing glasses.

[9] The RPD considered section 7.4.1 of Chairperson Guideline 9: Proceedings before the Immigration Refugee Board Involving Sexual Orientation, Gender Identity, Expression, and Sex Characteristics [SOGIESC Guidelines]. However, the panel found it could not "ignore the past attempts to depart Albania, the fact that the claimant crossed several countries without seeking

asylum, and that he chose Canada as a final destination objectively in consideration of his own profile and background and therefore his sexual orientation.” The RPD rejected the Applicant’s explanation that he did not look further into LGBTQ+ rights in Canada due to language barriers.

[10] The RPD also found the Applicant had not “provide[d] any supporting evidence of his sexual orientation as a bisexual and/or homosexual life in Canada”; as a result, the panel was “left with his testimony and the POE notes which are contradictory and therefore reflective of a lack of credibility considering the absence of reasonable justification for his declaration at the port of entry.”

[11] The RPD further impugned the Applicant’s credibility based on inconsistencies about his alleged relationship with his employer in Greece. The Decision notes the Applicant’s original work history form stated he was unemployed in Greece, contrary to his testimony that he “got involve[d] in a homosexual relationship with his employer [in Greece]... [who] eventually disclose[d] this homosexual relation to the claimant’s family leading to the claimant’s alleged threat from his father and brothers leading to his departure from Albania.” The Tribunal found this allegation not credible given the centrality of the incident to his refugee claim and that “the dates and occupation of the client were much more recent and fresh in hi[s] [m]emory when the claimant initially completed the said form on October 4, 2022, rather than at the hearing date on October 16, 2023”. The RPD did not accept the Applicant’s explanation of there being an interpretation issue given “it is the claimant’s form and declaration that he duly signed” and the interpreter only translates what the Applicant tells him. As such, the panel found the Applicant “did not provide any reasonable justification to explain the said omission”.

(3) Relationship With Family

[12] Finally, RPD found the Applicant not credible in his claim of fear of persecution from his family based on social media posts submitted by the Respondent indicating that the Applicant was still in contact with his family despite his allegations of having been persecuted by his brothers and his father for his bisexuality. The RPD noted that he is not fearful to disclose his location to his agent of persecution.

[13] The RPD also gave little weight to a Facebook message the Applicant allegedly received from his brother, which threatened to find and kill the Applicant if he ever returns to Albania.

IV. Issues

[14] The issues are whether the Applicant was denied procedural fairness and whether the Decision was reasonable.

V. Standard of Review

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

[16] On the issue of procedural fairness, the Applicant submits and I agree that the standard is correctness or akin to correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canada (Minister of*

Citizenship and Immigration) v *Khosa*, 2009 SCC 12 at para 43, citing *Dunsmuir v New Brunswick*, 2008 SCC 9), for which “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56).

VI. Relevant Provisions

[17] Section 107.1 of *IRPA* provides:

Manifestly unfounded

107.1 If the Refugee Protection Division rejects a claim for refugee protection, it must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent.

Demande manifestement infondée

107.1 La Section de la protection des réfugiés fait état dans sa décision du fait que la demande est manifestement infondée si elle estime que celle-ci est clairement frauduleuse.

VII. Submissions and Analysis

A. *Preliminary Issue: Admissibility of New Evidence*

[18] The Applicant filed new evidence on judicial review, namely a psychological evaluation report dated December 20, 2023, attached as Exhibit C to his Affidavit. The Applicant argued this report “provides necessary context for the issues before the Court and elucidates the record upon which the Decision is based.”

[19] The Applicant recognizes the general rule that applications for judicial review should be restricted to the evidentiary record before the decision-maker, but notes there are a few

recognized exceptions, as outlined in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 20 [*Access Copyright*]. The Applicant submitted this new evidence falls under the background information exception, but later submitted it also concerns procedural fairness (*Access Copyright* at para 20).

[20] At the hearing, I found this new evidence inadmissible. I agree with the Respondent that it was not before the RPD and in fact postdates the Decision by over a month, does not meet any of the recognized exceptions for admissibility, and would result in prejudice to the Respondent if admitted.

[21] I note that the more recent decision of *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 provides further instruction regarding the three exceptions noted in *Access Copyright*, above. On issues the background information exception, the Court of Appeal per Stratas JA held:

[20] The first recognized exception is the background information exception. Sometimes on judicial review parties will file an affidavit that contains summaries and background aimed at assisting the reviewing court in understanding the record before it. For example, where there is a large record consisting of many thousands of documents, it is permissible for a party to file an affidavit identifying, summarizing and highlighting, without argumentation, the documents that are key to the reviewing court's understanding of the record.

...

[22] But “[c]are must be taken to ensure that the affidavit does not go further and provide [fresh] evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider”: *Access Copyright*, above at paragraph 20; *Delios*, above at paragraph 46.

[23] The background information exception exists because it is entirely consistent with the rationale behind the general rule and administrative law values more generally. The background information exception respects the differing roles of the administrative decision-maker and the reviewing court, the roles of merits-decider and reviewer, respectively, and in so doing respects the separation of powers. The background information placed in the affidavit is not new information going to the merits. Rather, it is just a summary of the evidence relevant to the merits that was before the merits-decider, the administrative decision-maker. In no way is the reviewing court encouraged to invade the administrative decision-maker's role as merits-decider, a role given to it by Parliament. Further, the background information exception assists this Court's task of reviewing the administrative decision (i.e., this Court's task of applying the rule of law standards) by identifying, summarizing and highlighting the evidence most relevant to that task.

[Emphasis added]

[22] The psychological evaluation report provides evidence that does not fall within the general background exception as argued by the Applicant. The report goes further and provide new evidence relevant to the merits of the matter decided by the RPD concerning the Applicant's sexual orientation. It also attempts to supplement the record before the RPD about the disclosure of his sexual orientation.

B. *The Applicant Was Not Denied Procedural Fairness*

[23] Similar to the above, the Applicant submits the RPD denied him procedural fairness by refusing the Applicant's request to provide a psychological assessment, which he made at the beginning of the RPD hearing on October 16, 2023. He argues this report would have provided important context necessary to assessing the Applicant's claim. The Applicant stated during the hearing before this Court that his previous counsel only became aware of the necessity of the

psychological evaluation report while preparing for the hearing before the RPD and that he lacked time to have it prepared and submitted.

[24] The Respondent submits this request “should have been presented earlier, especially if the Applicant was seeking an adjournment of the hearing.”

[25] I agree with the Respondent. The Applicant’s claim was heard by the RPD on October 16, 2023, over a year after he sought refugee status in Canada. He had the time and opportunity to provide all the evidence he wanted, including a psychological evaluation report, to have his refugee claim assessed by the RPD. The Applicant admits that the services of the psychologist were retained in November 2023, and the psychological evaluation was conducted on December 8, 2023, both after the RPD hearing. The RPD did not breach its duty of procedural fairness.

[26] Furthermore, as the Respondent points out, there is no mention in the Applicant’s Memorandum of Argument nor in his Affidavit of his realization that the need for a psychological report came up while preparing for the RPD hearing. There is also no letter to the RPD on file in which the Applicant addressed this situation.

C. *The Decision is reasonable*

[27] The Applicant submits the RPD unreasonably assessed the Applicants’ subjective fear of persecution in Albania by overemphasizing his failure to seek asylum in a third country and his past social media relationships with his family members and also unreasonably drew negative inferences from the Applicant’s failure to disclose his sexuality upon his arrival in Canada.

[28] The Respondent submits the Decision was reasonable per *Vavilov*.

(1) Failure to Seek Asylum in a Third Country

[29] On failure to seek asylum, the Applicant maintains his explanations for not seeking asylum in third countries were reasonable, and that the RPD unreasonably assessed his behaviour based on the panel's own perspective as an educated Canadian. The Applicant submits his behaviour must instead "be analyzed from the perspective of a person of very limited means, who has an eighth-grade education, who only speaks Albanian, who is timid, and who is depressed and suffers from post-traumatic stress disorder."

[30] The Respondent acknowledges the Applicant's stays in Montenegro and Austria were brief and transitory, but argues the RPD reasonably found the Applicant's explanations did not justify his failure to claim protection in Germany, Iceland or Spain. In particular, the Applicant's previous eight-month stay in Spain without incident in 2020 reinforces the notion that he could live safely in that country, and that he should have claimed in Spain when he returned in 2022.

[31] I agree with the Respondent. Persons seeking refugee protection are expected to seek asylum in the first country they reach. Failure to do so may negatively impact the well-foundedness of their fear of persecution (*Ahmed v Canada (Citizenship and Immigration)*, 2023 FC 830 at para 42) and their credibility in general (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223).

[32] The Applicant claims to be someone fleeing persecution in his country of nationality and seeking international protection because of his sexual orientation. These countries are European

democracies with vast populations. The Applicant did not try to get information about asylum from the authorities of any of these countries, particularly in Spain where he had previously stayed for several months without incident. There is no evidence on file that refugee claims based on sexual orientation would be rejected in Germany, Iceland, or Spain. It was reasonable for the RPD to determine that the Applicant's failure to seek asylum in a third country is reflective of a lack of subjective fear.

(2) Sexual Orientation

[33] The Applicant submits the RPD unreasonably drew a negative inference from his failure to disclose his sexuality upon his arrival in Canada in its credibility assessment. The Applicant asserts that "sexual orientation" is in parentheses in the CBSA Officer's notes, and it is likely these words were not used during the interview.

[34] The Respondent submits this is speculative, and since the Applicant did not refer to any issues linked with sexual orientation at the POE and his position is that he was afraid to do so, this argument must fail. I agree.

[35] The Applicant also argues the RPD unreasonably overemphasized the Applicant's omission to mention his employment in Greece in his immigration form since the form was translated to him and it is understandable that errors may occur in forms translated to him by a person without legal qualifications. Prior to the RPD hearing, his counsel requested several modifications to the form IMM-5669, informing the Board Member of errors in the asylum claim, and he provided a detailed narrative which specifically discusses the Applicant's

employment in Greece. As a result, the Applicant submits that the application forms cannot be used to make a negative credibility finding against him.

[36] The Respondent submits the RPD's credibility finding was reasonable because the discrepancies between the port-of-entry notes and the Applicant's BOC are major and go to central elements of his claim (*Onkoba v Canada (Citizenship and Immigration)*, 2023 FC 1184 at para 29 [*Onkoba*]; *Linares Garavito v Canada (Citizenship and Immigration)*, 2023 FC 836 at para 22 [*Linares Garavito*]).

[37] I agree with the Respondent. The RPD negative credibility finding made by the RPD about the Applicant's sexual orientation is reasonable for the following reasons.

[38] It is clear that the RPD considered the SOGIESC Guidelines, which refer to the possibility that it may be difficult for an individual who has concealed his sexual identity to disclose and discuss it at POE with government officials. However, in this case, the Applicant alleges that he chose to come to Canada, after spending time in several countries in Europe, because of his belief that Canada would be open to grant asylum based on sexual orientation, his case was more promising in this country.

[39] I note the Applicant's failure to disclose his sexual orientation to two CBSA officers in two separate interviews in which he denied persecution based on sexual orientation. Instead, the Applicant cited economic factors and being making fun of him because he was wearing glasses as reasons for leaving his country. He declared to CBSA officer that his life is not in danger in

his country, nor does he have problems with the laws in his country and that he would want to claim as an economic refugee.

[40] As stated by Justice Favel in *Onkoba*, when relying on POE of entry notes to make credibility determinations, decision-makers must exercise caution and not unduly comment on lack of detail. However, when the discrepancies between point-of-entry notes and the BOC narrative are major and go to crucial elements of a claim, a negative credibility finding can be made (at para 29).

[41] Regarding the Applicant's omission to indicate his work history in Greece, the Respondent argues that it is another discrepancy between the point-of-entry-note and the BOC about a crucial element of his claim making that two totally different stories are presented. When inconsistencies and contradictions affect the central elements of the written account, it becomes very difficult for an asylum claimant to show that a decision is unreasonable (*Linares Garavito* at para 23).

[42] I agree with Respondent and find that the conclusion of the RPD is reasonable and should not be disturbed. As noted by the RPD, the immigration form was signed by the Applicant and the interpreter was only there to translate in English what the Applicant was telling him. I note that the Applicant alleges his fear began in May 2022, when his family was made aware of his relationship with his employer in Greece that took place in May 2021. Considering that this specific working experience allegedly led to a forbidden relationship, causing the Applicant to receive threats from his own family members, fear persecution in his Albania, and flee his

country, it was reasonable for the RPD to find that the omission is indicative of a lack of credibility.

(3) Relationship with Family

[43] The Applicant emphasizes all communications with his family members on social media were prior (2018-2020) to when they were informed about his homosexual behaviour in 2022. The Applicant submits the Decision does not address his testimony and explanations on this issue. The Applicant further submits that “contrary to the Board Member’s position, he has not removed some of his family members from social media because, out of fear, he has maintained to his family that he is a straight man” and “[h]is only hope of escaping violence if he is ever forced to return to Albania is to convince them that he is telling the truth and reconcile his relationship with them”.

[44] The Respondent submits that the Applicant’s above explanation is “inconsistent with his actions of May 2022, when he fled Albania immediately when his relationship with Dmitri was disclosed.” The Respondent further notes the Applicant does not deny that his family members remain friends with him on social media. The Respondent recognizes that the Instagram “likes” predate the Applicant’s claim, but submits maintaining the relationship with his family on social media is a further indication that his purported story is not reliable. I agree. I find the fact that members of his family are “friends” with the Applicant on Instagram and Facebook is inconsistent with the alleged fear he expressed.

[45] The Applicant also submits that the Decision's reference to the threatening message being received "by email", rather than by Facebook, demonstrates that the RPD completely and unreasonably disregarded this evidence.

[46] The Respondent submits this is not a ground for this Court to intervene and suggest that this submission amounts to a "treasure hunt for error" per *Vavilov* (at para 102).

[47] The section of the Decision in question is entitled "Threatening text message from his brother" and the fact that RPD referenced an email message instead of a Facebook message is not grounds for this Court to intervene.

(4) Absence of supporting evidence

[48] The Applicant asserts the RPD unreasonably draw a negative inference from the absence of independent corroborative documentary evidence and cites the SOGIESC Guidelines explaining that an individual's testimony may, in some cases, be the only evidence of their SOGIESC Guidelines.

[49] The RPD was aware of the SOGIESC Guidelines, mentioning the relevant section on evidence in the Decision. The RPD noted the Applicant was unable to provide any supporting evidence of his sexual orientation as a bisexual and/or homosexual life in Canada. However, what the RPD drew a negative inference from, reasonably, in my view, is that the Applicant's testimony and the POE notes are contradictory and therefore reflective of a lack of credibility considering the absence of reasonable justification for his declarations at the POE.

(5) The claim is manifestly unfounded

[50] The Applicant submits it was unreasonable for the RPD to conclude his claim is manifestly unfounded pursuant to section 107 of the IRPA. According to the Applicant, the RPD's conclusion is the culmination of several antecedent errors and unreasonable findings, including exercising its discretion contrary to the SOGIESC Guidelines.

[51] The Respondent argues that the Applicant's silence at the Canadian border as to the foundation of his asylum claim is inexplicable considering that he allegedly came to Canada on the assumption that Canada would deal with his claim based on sexual orientation fairly, as opposed to Germany, Iceland, and Spain.

[52] Under section 107.1 of IRPA, a claim is manifestly unfounded if it is clearly fraudulent. It requires the decision-maker to be convinced that refugee protection is being sought by fraudulent means, namely falsehoods of dishonest conduct that go to the determination of whether or not refugee protection will be granted (*Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 31).

[53] The RPD's determination that the Applicant's claim is manifestly unfounded is reasonable. The Applicant not only said nothing to border officials as to the foundation of his asylum claim, but also declared his life is not in danger in Albania, he would want to claim as an economic refugee, and he does not have problems with the laws in his country or in any country. He stayed in several countries in Europe, particularly Germany, Iceland and Spain, and did not

seek asylum in these countries. In my view, the RPD's determination is based on findings related to important discrepancies on crucial and elements of his claim and on his behaviour that is reflective of a lack of subjective fear.

VIII. Conclusion

[54] I find the Applicant has not met his burden to establish that the Decision is unreasonable, nor that any breach of procedural fairness occurred.

[55] The application for judicial review is dismissed.

JUDGMENT in IMM-5005-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions to be certified.

"L. Saint-Fleur"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5005-24

STYLE OF CAUSE: BLEDAR DEDJA v THE MINISTER OF CITIZENSHIP
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