Federal Court  Cour fédérale

Date: 20260114

Docket: IMM-22514-24

Citation: 2026 FC 53

Calgary, Alberta January 14, 2026

PRESENT: Mr. Justice Brouwer

BETWEEN:

ARMSTRONG ELORH MBI ATEM

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Armstrong Elorh Mbi Atem is a national of Cameroon who sought refugee protection in Canada based on his political opinion as an Anglophone separatist. His refugee claim was refused by the Refugee Protection Division [RPD] on June 4, 2024, and by the Refugee Appeal Division [RAD] on September 27, 2024. He seeks judicial review of the RAD decision. For the reasons set out below, I am granting his application because the RAD's assessment of Mr. Mbi Atem's *sur place* claim was unreasonable, as was its assessment of risk based on his residual profile.

I. Background

[2] Mr. Mbi Atem first became involved in the Anglophone separatist movement almost 20 years ago. He joined the Southern Cameroons National Council (SCNC), an outlawed separatist organization, in 2007, as a university student, and continued to support the organization and movement ever since, including by distributing their flyers.

[3] In his claim for refugee protection, Mr. Mbi Atem alleged that he was arrested in Buea, Cameroon, on September 1, 2017, during a political campaign, and was detained for two weeks, tortured, and interrogated about his activities with the SCNC. He asserted that his family retained a lawyer and secured his release on bail, after which he was hospitalized for injuries sustained during his detention. Mr. Mbi Atem alleges he went into hiding but was rearrested on March 2, 2018, during a military raid targeting Anglophone activists, and was again detained and tortured before his family and a lawyer secured his release. He says he was arrested a third time on December 27, 2018, this time because he was with a friend who was wearing an SCNC shirt. After his family bribed police to release him, he says, he fled to Canada to seek refugee protection based on his pro-SCNC political opinion and activities.

[4] In support of his claim Mr. Mbi Atem provided proof of membership in the SCNC since 2007; a recognizance of surety, wanted notice and arrest warrants from 2017-2021; his medical file from 2018; affidavits from family, friends, fellow activists and his lawyer; and news articles. He also submitted photos to corroborate his participation in political demonstrations outside of the Cameroonian embassy in Ottawa.

[5] The RPD rejected his claim. While it did not dispute Mr. Mbi Atem's long-standing support of the SCNC and the cause of Anglophone separation, it found that several of Mr. Mbi Atem's supporting documents were fraudulent, and that this, along with his "vague and untrustworthy" testimony about how the documents were obtained justified a general finding that Mr. Mbi Atem was not credible and had not established that the events that he says led him to flee Cameroon actually occurred.

[6] The panel also rejected Mr. Mbi Atem's claim that his participation in protests outside of the Ottawa embassy put him at risk. The RPD found insufficient evidence that Mr. Mbi Atem's activities are known to anyone outside of his acquaintances in attendance at the protest and determined that, although he would likely have to pay a bribe on re-entry to Cameroon, Mr. Mbi Atem would not be harmed as a returnee.

[7] Mr. Mbi Atem appealed to the RAD. The RAD found that the RPD had ignored the evidence corroborating Mr. Mbi Atem's 2017 arrest and subsequent release on bail but found that there was insufficient evidence to show that he was tortured by police as asserted, or that he required medical attention upon his release. The RAD upheld the RPD's rejection of the supporting documents as fraudulent and gave no weight to any of the letters and affidavits submitted to support the facts of his claim.

[8] Having determined that Mr. Mbi Atem's claim based on his allegations of past persecution was not credible, the RAD turned its attention to Mr. Mbi Atem's political activities in Canada to assess whether they supported a *sur place* claim. The RAD agreed with the RPD

that Cameroonian authorities were likely unaware of Mr. Mbi Atem's participation in the protests and that the fact that the photos he submitted had not been publicly posted or published "minimized" his risk due to his activist. It cited certain reports in the National Documentation Package to find that Mr. Mbi Atem was also not at risk as a returnee or simply as an Anglophone in Cameroon because the government there "for the most part is targeting politically active Anglophones who support the separatist movement." The RAD dismissed the appeal.

II. Issues and standard of review

[9] Mr. Mbi Atem asserts that the RAD erred on multiple fronts, including by rendering unreasonable findings that some documents were fraudulent, engaging in unreasonable item-by-item scrutiny of some evidence while failing to assess other evidence, and failing to assess his *sur place* risk. The Respondent disagrees, arguing that the RAD's findings were reasonable and based on an assessment of all the evidence on the record, and that Mr. Mbi Atem has failed to point to specific errors in the RAD's reasoning.

[10] In my view, the determinative issues are: Whether the RAD erred in the assessment of Mr. Mbi Atem's *sur place* risk and his residual profile.

[11] The parties agree, as do I, that the standard of review applicable to the RAD's assessment of the merits of Mr. Mbi Atem's appeal, including the two determinative issues identified above, is reasonableness. To assess whether an administrative decision meets this standard, the Court asks, "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal

constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). A decision that fundamentally misapprehends or fails to account for the evidence or submissions before it may be unreasonable (*Vavilov* at paras 125-128).

[12] The need for justification is heightened in decisions that have particularly harsh consequences, as discussed in *Vavilov*:

> [133] […] Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

[13] As in any decision denying refugee protection, the stakes involved in the RAD's decision are very high indeed, encompassing the risk of persecution, torture or death.

III. Analysis

A. *Unreasonable analysis of sur place claim*

[14] A refugee *sur place* is an individual who may not have qualified as a refugee when leaving their country of origin, but fears persecution upon return because of circumstances arising while in the host country (*Lakatos v Canada (Citizenship and Immigration)*, 2019 FC 1174 at para 13; *Lawani v Canada (Citizenship and Immigration*), 2018 FC 924 at para 29). The circumstances giving rise to a *sur place* claim may arise from, for example, the claimant's own actions while in the host country, a change of conditions in their country of nationality, or other

factors (*Michal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1507 at para 14). So long as the evidence of these circumstances is before the decision maker, they must be considered as part of the refugee determination process (*Zhang v Canada (Citizenship and Immigration)*, 2018 FC 1237 at para 31; *Mohajery v Canada (Citizenship and Immigration)*, 2007 FC 185 at para 31 [*Mohajery*]). This analysis is required "even if the applicant's narrative on the whole or in the part concerning his activities in his country of origin was not believed, insofar as trustworthy evidence establishes activities in Canada in support of the sur place refugee claim" (*Mohajery* at para 32 and the cases cited therein).

[15] Mr. Mbi Atem alleged a *sur place* risk of persecution and mistreatment upon return to Cameroon based on the new evidence of his participation in pro-Anglophone protests in front of the Cameroonian embassy in Canada and his profile as an Anglophone deportee. He relied on objective evidence in the Immigration and Refugee Board's [IRB] own National Documentation Package for Cameroon [NDP] and other published reports about the treatment of Anglophones by Cameroon, including Anglophone activists and returning failed Anglophone asylum seekers.

[16] The RAD accepted that Mr. Mbi Atem is Anglophone and that he had participated in the pro-Anglophone protests in Canada. It acknowledged objective evidence that "Anglophones returning to Cameroon including failed asylum seekers, are not safe and may be imprisoned or fined unless they pay a bribe" as well as reports filed by Mr. Mbi Atem detailing "the persecution faced by rejected Cameroonian asylum seekers, regardless of the country [from which they were being deported]." Nevertheless, the RAD determined that Mr. Mbi Atem's

political activities are likely not known to Cameroonian authorities and therefore he is not at risk as long as he pays a bribe on return.

[17] I agree with the Applicant that the RAD's analysis of *sur place* risk was unreasonable.

[18] The RAD acknowledged the evidence of grave mistreatment of returnees and political opposition supporters detailed in a 2022 report by Human Rights Watch [HRW], *"How Can You Throw Us Back?": Asylum Seekers Abused in the US and Deported to Harm in Cameroon*, included as item 14.2 in the NDP. However, the RAD gave the report "no weight" because Mr. Mbi Atem "was not in Cameroon in 2020 when the crack down…was happening" and "[t]here is insufficient evidence to support since this HRW report was released with recommendations to halt the harm experienced by some returnees to Cameroon in the time period continues." The latter finding is squarely contradicted by a more recent report in the NDP, item 2.19, *Cameroon Conflict Human Rights Report 2022/23 - From January 2021 to April 2023*, published by the Cameroon Conflict Research Group in mid 2023, and cited by the RAD for a different point just a paragraph earlier in its reasons. This report explicitly adopted the HRW findings and explained:

> [T]he types of human rights abuses committed previously are ongoing, while new forms of violence are also emerging. The Cameroon state forces are continuing to engage in village raids, massacres, and arson attacks; unlawful killings; arbitrary arrests; the use of torture; forced displacement; sexual violence; and targeting international humanitarian organisations. In addition to these longstanding violent practices, developments include the state's increasingly hostile response to asylum seekers returned to Cameroon from abroad, the threat of the death penalty in legal proceedings, the government's strategic underplaying of the conflict's severity, and the breakdown of peace talks led by the Swiss and Canadian governments.

[19] Likewise unreasonable was the RAD's reliance on item 10.6 of the NDP, *A Second Look at Cameroon's Anglophone Special Status,* published by the International Crisis Group [ICG] in early 2023, to reject the *sur place* claim. The RAD selectively cited to the positive steps taken by Cameroonian authorities to address the treatment of Anglophones, while ignoring information in this same report regarding the continuing political instability on the ground as well as the fact that the planned reforms had stalled. Indeed, later in the decision the RAD went so far as to rely – clearly unreasonably – on the fact that the ICG report "suggest[s] that the Cameroon government efforts are arguably a step in the right direction" and that "there is hope for the future of Anglophone citizens in Cameroon" to find that Mr. Mbi Atem is not at risk there today (*Camargo v Canada (Citizenship and Immigration),* 2015 FC 1044 at para 26). (Though not argued before me and not determinative given the RAD's other errors, the further finding that Mr. Mbi Atem can avoid mistreatment upon return if he pays a bribe may also be unreasonable: "If an individual has to pay for his or her own safety in order to ward off persecution, that, in and of itself, is persecution. The Applicants should not have to pay a bribe in order to survive." (*Junusmin v Canada (Citizenship and Immigration),* 2009 FC 673 at para 4).)

[20] While reviewing courts generally defer to the factual finding of administrative decision makers, we may intervene if the finding is "not 'justified in light of the facts' or when 'the decision maker has fundamentally misapprehended or failed to account for the evidence before it'" (*Mason v Canada (Citizenship and Immigration),* 2023 SCC 21 at para 73, citing *Vavilov* at para 126). When a decision maker does not properly deal with evidence squarely contradicting its findings of fact, the Court may infer that the decision maker overlooked the contradictory evidence when reaching its conclusion (*Ozdemir v Canada (Minister of Citizenship and*

Immigration), 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17; *Hernandez Cortez v Canada (Citizenship and Immigration)*, 2021 FC 1392 at para 29).

[21] That is what occurred here. While it was open to the RAD to come to its own conclusion about whether the objective evidence supported a current risk to Mr. Mbi Atem on return, that finding had to be justified in relation to the evidence.

[22] The RAD's failure to explain how and why it came to the conclusion it did in the face of the contradictory objective evidence renders its finding on the *sur place* claim unreasonable. I find further that the RAD unreasonably sought to bolster its conclusions about conditions facing returnees by selectively drawing from reports in the NDP without addressing the contradictory information contained in those same reports, and by relying on "serious efforts" to improve state protection and hopes for the future rather than on the current operational effectiveness of state protection mechanisms in Cameroon.

B. *Unreasonable assessment of risk based on residual profile*

[23] I also agree with Mr. Mbi Atem that the RAD's assessment of the risks he faces in Cameroon based on his residual profile was unreasonable.

[24] The RAD assessed the risks Mr. Mbi Atem faces in Cameroon based on his residual profile "as an Anglophone" and determined that "there is insufficient objective evidence to establish that the Appellant faces a serious possibility of persecution in Cameroon simply by

virtue of that fact that he is an Anglophone and/or a member of the Anglophone diaspora returning to Cameroon." In coming to this conclusion, the RAD explicitly distinguished Mr. Mbi Atem's circumstances from those of Anglophone activists, who it acknowledged are at risk, based on what it characterized as Mr. Mbi Atem's "testimony that he is not an activist" and a finding that he had "not credibly demonstrated that he was arrested or is wanted in Cameroon." This finding is directly contradicted by the RAD's own finding that Mr. Mbi Atem is an activist who continued to engage in activism in Canada, and that he was arrested – but not tortured – in 2017 while engaged in political activity.

[25] The RAD's reasoning regarding residual risk is unintelligible and internally incoherent, and it does not reveal a rational chain of analysis (*Vavilov* at paras 102-103). It resulted, moreover, in a failure to assess the risk to Mr. Mbi Atem based on his full profile as an Anglophone and a supporter of Anglophone separatism (*Safi v Canada (Citizenship and Immigration)*, 2016 FC 1347 at para 14; *Djubok v Canada (Citizenship and Immigration)*, 2014 FC 497 at paras 18-19; *Varga v Canada (Citizenship and Immigration)*, 2013 FC 494 at para 5; *Pastrana Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at para 6).

[26] I therefore find that the RAD decision must be set aside because the Officer unreasonably assessed Mr. Mbi Atem's *sur place* risk, and his risk based on his residual profile.

[27] Neither party proposed a serious question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-22514-24

THIS COURT'S JUDGMENT is that:

1. The application is granted. The appeal is remitted to a differently constituted panel for re-determination in accordance with these reasons.

2. No question of general importance is certified.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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