Federal Court  Cour fédérale

Date: 20210125

Docket: IMM-6675-19

Citation: 2021 FC 80

Ottawa, Ontario, January 25, 2021

PRESENT: The Honourable Madame Justice Walker

BETWEEN:

VIVIAN CHIOMA IDUMONZA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Vivian Idumonza, is a citizen of Nigeria. She is seeking judicial review of a Refugee Appeal Division (RAD) decision dated October 10, 2019 (Decision). The RAD confirmed the decision of the Refugee Protection Division (RPD) rejecting Ms. Idumonza's claim for refugee protection and denying her status as a Convention refugee or as a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] The determinative issue in this application for judicial review is whether the RAD erred in rejecting the new evidence presented by Ms. Idumonza. The RAD concluded that the new documents did not meet the requirements of subsection 110(4) of the IRPA.

[3] For the reasons set out below, I will allow Ms. Idumonza's application. In light of the evidence presented to the Court and the panel, and the applicable law, I am not satisfied that the RAD's refusal to accept the statement of Ms. Idumonza's daughter is reasonable. In my opinion, the reasons provided in the Decision do not reflect the transparency and consistency that are necessary for a reasonable decision. This is sufficient to justify the Court's intervention, and I must therefore, in the circumstances, refer the matter back to the RAD for reconsideration of the appeal brought by Ms. Idumonza.

I. Facts and RAD Decision

[4] Ms. Idumonza claims that she fears she will be killed by her uncle because of a family dispute over the property deeds of her father, who died 16 years ago. Her uncle allegedly threatened to kill her in June 2017 because of missing property deeds. In addition, in August and September 2017, Ms. Idumonza was the victim of a car accident and an armed robbery, which she believes were orchestrated by her uncle.

[5] Ms. Idumonza fled Nigeria in November 2017 and travelled to the United States. She entered Canada on May 1, 2018, and on May 7, 2018, she filed her claim for refugee protection.

[6] On April 2, 2019, her uncle located her daughter, went to her apartment in Abuja, Nigeria, and asked her for Ms. Idumonza's address.

[7] The hearing before the RPD regarding Ms. Idumonza's claim for refugee protection was held on April 25, 2019. At the beginning of the hearing, she described what had transpired between her uncle and her daughter on April 2, 2019. Ms. Idumonza offered to provide the panel with a sworn statement from her daughter. The RPD granted her an extension of one week, until May 1, 2019, to submit the document.

[8] On May 9, 2019, Ms. Idumonza received her daughter's April 30, 2019, statement (Statement) by mail. She filed it with the RPD on May 10, 2019.

[9] On May 14, 2019, the RPD rejected Ms. Idumonza's refugee protection claim on the grounds that she had an internal flight alternative (IFA) in Ibadan or Port Harcourt, Nigeria. The RPD found that Ms. Idumonza's testimony was not credible with respect to her uncle's interest in finding her and his ability to do so in Ibadan or Port Harcourt.

[10] By letter dated May 17, 2019, the RPD informed Ms. Idumonza that it was returning her daughter's Statement given that it had been received on May 10, 2019, after the panel's decision had already been made.

[11] Ms. Idumonza appealed the RPD's decision before the RAD. She submitted two new pieces of evidence to the panel: (1) the Statement; and (2) a partial copy of information from the Government of Canada Travel Advice and Advisories website regarding Nigeria.

[12] The RAD did not accept these two documents as evidence. With respect to the Statement, the RAD criticized Ms. Idumonza for failing to explain the delay in preparing, transmitting and filing the Statement with the RPD. The RAD questioned why Ms. Idumonza had not requested an extension of the one-week time limit granted by the RPD to file the Statement and why she had not sent the Statement to the RPD when she received it on May 9, 2019, "which was still prior to the rejection of her claim on May 14, 2019."

II. Issue and standard of review

[13] The determinative issue in this application is how the RAD dealt with the Statement from Ms. Idumonza's daughter describing the events of April 2, 2019, in Abuja.

[14] The standard of reasonableness applies to the RAD's decision to refuse new evidence (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*); *Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at paras 27–28 (*Okunowo*)). None of the situations identified by the Supreme Court of Canada in *Vavilov* for departing from the presumptive standard of review apply in this case.

[15] In *Vavilov*, the Supreme Court elaborated on what constitutes a reasonable decision, and provided guidance for conducting a reasonableness review. Where the applicable standard is

reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision "is based on an internally consistent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). If "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and . . . is justified in relation to the relevant factual and legal constraints that bear on the decision," this Court must not substitute the outcome that would be preferable to it (*Vavilov* at para 99).

III. Analysis

[16] In her application for judicial review, Ms. Idumonza does not challenge the conclusions drawn by the RAD with respect to the IFA. She alleges that the RAD's refusal to admit the Statement is unreasonable in the context of subsection 110(4) of the IRPA. Moreover, Ms. Idumonza criticizes the RAD for failing to consider the factors set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 (*Raza*), namely the relevance and materiality of her new evidence.

[17] Subsection 110(4) of the IRPA provides as follows:

Evidence that may be presented	**Evidence that may be presented**
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, elle n'aurait pas normalement présenté, dans

to have presented, at the time of the rejection.	les circonstances, au moment du rejet.

[18] The respondent submits that the RAD provided clear reasons for its refusal to admit the statement into evidence, and relied on the criteria set out in subsection 110(4) of the IRPA. The respondent argues that the RAD was not required to undertake the second step of the analysis and apply the implicit criteria from *Raza* (credibility, relevance, newness and materiality). The respondent maintains in particular that these criteria are applicable only where the explicit requirements of subsection 110(4) have been met.

[19] In deciding whether to accept the new evidence submitted by Ms. Idumonza, the RAD first had to determine whether it was admissible under subsection 110(4) of the IRPA. If not, the new evidence was not admissible. I agree with the respondent that new evidence must first fall into one of the three categories described in subsection 110(4) (*Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at para 17). Likewise, my colleague Justice Kane has noted that an applicant must meet the requirements of subsection 110(4) before the RAD considers how the *Raza* factors should be applied in the context of an appeal (*Okunowo* at para 41). The RAD made no error in this regard.

[20] My analysis of the Decision rests on the RAD's reasons regarding the requirements of subsection 110(4) of the IRPA. The RAD points out that Ms. Idumonza did not explain why she was unable to submit the Statement to the RPD at the hearing and before the RPD had made its decision, and that Ms. Idumonza did not act promptly after receiving the statement on May 9, 2019:

> [6] The first document is a statement dated April 30, 2019, signed by the Appellant's daughter, which indicates that, on April 2, 2019, a man came to her residence on behalf of her the Appellant's uncle, to inquire about the address of the Appellant. In an accompanying sworn statement, the Appellant explains that she had not yet received this document on the day of the hearing (April 25, 2019), nor did she receive it within the week that she had requested to file it after the hearing. She only received it by mail on May 9, 2019. She does not explain why this document, which pertains to events that happened prior to the hearing, could not have been prepared and sent earlier, nor does she explain why this document couldn't have been sent by a faster method of transmission. Furthermore, she offers no explanation as to why she did not ask for the extension of the one-week delay to file documents, and why she did not submit it to the RPD when she finally had it in her possession and available to her on May 9, 2019, which was still prior to the rejection of her claim on May 14, 2019. I cannot therefore accept this document into evidence before the RAD.
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> [Emphasis added]

[21] My analysis is based primarily on the letter from the RPD dated May 17, 2019. The letter informs Ms. Idumonza that the Statement was received by the panel on May 10, 2019, but that unfortunately, the RPD had rendered its decision before the Statement was received. As a result, the RPD returned the Statement to Ms. Idumonza.

[22] The chronology of events is as follows:

April 25, 2019:	Date of RPD hearing
May 1, 2019 :	Deadline established by the RPD for the filing of the Statement from Ms. Idumonza's daughter
May 9, 2019:	Receipt of the Statement by Ms. Idumonza
May 10, 2019:	Date of filing of the Statement with the RPD
May 14, 2019:	Date of RPD decision
May 17, 2019:	Date of RPD letter regarding the filing of the Statement
June 9, 2019:	Receipt of RPD decision by Ms. Idumonza

[23] I find that the RAD erred in determining that despite the RPD's May 17 letter, Ms. Idumonza "did not submit it to the RPD when she finally had it in her possession and available to her on May 9, 2019, which was still prior to the rejection of her claim on May 14, 2019." In my opinion, this error represents a significant enough shortcoming to render the Decision unreasonable (*Vavilov* at para 100). The other problems with Ms. Idumonza's explanations that were identified by the RAD are not convincing in the face of this factual error.

[24] It must be borne in mind that subsection 110(4) deals strictly with evidence that an applicant has not submitted to the RPD "at the time of the rejection." However, Ms. Idumonza filed the Statement prior to the date of the RPD's decision. I acknowledge that the filing was made after the deadline imposed by the RPD, but the panel's letter of May 17, 2019, does not suggest that the Statement was rejected as a result of being filed late. On the contrary, the letter suggests a tacit waiver of the deadline and states only that the Statement could not be considered because the decision had already been made. This reasoning appears to be erroneous. The RAD repeated this error in the Decision. The RPD received the Statement on May 10, 2019, and its decision is dated May 14, 2019. It may well be that the wording of the letter is only intended to indicate that the RPD had approved the content of the decision, but that the formal decision had not been finalized and signed. Ms. Idumonza was not provided with such an explanation, however. She believes that this was an error on the part of the RPD and that the RAD's reasons are not consistent and transparent in this regard.

[25] I understand that neither the Statement nor the letter from the RPD was forwarded to the RAD by the RPD or Ms. Idumonza. Therefore, the RAD could not have known that the

statement was received by the RPD on May 10, 2019. Similarly, Ms. Idumonza was unaware that the RPD had not provided its May 17 letter to the RAD. I note the respondent's argument that Ms. Idumonza's explanation in her sworn statement before the RAD is lacking in detail. Nevertheless, in her sworn statement dated July 11, 2019, and filed with the RAD, Ms. Idumonza indicates that she received the Statement on May 9, 2019, and promptly sent it to the RPD. The RPD received the Statement on May 10, 2019. In my view, it is not appropriate for the RAD to suggest that Ms. Idumonza did not act quickly upon receipt of the Statement.

[26] I agree with the respondent's argument that it is not for the Court to redetermine whether the Statement should have been admitted into evidence (*Okunowo* at para 38). The Court's role is to rule on the reasonableness of the RAD's finding that this new evidence did not meet the statutory and jurisprudential admissibility criteria. In light of my finding that the RAD's reasons for refusing to admit the statement into evidence do not reflect a reasoned analysis of the facts and the criteria set out in subsection 110(4), I am referring the request back to the RAD.

[27] Notwithstanding the fact that reconsideration of the admissibility of the statement falls within the jurisdiction of the RAD, I would point out that the RAD has already noted the importance of the Statement in light of Ms. Idumonza's arguments:

> [16] . . . The evidence that he was finally able to find her daughter in another city on April 2, 2019, just a few days before the hearing, one year and a half after the last threat, is thus very important, to establish that her uncle still has the intent and now the ability to find a relative such as the Appellant.

[28] Finally, I do not agree with the respondent's argument that in not challenging them, Ms. Idumonza accepted the RAD's findings regarding the IFA. The respondent relies on the decision in *Huang v Canada (Citizenship and Immigration)*, 2016 FC 163 at para 42 (*Huang*):

> [42] The principal basis of the Decision is a general negative credibility finding against the Applicants. This is made after a detailed examination of several areas of concern. The Applicants have chosen to question some of the Board's cumulative findings, but not all of them. The Court must take it, then, that where any finding of the Board is not questioned, it is accepted by the Applicants.

[29] The Court's reasoning in *Huang* is not persuasive. Her daughter's Statement is at the heart of Ms. Idumonza's appeal and must be properly addressed before a finding is made with regard to an IFA. The arguments of the applicants described by the Court above relate to the Board's findings on the merits of the case, not procedural findings on the admissibility of evidence.

IV. Conclusion

[30] For the reasons set out above, Ms. Idumonza's application for judicial review is allowed. Under the reasonableness standard, the reasons for the decision must demonstrate that the RAD's determinations refusing Ms. Idumonza's new evidence were based on an internally coherent and rational chain of analysis and were justified in relation to the facts and law that constrain the administrative decision maker. That is not the case here. By refusing the statement from Ms. Idumonza's daughter as it did in its decision, the RAD effectively deprived Ms. Idumonza of a part of the appeal process to which she was entitled. In these circumstances, the appropriate remedy is to restore that opportunity to her by referring the matter back to the RAD for reconsideration.

[31] The parties have not submitted any question of general importance for certification, and this matter does not raise any.

JUDGMENT IN IMM-6675-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6675-19
STYLE OF CAUSE:	VIVIAN CHIOMA IDUMONZA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MATTER HEARD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC
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APPEARANCES:

Émilie Le-Huy	FOR THE APPLICANT
Caroline Doyon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Émilie Le-Huy Counsel Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT