Federal Court  Cour fédérale

Date: 20211213

Docket: IMM-1840-20

Citation: 2021 FC 1402

Ottawa, Ontario, December 13, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

FRANKLIN CHAMDA NJOMO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The judicial review application concerns a citizen of Cameroon, Mr. Franklin Chamda Njomo (The Applicant), who was declared to be excluded from refugee protection by reason of section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The judicial review application is made pursuant to section 72 of the IRPA.

[2] Section 98 of the IRPA declares that a person referred to in section E or F of Article 1 of the United Nations Convention Relating to the Status of Refugee is excluded from being considered a convention refugee (s 96 of the IRPA) or a person in need of protection (s 97 of the IRPA). In this case, it is section E of Article 1 which is said to find application by the Refugee Protection Division (RPD). Section E of Article 1 reads as follows:

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	**E.** Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

[3] The decision under review results from a redetermination ordered by this Court following a judicial review in this Court after the RPD's original decision that had concluded that the Applicant should not be excluded. On the redetermination, the RPD reached a different conclusion. The decision to exclude the Applicant is now the subject of the judicial review application.

I. Facts

[4] The Applicant claims fear of persecution in his country of nationality for two reasons. He fears persecution from the national government because of his political activism in support of the Southern Cameroon National Council (SCNC) / Federal Republic of Ambazonia. It appears that the SCNC seeks to protect the rights of the Anglophone minority in Cameroon, leading

eventually to the establishment of an independent nation. The Applicant also fears persecution because of his sexuality.

[5] The facts leading to the RPD decision on redetermination are the following. Born in Cameroon, the Applicant joined the SCNC in October 1996. Three years later (December 31, 1999) he took part in the takeover of a radio station in Buea. That allowed for the broadcast of a proclamation of independence of Southern Cameroon. The RPD states that in October 2001, Mr. Njomo took part in a rally in Buea to protest the detention of SCNC members. He was arrested in March 2002 and spent the next six months in detention where he was beaten and forced to sign a declaration about his illegal involvement in SCNC activities between December 1999 and October 2001.

[6] The Applicant left Cameroon for Spain in March 2003. His asylum claim was rejected. He then was granted a temporary residence permit (TRP), valid for one year. The TRP was renewed twice for periods of two years, and once for a period of five years.

[7] Things started to evolve in 2008. It looks like the Applicant started to travel regularly back to Cameroon. As we shall see later, the Applicant appears to have spent considerable time in Cameroon in spite of his TRP in Spain. He covered his true identity by using a membership card with the name “Tata Divine”. It seems that he also used two other identities. In February 2011, the President of SCNC and several members were arrested. He was not. However, returning to the residence he used in Cameroon, he found the place broken into and his passport stolen. With the assistance of a corrupt immigration officer, the Applicant obtained a new

Cameroonian passport and returned to Spain in May 2011. Weeks later, SCNC members informed him that the Cameroonian police had discovered his use of two identities; he was warned that he would be arrested and detained if he went back to Cameroon.

[8] Around January 2012, while in Spain, he began receiving threatening phone calls, fifty in total according to the Applicant. The Applicant came to Canada later in May 2012. His Personal Information Form (PIF) is stamped on June 22, 2012. His wife and two daughters did not accompany him to Canada. The Applicant's wife, a Bolivian national, went from Spain to Bolivia before the Applicant left for Canada. The family kept in touch by telephone for a while. In mid-2014, the couple, in effect separated.

[9] The Applicant declares that around June 2015, he met another man while following an educational program in the Toronto area. He found out that he was attracted to men and women. The Applicant contends that homophobia is widespread in Cameroon: bisexuals face severe discrimination, harassment, verbal abuse, threats and physical violence. Indeed, the Applicant claims that homosexual acts are illegal in Cameroon.

II. The RPD decision

[10] This case turns on whether the Applicant is excluded from consideration pursuant to section 98 because of Article 1E of the United Nations Refugee Convention. If so, the Applicant cannot validly invoke sections 96 and 97 of the IRPA.

[11] It is the decision of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118, [2011] 4 FCR 3 [*Zeng*] that is the controlling authority. The RPD sought to apply the test. The general scheme is said to prevent asylum shopping and is described in the following fashion at paragraph 1 of *Zeng*:

> [1] …. Article 1E is an exclusion clause. It precludes the conferral of refugee protection if an individual has surrogate protection in a country where the individual enjoys substantially the same rights and obligations as nationals of that country. Asylum shopping refers to circumstances where an individual seeks protection in one country, from alleged persecution, torture, or cruel and unusual punishment in another country (the home country), while entitled to status in a "safe" country (the third country).

The Court of Appeal went further and established a test that is still applied. It reads:

> [28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.
>
> [29] It will be for the RPD to weigh the factors and arrive at a determination as to whether the exclusion will apply in the particular circumstances.

[12] The RPD found that the Applicant had a status similar to that of a Spanish national when he arrived in Canada on May 30, 2012. However, he lost his long-term resident status in Spain. Accordingly, the RPD proceeded to consider the reason for the loss of status, whether the

claimant could go back to Spain, what risk he would encounter if he returned to Cameroon and Canada's international obligations.

A. *Reasons for loss of status*

[13] Referring to Shamlou v Canada (Minister of Citizenship & Immigration), [1995] 32 Imm LR (2d) 135, the RPD finds that the burden is on the Applicant to renew his resident status in Spain. An applicant must demonstrate why:

- The travel documents cannot be renewed;
- His residence card cannot be re-issued;
- A re-entry visa cannot be obtained;
- His residency status cannot be renewed.

[14] Counsel for the Applicant claimed that his status in Spain expired effectively after a 12-month absence from Spain, on June 1, 2013. The RPD concludes that the Applicant chose not to renew his status in Spain in a voluntary and deliberate way. Being satisfied that the documentary evidence indicates that he could have applied to regain his Spanish residency, no steps were taken after arriving in Canada to regain residency. Not before 2018 were there steps taken; there was no contact with the Spanish Consulate in Toronto until 2019. It is suggested that the Applicant suffered from mental health challenges which are related to the failure to renew the status in Spain.

[15] It is noted that no steps were taken for six years after Mr. Njomo came to Canada. Furthermore, a review of the Claimant's assessment by mental health professionals was less than convincing. The Applicant was diagnosed by a nurse practitioner for Trauma and Post Traumatic

Stress Disorder (PTSD) after he arrived in Canada in 2012. A psychiatrist expressed an opinion in September 2012 that the Applicant fulfilled the diagnostic criteria for major depressive disorder and PTSD. In March 2018, a psychotherapist indicated that the Applicant presented still symptoms of anxiety and depression. At the time of the decision, he was not receiving any treatment and he was not being seen by a medical professional.

[16] The panel noted that a psychiatric report cannot be a cure-all for the deficiencies in a testimony and that the opinion evidence just goes so far as it is only as valid as the truth of the facts on which it is based. Here, the Applicant declared in his interview at the point of entry (Mary 31, 2012) that he did not have health issues or had not received psychiatric treatment. At the end of the interview he was asked if he had anything to add. He stated: "What I wish to add is that I have a well-founded fear of returning to Cameroon and leaving Spain is definite. I no longer want to be a Spanish resident." (Decision of the RPD, para 27). That leads the RPD to state, at paragraph 29 of its decision:

> [29] The panel finds that the claimant made a conscious and deliberate decision to leave Spain and seek permanent residence in Canada through the avenue of refugee status. While he may have displayed symptoms of anxiety and depression, his activities in Canada indicate that his mental health has not significantly impeded him. The panel finds therefore, on a balance of probabilities, that the claimant's mental health would not have prevented him from taking steps to renew his residency status in Spain. As he clearly and unequivocally stated upon arrival in Canada: "I no longer want to be a Spanish resident." …
>
> [Emphasis added.]

B. *The claimant's ability to return to and risk faced in Spain*

[17] It appeared to the RPD that the process of renewal of the long-term residency rights in Spain was not completely clear. As seen earlier, those rights were lost after being out of Europe for twelve months. Given that the burden is on the shoulders of a claimant to show that he cannot return to Spain, the RPD concluded that Mr. Njomo did not discharge his burden.

[18] The expired residence card would not allow re-entry in Spain. A citizen of Cameroon would normally require a visa to be allowed to return to Spain. However, according to responses to information requests, if the person wishing to return to Spain is abroad, an application may be submitted at the nearest Spanish mission. The documentary evidence and that of the Applicant on the process and possibility of regaining long-term residency rights in Spain is said by the RPD to not being clear. The Spanish consulate in Toronto indicated in a letter of March 26, 2019, that travel back to Spain requires a special visa. Clarifications sought by counsel for the Applicant were not responded to as of the date of the RPD decision (February 19, 2020).

[19] According to the RPD, the jurisprudence of this Court requires that the onus shifts once a prima facie case that Article 1E applies has been established. As a result, the RPD concluded that the Applicant did not discharge his burden as he had not shown on a balance of probabilities that he cannot renew his permanent residence and thus return to Spain.

C. *The risk faced in Spain*

[20] In essence, the Applicant fears being deported from Spain to Cameroon, if he returns to Spain, because of the influx of refugees from African countries. However, the RPD found that there was no evidence provided by the Applicant in support of that contention.

[21] Moreover, the Applicant contended having received anonymous threatening phone calls while in Spain many years ago (2012). Relying on the 2019 United States Department of State Report on Spain, the RPD dismissed this argument as the State Department expressed the view that the authorities maintained effective control of the police and have effective mechanisms to investigate and punish. The RPD also referred to the 2019 Freedom in the World Report, Freedom House, which gave Spain the top score in every category. Accordingly, "In light of available evidence, the panel is not persuaded that the claimant would be at risk or that state protection would not be available, were he to return to Spain" (RPD decision, para 38).

D. *The risk the claimant faces in Cameroon – Political Activism*

[22] The Applicant fears persecution because of his political activism and his sexual orientation if he returns to Cameroon. It is acknowledged that the Applicant was involved with the SCNC. However, the Applicant's credibility and subjective fear are issues in this case.

[23] The Applicant did not offer any witness. As for documentary evidence from family and friends, the decision maker gave them little probative value because they were not cross-examined. On the other hand, there was evidence of the Applicant travelling back to Cameroon

in 2008, 2009, and 2010. In fact, in his point of entry interview in 2012, the Applicant declared spending more time in Cameroon than Spain in the years he was residing in Spain; 60% of his time was spent in Cameroon. When travelling to Cameroon, he used an SCNC membership card with a pseudonym of “Tata Divine”. It is said that his Facebook posts identified his location as Madrid when in Spain.

[24] The RPD found that annual returns to Cameroon from 2008 to 2010 were not consistent with the Applicant’s alleged fear of persecution in Cameroon.

[25] While he was attending an SCNC meeting in 2011, the Applicant claimed that the meeting was raided and he had to go into hiding before being able to return to Spain several weeks later. He was warned by members of the SCNC of the police’s awareness of various identities and that he would be detained if found in Cameroon. That is when, says the Applicant, he became afraid for his life and decided to come to Canada.

[26] The RPD panel took a dim view of the evidence offered by the Applicant. The time spent in Cameroon is not consistent with a subjective fear of persecution in that country and that undermines credibility. An arrest warrant was issued, but country documentation speaks of significant use of fraudulent identity documents in Cameroon. Here, an arrest warrant produced before the RPD is not an identity document, but the document does not have robust security features and contains various anomalies; that leads the panel to consider reasonable to conclude that obtaining a fraudulent arrest warrant would not be difficult in Cameroon. On a balance of probabilities, the RPD concludes that the arrest warrant is not genuine. Finding support on

Gebetas v Canada (Citizenship and Immigration), 2013 FC 1241, at paragraph 29, the RPD extends the finding of lack of genuineness to other documents. Thus, a medical report describing injuries the Applicant claims he suffered while imprisoned in 2002 is given no weight. The same is true of psychological reports made in 2012 and 2018. In effect, the RPD states that "[i]n light of credibility concerns with the claimant's evidence, the panel is not persuaded that the claimant suffered physical or psychological harm as a result of alleged mistreatment in Cameroon because of his involvement with SCNC" (RPD decision, para 46).

[27] Indeed, the RPD expresses doubt about the Applicant's motivation in participating in the SCNC activities. It also finds that it has not been proven that the participation had come to the attention of the authorities. These activities, given their limited breadth and scope, would not place the Applicant at risk if he were to return to Cameroon.

E. *Sexual orientation*

[28] The Applicant also raises as a risk he faces in Cameroon his sexual orientation. This is a new allegation which was made in his amended narrative of May 31, 2016. The Applicant alleges he entered into a homosexual relationship since arriving in Canada.

[29] The allegation was challenged by the Respondent. No evidence of that relationship was provided other than a letter from the alleged partner, letter that is undated and unsigned. The alleged relationship was said by the Applicant to have lasted more than 2 years. There is very little evidence on which to rely to establish the existence of the relationship. Moreover, the

partner's Facebook profile shows that he has a wife and a child; that contradicts the Applicant's assertion that his partner was unmarried and had no children. The partner did not testify.

[30] As for the Applicant himself, evidence was produced by the Respondent of a woman who, in a Youtube video uploaded by M. Njomo in September 2017, is presented in a caption as "My wife (woman of god)". The Applicant states that he met the woman in 2016, but they became romantically involved together only in 2018. That assertion is confirmed by the woman in a letter filed with the RPD. The Respondent contends that there exists a discrepancy. The woman identified in the Youtube video is presented as having the "Njomo" name in her name; there is no explanation given for the name and the identification in the video as that person being designated as the Applicant's wife in 2017, while the Applicant's explanation situates the romantic involvement only in 2018. The evidence, argues the Respondent, confirms that the Applicant is not bi-sexual.

[31] In response, the Applicant argues that information on social media is unreliable. The RPD argues that such information cannot be conclusive. Indeed, the RPD guards itself against stereotyping and inappropriate assumptions, yet a reasonable expectation is that a 45 year old man "would have been aware of his same-sex attraction earlier on in his life" (RPD decision, para 55). The other evidence in support of the Applicant's allegation of his sexual orientation comes from letters from family and friends. They are discounted by the RPD because of the lack of reliability of documentary evidence coming from family members and friends. The RPD states "that there is insufficient, trustworthy and reliable evidence to support his allegation that he is bi-sexual" (Decision of the RPD, para 57).

[32] As a result, the RPD concludes that the Applicant voluntarily lost his status in Spain; the Panel is not persuaded that he is unable to return to Spain. As for the Applicant's political activism prior to coming to Canada, little weight is assigned to it as to its extent and degree. Finally, there is insufficient reliable evidence to support the allegations about the Applicant's bi-sexuality. The Applicant is excluded from refuge protection, in application of section E of the Article 1 of the Refuge Convention.

III. Arguments and analysis

[33] The Applicant challenges the RPD decision as being unreasonable. The parties argree that the appropriate standard of review is that of a reasonable decision, a point of view that I share.

[34] It follows that the Applicant must satisfy the reviewing court that the decision is unreasonable as such is the burden (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at para 100). The hallmarks of reasonableness are the justification, transparency and intelligibility of the decision in view of the relevant factual and legal constraints that bear on the decision (*Vavilov*, para 99). Peripheral or superficial shortcomings identified by an applicant, on the line-by-line treasure hunt for error (*Vavilov*, para 102) will not suffice to show a decision as being unreasonable. Rather it will take serious shortcomings that are sufficiently central or significant to render a decision unreliable.

[35] The burden on an applicant includes that the reviewing court must have as its starting point the principle of judicial restraint, which translates into a posture of respect. The reviewing

court shows deference toward the decision maker; its role is to control the legality of the decision under review, not delve into the merits of the decision to simply disagree with the outcome. A decision that would be internally incoherent because, for instance, it exhibits logical fallacies, offers circular reasoning, presents false dilemmas, relies on unfounded generalizations or absurd premise should fail the reasonableness test. A decision that is in some respect untenable in light of the facts and legal constraints that apply will also be unreasonable. Note that a mere disagreement with the decision reached will not suffice. The applicant must not merely seek to convince the reviewing court that a better outcome would be that which the applicant prefers. Reasonableness requires more on the part of an applicant.

[36] The Applicant challenges the reasonableness of the RPD decision on four fronts:

- Unreasonable negative credibility assessment;
- Unreasonable treatment of the psychological evidence of mental health symptoms, which would have an impact potentially on the Applicant's decision-making capabilities;
- Unreasonable determination of the inability to discharge the onus of the Applicant that he could not renew or regain his lost status in Spain;
- Unreasonable assessment of the evidence of risk in Cameroon because of his political opinion and sexual orientation.

[37] As indicated hereinbefore, it is the Decision of the Federal Court of Appeal in *Zeng* which continues to be the controlling authority. Other than the test which is reproduced at paragraph 10 of my reasons for judgment, the Federal Court of Appeal listed a number of basic propositions that are said to be unassailable. They provide better context in the application of the test:

> [19] …
>
> ▪ the objectives set out in subsection 3(2) of the IRPA seek, among other things, to provide protection to those who require it and, at the same time, provide a fair and efficient program that maintains the integrity of the system;
>
> ▪ the purpose of Article 1E is to exclude persons who do not need protection;
>
> ▪ asylum shopping is incompatible with the surrogate dimension of international refugee protection;
>
> ▪ Canada must respect its obligations under international law;
>
> ▪ there may be circumstances where the loss of status in the third country is through no fault of a claimant in which case the claimant need not be excluded.
>
> (*Zeng*, para 19)
>
> [Emphasis added.]

The Respondent in the case emphasized that this constitutes a typical case of asylum shopping. The Applicant, on the other hand, claims to have lost his status in Spain through no fault of his own. He is deserving of the protection by Canada.

[38] The first stage of the *Zeng* test is the determination of whether the Applicant had status substantially similar to Spanish nationals in the third country (Spain). The answer to that question, on the date of the hearing, was no. If the answer is no, we move to the next stage in the analysis. Here, the determination that must be made is whether the Applicant had such status but lost it. If the Applicant did not have it, he is not excluded. But if the Applicant had the status and lost it (or had access to it but failed to acquire it), then a number of factors must be considered and balanced to consider the Applicant excluded or not from the protection of sections 96 and 97 of the IRPA.

[39] The parties are in agreement that the Applicant has allowed for his status in Spain to be lost. According to the framework, here are various factors drawn from *Zeng* to be considered:

- The risk the Applicant would face in his home country (Cameroon);
- Loss of status (voluntary or involuntary);
- Whether the claimant could return to the third country (in this case, Spain);
- Canada's international obligation.

The factors are not limited to those listed. The Applicant considers these factors through the prism of various allegations made about the reasonableness of findings made by the RPD. These findings are alleged to be unreasonable; the Applicant argues that if the findings are unreasonable, that affects the various factors that are relevant to decide if he can benefit of the protection of sections 96 and 97 of the Act. There are four, as indicated before. They will be considered seriatim.

A. *Unreasonable negative credibility assessment*

[40] Turning to the issues raised by the Applicant in an effort to challenge the reasonableness of the RPD decision, he argues that the credibility determination was unreasonable. He actually complains about the credibility assessment in relation to the risk he would face if he has to retrun to Cameroon.

[41] First, regarding the risk of persecution faced if the Applicant were to return to Cameroon, the Applicant takes issue with the conclusion that his return to Cameroon where he spent more than half of his time between 2008 and 2011 draws a negative inference against him. The Applicant claims that he spent the time in Cameroon on "political activities" as if this alleviates

concerns about his credibility. The Applicant claims he is not asking this Court to reweigh the evidence, yet this appears to be exactly that which is at the heart of the Applicant's argument: he should have been believed he contends. Instead, it was dressed up as the RPD neglecting other evidence, conducting a selective analysis of the evidence. As I understand it, that evidence is his political activism. With great respect, there is no such evidence that would have been ignored by the RPD. The Applicant argues that he was consistent in his claim to have gone to Cameroon for continuation of his political activities. But that does constitute selective analysis of the evidence, or ignoring evidence. It is rather considering the evidence in a different light, that is that 60% of the time spent in Cameroon, where persecution is feared, is not a valid explanation. The Court is in effect asked to reweigh evidence, with an emphasis put on the reason for those trips, which has evidently not been accepted by the RPD. That has been part of the record ever since M. Njomo came to Canada, which includes that he went back to Cameroon to continue his political activities. For some reason, the Court would consider anew this explanation, without the Applicant showing why the RPD decision lacks reasonableness.

[42] One of the primary roles played by immigration decision makers is to use their experience and training to weigh evidence. The evidence of returning to Cameroon from Spain, where the Applicant's wife and children were residing, is not that of someone in subjective fear of his country of nationality, whatever the reason for going back. The Respondent is right. There is little evidence of the Applicant hiding while in Cameroon. It appears that he even used a travel document issued by Spain, but in his own name. While in Cameroon, he said that he used on SCNC membership card with an alias (Tata Divine). The Respondent, relying on the transcript of the refugee hearing, points out that the only precaution taken was not to wear glasses. There was

ample evidence for the RPD to conclude that this Applicant did not show subjective fear. Its conclusion is not unreasonable. As the *Vavilov* majority states at paragraph 125, "It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings." There is no exceptional circumstances shown in this case.

[43] Second, the same can be said about what was alleged to be an arrest warrant for the Applicant in Cameroon. The RPD found the warrant not to be genuine, on a balance of probabilities.

[44] The Applicant says that the RPD did not have good and valid reasons to doubt the authenticity of the document. But there were good and valid reasons. The Respondent finds in the record of the case information that would tend to confirm that the arrest warrant is not genuine:

- The warrant states summons was served on the Applicant; that is not possible because the date is after the Applicant had already left Cameroon;
- The date on the summons is the same date on which the Applicant was required to appear;
- The warrant is dated after the Applicant left Cameroon; although there may be an explanation for a warrant to be issued after departure, it does not appear that the point has been the subject of objection;
- The part of the warrant where the defendant is identified is instead used to state again the charge ("Public Disorder called the Defendant");
- The charge number indicated 2012 rather than the date of the charge.

These are anomalies, as noted by the RPD. Furthermore, the Applicant's testimony is to the effect that the warrant was sent to him in Canada. That is surprising. There was significant

evidence the RPD could rely on to consider the arrest warrant as unauthentic, especially given that the Applicant did not engage with the Minister's submissions on that front. It was not, as argued by the Applicant, only that the RPD relied on the easy availability of fraudulent documents in Cameroon to conclude on a balance of probabilities that the arrest warrant was unauthentic. It is much more that the submissions of the Minister tend to confirm that the warrant is not genuine, without the Applicant answering the submissions. It was open to the RPD to conclude as it did on the genuineness of the warrant. There is no room for this Court to intervene.

B. *Unreasonable treatment of the psychological evidence*

[45] The Applicant takes issue with the treatment given by the RPD to the so-called "psychological evidence" obtained over the years by the Applicant after his arrival in Canada. It is said that the reports are submitted to assist in showing that the loss of status in Spain was involuntary. The RPD gave the Applicant's mental health assessment little weight.

[46] It is claimed, on behalf of the Applicant, that the evidence of mental health professionals, in Canada after the Applicant arrived, "established that the Applicant was struggling with the mental health symptoms in question at the time that they conducted their assessment, demonstrating that these symptoms were affecting him at the time, and that his sworn testimony attesting to these challenges he was facing at the time was therefore credible" (memorandum of fact and law of the Applicant, para 40).

[47] I have read the medical evidence proffered by the Applicant. It does not do anything of the sort. At its highest, it suggests that the Applicant has been experiencing major depression and

anxiety disorder. I have not found, and none was presented by the Applicant, any evidence of causation between depression and some involuntary incapacity or voluntary decision not to renew his status in Spain. It would be sheer speculation to draw an inference from the evidence offered that depression and anxiety could justify not renewing status in Spain. The effects of depression and post traumatic stress disorder are not explained and are certainly not associated with not renewing one's status in a country such as Spain.

[48] I have not been able to find evidence that could have allowed the RPD to infer that anxiety and depression could explain why the Applicant did not renew his status in Spain. The medical evidence was limited. It did not explain what may result from anxiety and depression, let alone that it may explain why it could make someone not renew his immigration status.

[49] I note that none of the reports gives any indication that the authors have been informed that the Applicant spent some 60% of his time in Cameroon, between 2008 and 2011. Indeed the various reports appear to be based solely on the interviews with the Applicant, who gives various details about his life but does not seem to have disclosed his extensive travels between Spain and Cameroon.

[50] In fact, the reports appear to receive the story of their patient, and accept it, before coming to some conclusion. As already pointed out, it seems in this case that they were not made aware of the travels between Spain and Cameroon as the reports do not mention anything of the sort. This was an important fact that would have deserved mention, and consideration, in the various reports.

[51] On the other hand, and as alluded to before, the unprompted statement volunteered by the Applicant upon his arrival in Canada, at the end of his interview, is not explained:

> Q. Do you have anything else you wish to add?
>
> A. What I wish to add is that I have a well founded fear of returning to Cameroon and leaving Spain is definite. I no longer want to be a Spanish resident.

That, it seems to me, is the statement of someone who has made the voluntary decision to leave Spain with the firm intention not to come back. There was really no use in renewing one's immigration status in those circumstances.

[52] It is of course for the Applicant to satisfy the Court that the conclusion reached by the RPD was not reasonable. On the contrary, the unreasonableness of the decision was not demonstrated in that the decision was justified, transparent and intelligible. In fact, I can hardly see how the "psychological evidence" could support any other conclusion but the one reached. The anxiety and depression evidence was never linked with the decision-making capabilities of the Applicant, including specifically the inability to renew the status the Applicant enjoyed in Spain for many years. Without any evidence, no causation can be established. Moreover, the Applicant could hardly have been clearer that he had no interest in going back to Spain as early as May 2012. In the result, the Applicant fails to establish any reviewable error.

C. *Unreasonable determination of inability to discharge the onus that the Applicant could not renew, or regain his lost status in Spain*

[53] The Applicant also argued that he was unable to regain his lost status in Spain. It is not disputed that the onus is on him for proving that he could not reacquire his status. The RPD

found that the Applicant did not discharge his burden. The evidence offered may have been equivocal as to whether it was possible, although it suggests that it was possible, but, at any rate, it was for the Applicant to show that it is not possible.

[54] The RPD found that the Applicant failed to demonstrate that his travel documents cannot be renewed, that his residency card cannot be re-issued, that a re-entry visa cannot be obtained and that his residency status cannot be renewed. In fact, the evidence seems to show that it is possible. As a matter of fact all that was contented is that the Applicant consulted with the Spanish Consulate in Toronto and that he was left with some unanswered questions. As pointed out by the Respondent at paragraph 47 of his memorandum of fact and law:

> 47. Regarding the information from the Spanish consulate, in the November 2019 letter, the consulate clearly states that the Applicant was provided an answer to his question on the phone and several times by letter. Instructions were attached to this letter which includes a link to an application form and states that the application can be made if a person is outside of Spain. There is no indication the Applicant attempted to follow that procedure and was refused. In other correspondence, the consulate advised that the Applicant needs a visa to travel to Spain to renew the permit. There is no evidence the Applicant attended at the consulate and attempted to apply for such a visa.
>
> [Footnotes omitted.]

This constitutes an adequate summary of the evidence offered by the Applicant in support of his contention that he is unable to regain his lost status in Spain. That falls short. That was found by the RPD to be insufficient for the Applicant to discharge his burden; the Applicant has not shown that the RPD acted unreasonably within the meaning of *Vavilov*.

D. *Unreasonable assessment of the risk in Cameroon*

[55] The fourth ground raised by the Applicant is that the RPD was unreasonable in its assessment of the risk facing the Applicant if he had to return to Cameroon. Two issues are raised: his political activism and his sexual orientation.

[56] Here, once again, the Applicant is faced with the burden of showing, on a balance of probabilities, that the decision is unreasonable, not merely what a better outcome would be. The reviewing court must show deference to the decision maker. On political activism, the RPD found that numerous returns to Cameroon, for long periods of time (60% of the time between 2008 and 2011 was spent in Cameroon), are simply not consistent with someone having a subjective fear of persecution. As already discussed the arrest warrant was also seen as suspicious to the point of being fraudulent, not being genuine and being assigned no weight. That undermines the reliability of other documents. As a result, the RPD was not persuaded to alleged physical or psychological harm was suffered as a result of mistreatment in Cameroon.

[57] In effect, this is largely a rehash of the first ground raised by the Applicant. The Applicant declares that he disagrees with the assessment made by the RPD. As already discussed at length hereinabove, that is not the burden. Unreasonableness must be demonstrated on a balance of probabilities. In my estimation, that demonstration was not even attempted by the Applicant. The evidence was simply insufficient to challenge the finding by the RPD based on significantly long periods of time spent in Cameroon and official documents about which there were good reasons to conclude were not genuine. I add that the psychological evidence was itself

lacking as it was based on interviews of the Applicant where there was no indication that had been disclosed that the Applicant spent long periods of time in Cameroon starting in 2008. Mr. Justice Annis of this Court expressed concerns about “conclusions of forensic experts which have not undergone a rigorous validation process under court procedures” (*Czesak v Canada (Citizenship and Immigration*, 2013 FC 1149, at para 38). His warning of cautiousness is deserving in my view of careful attention in the assessment made of that evidence. It is even more so the case where none of the authors, all from the Toronto area, testified in these proceedings.

[58] The Applicant raised the issue of his sexual orientation. The Respondent stresses that the evidence offered by the Applicant was extremely thin. I agree. An unsigned and undated letter from an alleged partner is all that was presented; the alleged partner did not testify. Not a single element of objective evidence was proffered in support of the alleged relationship. On the other hand, there was evidence of an heterosexual relationship during that period of time, involving a child and his mother married to the partner, while the Applicant said that the partner was not married and did not have children. Similarly, a social media posting of a video entitled “Christel Chamba Njomo” was put in evidence. It has a caption which reads, “My wife (woman of god)”. The video would have been uploaded in September 2017. Again, the evidence is inconsistent in that the Applicant contended that he became romantically involved only in 2018 after meeting her in 2016.

[59] Given the contradictions in the evidence, where there is evidence, and the absence of evidence on central aspects, the RPD considered that the evidence was insufficient,

untrustworthy and not reliable to support the allegation that the Applicant is bisexual. There was ample evidence that made that conclusion open for the RPD to reach.

[60] The Applicant complained about a comment made at paragraph 55 by the RPD in its decision according to which , although there is no defined age to become aware of one's sexual orientation, "it is reasonable to expect that the claimant would have been aware of his same-sex attraction earlier on in his life." I agree with the Applicant that this unsubstantiated and gratuitous comment constitutes an unfortunate remark that reached the level of a shortcoming within the meaning of *Vavilov*. However, as the majority in *Vavilov* found, "the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (para 100). Here it cannot be said, in view of all the evidence, that this shortcoming is sufficiently central such that it can be said that the decision does not exhibit the requisite degree of justification, intelligibility and transparency. Not every shortcoming, however inappropriate, results in a decision becoming unreasonable within the meaning of *Vavilov*.

[61] The RPD summarized its finding in the following fashion:

> [58] The panel finds that the claimant voluntarily lost his long-term residence status in Spain. The panel is also not persuaded that he is unable to return there. As noted in *Zeng*, "asylum shopping is incompatible with the surrogate dimension of international refugee protection." While the panel acknowledges that the claimant is a member of SCNC and has been politically active in Canada, given concerns with his credibility, the panel assigns little weight to his evidence regarding the extent and degree of his activism prior to coming to Canada. The panel also finds that the claimant has provided insufficient reliable and trustworthy evidence to support his allegation that he is bi-sexual.
>
> [Footnote omitted.]

In my view, the Applicant has not been successful in discharging the onus that is his in showing that any of those findings is unreasonable. Given the evidence presented, the decision is justified, transparent and intelligible in view of the factual and legal constraints.

[62] It follows that the RPD decision is reasonable. Thus the judicial review application must be dismissed.

[63] The parties are in agreement that there is no question to be certified in this matter. The Court concurs.

JUDGMENT in IMM-1840-20

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no question to be certified.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN OTTAWA (ONTARIO) AND TORONTO (ONTARIO)
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