

Federal Court



Cour fédérale

Date: 20220405

Docket: IMM-1455-20

Citation: 2022 FC 473

Ottawa, Ontario, April 5, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**YOUNIS ABDELKARIM BADRI
A.K.A. YOUNIS BADRI
A.K.A. YOUNIS ELSAYEDRI
A.K.A. YOUNIS EL SAYEDRI**

Applicant

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a Sudanese citizen. The Respondent brought an application before the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada under

section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], seeking to vacate and nullify the Applicant's refugee status.

[2] The RPD allowed the Minister's application. The Applicant now applies under section 72 of the IRPA for judicial review of the RPD's February 4, 2020 decision, raising the following issues:

- A. The Applicant was unfairly denied the opportunity to make submissions in regard to the authenticity of certain documents; and
- B. The RPD's findings and conclusions are unreasonable, having ignored or misconstrued evidence.

[3] The Respondent argues the Applicant had the opportunity to address authenticity concerns identified by the Respondent and that the RPD's decision is reasonable.

[4] For the reasons that follow, the Application is dismissed.

II. Background

[5] The Applicant applied for refugee protection in Canada on July 7, 2003, reporting he had experienced detention and torture in Sudan stemming from his political involvement and Nubian ethnicity. His status as a refugee was recognized by the RPD in November 2003.

[6] In seeking protection, the Applicant stated in his Personal Information Form [PIF] that he had travelled directly from Sudan to Canada in June 2003, he did not enter Canada through the

United States and he had not claimed refugee protection in another country. The PIF indicated the Applicant's name and birth date and did not indicate he was known by any other name.

[7] In June 2011, the United States Department of Homeland Security performed a fingerprint analysis on an individual who would be convicted in October 2013 of conspiracy to commit immigration document fraud, passport forgery and making false statements. This individual, who went by a different name and claimed a different birth date than the Applicant, had entered the United States in August 2000 and obtained refugee protection in that country in May 2001. The fingerprints of this individual [the US Refugee] matched those of the Applicant.

[8] Section 101(1)(d) of the IRPA states an individual who has been recognized as a Convention refugee in another country is ineligible to apply for refugee protection in Canada:

Ineligibility

101 (1) A claim is ineligible to be referred to the Refugee Protection Division if:

[...]

(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country...

Irrecevabilité

101 (1) La demande est irrecevable dans les cas suivants :

[...]

d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé...

[9] On December 3, 2013, the Minister of Public Safety and Emergency Preparedness applied to the RPD to vacate the November 2003 refugee decision pursuant to IRPA section 109. The Minister argued the Applicant and the US Refugee are the same person and the Applicant

made misrepresentations that had a direct effect on the RPD's decision to grant refugee protection.

[10] Section 109 of the IRPA states:

Vacation of refugee protection

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

[...]

Allowance of application

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

Demande d'annulation

109 (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

[...]

Effet de la décision

(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

III. Decision under Review

[11] The RPD allowed the Minister's application, finding on a balance of probabilities the Applicant and the US Refugee are the same person and the Applicant obtained his Convention refugee status through misrepresentation.

[12] In rejecting the Applicant's arguments, the RPD identified numerous concerns with the Applicant's narrative and found the explanations provided were not satisfactory. The RPD noted the Applicant and the US Refugee, who the Applicant reported were brothers, had the same first name, that the US Refugee was the only one of the Applicant's numerous reported siblings with a different last name and that the US Refugee was not listed as a sibling on the Applicant's PIF or refugee intake form. The RPD noted the Applicant had not been called as a witness in his alleged brother's legal proceedings in the United States when he was implicated in those proceedings and the Applicant was in possession of identity documents pertaining to both the Applicant and the US Refugee. The RPD also noted the Applicant and the US Refugee named the same woman as their spouse on their asylum applications.

[13] The RPD also took issue with the documentation supplied by the Applicant. The RPD found one of the submitted passports had been altered and the Applicant's passport listed a different place of birth than that set out in his refugee application. The Applicant's passport also did not contain a visa and the Applicant did not present his Canadian Permanent Resident Card.

[14] In considering documentary evidence submitted by the Applicant post-hearing, the RPD found it insufficient to establish the Applicant's presence in Canada during a period the US Refugee was reportedly being detained in the United States. The RPD found documentation relating to medical appointments had been altered and contained contradictory evidence and this in turn cast doubt on all the evidence provided by the Applicant to establish his presence in Canada at certain times.

IV. Standard of Review

[15] The parties agree the RPD's decision to vacate the Applicant's refugee status is to be reviewed against the standard of reasonableness (*Bafakih v Canada (Citizenship and Immigration)*, 2020 FC 689 at paras 19-23).

[16] A reasonable decision is "transparent, intelligible and justified" and is "based on an internally coherent and rational chain of analysis" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15 and 85 [*Vavilov*]).

[17] The parties have not addressed the standard of review to be applied in reviewing the fairness issue. In considering fairness issues, a reviewing court is to be guided by the question of "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). Although no standard of review is actually being applied, this review is "best reflected in the correctness standard" (*CPR* at para 54). Procedural fairness is "inherently flexible and context-specific" and the requirements imposed by the duty are determined with regard to all of the circumstances in any given matter (*Vavilov* at paras 77 and 127).

V. Analysis

A. *No breach of procedural fairness*

[18] The Applicant claims the RPD breached procedural fairness in finding the post-hearing medical documentation was contradictory and had been altered without having put those concerns to him and providing an opportunity to respond. I disagree for two reasons.

[19] First, the RPD's authenticity concerns with the medical documentation arise from inconsistencies with respect to dates that are readily identifiable upon a review of the documents. The Applicant, having produced these documents, could have addressed these inconsistencies at the time of submission.

[20] Second, in a written reply responding in part to the Applicant's post-hearing medical documentation, the Respondent noted the inconsistencies in the documents. The Respondent then stated, "these forms are most certainly forgeries submitted to mislead the presiding Member." The Applicant received these submissions and in fact submitted a sur-reply. The sur-reply is silent on the authenticity concerns raised by the Respondent; however, the Applicant clearly had notice and the opportunity to address the concerns with the medical documents. There was no unfairness.

B. *The decision is reasonable*

[21] The Applicant submits the RPD's treatment of affidavit evidence and letters corroborating his position that he and the US Refugee were not the same person, in addition to other aspects of his narrative, was unreasonable. The RPD failed, the Applicant submits, to sufficiently respond to this evidence and explain why it was unpersuasive. He further submits the RPD did not explain its findings that the medical documentation was contradictory and had been altered. The Applicant relies on *Guney v Canada (Citizenship and Immigration)*, 2008 FC 1134 [*Guney*] to argue the RPD erred in expanding a single and discrete negative credibility finding into a global negative finding.

[22] The Respondent argues and I agree that the Applicant's arguments relating to the RPD's consideration and weighing of the evidence is nothing more than a request that this Court reconsider and re-weigh the evidence. The RPD acknowledges and addresses the contradictory evidence and in doing so explained why it preferred the Respondent's evidence. In light of the overwhelming nature of the evidence that the Applicant and the US Refugee were the same person, the RPD was not required to engage with each piece of the Applicant's evidence. The RPD's decision is justified, transparent and intelligible.

[23] Nor is there merit to the argument that the RPD erred by drawing a global negative credibility finding after concluding the medical documents had been altered.

[24] In *Guney*, Justice Russell Zinn found the RPD erred in drawing a global negative inference from a finding that one element of an overall narrative had been fabricated where the fabrication had little or no bearing on the remainder of the claim. This is not the case here.

[25] In this instance, the Applicant had submitted documents seeking to establish his presence in Canada during a certain period. The RPD found certain documents submitted for this purpose had been altered and then concluded, “this casts a doubt on all the evidence provided by the [Applicant] to show that he was residing in Canada” [Emphasis added]. The RPD’s negative finding was limited to the issue of residence or presence in Canada.

[26] The Applicant has not demonstrated any error warranting the Court’s intervention.

VI. Conclusion

[27] The RPD’s decision is reasonable and the Application is dismissed. The parties have not identified a question of general importance for consideration and none arises.

JUDGMENT IN IMM-1455-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1455-20

STYLE OF CAUSE: YOUNIS ABDELKARIM BADRI A.K.A. YOUNIS
BADRI A.K.A. YOUNIS ELSAYEDRI A.K.A.
YOUNIS EL SAYEDRI v THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 30, 2022

JUDGMENT AND REASONS: GLEESON J.

DATED: APRIL 5, 2022

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