

Federal Court



Cour fédérale

Date: 20260121

Docket: IMM-14116-24

Citation: 2026 FC 91

Ottawa, Ontario, January 21, 2026

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SAMUEL GYAWU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Samuel Gyawu, made a claim for refugee protection in Canada based on fear of persecution in Ghana due to his political opinion, specifically his membership in a particular political party. The Refugee Protection Division [RPD] rejected his claim, finding that his allegations were not credible. Mr. Gyawu appealed the refusal. The Refugee Appeal Division

[RAD] upheld the RPD's decision, also finding Mr. Gyawu was not credible. It is the RAD's decision Mr. Gyawu challenges on judicial review.

[2] Mr. Gyawu raises numerous issues on judicial review. It is unnecessary for me to address each one because I have found the RAD's review of three of these issues requires the matter to be sent back to be redetermined. I find the RAD unreasonable on the following three issues: i) its refusal to admit Mr. Gyawu's affidavit that addressed his claim that the RPD breached fairness; ii) its failure to consider a potentially relevant document because it mischaracterized the document as "new evidence" when it was already part of the record before the RPD, and therefore was before the RAD; and iii) its evaluation of the corroborative evidence.

II. Procedural History

[3] Mr. Gyawu's refugee hearing before the RPD took place over four sittings, spanning approximately five years: August 2018, October 2019, February 2020, and April 2023.

[4] At the second hearing, after Mr. Gyawu gave approximately one hour of testimony in response to questions from the RPD, the RPD realized it had not been recording the hearing. Mr. Gyawu's counsel asked that a re-hearing be ordered with a different member. The RPD determined that it could continue to hear and decide Mr. Gyawu's case if it asked Mr. Gyawu the same questions again at another sitting and ensured it was recorded. Mr. Gyawu's counsel advised that she had taken notes of the first hour of the testimony but there were several points where she had noted that the recording would be required because she could not capture the

details of the testimony. The RPD did not explain what it was going to do with its own notes of the unrecorded testimony from the second hearing.

[5] At the outset of the third hearing, Mr. Gyawu's counsel asked for a determination on her request that the hearing begin *de novo* before a different member. The RPD advised that the request was refused, and reasons would be provided in the final decision.

[6] In May 2023, the RPD refused the claim for refugee protection. The central issue was Mr. Gyawu's credibility. The RPD found inconsistencies within Mr. Gyawu's testimony and with the documentary evidence. The RPD noted the issue with the recording and found that its solution of re-asking the same questions but on the record remedied any fairness concern.

[7] Mr. Gyawu appealed the RPD's refusal. The RAD first refused his appeal on November 9, 2023. On consent, the Court ordered the matter be redetermined based on a fairness issue with respect to having counsel's submissions considered on appeal. The RAD issued its redetermination decision on July 17, 2024, denying the appeal. It is this decision that is under review. The RAD found, like the RPD, that Mr. Gyawu was not credible. The RAD found no fairness breach on the part of the RPD with respect to the hearing recording issue.

III. Issues and Standard of Review

[8] All the issues I am addressing in the decision relate to the substance of the RAD's evaluation: the decision to not admit evidence, the failure to consider a relevant document, and the failure to transparently justify its assessment of some of the corroborative evidence. I have

therefore reviewed these issues on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23; *Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 96 at para 29).

[9] The reasonableness standard is a deferential but nonetheless “robust form of review,” where the starting point of the analysis begins with the decision-maker’s reasons (*Vavilov* at para 13). A decision-maker’s 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). The Supreme Court of Canada described a reasonable decision as “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). Administrative decision-makers, in exercising public power, must ensure that their decisions are “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

IV. Analysis

A. *Exclusion of Applicant’s Affidavit*

[10] The RAD did not accept a short affidavit from Mr. Gyawu, dated July 9, 2023, where he describes what happened at the second sitting at the RPD when the recording stopped. In particular, he states the subject matters he was asked about that were not recorded and that there may have been other topics he could not recall. The Applicant also stated that he remembered that the questioning was “comprehensive” and he provided “detailed responses.”

[11] New evidence can be filed at the RAD only where the evidence arose after the RPD rejected the claim, or where the evidence was not reasonably available or the claimant could not have been reasonably expected to have filed the evidence prior to the rejection of the claim (subsection 110(4) of *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]).

[12] The RAD found this affidavit did not meet the statutory requirements for the admission of new evidence at the RAD. The RAD found “the matter of the missing audio recording did not arise after the RPD’s decision” and that the “RPD’s decision addresses its consideration of the totality of the evidence with respect to procedural fairness.”

[13] Mr. Gyawu argued before the RAD that there had been a breach of procedural fairness because of the manner in which the RPD dealt with its failure to record the second day of testimony at his RPD hearing. In his submissions filed to the RAD, Mr. Gyawu argued that the RPD’s credibility findings could not be upheld because of the unfairness in the RPD’s attempt to repeat the same questions to Mr. Gyawu after it had already heard him provide the answers to those or similar questions.

[14] While Mr. Gyawu raised the fairness issue before the RPD, it’s the RPD’s treatment of the issue that Mr. Gyawu was asking the RAD to consider on appeal and specifically to determine whether the RPD breached procedural fairness by proceeding with hearing in the manner it did and by attempting to repeat the same questions.

[15] Given the nature of the argument Mr. Gyawu was making to the RAD relating to his allegation of a procedural fairness breach due to the RPD's process, it is unclear how in these circumstances Mr. Gyawu could have provided this evidence earlier. The RAD fails to explain its refusal to admit the evidence in light of this context.

[16] In order to properly address Mr. Gyawu's fairness argument, the RAD ought to have considered the evidence that Mr. Gyawu attempted to put forward related to the alleged procedural fairness breach. As this was not before the RAD, this may have affected their evaluation of this issue.

[17] I will not decide on the procedural fairness issue raised on judicial review, but I find that in order to evaluate that issue, it was unreasonable for the RAD to not admit Mr. Gyawu's July 9, 2023 affidavit.

B. *Mischaracterization of Evidence as "New"*

[18] Within Mr. Gyawu's appeal record, he provided his counsel's letter, dated June 2017, asking that a designated representative be appointed for him because of the mental health issues she observed while trying to complete his Basis of Claim [BOC] forms while he was detained. Ultimately, Mr. Gyawu was not found to have required a designated representative.

[19] Counsel argues the letter is relevant because of the RAD's findings relating to the inconsistencies between the vague information in Mr. Gyawu's BOC and the more detailed account in his testimony.

[20] Mr. Gyawu's counsel did not characterize the letter as "new evidence" before the RAD or ask that the RAD admit it; it was simply provided as part of the record. The RAD found that it would not accept the evidence because it was not "new" and could have been provided to the RPD at the time of the hearing.

[21] This was clearly a factual error. While the Respondent does not dispute this error, they argue that it is an error that would have made no difference given the limited value of it in substantiating any mental health issue.

[22] In my view, it was unreasonable for the RAD to treat evidence that was before it in the record as "new evidence" and decline to consider it. In order to evaluate counsel's submissions on the inconsistencies of the evidence, the RAD ought to have considered the material in the record and counsel's submissions on this issue. It is not for this Court to attempt to determine whether this evidence would have had an impact on the RAD's evaluation of the inconsistencies with the BOC narrative.

C. *Unreasonable Evaluation of Corroborative Evidence*

[23] The RAD preferred the evidence provided in an article in the National Documentation Package, "*Conflict Trends (No.58). Real-Time Analysis of African Political Violence, May 2017, Ghana.*" about the date of a protest at issue as being March 24, 2017 instead of March 3, 2017 as stated in the Applicant's BOC and a number of corroborative affidavits.

[24] The RAD assigned “no weight” to the affidavits of Mr. Gyawu’s mother, brother, and his mother’s landlady, that described recent police visits in 2023 to Mr. Gyawu’s mother’s home, following the return of his brother to Ghana, who the police were alleged to mistakenly believe was the Applicant. The basis for assigning “no weight” to this evidence is because the date of “March 3, 2017” is provided in each affidavit as when the Applicant’s problems began. This is the only basis on which the RAD determined the affidavits should be given “no weight.”

[25] The RAD reasoned that because it did not accept that Mr. Gyawu was involved in the protest on March 3, 2017, which led to police interest in him, it did not have to consider the affidavits that asserted as background that the March 3, 2017 protest triggered this interest. The RAD does not explain, other than saying that “overall credibility” is at issue, how this finding affected the remainder of the information in the affidavits that dealt with a key issue, which was the police visiting the Applicant’s mother’s home on multiple occasions in 2023, looking for Mr. Gyawu.

[26] The RAD cites this Court’s decision in *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 for the principle that a finding about claimant’s “overall credibility may affect the weight given to documentary evidence.” As explained by Justice Norris, while true as a general proposition that adverse credibility findings may affect the weight, “adverse overall credibility findings alone are not sufficient grounds for rejecting potentially corroborative evidence” (*Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at paragraph 18; *Tofa v Canada (Citizenship and Immigration)*, 2023 FC 315).

[27] The RAD's decision to assign no weight to any of the evidence in these affidavits does not meet the requisite standard of transparency, intelligibility and justification. It is not sufficient for a decision to be justifiable; the decision must also be justified to the Applicant through the reasons provided by the decision-maker (*Vavilov* at para 86).

V. Disposition

[28] The application for judicial review is allowed. The matter must be sent back to be redetermined. Neither party raised a question for certification, and I agree none arises.

JUDGMENT IN IMM-14116-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated July 17, 2024 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

DOCKET: IMM-14116-24

STYLE OF CAUSE: SAMUEL GYAWU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 9, 2025

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JANUARY 21, 2026

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