

Federal Court



Cour fédérale

Date: 20220613

Docket: IMM-3466-21

Citation: 2022 FC 875

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 13, 2022

PRESENT: Mr. Justice Pentney

BETWEEN:

**DIMITRI HARDING TCHUIEKOU
TCHOUASSI**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the Refugee Appeal Division (RAD) decision confirming the decision rendered by the Refugee Protection Division (RPD) that the applicant is neither a refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The applicant claimed that his life is threatened by his older brother who wants to take money and property the applicant inherited, and by other family members who have been told by his brother that he is gay. The applicant is a citizen of Cameroon and also fears being targeted by the Cameroonian public and authorities because of the risk to those perceived to be homosexual.

[3] Like the RPD, the RAD found the applicant's story to be true, but rejected his refugee protection claim after determining that he had a viable internal flight alternative (IFA).

[4] I find that the RAD's decision is unreasonable because the RAD failed to address the applicant's allegations regarding the risk to which he would be exposed as a perceived homosexual in Cameroon, and because the RAD failed to consider objective documentary evidence showing that the police in Cameroon are a major source of persecution and violence perpetrated against homosexual persons.

I. Background

[5] The applicant is a citizen of Cameroon. Following the death of his father in 1996, he was designated as his father's sole heir while still a minor. Four years later, the funds from the inheritance allowed the applicant to pursue studies in Canada, which displeased his brothers, who were concerned about the fate of their father's estate. His older brother then proclaimed himself as their father's sole heir and appropriated the inheritance funds and property.

[6] In January 2017, the applicant was forced to drop out of school because he no longer had enough money. Six months later, his older brother threatened to kill him to gain full control over

the inheritance. He also spread a rumour within the family that the applicant was homosexual, a false rumour according to the applicant.

[7] On November 8, 2017, the applicant filed his refugee protection claim in Canada, alleging three fears: threats from his older brother; threats from his family because of the false rumour that he is gay; and the risk of persecution in Cameroon related to the fact that he would be perceived as a homosexual.

[8] The RPD found the applicant's story credible, but concluded that he had an IFA in Yaoundé. According to the RPD, the risk to the applicant is minimal in the city where his brother and family members who believe he is gay live. The RPD found that there is little chance that they would be able to track him down if he moved to Yaoundé, a city of nearly four million people, located several hours' drive from his hometown, Douala. Moreover, since the applicant claimed not to be a homosexual and rumours to that effect had not circulated in Yaoundé, he would not face a serious possibility of persecution there. Thus, the RPD rejected the applicant's refugee protection claim, finding that Yaoundé is a viable IFA for him.

[9] The RAD rejected the applicant's appeal, finding that [TRANSLATION] "there is no serious possibility that [the applicant's] family would find him in a city as large and populous as Yaoundé" (RAD decision at para 2). According to the RAD, if the applicant did everything to avoid his family members living in Yaoundé, there was little chance that they would ever come across him, given that the applicant had testified that he was not close to them.

[10] The RAD also found that the evidence did not establish a significant risk that [TRANSLATION] "other people or even the authorities [would attack] him because they would

presume wrongly that he is homosexual”. Since the applicant [TRANSLATION] “claims not to be homosexual, he should have the protection of the authorities if he were to get into trouble as a result of false impressions others might have” and the Cameroonian authorities should be able to protect him from any attempt by his brother or other family members to attack him (RAD decision at para 9).

[11] Before dealing with the merits of the application for judicial review, there is a procedural point to discuss.

II. Request for postponement of the hearing

[12] The day before the scheduled hearing date for this judicial review, the Court received a written letter from the articling student of the attorney representing the applicant, requesting a postponement of the hearing. The justification for the request is as follows:

[TRANSLATION]

The hearing in this case was scheduled for April 21, 2022, but unfortunately, we will not be able to attend. Alain Moriba Koné, the applicant’s lawyer, is currently out of the country and Christine Brou, who was to replace him, must be before the court of Quebec, civil division of the Granby courthouse, for a settlement conference tomorrow Moreover, she has not yet had the opportunity to meet with the client, who lives outside Montréal.

[13] The Court denied the request, and a review of the history of the case is required to explain the reason for the denial.

[14] The hearing date in the proceeding was set by Order of the Court on January 24, 2022. The applicant did not file a supplementary memorandum, as permitted by the Order, but the

respondent did. The Court's docket does not indicate any further activity by the applicant between the January 24, 2022, Order and the April 20, 2022, letter received the day before the hearing. In addition, the respondent's counsel filed a letter dated February 7, 2022, which states that he had had difficulty communicating with Mr. Koné, noting that [TRANSLATION] "multiple attempts to communicate with the opposing party regarding settlement discussions have been unsuccessful as the applicant's counsel has not responded to our emails".

[15] On March 29, 2022, the registry officer informed the court that the applicant's lawyer, Mr. Koné, had been appointed Minister of Justice in Guinea, a fact that the officer verified through an internet search. The officer also told the court that Mr. Koné still appeared as the solicitor of record. The court asked the registry officer to confirm with Mr. Koné that he would continue to represent the applicant in this judicial review, in an attempt to avoid a last-minute request for postponement being filed.

[16] The registry officer attempted to contact Mr. Koné on numerous occasions, both by email and by telephone, including emails dated April 4, April 7 and April 13. The officer was able to contact the articling student, who informed him that Mr. Koné was [TRANSLATION] "out of town". The articling student stated that she would call Mr. Koné to tell him to read his emails. However, Mr. Koné did not contact the Court until the day before the hearing, through his assistant, who called the registry officer to state that he planned to file a request for postponement. In the end, it was Mr. Koné's student who signed and filed the letter requesting a postponement of the hearing, and the letter was not filed until after court hours, that is, at around 6:00 p.m. on April 20, 2022.

[17] It was these circumstances that led the Court to deny the request for postponement. Furthermore, the request did not comply with the procedures set out in section 36 (*Federal Courts Rules*, SOR/98-106) or the jurisprudence of the Court.

[18] According to the Court's jurisprudence:

[P]arties with a fixed hearing date will receive an adjournment only in exceptional cases. Relevant factors in considering whether to grant an adjournment include the prejudice the adjournment would cause to one and more of the parties, the prejudice to the Court of losing a scheduled hearing time and the public interest in a timely conclusion of litigation and efficient use of trial facilities.

(*Canada (Citoyenneté et Immigration) v Megally*, 2008 FC 743 at para 5; see also *UHA Research Society v Canada (Attorney General)*, 2014 FCA 134).

[19] The Court's policy regarding requests for adjournments was clearly explained in a Notice to the Profession dated May 8, 2013:

The Federal Court operates on a guaranteed, fix-date system. When the Court has fixed a date for trial or for a hearing parties are expected to proceed on that date. Adjournments cause inconvenience and expense. Court resources are not used efficiently as there often is not sufficient time to schedule another matter to take the place of the adjourned hearing.

[20] In this case, the Court is of the opinion that the applicant's counsel, Mr. Koné, has flagrantly failed in his obligations to his client and to the Court. Mr. Koné did not respond to the emails from the respondent's counsel or to the repeated requests from the registry officer to confirm that he would attend the hearing. Although he had been aware of the hearing date since January 24, 2022, Mr. Koné did not take the necessary steps in order to be able to attend the hearing. Moreover, the fact that the hearing was virtual gave him the opportunity to fulfill his professional obligations even though he was outside the country. All he had to do was click on a

Zoom link sent by the registry officer to join the hearing by videoconference, but he did not do so and offered no explanation for his absence.

[21] For all of these reasons, the Court dismissed the late request for postponement of the hearing.

[22] I note that Mr. Koné's articling student attended the hearing, but was not in a position to make representations for the applicant. I stated at the hearing, and I repeat it here, that my comments about Mr. Koné's lack of professionalism are not a criticism of the actions of the articling student, who responded professionally and appropriately to the registry officer's requests. I should add that counsel for the respondent fulfilled her obligations in a professional manner as well.

[23] Having said that, I will deal with the merits of the application for judicial review based on the written submissions Mr. Koné filed on behalf of the applicant, as well as the written and oral submissions of the respondent.

III. Issues and standard of review

[24] The only issue raised by this application for judicial review is whether the RAD's decision is reasonable.

[25] The standard of review that applies to a review of a decision of the RAD is that of reasonableness (*Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32; *Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 [Vavilov] at paras 13, 24, 30; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 28).

[26] In summary, under the framework set out in *Vavilov*, a reviewing court conducting a reasonableness review must “review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post* at para 2). The burden is on the applicant to satisfy the Court that “any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para 100, cited with approval in *Canada Post*, at para 33).

IV. Analysis

[27] The applicant submits that he fears returning to Cameroon for three reasons: threats to his life from his older brother; threats from his family because of the false rumour spread by his brother that he is gay; and the risk of persecution by Cameroonian authorities and the general population because of being perceived as gay. The RAD accepted the applicant’s story, but agreed that he had a viable IFA in Yaoundé.

[28] The RAD’s analysis of the motivation and means of the persecuting agents is reasonable. The RAD found that the applicant had established that his brother and other family members had the motivation to try to track him down, but was not persuaded that they had the means to do so. There is no evidence in the record of connections between his immediate family and extended family members living in Yaoundé. There is no evidence that his immediate family has any connection to the authorities, or that there were any other means they could use to locate him in such a large city as Yaoundé. The RAD’s analysis on this point is clear and reflects the application of the test established by case law. The analysis on this point is reasonable.

[29] On the other hand, the RAD did not consider important evidence on the record in its analysis of the risk of persecution by Cameroonian authorities and the general public, namely the evidence submitted by the applicant and the objective documentary evidence in the National Documentation Package (NDP) to which the RAD refers in its reasons for decision.

[30] The RAD began its analysis by addressing the situation of sexual minorities in Cameroon. The RAD recognized that [TRANSLATION] “the situation of sexual and gender minorities in Cameroon is particularly difficult, especially since homosexuality is illegal and not accepted by a significant portion of the population” (RAD decision at para 9). This conclusion is amply supported by the evidence, including in the Response to Information Requests from the Immigration and Refugee Board of Canada cited by the RAD found in the April 16, 2021, NDP on Cameroon at Tab 6.1, entitled “Situation of sexual and gender minorities, including legislation, treatment by authorities and society, state protection and support services (2017-August 2020)”.

[31] However, the RAD continued its analysis by adding the following: [TRANSLATION] “On the other hand, since the [applicant] claims not to be homosexual, he should have the protection of the authorities if he were to get into trouble as a result of false impressions others might have” (RAD decision at para 9).

[32] There is no evidence on the record to show that Cameroonian authorities would have any knowledge of the rumour spread by the applicant’s brother that he is homosexual. However, the applicant testified that he feared being perceived as such and explained the basis for his fear. In his submissions to the RAD, the applicant stated that it would be [TRANSLATION] “very easy to make people believe [he] is gay given his profile as a single, well educated, healthy 26-year-old”.

[33] Further, in his testimony before the RPD, the applicant described that the relationship between him and his cousin, with whom he was previously very close, deteriorated after she heard the rumour, and after she saw pictures of him with pierced ears. He stated that the rumour spread by his brother was believed by his family in part because of his pierced ears. According to him, this prejudice against him is indicative of the attitude of most Cameroonians towards sexual minorities, and is established in the document cited by the RAD from the NDP on Cameroon, above. The applicant also argues that this is sufficient to show that his fear is real and is based on evidence.

[34] The RAD must consider the applicant's situation and the risks the applicant would face if returned to the applicant's birth country, taking into account the cultural and legal differences between Canada and Cameroon. The RAD is also required to consider the objective documentary evidence in the NDP regarding the attitude of the Cameroonian police towards sexual minorities. It is the absence of such an analysis that is the crux of the problem with the RAD's decision.

[35] The RAD concluded that the applicant [TRANSLATION] "should have the protection of the authorities if he were to get into trouble as a result of false impressions others might have" about his sexual orientation (RAD decision at para 9). This conclusion is not supported by the document in the NDP cited by the RAD in its decision. Regarding the attitude of authorities towards sexual minorities, the objective documentary evidence shows that:

- A. "arrests and prosecution are based on suspicion . . . [and are] ' . . . regularly based on a neighbour's or stranger's information, [and] stereotypes such as clothing and conduct are included as evidence of the charge of homosexual acts'" (p 3) ;

- B. “sexual minorities are harassed by the police and gendarmes . . . in 2016, the police were also responsible for 67 cases of extortion and blackmail related to sexual orientation, real or perceived . . . [and] sexual minorities cannot go to the police for violations because even when they are the complainants, once their sexual orientation is disclosed to the investigators, the victims become the perpetrators, and when they are not victims of scams by judicial police officers, the reason for their complaint is changed to ‘homosexuality’ and they are incarcerated” (p 4); and
- C. various organizations in Cameroon “provide legal support to people involved in legal proceedings due to their real or presumed sexual orientation” (p 10).

[36] The RAD referred to this document from the NDP in its reasons to support its analysis of the situation of sexual minorities in Cameroon, but it did not refer to those passages that contradicted its conclusion about the applicant’s ability to obtain protection from the authorities if he was perceived as homosexual. Given the applicant’s fear and the testimony he gave based on that fear, it was not reasonable for the RAD to dismiss the appeal without analyzing the evidence regarding the general attitude and actions of Cameroonian authorities toward sexual minorities.

[37] The fear of being perceived as homosexual in Cameroon is an essential element of the applicant’s complaint, and the lack of analysis of the evidence submitted by the applicant and of the objective documentary evidence in the NDP makes the RAD’s decision unreasonable.

[38] For the reasons above, the application for judicial review must be allowed, as a finding by the RAD on a central element of the applicant's complaint is not justified and lacks transparency.

[39] The parties have not raised any issues for certification, and the Court agrees that there are none.

JUDGMENT in IMM-3466-21

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The decision of the Refugee Appeal Division dated May 3, 2021, is set aside.
3. The case is sent back to the Refugee Appeal Division for reconsideration by a differently constituted panel.
4. No serious issue of general importance is certified.

“William F. Pentney”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3466-21

STYLE OF CAUSE: DIMITRI HARDING TCHUIEKOU TCHOUASSI
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VIA VIDEOCONFERENCE

DATE OF HEARING: APRIL 21, 2022

**JUDGMENT AND
REASONS:** PENTNEY J.

DATED: JUNE 13, 2022

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