Federal Court  Cour fédérale

Date: 20250822

Docket: IMM-16534-23

Citation: 2025 FC 1410

Ottawa, Ontario, August 22, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

DEL-LANYO DELGARDO ALLEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Del Lanyo Allen, made a claim for refugee protection because he feared the police in the Bahamas would not protect him from violence of his spouse's ex-partner, BF. The Refugee Protection Division ("RPD") refused his claim. Mr. Allen appealed the decision and the Refugee Appeal Division ("RAD") denied his appeal, finding that he would have access to state protection in the Bahamas.

[2] Mr. Allen's spouse, KA, had been subjected to years of abuse from BF. By the time Mr. Allen's appeal was being considered, his spouse's and their minor children's refugee claims had been granted. Like Mr. Allen, their claims were also based on the fear that the police would not protect them from BF's threats and violence.

[3] I find that the RAD misconstrued the facts before it, finding KA to be Mr. Allen's former partner, though the evidence before the RAD stated that the couple had reunited. Given the interconnected nature of Mr. Allen's claim to that of his spouse and children, I find that this error was not a minor misstep but may have impacted the lens in which the RAD was viewing his claim. In these circumstances, I find that the matter must be sent back to be redetermined.

[4] Further, though not determinative of this claim, I find the RAD ought to have taken the minimal measure of inquiring about a clear misfiling on the part of Mr. Allen's counsel that resulted in KA's positive RPD decision not being before the RAD.

II. Procedural History

[5] Mr. Allen is a citizen of the Bahamas. He had been in a relationship on and off with KA since approximately 2017. They have three children together. Throughout their relationship, they have experienced threats and violence from KA's abusive ex-partner, BF.

[6] In February 2022, KA and their two children left the Bahamas and made refugee claims in Canada. Mr. Allen stayed behind because of a family emergency and later joined the family in

June 2022. Mr. Allen's and KA's third child was born in Canada. A few weeks after arriving, Mr. Allen and KA separated. KA's and their children's refugee claims proceeded on their own.

[7] By June 2023, Mr. Allen and KA were reunited. KA provided a letter, dated June 6, 2023, to the RPD stating this.

[8] In September 2023, the RPD accepted the refugee claims of KA and their children.

[9] Mr. Allen provided to the RAD an affidavit sworn on October 18, 2023, where he describes KA as "his girlfriend" and states that he is attaching the positive RPD decision of KA and his children to his affidavit.

[10] On November 30, 2023, the RAD accepted Mr. Allen's new evidence and dismissed the appeal, confirming the RPD's finding that Mr. Allen would have access to state protection in the Bahamas.

III. Issues and Standard of Review

[11] The determinative issue is the RAD's treatment of Mr. Allen's evidence. The parties agree, as do I, that I ought to review the Officer's determination on this issue on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 12-13, 84).

[12] The Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the decision maker's reasons are the starting point of the analysis (*Vavilov* at paras 13, 296). Administrative decision makers must ensure that the exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[13] The Supreme Court explained that a decision maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103). 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" (*Vavilov* at para 85).

IV. Analysis

[14] Throughout the RAD decision KA is described as Mr. Allen's "former partner" or "ex-partner". The RAD also noted that they separated on June 29, 2022. This is inconsistent with the evidence that was before the RAD. While there was evidence before the RAD that Mr. Allen and KA separated in June 2022, there was also evidence as stated in the post hearing letter of KA filed at the RPD, and Mr. Allen's affidavit before the RAD that they were again a couple. At the time the RAD was considering the application, the evidence before the RAD indicated that Mr. Allen was in a relationship with KA.

[15] At the judicial review hearing I stopped Mr. Allen's counsel from providing me with new information about Mr. Allen's relationship status. This is not relevant to my analysis on judicial

review. As I explained at the hearing, the issue on judicial review is whether the RAD misconstrued the facts before them at that time.

[16] I acknowledge that the RAD did not directly rely on Mr. Allen no longer being in a relationship with KA in its state protection analysis. However, I have come to the conclusion that this mistake, even if not directly relied upon, is not a minor misstep in the context of this type of claim. These particular facts, Mr. Allen's relationship with KA and their children, may have impacted the manner in which the RAD was viewing Mr. Allen's circumstances in returning to the Bahamas and receiving state protection, or the significance of the positive determination in KA's and his children's cases. The RAD's failure to account for the evidentiary record before it jeopardizes the reasonableness of the decision (*Vavilov* at para 126). This is a sufficient basis to send the matter back to be redetermined.

[17] I also raised at the hearing that neither the RAD, nor this Court have been provided with KA's positive RPD decision. Mr. Allen attempted to file this decision as new evidence to the RAD, but the decision attached to his affidavit was not KA's RPD decision, as stated in his affidavit. Rather it was Mr. Allen's own RPD decision. This was clearly an error because Mr. Allen's affidavit states that KA's decision is being attached and describes her decision. While the RAD accepted Mr. Allen's affidavit as new evidence, it stated that KA's decision was not in evidence because it had not been filed. The RAD found:

> I note that the Appellant states in his affidavit that he is disclosing the 'positive refugee decision' of KA, however there is no evidence that such a document has been disclosed. No file number has been provided for this RPD decision, and there is no indication that a redacted version of the RPD decision has been published on

> CanLII. Thus, the RPD decision is not part of the record in this appeal and is not otherwise before me.

[18] The RAD did not ask the Applicant to refile or alert them to the clear misfiling. The RAD addressed the positive determination in KA's decision, finding, without having seen the RPD analysis in her case, it would not have affected its determination because KA's circumstances are different as a female victim of domestic violence seeking state protection in the Bahamas and moreover the RAD is not bound by a determination made by the RPD in another case.

[19] I raised the issue of KA's decision at the judicial review. Counsel for the Applicant acknowledged the error of filing the wrong decision to the RAD but advised that they did not seek to re-open based on this error at the RAD, and therefore did not feel like they could have raised the issue on judicial review. The Respondent argued that the onus was on the Applicant to file the materials they wished the RAD to consider.

[20] In my view, though not determinative in the circumstances of this judicial review, the RAD ought to have taken further steps to ensure that the relevant document attempted to be filed was before it. Where a claimant, as in this case, has clearly made an error in filing a relevant document, particularly in the context of a written process where there is no further interaction and given the stakes at issue, the RAD ought to have inquired about the misfiling of KA's RPD decision. This was a minimal measure that could have been taken in order to ensure that the correct documents were before the RAD prior to deciding the Applicant's claim for refugee protection (see for example *Bizimana v Canada (Citizenship and Immigration)*, 2020 FC 288 at para 28 in the context of missing documents from a permanent resident application).

[21] I am satisfied that there are sufficient shortcomings in the RAD's analysis that render it unreasonable and require redetermination. The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-16534-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated November 30, 2023 is quashed and sent back to be redetermined by a different decision maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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