Federal Court Cour fédérale

Date: 20240228

Docket: IMM-1751-23

Citation: 2024 FC 328

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 28, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

JEAN COLBERT DJINDJEU NKWENDJA

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jean Colbert Djindjeu Nkewendja [the applicant] is a Cameroonian citizen. He is married and has four children. The applicant is seeking judicial review of a decision rendered on January 20, 2022 [Decision] that rejected the application for a pre-removal risk assessment [PRRA].

[2] The PRRA officer concluded that the applicant's evidence was insufficient to demonstrate that he faced more than a mere possibility of persecution within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The officer also concluded that the applicant had not demonstrated, on a balance of probabilities, that there were [TRANSLATION] "substantial grounds to believe that he faced a risk of torture, a risk to his life or a risk of cruel and unusual treatment or punishment" if he were to return to Cameroon, within the meaning of paragraphs 97(1)(a) and (b) of the IRPA.

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

II. Facts

[4] The applicant arrived in Canada on January 14, 2020, via Roxham Road, without a visa. He had spent almost 19 years in the United States, where he went to seek protection in November 2002.

[5] On January 14, 2020, the applicant filed a refugee protection claim in Canada that was deemed ineligible within the meaning of paragraph 101(1)(c.1) of the IRPA.

[6] On January 27, 2020, the applicant filed a PRRA application.

[7] On October 20, 2021, the Canada Border Services Agency heard the PRRA application by videoconference.

[8] In his PRRA application, the applicant claimed that after being appointed head of the Douala 2 polling station during the May 1997 election period, the sub-prefect asked him to falsify the voting results in order to be declared the winner. The applicant stated that he had taken part in a march protesting the arrest, transfer to a military camp and execution of children. During the march, the applicant and others were arrested and taken to the police. The applicant was detained and was tortured during his detention. Given the state of his health, he was treated at the hospital, at which point a nurse helped him escape. His friend, who had visited the day before, had given him enough money for him to get to his friend's home and hide there. He remained there in hiding until his departure for the United States in December 2001.

[9] After arriving in the United States, the applicant allegedly continued to take part in several political activities denouncing the party in power. The applicant describes himself as a political opponent and alleges that his life would be in danger because of his political opinion if he were to return to Cameroon.

[10] In his decision, the officer concluded that the applicant's account of the escape lacked credibility, particularly with respect to the steps he had allegedly taken to escape undetected. Moreover, the officer had determined that the additions and adjustments to his statements [TRANSLATION] "on this subject greatly undermined his credibility and clearly demonstrate[d] an attempt to embellish his story for the purpose of obtaining immigration status". The PRRA application was rejected because the officer had concluded that the applicant lacked [TRANSLATION] "substantial grounds to believe that he faced a risk of torture, a risk to his life or

a risk of cruel and unusual treatment or punishment" should he be returned to his country of nationality or habitual residence.

III. Issue

[11] The issue is whether the decision rendered on January 20, 2022, by the PRRA officer is reasonable.

IV. Standard of review

[12] The parties agree that the Court must review the PRRA officer's decision on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17 and 25). I agree that the standard of reasonableness applies in the context of this application for judicial review.

[13] Review on a standard of reasonableness considers both the reasoning process and the outcome. The Court must refrain from deciding the issue itself, and does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a de novo analysis or seek to determine the "correct" solution to the problem (*Vavilov* at para 83).

[14] The Court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness—

justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints (*Vavilov* at para 99).

[15] The burden is on the party challenging the decision to show that it is unreasonable. There must be sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100).

V. Analysis

A. *Credibility issues*

[16] In the context of the PRRA, the determinative issue was the applicant's credibility.

[17] The applicant alleges that the officer's decision was based on speculation rather than fact since the officer called into question his testimony and assumed the presence of security guards watching the outside of the establishment. According to the applicant, the officer had no reliable information in the form of evidence in the record to support his speculation. The applicant maintains that the officer relied on an assumption that he had judged to be a possibility but that in reality there was nothing in the record stating this.

[18] The respondent, on the other hand, alleges that the officer identified and analyzed all the alleged risk factors related to the applicant's return to Cameroon. He concluded that the applicant had not demonstrated that he was at risk if he were to return to Cameroon. In particular, the PRRA officer reasonably concluded that the applicant's story as a whole lacked credibility.

Assessing credibility is part of the fact-finding process, and credibility determinations are entitled to deference in the context of judicial review.

[19] The applicant's central argument regarding the credibility assessment focuses on the officer's conclusion in relation to his story, including his flight from the hospital and the circumstances leading to his departure from Cameroon. The applicant has repeatedly cited the places where the officer's decision refers to the facts concerning the assumption of the presence of security guards and the assessment of the credibility of the account.

[20] The applicant cites *Valtchev v Canada (MCI)*, 2001 FCTD 776, in support of the argument that the implausibility principle should be applied only in the clearest of cases. The applicant argues that the officer speculated about the existence of guards at the hospital to determine that the applicant's story lacked credibility or plausibility. He notes that there was no mention of guards anywhere. According to the applicant, the Court's intervention is warranted because the PRRA decision was based on speculation or assumptions.

[21] However, as the respondent pointed out at the hearing, the officer considered the plausibility of the story with respect to the existence of security guards based on the applicant's own testimony. In the applicant's memorandum, he describes the complicity of a nurse who allegedly helped him [TRANSLATION] "slip past the Cameroonian authorities". In a transcript of the applicant's interview of January 16, 2020, the applicant testified in French without needing the services of an interpreter: [TRANSLATION] "I was under surveillance at the hospital; I ran away because the guard in charge of watching me was distracted."

[22] The respondent argues that the decision maker may rely on implausibilities raised in an applicant's testimony as a basis for a finding of lack of credibility (*Shahamati v MEI*, [1994] FCJ No 415 (QL) (CA) and *Wen v MEI* [1994] FCJ No 907 (QL) (CA)).

[23] As Gascon J explained in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraph 15, a deferential approach is particularly required when the impugned findings relate to the credibility and plausibility of a refugee claimant's story. It is well established that these findings require a high degree of deference from the judges on judicial review, given that credibility findings go to the very heart of the administrative tribunal's expertise. Members are in a better position to assess a claimant's credibility since they see the witness at the hearing, observe his or her behaviour and hear his or her testimony.

[24] Credibility findings and the assessment of evidence by triers of fact are owed considerable deference by the Court (*Melay v Canada (Citizenship and Immigration)*, 2022 FC 1230 at para 13).

[25] The concept of surveillance by authorities was introduced by the applicant. It was therefore reasonable for the officer to assess the applicant's story in this context. The applicant may disagree with the officer's finding, but this disagreement does not give rise to a finding that the decision is unreasonable.

[26] The applicant highlighted a few parts of the officer's reasoning, but I must not view the decision in this case so narrowly. The Court must consider the decision as a whole.

[27] Note that the applicant's story contained more than one action considered by the officer. The flight from the hospital was only one part of the applicant's story. The officer concluded that, on top of the applicant's testimony and the documents presented, the additions and adjustments to his statements undermined his credibility and represented an attempt to embellish.

[28] The officer's reasons clearly state that his finding of undermined credibility was based on the story as a whole, the evidence submitted and the applicant's testimony. On the basis of the record, I cannot find that the decision in this case was unreasonable.

[29] Furthermore, the applicant's arguments seek to have the Court weigh the evidence to reach a conclusion different from that of the officer. It is not open to me to reweigh and reassess the evidence considered by the decision maker, as this would violate the principles established in the case law (*Vavilov* at para 125).

[30] Given the officer's reasons as a whole and in the context of the relevant evidence, I find that they reveal a rational and coherent analysis of the testimony and the facts. They do not reveal a fatal flaw in the overarching logic (*Vavilov* at paras 102–103).

B. *General country conditions*

[31] The applicant alleges that the officer completely ignored the documentary evidence in the National Documentation Package on Cameroon, a country ruled by a dictator who has reigned unchallenged for more than 40 years. The documentary evidence in the record shows systematic persecution of political opponents.

[32] During the hearing, the Court asked the applicant to identify the evidence ignored by the officer. The applicant pointed to evidence confirming that he was a political opponent. The applicant identified photographs, and one in particular in which he was present at a demonstration wearing the scarf of a political movement. He alleged that the photograph showed that he was an opponent of a dictator. Moreover, the general conditions support a finding that all dissidents are oppressed; therefore he has demonstrated through objective and subjective evidence that a return to Cameroon represents a real risk for him.

[33] The respondent maintains that the PRRA officer reasonably concluded that the applicant had failed to demonstrate that the Cameroonian authorities were interested in him with regard to his political activities. Despite the problems with the credibility of the applicant's testimony, the officer nevertheless considered the general country conditions. However, there was no evidence that the Cameroonian authorities were aware of his activities or that his activities were considered the type of political opposition that they would target.

[34] Counsel for the respondent cites *Tesfay v Canada (Citizenship and Immigration*), 2021 FC 593, at paragraph 16, in support of her position that the review of objective documentary and personalized evidence and the assessment of an applicant's risks of return are matters for the specialized expertise of the PRRA officer.

[35] The respondent argues that the general conditions, photographs and statements submitted by the applicant to establish his participation in political activities opposing the Cameroonian government are not sufficient without a link to the applicant himself. The onus is on the

applicant to prove that he is considered a political opponent targeted by the authorities or that there is a link between the general conditions and his circumstances.

[36] The factual determinations made about the risk of removal in the course of a PRRA assessment are fact driven and warrant considerable deference (*Yousef v Canada (Citizenship and Immigration)*, 2006 FC 864, at para 19). In this case, I am not convinced that there was a failure to consider relevant factors or to weigh the evidence submitted.

[37] Given all the evidence before him and the relevant legal constraints, it was not unreasonable for the officer to conclude that the applicant had not provided compelling evidence to establish a link between his personal circumstances and the general conditions.

[38] Accepting the applicant's arguments would compel me to reweigh the evidence considered by the decision maker, an avenue not open to me on judicial review (*Vavilov* at para 125).

[39] The applicant has failed to establish that the decision lacks the hallmarks of reasonableness or that it is not transparent, intelligible or justified (*Vavilov* at para 99).

[40] The application for judicial review must be dismissed.

[41] No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-1751-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Phuong T.V. Ngo"
Judge

Certified true translation
Francie Gow

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1751-23
STYLE OF CAUSE:	JEAN COLBERT DJINDJEU NKWENDJA v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
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