Federal Court  Cour fédérale

Date: 20200401

Docket: IMM-3207-19

Citation: 2020 FC 463

Ottawa, Ontario, April 1, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ABDULRA ABDULRAHIM
(AKA HUSSAIN ABDULRA ABDULRAHIM)

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Abdulra Abdulrahim, is a citizen of Qatar. Although he claimed refugee status in Canada in 2003, that status is now in question due to an April 26, 2019 Refugee Protection Division [RPD] decision [Decision], which vacated his refugee status for misrepresentation. The Applicant applies for judicial review of the Decision pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The application for judicial review is dismissed for the reasons that follow.

II. Decision under Review

[3] On July 22, 2004, the RPD granted the Applicant and his wife refugee status in Canada. However, on November 5, 2013, the Minister of Citizenship and Immigration applied under s 109 of IRPA, to have the Applicant's (but not his wife's) refugee status vacated for misrepresentation and withholding material facts. The section reads:

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.	**109 (1)** La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.
(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.	(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.
(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.	(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

[4] The Minister claimed that the Applicant had been charged with fraud and forgery in Qatar prior to coming to Canada, and he had withheld that he had committed the acts upon which

these charges were based. Therefore, the RPD was unable to consider whether the Applicant was inadmissible because they did not know of these charges or acts.

[5] The Minister presented the following evidence in support of his application: the Applicant's fingerprint data and allegedly-matching fingerprint data from Interpol's database; a report from Qatar's Ministry of the Interior, Fraud and Forgery unit containing investigation documents about a fraud in Qatar, including documents that purportedly identified the Applicant as the perpetrator of the fraud from (a) two bank managers whose banks were swept up in the fraud, and (b) the Applicant's brother.

[6] The RPD allowed the Minister's application. In its decision, the RPD first quoted Justice Harrington's words from *Canada (Public Safety and Emergency Preparedness) v Gunasingam*, 2008 FC 181 at paragraph 7 [*Gunasingam*], outlining the three requirements for allowing an application under IRPA s 109(1): "a) there must be a misrepresentation or withholding of material facts; b) those facts must relate to a relevant matter; and c) there must be a causal connection between the misrepresenting or withholding on the one hand and the favourable result on the other".

[7] In applying the *Gunasingam* test, the RPD proceeded to summarize the Minister's evidence and the Applicant's position on it. All of the Minister's evidence was tendered toward establishing that the Applicant committed a fraudulent act to acquire $500,000 in Qatari Royals before coming to Canada. The Applicant replied by arguing that it was not him who was identified in the above

evidence; however, the RPD was not persuaded by his arguments. On the evidence before it, it found that the Minister had satisfied the *Gunasingam* test.

[8] Next, the RPD found that the Applicant was ineligible for refugee protection per IRPA s 98, which reads:

98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	**98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[9] Section 98 incorporates Article 1F of the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can TS No 6:

F The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	**F** Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
[…]	[…]
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
[…]	[…]

[10] The RPD found that the crime was serious, non-political, and committed in Qatar in 2002 before the Applicant came to Canada. Therefore, the exclusion applied, making the Applicant ineligible for refugee protection. The RPD allowed the Minister's application and the Applicant's refugee claim was deemed rejected.

III. Issues and Standard of Review

[11] The Applicant contests the RPD's findings. He accuses the RPD on relying upon flawed evidence and drawing incorrect conclusions with respect to his alleged crimes in Qatar.

[12] The parties agree that these errors are to be assessed on a standard of reasonableness. A reasonableness standard aligns with the Supreme Court's recent restatement of the law in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], in which a reasonableness standard is presumed. I see no reason to rebut this presumption in the instant case.

IV. Parties' Positions

A. *Was the decision reasonable?*

(1) Applicant's Position

[13] The Applicant takes issue with the RPD's reliance or findings related to: (1) the sets of fingerprints, (2) the Applicant's brother's testimony, (3) statements from officials of the defrauded banks and victim, (4) the Applicant's own testimony and explanations for why he did not try to "clear his name" by contacting family members or Interpol, (5) the non-political nature of the charges against the Applicant, (6) the RPD's failure to consider that the "Red Notice" issued by Interpol was not renewed, (7) that there was no evidence that the Applicant was aware of the allegations against him when he made his claim. He calls the evidence provided by the

Minister and accepted by the panel “conjectures and guess work”. He argues that the allegation is fabricated.

(2) Respondent’s Position

[14] The Respondent argues that the decision was reasonable as a whole. It provides explanations for the Board’s reasoning on various points, and notes that many of the “errors” alleged by the Applicant are either insignificant or immaterial.

V. Analysis

A. *Was the decision reasonable?*

[15] First, on the Applicant’s submissions about his fingerprints and Interpol status, I am in agreement with the Respondent that the RPD placed little weight on them. The RPD’s treatment of the fingerprint data does not constitute a reviewable error. They are only mentioned as part of a summary of the Minister’s evidence. The RPD mentions “fingerprints” again later in the decision, but only notes that it has reviewed the evidence, including statements identifying the Applicant as the perpetrator, and has found a positive link. The RPD did not rely on the fingerprints matching.

[16] Second, the Applicant has presented no compelling argument as to how the RPD has erred in relying on his brother’s testimony. In fact, the RPD produced an extensive examination—and the Applicant was unable to produce an explanation about why his brother would falsely identify him. The Applicant claims it was an error for the RPD to not consider that

his brother was working with his “agent of persecution” against him. However, the RPD is not bound to consider every possible argument or line of analysis (*Vavilov* at para 128).

[17] Third, on the issue of the RPD relying on erroneous and untested statements, there is no reviewable error. Although the Applicant does note some slight contradictions between certain pieces of testimony, the primary issue was identification: the RPD found that both bankers were able to identify the Applicant as participating in the fraud. The investigation might have contained minor flaws, but identification of the Applicant was the key issue. No investigation is perfect. It was not an error for the RPD to find that the Applicant has been identified and charges were laid against him.

[18] Fourth, there is no error in the RPD’s discussion about the Applicant’s willingness to contact his family or “clear his name” on the Interpol database. The Applicant claims that it was unreasonable for the RPD to expect this because the Applicant would not want to “cause a rift in his family.” This assertion is not enough to establish a reviewable error. In any case, the RPD did not impeach his credibility using this information—they simply mentioned it while speaking about how it was strange that the Applicant did not expend a greater effort to rebut the Minister’s allegations. It is true that the RPD did call his actions “unreasonable”; however, I find that nothing turns on that statement.

[19] Fifth, on the allegation that the RPD erred in finding that the nature of this crime was non-political, there is no merit to this argument. Although he claims that the RPD did not consider that his family might be aligned with the government against him, he presented no

evidence of this other than a few speculative remarks. Again, an assertion is not enough to establish a reviewable error. I once again highlight that the RPD is not bound to consider every possible line of argument and hypothetical (*Vavilov* at para 128).

[20] Sixth, on the argument that it was an error for the RPD to not consider that the Interpol Red Notice against the Applicant was not renewed, I also find that the RPD did not err. As the Respondent puts it, "the fact that [the Interpol Red Notice] was not renewed in 2015 does not detract from the finding that he had engaged in fraud in 2002." Further and again, the RPD is not bound to consider every possible line of argument and hypothetical (*Vavilov* at para 128).

[21] Seventh and finally, the RPD did not err by deciding as it did, regardless of whether the Applicant was aware of the allegations against him in Qatar. This is an irrelevant complaint. Section 109(1) of IRPA reveals no *mens rea* element to the provision (*Canada (Minister of Citizenship and Immigration) v Wahab*, 2006 FC 1554 at para 29).

[22] None of the Applicant's arguments support a finding of unreasonableness in the RPD's Decision. While it is true that the RPD could have reasonably decided other than as they did, this is a matter of weighing, which is not the Court's role in a judicial review. There was sufficient evidence before the RPD to support its findings.

VI. Conclusion

[23] For the reasons above, the application for judicial review is dismissed. Neither party has submitted a question for certification and, in my view, none arises.

[24] I make no order as to costs.

JUDGMENT in IMM-3207-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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