Federal Court  Cour fédérale

Date: 20210427

Docket: IMM-3139-20

Citation: 2021 FC 369

Ottawa, Ontario, April 27, 2021

PRESENT: Madam Justice McVeigh

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

RUDO MVUNDURA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, the Minister of Citizenship and Immigration [the "Minister"], seeks judicial review of a decision by the Refugee Appeal Division ["RAD"], allowing the appeal of a negative decision by the Refugee Protection Division ["RPD"].

[2] For the reasons set out below, I am dismissing the application.

II. Background

[3] Ms. Mvundura is a citizen of Zimbabwe. She claims that she is in danger from her ex-husband, who was a police officer and is opposed to her political involvement and views, and blames her for the deaths of her two sons.

[4] Ms. Mvundura's ex-husband was abusive during their marriage. The couple had four children together, including two sons: Tafadzwa who was born in 1981, and Prince who was born in 1983. Prince began residing in the United States in 2001. In 2005, the couple separated. Their other son is in Cyprus, and their daughter in South Africa.

[5] That same year, Ms. Mvundura and Tafadzwa joined the Movement for Democratic Change ["MDC"], which was opposed to the Zimbabwe African National Union – Patriotic Front ["ZANU-PF"]. Her brother was also an active member of the MDC. She alleges that her ex-husband, like most police officers, was a supporter of the ZANU-PF, and did not approve of Ms. Mvundura and Tafadzwa's involvement in the MDC.

[6] In December 2005, the ex-husband and three other men visited Ms. Mvundura's home and assaulted her and her son because of their involvement in the MDC. After the assault, Ms. Mvundura and Tafadzwa did not cease their involvement with the political party.

[7] In 2007, Tafadzwa died. The police ruled it a suicide, but Ms. Mvundura does not believe that.

[8] The ex-husband blamed her for their son's death, and he became violent with her at the funeral and had to be physically restrained. He told Ms. Mvundura that she needed to go before a witch doctor to determine how their son died. She resisted, both for religious reasons, and because she thought that if the witch doctor blamed her, her ex-husband would feel justified in blaming or harming her. She left Zimbabwe and stayed in South Africa for a month.

[9] In 2010, Ms. Mvundura received a call from police in the United States telling her that her son, Prince, had died by suicide. She traveled to the United States on a valid visa, but overstayed. She eventually made an asylum claim on March 10, 2016 in the United States. The claim was abandoned and she traveled to Canada to make a claim. She states that she abandoned the claim and came to Canada because she was afraid her husband was planning on coming to the United States.

[10] On May 7, 2019, Ms. Mvundura had her claim before the RPD. The RPD wrote in their decision that they had "concerns" with her credibility because there were differences between her claims in the United States and in Canada regarding the assaults on her and her son. She answered that the inconsistencies were because she was not represented in the United States claim, and was in a rush to complete the form. The Member did not accept those explanations, and approached "her evidence with caution".

[11] The central claim was a fear of persecution by the ex-husband, who, with police connections, would allegedly be a danger to her anywhere in the country. The Member found that while there was a nexus between her alleged persecution, and the membership in the

particular social group of Zimbabwean women. But then found because there had been no violence since 2007 at the funeral of Tafadzwa, and because the ex-husband had opportunity to persecute Ms. Mvundura, the fear of heightened violence is speculative.

[12] The decision-maker held that there was no serious risk of persecution because of her political opinion because her membership in the MDC is at a low level, and her opposition to the ZANU-PF has not "been a meaningful aspect of her life for many years…"

[13] The RPD concluded that Ms. Mvundura was not a convention refugee, and she appealed to the RAD.

A. *Decision under Review*

[14] The Minister intervened in the appeal to the RAD, arguing that the RPD did not err in law regarding the credibility assessments, and that the RPD had made a reasonable decision.

[15] The RAD found that Ms. Mvundura was a convention refugee. In a 17-paragraph decision, the Member concluded that the RPD made errors in the decision regarding credibility and objective basis assessment.

[16] The RAD determined that after reviewing the record and the transcript of the RPD hearing, and assessing it independently, there were no credibility issues with the evidence. Specifically, regarding the omission in the United States asylum claim, the RAD Member considered the explanation that she did not have counsel during the claim, nor an interpreter (and

limited English). This combined with her medical evidence indicating that she was suffering from trauma-related memory issues and photographic and affidavit evidence was why the RAD concluded that her explanation for her omissions was reasonable, and that the RPD should not have made that finding.

[17] Regarding the objective basis assessment, the RAD Member found that the RPD was wrong in determining that the claim was not well founded. They concluded that the threat made by the ex-husband to come to the United States in 2017 showed intent to do Ms. Mvundura serious harm. The RAD came to this conclusion based on the testimony given, as well as affidavit evidence that in April 2019 the ex-husband had an ongoing intention to "avenge [the] blood of his children upon her". The credibility finding, argues the RAD Member, shows that the central allegations are credible, and that it was not open to the RPD to find that the ex-husband does not have an intention to do her serious harm if she returns to Zimbabwe.

[18] The decision also addressed, briefly, Internal Flight Alternatives ["IFAs"] and the Minister's intervention.

[19] The RAD Member concluded the reasons by noting that there was an independent assessment of the evidence, and that there were errors in the RPD's determination. The Member set aside the decision of the RPD, and substituted the determination that Ms. Mvundura is a Convention refugee, pursuant to section 111(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

III. Issue

[20] The issue is whether the decision of the RAD was reasonable.

IV. Standard of Review

[21] The RAD reviews decisions of the RPD on a standard of correctness. They are not true *de novo* hearings as they will consider all materials, including the decision of the RPD, when making their decision (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 78-79).

[22] The standard of review for this Court's review of RAD decisions is one of reasonableness. A reasonable decision must be based on reasoning that is rational and logical, and be based on internally coherent reasoning (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85, 102 [*Vavilov*]).. The decision must bear the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov*, at para 99).

V. Analysis

A. *Was the decision of the RAD reasonable?*

[23] There is no doubt that the reasons of the RAD are brief, but the test for proper reasons is not length. There can be lengthy reasons that do not satisfy the requirements, and short ones that do. It should also be pointed out that rather than repeating facts, the RAD decision relies on the

statements of facts in the RPD decision, which consists of 22 paragraphs of information (RAD Decision at para 3).

[24] The Minister submits that the brief reasons do not allow us to understand why the RAD came to the determination it did, and that there was no evidence of independent assessment of the evidence.

[25] I disagree with the Minister.

[26] First, a short discussion on the standard of review by the RAD when considering RPD decision specifically on issues of credibility is warranted. Justice Diner, in *Rozas Del Solar v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1145 [*Rozas*] embarks on a long and complex analysis on a few issues connected with the RAD and credibility determinations. In that decision, he found that there should be some deference to the RPD on issues of credibility (*Rozas*, at para 60), but that it does not rise to the level of a reasonableness review in a judicial review.

[27] In *Jeyaseelan v Canada (Minister of Citizenship and Immigration)*, 2017 FC 278 [*Jayaseelan*] at paragraph 13, Justice Diner found that the RAD may give deference to the RPD's credibility findings, but the decision does not say that they must. It would seem that Justice Diner's position is that there is some leeway for the RAD decision-maker to look at the specifics of the case:

> In my view, to be reasonable, a deferential standard selected by the RAD cannot simply duplicate the supervisory role of this Court on

> judicial review. The RAD reasonableness standard runs the risk of curtailing the opportunity to have flawed credibility determinations corrected.
>
> (*Rozas*, at para 136)

[28] I accept that the RAD decision was correcting a flawed credibility determination, and the reasons show both why and how the RAD Member came to that decision—specifically that the RPD Member ignored evidence.

[29] The reasons of the RAD show that there was, indeed, an independent analysis by the RAD member. In paragraphs 7 and 8 of the RAD's decision, the Member specifically mentions the US asylum claim narrative, medical evidence, affidavits, testimony from the RPD (such as the lack of counsel and language skills), and photographic evidence presented, and a determination that the RAD agrees with the arguments presented.

[30] The RAD refers to specific pieces of evidence, and explains why they came to the decision they did. The objective basis finding of the RPD was based on the credibility determinations, specifically, that the RPD did not necessarily believe some of the violence claims that were presented in the Canadian claim, and were absent from the United States claim. However, upon the RAD's determinations on credibility, there is more evidence to support the objective basis claims, which the RAD Member points out in paragraphs 10-11 of the decision. This shows an engagement of the RAD with the record, and that they came to an assessment. In my opinion, this satisfies the requirements as stated in *Jeyaseelan* and *Hundal v Canada (Minister of Citizenship and Immigration)*, 2021 FC 72.

[31] The Minister specifically addressed that this was especially important when the RAD grants refugee protection; it must conduct a full and complete analysis (*Canada (Minister of Citizenship and Immigration) v Kaler*, 2019 FC 883).

[32] Breviety alone does not make the decision unreasonable. In fact, concise reasons are preferable and far more difficult to write than long rambling decisions in any context. As stated in *Vavilov*, at paragraph 91 quoting *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16 "[w]hile the reasons given for a decision do 'not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred' is not on its own a basis to set the decision aside." Further, as this is not a true *de novo* hearing, and responding to the concerns of the RPD without going into a long discussion of every possible issue would seem warranted.

[33] The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings. Reasons should be read in light of the record, and not assessed against a standard of perfection (*Vavilov*, at para 91). Also, the reviewing court must read the reasons in light of the history and context of the proceedings (*Vavilov*, at para 94).

[34] In the present case, once the RAD Member determined that Ms. Mvundura was credible, everything else fell into place, and few reasons were needed.

[35] I am satisfied that the RPD has provided adequate reasons for the conclusion they came to for the reasons outlined. In my opinion, despite the brevity of the RAD reasons, they have allowed this Court to understand how they came to the decision they did. The RAD accepted the credibility arguments presented by Ms. Mvundura, and that led the RAD to conclude there was an objective basis to fear persecution by her former husband in Zimbabwe. In my opinion, this satisfies the requirements set out in *Vavilov*.

[36] No certified question was presented and none arose.

VI. Conclusion

[37] I am satisfied that the reasons of the decision-maker show that they applied the relevant law to the facts of the case, and that there was an internally coherent chain of reasoning.

[38] I find the decision of the RAD to be reasonable in light of the facts and law. The application is dismissed.

JUDGMENT IN IMM-3139-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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