

Federal Court



Cour fédérale

Date: 20210518

Docket: IMM-4639-20

Citation: 2021 FC 455

[ENGLISH TRANSLATION]

Montréal, Quebec, May 18, 2021

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MAICO DIANSONI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision dated September 9, 2020, by the Refugee Appeal Division [RAD] confirming the decision of the Refugee Protection Division [RPD] dated June 19, 2018, rejecting the applicant's claim for refugee protection.

[2] For the reasons that follow, the RAD's decision is reasonable in all respects. There is no need to intervene in this case.

I. Factual background

[3] The applicant is a citizen of the Republic of Angola. He alleges that he was persecuted by Angolan authorities and that he fears for his life and safety by reason of his membership in the Church of the Seventh Day Adventists—*Luz do mundo* [the Church] starting in March 2014. As a millenarian group, the Church's followers believe that the end of the world is near. Specifically, it was to occur on April 16, 2015. The day before this critical date, believers were supposed to assemble and pray at Mount Sumi. However, this did not stop the applicant from travelling to the United States on April 6, 2015, to explore business opportunities. During the trip, the members of his church experienced serious problems with the authorities. The police allegedly opened fire on members of his church, whom they saw as political opponents, and tried to arrest their leader. A number of them reportedly died from their injuries. The applicant's spouse and a number of other Church members were arrested and detained by the police, if the applicant's account is to be believed. On May 6, 2015, the applicant left the United States and returned to Angola to look for his spouse. On May 10, 2015, as he was continuing his search, the applicant was arrested by Angolan authorities and accused of being a member of the Church. The applicant states that after 19 days of detention, during which he almost lost his life, he managed to escape with the help of a soldier. The applicant lived in hiding until he could afford to leave Angola. He left Angola for the United States on October 28, 2016, and sought asylum there.

[4] On July 8, 2017, while his asylum application was still pending in the United States, he decided to cross the border and claim refugee protection in Canada.

II. Rejection of refugee protection claim and subsequent appeal

[5] The RPD determined that the applicant was not a Convention refugee or a person in need of protection. The credibility of his account was a determinative factor. The RPD identified a significant inconsistency in the applicant's testimony, namely his presence in the United States on April 16, 2015, when the Church's faithful had been called to assemble at Mount Sumi for the end of the world. The applicant's explanations for this were inconsistent and did not satisfy the RPD. It found further inconsistencies with respect to the date the applicant became a member of the Church and with respect to the places where the applicant allegedly hid during his flight. The applicant's explanations remained unsatisfactory. All of this seriously undermined the applicant's credibility and justified rejecting the claim for refugee protection.

[6] The applicant filed an appeal. In particular, he wanted to submit six new pieces of evidence to the RAD, including statements attesting that the applicant's spouse was arrested again in March 2020 along with the pastors and other members of the Church.

[7] Initially, the RAD rejected the new evidence. Although the new evidence met the requirements of section 29 of the *Refugee Appeal Division Rules*, SOR/2012-257, it did not meet the implicit criteria for admissibility laid down in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] and reiterated with certain clarifications by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*].

[8] On the merits, following an independent analysis of the file, the RAD arrived at the same conclusions as the RPD. The RAD began by noting that the information provided by the applicant regarding the Church's dogma, philosophical thought and doctrine was rather lacking. The RAD found that the applicant's inability to explain the structure and principles of his new religion undermined his credibility. As for the claim that the RPD had not given the applicant an opportunity to clarify some aspects, including the date of the end of the world and the authenticity of his membership card, the RAD was of the opinion that he had had the opportunity to testify at length on the end of the world. It also noted that the applicant's explanations regarding his membership card were illogical and perplexing. With respect to the date on which the applicant joined the Church, the RAD concluded that there were major contradictions in the his testimony that undermined his credibility. Lastly, regarding the allegation that the RPD did not understand the applicant's different cultural background, the RAD stated that he had given no examples to support his statement. Consequently, it determined that the RPD had not erred and that the appeal had to be dismissed, hence this application for judicial review.

III. Analysis

[9] Today, the applicant is asking the Court to conclude that the RAD acted unreasonably in refusing to admit, under subsection 110(4) of the IRPA, his statement dated June 23, 2020, which he believes presents a new, credible and probative fact, namely the arrest of his spouse on March 27 and 28, 2020. Since the spouse's March 2020 arrest is a new fact, the applicant criticizes the RAD for not sufficiently explaining in its reasons how his spouse's statement of May 15, 2020, is ambiguous and how it renders his own statement of June 23, 2020, not credible. He also submits that the RAD erred in noting the existence of a contradiction between the

statement of a friend of the couple dated June 22, 2020, and the statement of his spouse. In short, he submits that the RAD erred in rejecting the new evidence because it did not meet the implicit criteria for admissibility mentioned in *Raza and Singh*.

[10] Both in its supplemental brief and at the hearing, counsel for the respondent focused on demonstrating that both the RAD's refusal to admit the new evidence and its negative credibility findings were reasonable and should not be disturbed.

[11] In accordance with the presumption established by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the reasonableness standard of review applies to the impugned decision. This Court must therefore examine the reasons provided with respectful attention and seek to understand the reasoning process followed by the decision maker to arrive at its conclusion. In this case, the Court must ensure that the RAD's decision is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker. In short, the decision maker must assess and evaluate the evidence before it and, absent exceptional circumstances, this Court must not interfere with its factual findings (*Vavilov* at para 125).

[12] To begin with, subsection 110(4) of the IRPA provides that only evidence that arose after the rejection of the claim or that was not reasonably available, or that could not reasonably have been expected in the circumstances to have been presented, at the time of the rejection, is admissible. But there is more: The Federal Court of Appeal has recognized that there are also

implicit conditions of admissibility, such as credibility, relevance and newness, that must be assessed by the RAD (*Raza and Singh*).

[13] In this case, the RAD reasonably concluded that the new evidence was either reasonably available to the applicant prior to the RPD hearing or not relevant or credible, given its source and the circumstances in which it arose. In particular, the applicant has failed to identify before this Court any determinative errors in this regard. Although the statements of the applicant, his spouse and the couple's friends were relevant at first glance, the RAD nevertheless had reasonable grounds to doubt their credibility. The RAD's reasoning is clearly articulated in paragraphs 13, 15, 16 and 17 of the decision under review (exhibits D-1, D-3, D-4 and D-5).

[14] Regarding the merits of the appeal, it was reasonable for the RAD to conclude that the inconsistencies and contradictions between the evidence on the record and the applicant's testimony on key elements of his refugee protection claim, such as his absence from the events related to the end of the world or the date he joined the Church, undermined his overall credibility. Credibility findings go to the very core of the expertise of the RPD and the RAD. This Court can neither substitute its own view of a preferable outcome nor reweigh the evidence (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 16, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

IV. Conclusion

[15] The application for judicial review is dismissed. Counsel raised no serious question of general importance, and none arises in this case.

JUDGMENT in IMM-4639-20

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4639-20

STYLE OF CAUSE: MAICO DIANSONI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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QUÉBEC, QUEBEC, AND MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: MARTINEAU J.

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