Federal Court  Cour fédérale

Date: 20220208

Docket: IMM-4429-20

Citation: 2022 FC 57

Ottawa, Ontario, February 8, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

ALEXANDRU ROSU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated August 27, 2020 made by the Refugee Appeal Division (the "RAD") of the Immigration and Refugee Board.

[2] With brief reasons, the RAD dismissed an appeal from a decision of the Refugee Protection Division ("RPD"), which concluded that the applicant was not a Convention refugee or person in need of protection under s. 96 and subs. 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[3] For the reasons that follow, the application is dismissed.

I. Facts and Events Leading to this Application

A. *Incidents in Romania and Germany*

[4] The applicant is a citizen of Romania. He claimed protection in Canada on the basis of risks to his life from gang members in Romania arising from several incidents that he claimed were connected.

[5] The applicant claimed that he was the target of men known as the Corduneanu brothers and their clan, who are part of an organized crime group in Romania. The applicant met the Corduneanu brothers at a gym in Iasi, Romania in 2012. He initially knew nothing about them. They became friends and the brothers offered him work, which he accepted. After learning of their criminal activities, he told them he did not want the work. That upset the brothers. Members of the clan then beat him up and told him to leave the city. He did not report the incident to the police as he believed they were corrupt.

[6] The applicant testified that he moved to Vaslui, Romania. In 2014, he was beaten again at a bus station in downtown Vaslui. The perpetrators were five members of a different gang in that area known as the Gentimir clan. The applicant claimed that the two clans were connected, and that the Gentimir clan deliberately provoked the beating as an excuse to retaliate against him on behalf of the Corduneanu brothers. The applicant testified that a bystander told him the Gentimir clan was connected to the Corduneanu brothers. The police attended the bus station and the applicant went to the police station. He told the police that the men were part of the Gentimir

clan. The police told him it was unclear whether the perpetrators were part of that clan. The applicant advised that the police did not help him.

[7] In another 2014 incident in Vaslui described by the applicant, he and his brother were together when his brother's cell phone was stolen. They chased the thieves and found themselves surrounded and beaten up by several men. The applicant testified that the men were Gentimir clan members as he recognized one, and bystanders told them that the area was controlled by that clan. The applicant believed he was targeted because of his previous relations with the Corduneanu brothers. He and his brother did not report the incident to the police, as they believed the police would not do anything.

[8] In 2015, a further incident occurred in Bucharest. At a gym, a man asked him whether he had heard of the Corduneanu brothers. After the applicant acknowledged that he had, the man terrorized him — the man started to swear, issued threats, and made him leave the gym.

[9] The applicant then moved to Germany, where he spent two years. During that time, he ran into a man on the street whom he recognized as a member of the Corduneanu clan. The applicant testified that the man grabbed him by the throat and told him he could not get away from the clan. The applicant escaped but did not report the incident to police in Germany.

[10] A final incident involved the applicant's brother. The applicant testified that in August 2018, after the applicant was in Canada, his brother was threatened in Vaslui by members of the Gentimir clan, who beat him when he refused to work for them. The applicant stated that his brother's jaw was broken in the attack and had to travel to Iasi to get surgery. His brother put the

details in an email to the applicant, including the statement that the attacking men told him that the Gentimir clan would not stop until they find the applicant.

B. ***Important RPD Conclusions***

[11] The RPD accepted that the applicant met members of the Corduneanu clan at the gym in 2012. The RPD also accepted that the Corduneanu clan beat him and told him to leave Iasi.

[12] The RPD accepted that the applicant was likely beaten up in Vaslui twice by criminals who may have been part of organized crime. The RPD concluded however that these incidents in 2014 were random attacks stemming from crime. The RPD did not accept the applicant's position that the Corduneanu clan was connected to the Gentimir clan. The RPD found no evidence that the applicant was specifically targeted by the Gentimir clan because of his previous encounters with the Corduneanu clan, or that the two clans were related or affiliated with each other.

[13] The RPD concluded that the applicant's evidence about the incident in Bucharest was "very vague and lacking in detail". It found the applicant's testimony to be evasive. The RPD did not accept that the man at the gym made threats against the applicant on behalf of the Corduneanu clan or that the clan was using this man to threaten the applicant.

[14] The RPD found that the incident in Germany was an isolated, random encounter.

[15] The RPD found that the email from the applicant's brother about his beating in August 2018 was not credible. While the RPD found that the attack may have occurred, it concluded that the men did not make a threat against the applicant and it was not credible that the Gentimir clan

was now suddenly after both the applicant and his brother to work for them. The RPD concluded that the brother's email was created for the sole purpose of bolstering the applicant's claim and did not accept the email as reliable or credible evidence.

[16] The RPD also concluded on the evidence that the two clans were no longer interested in pursuing the applicant. While it accepted that the Corduneanu clan beat him and told him to leave the city of Iasi in 2012, the RPD did not find that the clan was still after the applicant. The RPD found no relationship between the Corduneanu clan and the Gentimir clan (which was localized in the city of Vaslui). No one from the clans was still interested in pursuing the applicant on a forward-looking basis.

[17] Finally, the RPD concluded that the applicant had three viable internal flight alternatives ("IFAs") in Romania. In the course of its analysis finding that the IFAs were viable, the RPD found that the two clans, and the men associated with them, were localized in their respective regions of Romania.

II. The RAD Decision under Review

[18] The applicant appealed to the RAD. It dismissed the appeal.

[19] In his written submissions to the RAD, the applicant raised three issues: whether the RPD decision was transparent and intelligible; whether the RPD erred in assessing the credibility of the applicant; and whether the RPD erred in finding a viable IFA.

[20] In the course of his argument to the RAD with respect to the credibility findings, the applicant argued that the RPD had been selective in its assessment of the evidence; that the

RPD's decision was unintelligible when it found that three attacks on the applicant were "random"; and that part of its reasoning "defie[d] logic". The applicant's written submissions on appeal concluded with the argument that the RPD decision lacked the "justification, transparency and intelligibility required for it to be reasonable and acceptable" and that the applicant had established the facts to justify the reversal of the RPD decision.

[21] In its decision on the appeal, the RAD stated that it would apply a standard of correctness to its assessment of the RPD decision.

[22] In short reasons comprising twelve paragraphs, the RAD concluded that the lack of forward-looking risk was determinative of the appeal. It agreed with the RPD that the applicant had not established that either the Corduneanu clan or the Gentimir clan would target him.

[23] The RAD held, contrary to the applicant's arguments to it, that:

- the RPD's reasons were transparent and intelligible;
- the RPD did not err when it concluded that he was not personally targeted by the Gentimir clan and that the two clans were not connected; and
- the RPD's finding that there was insufficient evidence that the Corduneanu clan was still interested in the applicant did not defy logic.

[24] The RAD found that the RPD was correct in concluding that the applicant did not face a forward-looking risk under s. 97 of the *IRPA*.

III. Standard of Review

[25] I agree with the parties that the standard of review of the RAD's substantive decision is reasonableness, as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[26] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33.

[27] The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194.

[28] The Supreme Court has identified two types of fundamental flaws in administrative decisions: a failure of rationality internal to the reasoning process; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it: *Vavilov*, at para 101; *Canada Post*, at paras 32, 35 and 39. To intervene, however, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently central or significant to render the decision unreasonable. See:

Vavilov, at para 100; *Canada Post*, at para 33; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

[29] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100; *Canada Post*, at para 33.

IV. Analysis

[30] The applicant raised the following issues to challenge the reasonableness of the RAD's decision: (a) whether the RAD's decision was intelligible; (b) whether the RAD failed to conduct an independent analysis of the evidence; (c) whether the RAD's forward-looking analysis was reasonable; and (d) whether the RAD erred by making a veiled IFA finding.

[31] The substance of the applicant's four arguments overlapped. The analysis below will attempt to address them in turn.

A. *Was the RAD's decision unintelligible?*

[32] The applicant submitted that the RAD's decision was unintelligible for two reasons: because it stated that the standard of review was correctness, but in fact conducted a reasonableness review of the RPD's decision; and because it did not truly review or provide reasons explaining why it reached the conclusion that the RPD's decision was correct.

[33] I do not agree that the RAD conducted a reasonableness review. First, the RAD expressly stated that it must review the RPD's decision on a standard of correctness, citing *Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93, [2016] 4 FCR 157, at para 103. Second, there are two places in the RAD's 12-paragraph decision where it expressly applied a correctness standard, one where it "agree[d]" with the RPD's conclusion overall and another where it found that the RPD's analysis was "correct in its conclusion" on an issue raised by the applicant.

[34] Third, I see no indication that the RAD said one thing and did another, as the applicant maintained. The RAD did not apply a reasonableness standard and used no language of deference — except in response to the applicant's own submissions to the RAD that the RPD's decision was unintelligible. In response to that argument, the RAD properly found that the RPD's reasons were transparent and intelligible.

[35] Fourth, the RAD's reasons are intelligible because they are comprehensible and able to be understood, and they do not contain any fundamental logical flaws, internal inconsistencies or contradictions, or other reasoning errors that can render a decision irrational or arbitrary: *Vavilov*, at paras 101-104; *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158, [2011] 4 FCR 425, at paras 16 and 26; *Bruno v Dacosta*, 2020 ONCA 602, at paras 14 and 17. See also: *Halifax Employers Association v Farmer*, 2021 FC 145 (Southcott J.), at paras 4 and 43-44; *Starach v Canada (Citizenship and Immigration)*, 2020 FC 917, [2020] 4 FCR 701 (Southcott J.), at paras 2, 12, 15 and 21; *Romelus v Canada (Citizenship and Immigration)*, 2019 FC 172 (St-Louis J.), at paras 19 and 36-45; *Mohitian v Canada (Citizenship and Immigration)*, 2015 FC 1393 (Boswell J.), at para 16.

[36] The applicant also submitted that the RAD did not explain why it rejected his position on appeal, did not engage with the evidence and did not explain what law or evidence supported its conclusions.

[37] The applicant did not refer to any case law to support his position on this issue. It is true that a decision that simply parrots statutory language or the parties' arguments and then states a peremptory conclusion may be unreasonable if it is devoid of any factual or legal analysis and judgment: *Vavilov*, at para 102; *Canada Post*, at para 64. A reviewing court must be able to discern a "reasoned explanation" for key aspects of the decision: *Alexion Pharmaceuticals*, at paras 7, 32, 64-66 and 70. A reasoned explanation for a decision may be found expressly, be implied or be implicit in a decision, and in some circumstances may be found outside the reasons themselves: *Mason*, at paras 31 and 38.

[38] Applying this standard, I am satisfied that the RAD's decision in this case was reasonable. The RAD's reasons do not simply set out arguments and then state a conclusion without substantive reasoning. The RAD provided a reasoned explanation for its conclusions. Reading the RAD's reasons with both the RPD's decision and the submissions made to the RAD by the applicant, it is apparent that the RAD's reasons were responsive in substance to the issues raised by the applicant to challenge the RPD's decision. The RAD's decision meets the requirements described in *Vavilov* and *Alexion Pharmaceuticals.*

B. ***Did the RAD fail to conduct an independent analysis of the evidence?***

[39] The applicant submitted that the RAD failed to conduct an independent analysis of the evidence, because nothing in its reasons suggested that it did such an analysis. Rather, according to the applicant, it "rubber-stamped" the RPD's decision, relied on the RPD's findings and did not do its own analysis. If it had done its own proper analysis, the RAD would (following the applicant's argument) have identified errors made by the RPD in assessing the evidence and come to different conclusions.

[40] The respondent contended that the RAD's reasons focused on and were responsive to the issues raised in the applicant's written arguments to the RAD on the appeal, and the RAD generally agreed with the RPD's reasons (citing, among other cases, *Dahal v Canada*, 2017 FC 1102 (Crampton CJ), at paras 30-39). The respondent referred to specific submissions in the memorandum filed by the applicant on the appeal and to the RAD's Rules governing the contents of such written arguments.

[41] I agree substantially with the respondent. The RAD's reasons addressed all three issues raised by the applicant's written submissions on the appeal. The RAD's reasons showed that it engaged with the evidence and with the RPD's reasons. For instance, the RAD's reasons expressly referred to both clans by name, and to the 2012 events, the two incidents in 2014 and to the alleged attack at the gym in Bucharest in 2015. The RAD's reasons also expressly addressed two specific submissions made by the applicant, disagreeing with them in its reasoning. The RAD's reasons also recognized what had not been challenged by the applicant on

the appeal. This is not a case in which the RAD simply endorsed the reasons of the RPD, or adopted them.

[42] For the same reasons, I cannot conclude that the RAD's reasons were a mere "rubber stamp" and therefore not an independent analysis. In addition, the RAD expressly disagreed with one portion of the RPD's reasons (the characterization of the IFA analysis as determinative, rather than an alternative basis for its decision), which was inconsistent with a "rubber stamp" approach to the appeal.

[43] It is true that the RAD's reasons were short and its reasoning was economical. However, concise reasons are not necessarily inadequate or incomplete reasons, nor are they inherently unreasonable. On a judicial review application, a decision maker's decision and reasons must be read alongside the record: *Vavilov*, at paras 91-95.

[44] My colleague Justice McVeigh recently remarked in *Ademi v Canada (Citizenship and Immigration)*, 2021 FC 366, at para 28:

> Simply because the RAD agrees with the conclusions of the RPD does not mean that there was not an independent analysis. A physicist might agree with Einstein on the Theory of Relativity, and for the same reasons. That does not mean that she has not also done the math.

[45] To be understood fully, the RAD's reasons in this case must be read alongside the reasons in the RPD's decision under appeal and the applicant's written arguments on the appeal. Doing so, it becomes clear that the RAD "did the math". Continuing the analogy, to achieve better marks on a math or physics test, you "show your work". In that vein, it remains a better

practice for the RAD's reasons to explain its decision and conclusions in a manner that enables affected individuals and their counsel (as well as a reviewing court) to readily understand the reasoning on appeal without having to invest substantial time and effort to connect the bits of relevant evidence, the original decision and its reasoning, the grounds of appeal, and the reasons for dismissing or allowing the appeal.

[46] Finally, the applicant made a number of submissions to this Court concerning the specific evidence that the RAD allegedly failed to consider and evaluate. The applicant made two specific points. First, the applicant submitted that if the RAD had independently assessed the evidence, it would have noted an inconsistency between its statement that the applicant was "beaten up" at the gym in Bucharest in 2015 and the applicant's evidence which did not state that he was physically attacked but was threatened. In my view, this error did not render the RAD's decision unreasonable. The RPD found that the applicant's testimony concerning what exactly happened at the gym in Bucharest was "very vague and lacking in detail" and "evasive". On appeal to the RAD, as the RAD correctly noted, the applicant did not challenge the RPD's findings.

[47] At most, the RAD's statement that the applicant was "beaten up" at the gym (rather than threatened with a beating) was a minor misstatement. It had no effect on the RAD's analysis or the outcome of the appeal. It did not render the decision unreasonable: *Vavilov*, at para 100; *Alexion Pharmaceuticals*, at para 13.

[48] The applicant's second argument was that the RAD disregarded a key event in the applicant's claim, namely, an incident in 2018 in which one of the clans assaulted the applicant's brother. According to the applicant, the RAD was obligated to assess this evidence independently and did not do so.

[49] I do not agree with this submission. On his appeal to the RAD, the applicant's statement of facts briefly mentioned the attack on his brother by the Gentimir clan and his belief that it was connected to his refusal to work for the Corduneanu clan. In submitting to the RAD that the clans' attacks were not random, the applicant stated that both he and his brother were "targeted".

[50] However, the RPD did not accept the evidence supporting the 2018 attack on his brother and the applicant made no effort on appeal to reverse the RPD's findings. The 2018 attack was a relatively minor factual matter in the applicant's appeal memorandum, which appeared only inferentially in his argument. In my view, the RAD's failure to specifically address the incident against his brother in its reasons did not render the decision unreasonable.

C. ***Did the RAD make a reviewable error in its forward-looking risk analysis?***

[51] The applicant submitted that the RAD's forward-looking analysis was unreasonable because it failed to consider evidence and reached unreasonable conclusions based on the evidence that it did consider. The applicant argued that the RAD did not refer to the serious incident involving his brother, which was consistent with the applicant's position that there was an ongoing risk. He submitted that the RAD did not understand that the applicant did face an

ongoing risk within Romania owing to three incidents in three cities in that country, together with the evidence of risk outside Romania based on the incident in Germany.

[52] In my view, this argument cannot succeed. The RAD's analysis on the issue focused on whether the applicant had established that he has had problems with the Corduneanu clan since 2012. The RAD noted that the applicant had not pointed to any evidence in the record that suggested that the Corduneanu clan was still interested in him.

[53] In this Court, the applicant relied on evidence about the later attack on his brother by the Gentimir clan. However, the RPD did not find any evidence that there was any relationship or affiliation between the two clans. As the respondent noted, the RPD also found that 1) it was not credible that the Gentimir clan was now after the applicant's brother and the applicant to work for them, and 2) it was not credible or reasonable that the Gentimir clan would suddenly approach the applicant's brother and demand that he join them to work and also continue to search for the applicant. Due to the "contradictions in testimony and evidence", the RPD found that the applicant's brother's email describing the 2018 incident was created for the sole purpose of bolstering the applicant's claim and did not accept it as reliable or credible evidence that the Gentimir clan was after the applicant in Romania.

[54] In this context, and given the minor role of the 2018 incident with his brother in the applicant's written submissions made to the RAD, it is hard to find fault with the RAD's conclusion that, on a balance of probabilities, the applicant did not face a forward-looking risk under *IRPA* section 97. The applicant appears to be arguing a point that that he did not make on

the appeal to the RAD based on evidence that the initial trier of fact concluded was not credible or reliable.

[55] Applying the principles in *Vavilov* and *Canada Post*, there is no basis for this Court to intervene.

D. ***Did the RAD make a veiled IFA finding?***

[56] The applicant submitted that the RAD made an IFA finding, even though the existence of an IFA was not an issue on appeal. There is no merit in this position. The RAD did not make a veiled IFA finding when it merely referred to the reach of the Corduneanu clan throughout Romania. To the contrary, earlier in its reasons at paragraph 6, the RAD expressly stated that it was "not necessary [to] consider" the applicant's arguments with respect to an IFA.

V. Conclusion

[57] The application is therefore dismissed. Neither party raised a question for certification and none is stated.

JUDGMENT in IMM-4429-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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