

Federal Court



Cour fédérale

Date: 20250320

Docket: IMM-3530-24

Citation: 2025 FC 522

Toronto, Ontario, March 20, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

DECHEN WASER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a Tibetan Buddhist born in 1978 in India. He has limited status in India pursuant to a Registration Certificate [RC], which must be renewed every five years. However, his most recent RC expired in 2019. Tibetans who are unable to renew their RC may be subject to fines, detention and even deportation to China under Indian law. The Applicant has been issued an Indian Identity Certificate [IC] valid until 2028, which permits him return to India.

[2] The Applicant travelled to Canada in November of 2018 using his IC and a Canadian visitor's visa. He made a refugee claim shortly after his arrival, alleging a well-founded fear of deportation to China by India and persecution by the Chinese authorities based on his Tibetan ethnicity and Buddhist faith.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected the Applicant's refugee claim and the Refugee Appeal Division [RAD] of the IRB upheld the decision of the RPD. The RAD found that the Applicant has a legal right to Indian citizenship and, while there are significant impediments that may prevent him from exercising his citizenship rights, the Applicant had not made reasonable efforts in the circumstances to overcome them.

[4] The sole issue raised on this application for judicial review is whether the RAD's decision was reasonable.

[5] The parties agree and I concur that the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. A reasonable 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite

degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[6] An individual will not be entitled to refugee protection in Canada where their acquisition of citizenship in a safe country is a matter of mere formality or is within the control of the individual. Where citizenship in another country is available, claimants are expected to attempt to acquire it [see *Williams v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 126 at paras 19-23, 27]. The onus is on claimants to establish that they are unable to avail themselves of the protection of their country of nationality, or are unwilling to do so because of fear of persecution in that country. Any impediment to realizing the rights of state protection granted to citizens must be a significant one [see *Norgay v. Canada (Citizenship and Immigration)*, 2021 FC 863 at para 12, citing *Tretsetsang v Canada (Citizenship and Immigration)*, 2016 FCA 175 at para 71].

[7] Refugee claimants who allege the existence of an impediment to exercising their rights of citizenship in a particular country must establish on a balance of probabilities:

- A. The existence of a significant impediment that may reasonably be considered capable of preventing the claimant from exercising his or her citizenship rights of state protection in that country of nationality; and
- B. That the claimant has made reasonable efforts to overcome such impediment and that such efforts were unsuccessful such that the claimant was unable to obtain the protection of that state.

[see *Tretsetsang*, *supra* at para 72]

[8] The Federal Court of Appeal expanded upon the meaning of “reasonable efforts” at paragraph 73 of *Tretsetsang*:

What will constitute reasonable efforts to overcome a significant impediment (that has been established by any particular claimant) in any particular situation can only be determined on a case-by-case basis. A claimant will not be obligated to make any effort to overcome such impediment if the claimant establishes that it would not be reasonable to require such claimant to make any such effort.

[9] In *Yalotsang v Canada (Citizenship and Immigration)*, 2019 FC 563 at paragraph 14, this Court confirmed that “the reasonableness and sufficiency of the steps that have been taken by a refugee claimant to assert his or her citizenship rights in a given country will depend on the nature and significance of whatever impediment to accessing state protection may exist in the case in question.”

[10] The Applicant only takes issue with the RAD’s finding in respect of the second part of the test set out in *Tretsetsang* – namely, the RAD’s finding that the Applicant had not established, on a balance of probabilities, that he made reasonable efforts to overcome the impediments to exercising his citizenship rights. The Applicant asserts that the RAD made a number of errors in arriving at this finding, which render its decision unreasonable. Specifically:

A. The RAD erred in finding that he could have made further efforts to apply for an Indian passport after having been “refused” at the local office. The Applicant argues that it was unreasonable for the RAD to presume that he can get a birth certificate simply because he had been able to obtain documents from Indian authorities in the

past. Moreover, the Applicant submits that according to Indian policy, a birth certificate is not a requirement if an applicant provides other means of proof of birth. The Applicant had provided his issued RC stating his place of birth yet was requested to produce a birth certificate, which the Applicant deems was an arbitrary refusal.

B. The RAD erred by disregarding and assigning low weight to evidence that demonstrated it would be difficult for him to obtain a birth certificate if he tried – namely, the Tibetan Justice Centre [TCJ] report that Tibetans born before 2003 have an especially hard time getting Indian issued birth certificates and must engage in a difficult court proceeding with police interrogations involved. The Applicant asserts that it is educated and “elite” Tibetans in India who are generally successful in obtaining passports, not uneducated illiterate Tibetans from remote parts of India (like him). The Applicant submits that there is no reason for the RAD to dismiss the TJC report and other credible researchers’ findings that, despite legal developments, Indian authorities continue to refuse passports and citizenship rights to eligible Tibetans. Therefore, it was unreasonable for the RAD to expect that he should make any efforts to obtain his birth certificate.

C. The RAD failed to consider how the expiry of his RC would make him vulnerable to fines, detention and even deportation to China. According to the country evidence, those who do not renew their RC before its expiration, especially those whose RC expired while they were abroad, may be denied the renewal of their RC. The Applicant argues that even if he is able to return to India, there is no guarantee

that he can renew his RC. Moreover, if he applies to citizenship, he will easily have to wait one year to obtain it, and that is based on an assumption that he will get it and not be *rejected again* if he re-applies.

[11] I am not satisfied that the Applicant has demonstrated a basis for the Court's intervention. Contrary to the Applicant's submissions, a review of the RAD's reasons reveals that the RAD considered the Applicant's personal circumstances in determining that it was not unreasonable to expect someone in his circumstances to make further efforts to obtain recognition of his citizenship rights. The RAD accepted that, as stated by the Applicant, he is uneducated and illiterate. However, the RAD reasonably concluded that this was a surmountable issue given that the Applicant had relied on the aid of family and friends in the past to acquire Indian government documents. The RAD further noted that the Indian government has made specific modifications to their application processes to accommodate the almost 20% of Indians who are illiterate. As noted below, the RAD also had before it evidence that the Applicant had attended the Indian Consulate to make inquiries about obtaining an Indian passport. Against this backdrop, I find that the RAD reasonably found that it was not unreasonable to expect the Applicant to make efforts to overcome any significant impediments.

[12] The Applicant has raised a number of arguments regarding the RAD's consideration of the country condition evidence set out in the National Documentation Package [NDP], including the low weight assigned to the TCJ Report and the RAD's failure to expressly address various sections of the NDP that the Applicant asserts establish significant impediments that the Applicant would face to obtaining his citizenship rights. However, it must be recalled that the RAD ultimately found that there were significant impediments facing the Applicant and acknowledged that there was

“mixed documentary evidence about the ability of Tibetans born in India to exercise their citizenship rights.” It was with that mixed documentary evidence in mind that the RAD considered whether the Applicant had made reasonable efforts to exercise his citizenship rights in the face of these significant impediments. With respect to the TCJ Report, the RAD provided a rationale for why it accorded little weight to the report. While this Court may not agree with the weighing of that evidence, the RAD is an expert tribunal and its assessment of the evidence before it, such as the TCJ report, is owed deference [see *Norgay v Canada (Citizenship and Immigration)*, 2021 FC 863 at para 25]. Moreover, it is not the role of this Court to reweigh this evidence on an application for judicial review. In light of the above, I am not satisfied that the RAD’s consideration of the country condition evidence warrants the Court’s intervention.

[13] The RAD then considered the efforts made by the Applicant to date to overcome the significant impediments to obtaining his citizenship. The evidence before the RAD was that the Applicant made two inquiries about obtaining citizenship. First, in 2015, the Applicant approached a local Indian government office in Tuting, Arunachal Pradesh and asked about obtaining an Indian passport. The government official indicated the Applicant needed to provide a copy of his birth certificate, Permanent Account Number card, and an Aadhaar card to obtain a passport. Second, in 2019, once in Canada, the Applicant visited the Indian Consulate in Toronto to inquire into obtaining Indian citizenship. He testified that the government official did not ask him what documents he had but only stated that he must return to India to apply.

[14] Contrary to the Applicant’s submissions, I do not find that these inquiries constitute effective refusals of a passport. There was no evidence that the Applicant had never, in fact, submitted a passport application. In relation to the first inquiry, the government official provided

guidance to the Applicant about how to apply, which guidance the Applicant took no steps to follow. In relation to the second inquiry, I find that it was reasonable for the RAD to place little weight on this inquiry as the country condition evidence is clear that a Tibetan born in India cannot apply for a first-time passport from outside of India. Based on these limited attempts to obtain Indian citizenship and no attempt to obtain his birth certificate, I find that the RAD's conclusion that the Applicant failed to make reasonable efforts to overcome the impediments to exercising his citizenship rights was reasonable.

[15] Finally, contrary to the Applicant's assertion, the RAD expressly considered whether the expiry of the Applicant's RC would make him at risk for deportation to China. The RAD reasonably concluded that, based on the availability of a travel visa that would give him a right to reside in India while he renews his RC and obtain any documents needed to secure a passport, there was no reasonable chance of the Applicant being deported to China due to his expired RC. I find that the balance of the arguments made by the Applicant related to his expired RC are entirely speculative in nature.

[16] As the Applicant has failed to demonstrate that the RAD's decision was unreasonable, the application for judicial review shall be dismissed.

[17] No question for certification was raised and I agree that none arises.

JUDGMENT in IMM-3530-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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