Federal Court Cour fédérale

Date: 20230531

Docket: IMM-5134-22

Citation: 2023 FC 745

Ottawa, Ontario, May 31, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

CHUKWU MATHEW PATRICKS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Mr. Chukwu Mathew Patricks, a citizen of Nigeria, seeks judicial review of the Refugee Appeal Division [RAD]'s decision dated May 6, 2022 that allowed his appeal and referred the matter back to a different member of the Refugee Protection Division [RPD] for redetermination in accordance with paragraph 112(2)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Immigration Act].

[2] Although the RAD allowed his appeal, and because of the particular history of this file, Mr. Patricks challenges the decision and contends that the RAD did not have the jurisdiction to refer the matter back to the RPD. He adds that in the present circumstances, the RAD was obligated to analyze one particular element and to even restrict its analysis to this element.

[3] As a matter of context, this is the second application for judicial review of a RAD decision involving Mr. Patricks. Briefly, the context is the following:

- On October 15, 2019, the RPD rejected the claim Mr. Patricks made under sections 96 and 97 of the Immigration Act. The RPD raised certain credibility issues, but found Mr. Patricks generally credible; it determined he had an Internal Flight Alternative in Abuja and in Benin City and thus concluded he was neither a Convention refugee nor a person in need of protection;

- Mr. Patricks appealed the RPD decision before the RAD and challenged, *inter alia*, some credibility findings. On March 19, 2021, the RAD upheld the RPD's decision;

- Mr. Patricks challenged the March 19, 2021 RAD's decision before the Court where he raised, for the first time, an argument relating to the "compelling reasons" element of subsection 108(4) of the Immigration Act (that relates to the cessation of the refugee status), and asserted that the RAD had failed to consider it;

- The parties agreed to a Judgment on consent and presented a motion to that effect to the Court. On June 1, 2021, the Court granted the motion "on the terms recited", i.e.:

    a) [Allowed] the application for judicial review;

    b) [Quashed] the March 19, 2021 decision of the Refugee Appeal Division of the Immigration and Refugee Board (the "RAD"), in which the RAD upheld the decision of the Refugee Protection Division that found the Applicant is not a Convention refugee nor a person in need of protection, on account of the RAD's decision being unreasonable, on the basis that its reasons fail to provide an analysis as to why "compelling reasons" under subsection 108(4) of the Immigration and Refugee Protection Act are not applicable to the present case or were not considered;

    c) [Remitted] the matter to a differently constituted panel of the RAD for re-determination; and

    d) [Awarded] no costs to either party.

[4] On May 6, 2022, the RAD rendered the decision being challenged today by Mr. Patricks. In essence, the RAD conducted a *de novo* assessment of the record and concluded that (1) the RPD had erred in its credibility assessment; and (2) the RPD should also have considered "what steps the [Applicant] took to protect himself from the alleged risk while he was still in Nigeria". The RAD could not either confirm the RPD's determination or substitute its own without rehearing the evidence, found it did not have jurisdiction to hold a new hearing, and that the matter thus had to be referred back to the RPD for redetermination. In regards to the "compelling reasons", the RAD considered that, as a consequence of its prior findings, it was "unable to analyze the issue in accordance with the Judgment on consent rendered by the Federal Court".

[5] Mr. Patricks now seeks judicial review of this second RAD decision on the ground that the RAD committed a reviewable error in law and a breach of procedural fairness and the principles of natural justice by failing to exercise its jurisdiction as instructed by the Federal Court of Canada and, instead, by acting beyond its mandated jurisdiction.

[6] More specifically, Mr. Patricks contends that the Court's Judgment on consent contained clear instructions from the Court to the RAD to limit its assessment to this "compelling reasons" element. He thus submits that the RAD (1) disregarded the Court's instruction, as it refused to exercise its mandated jurisdiction and analyze the sole issue of concern; which was to determine whether Mr. Patricks's refugee claim should be accepted in light of the "compelling reasons" arising out of previous persecution pursuant to subsection 108(4) of the Immigration Act; and (2) refused to analyze the issue identified by the Court when it rendered its Judgment on consent. He asks the Court to quash the decision and have it returned before a different RAD member.

[7] Mr. Patricks adds that, in light of the fact that the issue is a general question of law of central importance to the legal system as a whole and is a question of the proper exercise of an administrative tribunal's jurisdiction - both of which require a single and determinate answer - the applicable standard of review in the present application is the correctness standard.

[8] The Minister of Citizenship and Immigration [Minister] responds that quashed decisions cannot give rise to *stare decisis* or *res judicata* as they are quashed for all purpose and that when redetermining a refugee claim, the RPD (or the RAD) may come to a different conclusion on credibility as the first decision is quashed for all purposes when it is set aside by order of this Court. The Minister adds that this is true even if the Court had found a reason to intervene on a narrow issue only. He thus asserts that the RAD could review the entirety of Mr. Patricks's claim (*Burton v Canada (Citizenship and Immigration)*, 2014 FC 910 at para 30 [*Burton*]; *Ouellet v Canada (Attorney General)*, 2017 FC 586 [*Ouellet*]). The Minister adds that the reasonableness standard of review applies and the decision meets this standard.

[9] For the reasons that follow, I find that the RAD decision must be reviewed against the reasonableness standard and that, in light of the law and the jurisprudence, Mr. Patricks has not shown the decision to be unreasonable. The application for judicial review will consequently be dismissed.

II. Analysis

A. *Standard of review*

[10] I agree with the Minister that the presumptive standard of review is reasonableness and that nothing refutes the presumption in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I note that Mr. Patricks has submitted no argument in relation to a possible breach of procedural or in support of his proposition that this case raises a general question of law of central importance to the legal system as a whole.

[11] When the reasonableness standard of review applies, the burden is "on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus must be "on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and [...] is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). It is not for the Court to substitute its preferred outcome (*Vavilov* at para 99).

B. *The RAD decision is reasonable*

[12] Where a matter is remitted by the Court to an administrative tribunal for redetermination, a tribunal is only required to follow explicit instruction stated in the judgment or direction from a reviewing Court if such instructions are indeed provided (*Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48 at para 19 [*Yansane*]). Hence, while the decision maker is advised to

consider the comments and recommendations in the reviewing Court's reasons, it is not required to follow them (*Ouellet v Canada (Attorney General)*, 2018 FCA 25 at para 7).

[13] As the Federal Court of Appeal explained in *Yansane* at paragraph 19:

> According to that logic, I believe it is essential to interpret the possibility of issuing directions or instructions restrictively, such that only those explicitly stated in the judgment may bind the administrative decision-maker responsible for re-examining a case. This must be the case not only so that Parliament's decision not to allow appeals is respected, but also so that the law is predictable and appropriately guides those who must re-examine a question when the first decision was set aside. Consequently, I am of the opinion that only instructions explicitly stated in the judgment bind the subsequent decision-maker; otherwise, the comments and recommendations made by the Court in its reasons would have to be considered mere *obiters*, and the decision-maker would be advised to consider them but not required to follow them.

[14] "According to the FCA, the Court's instructions will form part of the Court's judgment when they are expressed directly and explicitly in the conclusions of the judgment on judicial review: 'only instructions explicitly stated in the judgment bind the subsequent decision-maker' (*Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48 [*Yansane*] at para 19; see also *Ouellet v Canada (Attorney General)*, 2018 FCA 25 at para 7). Conversely, where instructions are simply expressed in the reasons for judgment, they 'would have to be considered mere obiters, and the decision-maker would be advised to consider them but not required to follow them' (*Yansane* at para 19)" (*Lill v Canada (Attorney General)*, 2020 FC 551 at paragraph 83).

[15] It is with these principles in mind that I must examine the RAD's decision and the arguments raised by Mr. Patricks.

[16] In the Judgment on consent it issued on June 1, 2021, the Court did find the RAD's decision to be unreasonable on the basis that the RAD's reasons failed to provide an analysis as to why "compelling reasons" under subsection 108(4) of the Immigration Act were not applicable or were not considered, and proceeded to quash the decision.

[17] However, and contrary to Mr. Patricks' position, a simple reading of the Order confirms the Court did not include instructions or directions, explicit or implicit, restraining the RAD's review; it simply returned the matter before the RAD for "re-determination by a panel other than the one who rendered the previous decision with regard to the Applicant's refugee claim". The sole impact of the Court's judgment was thus to extinguish the first RAD decision. As the Federal Court of Appeal recently reasserted, "*general* references to reasons in a formal judgment do not form part of the judgment itself so as to give rise to a right of appeal based on the reasons" (*Canada (Attorney General) v Benjamin Moore & Co*, 2022 FCA 194 at para 19 citing *Yansane* at para 25).

[18] It was thus open to the RAD, on redetermination, to conduct a complete assessment and to reach a different conclusion from the RPD and namely, on the issue of credibility (*Burton* at para 30; *Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155 at para 3; *Miah v Canada (Minister of Citizenship and Immigration)*, 2007 FC 2005 at para 8). Put differently, the RAD was then "free to reach its own conclusions based on a fresh consideration of the evidence and arguments presented" (*Ouellet* at para 28).

[19] As I conclude that no instructions were given by the Court to the RAD in its Judgment on consent, the RAD cannot be considered to have disregarded the Court's instructions, nor to have refused to analyze an issue identified by the Court in its reasons.

[20] As I outlined to the parties at the hearing, the question as to whether or not subsections 108(1)(e) and 108(4) of the Immigration Act can be considered by the decision maker when assessing claims made under sections 96 and 97 of the Immigration Act is not before me in this proceeding, and I will consequently not address it. My silence on this issue cannot be interpreted as an endorsement of the very brief justification provided in the Judgment on consent.

III. Conclusion

[21] In light of the teachings provided by the Federal Court of Appeal in *Yansane*, and given that the Court's Judgment on consent did not provide any particular instructions but simply referred the matter back to the RAD for a redetermination by a different panel, I am convinced that the RAD had no obligation to restrict its assessment to one issue. I am satisfied that the RAD's decision is reasonable and in fact, correct, and will thus dismiss the application for judicial review.

<u>JUDGMENT in file IMM-5134-22</u>

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.

2. No question is certified.

2. No costs are awarded.

"Martine St-Louis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Me Jonathan Gruszczynski CJC	FOR THE APPLICANT
Me Mario Blanchard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Canada Immigration Team Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT