

CANADA / JUDGMENT

Garway v. Canada (Citizenship and Immigration)

2025 FC 1912

COURT

Federal Court

DECIDED

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Decision Content

Date: 20251201

Docket: IMM-22369-24

Citation: 2025 FC 1912

Toronto, Ontario, December 1, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

CIMUEL ALFRED GARWAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW [1] The Applicant, Cimuel Alfred Garway, seeks judicial review of a decision in which his appeal to the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] was dismissed.

[2] For the reasons that follow, this application for judicial review will be dismissed.

II. BACKGROUND A. Facts [3] The Applicant is a Liberian national whose claim for refugee protection was based on his fear of the Poro Society, a traditional society active in West Africa. The Applicant's father had been an initiate in the society, although he had not been an active member since leaving his childhood village. However, when the Applicant's father died, the Poro Society sought out the Applicant to recruit him.

B. RPD Decision [4] At the outset of his hearing before the Refugee Protection Division [RPD] of the IRB, the presiding member informed the Applicant that she would be considering whether he had a viable internal flight alternative [IFA] in the areas of Maryland County and Grand Gedeh. Some 40 days after the Applicant's hearing, the RPD refused his claim on the grounds that there was an IFA in Maryland County. This finding was based on documentary evidence found in the IRB's National Documentation Package [NDP], which indicated that while the Poro Society is present in the north, west, and central parts of the country, it has little to no presence in the southeast, where Maryland County is located. Moreover, the RPD found that the Poro Society lacked the means and motivation to pursue the Applicant in Maryland County.

C. RAD Appeal [5] The Applicant appealed the RPD's decision to the RAD, arguing that Maryland was not a viable IFA.

[6] In support of this argument, the Applicant submitted and referred to various documents that had not been before the RPD at the time that it rendered its decision. The documents can be divided into two categories: first, he made a formal submission of three documents under subsection 110(4) of the Immigration and Refugee Protection Act [IRPA]. These consisted of two news articles and a report from the Australian Refugee Review Tribunal, each of which, the Applicant maintained, indicated that the Poro Society was active in Maryland County. Second, in the Applicant's memorandum of argument, he included hyperlinks to various documents that had not been before the RPD, and which also (according to the Applicant) undermined the IFA determination.

[7] In arguing that the new evidence on appeal should be admitted, the Applicant stated as follows:

We argue that the Appellant did not have the opportunity to provide supporting documents on his claim that he is not safe in the proposed IFA particularly Maryland during the hearing of his claim. He could not reasonably have been expected in the circumstances to have presented the documents appended in this appeal memorandum.

[8] Turning to the substance of the Applicant's appeal, he argued that the evidence established that the Poro Society would, in fact, have both the means and the motivation to find him in Maryland County.

D. Decision Under Review [9] The RAD declined to admit the new evidence presented on appeal and confirmed the RPD's finding that the Applicant has an IFA in Maryland County.

[10] In rejecting the new evidence, the RAD first noted that the three properly submitted documents were all published before the RPD rejected the Applicant's claim. The RAD also found that the Applicant did not explain why he could not have provided this evidence to the RPD during the month between the RPD hearing and the date on which the decision was issued.

[11] On the evidence that was simply hyperlinked in the Applicant's memorandum, the RAD found that these articles were not submitted in accordance with the Refugee Appeal Division Rules, and it refused to consider them on this basis. It is not the role of the RAD, the member added, to go to third-party linked documents to evaluate their admissibility and admit them as evidence.

III. ISSUES and STANDARD OF REVIEW [12] The Applicant raises a single issue on this application, related to the RAD's treatment of the evidentiary record. Essentially, the Applicant argues that the restrictions on new evidence contained at subsection 110(4) of the IRPA do not strictly apply to general country conditions evidence, and that the RAD has a positive obligation to consider such evidence in certain circumstances that I will describe in greater detail below.

[13] As the Applicant's arguments are confined to the RAD's interpretation of the IRPA, it is clear that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [Mason].

IV. RELEVANT PROVISIONS [14] Subsections 110(3) and 110(4) of the IRPA set out the evidentiary record on which RAD determinations are to take place:

Procedure

(3) Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the

Board.

...

Evidence that may be presented

- (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Fonctionnement

- (3) Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut-Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.

...

Éléments de preuve admissibles

- (4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

V. ANALYSIS [15] As noted above, the only issue raised by the Applicant in this matter is the novel proposition that the RAD may (or in his circumstance, must) consider reliable and reasonably available country conditions information, even where this information does not meet the requirements of subsection 110(4) of the IRPA.

[16] The proposition is based on this Court's decision in *Saifee v Canada* (Citizenship and Immigration), 2010 FC 589 [Saifee]. In that case, the applicants sought judicial review of a visa office decision refusing their applications for permanent residence through the Convention Refugee or Protected Persons Abroad Class. They argued that their application was unreasonably refused, in part, because the reviewing officer had not considered widely available country condition evidence, including the US Department of State 2008 Human Rights Report on Afghanistan. The respondent in *Saifee* submitted that the Court could not consider this report because it wasn't part of the record before the officer.

[17] In granting the application, this Court held that:

- [28] ...it must be assumed that the generally available country conditions were before the officer prior to the decision being made. Consequently this is not a case where the Applicant is adding to the record. The Applicant is rather setting out the facts which were available to the officer and which were or should have been taken into account in his decision.
- [18] The Applicant submits that the country condition evidence he submitted to the RAD is analogous to the state department report in Saifee: it was reliable and generally available country condition evidence that was available to the RAD, and therefore it ought to have been considered.
- [19] More specifically, the Applicant asserts that the RAD has both the legal authority and the obligation to consider country condition information not addressed by the RPD and not found in NDP, without considering whether the information meets any of the tests set out in IRPA section 110(4) where:
- a) the source of the information is reputable and reliable,
 - b) the information is public and reasonably available, and
 - c) the information is part of a reasonable knowledge of country conditions.
- [20] The Applicant further submits that if the principle set out in Saifee is not applicable in the IRB context, this would lead to the absurd result of requiring a higher standard of general country condition knowledge and diligence from visa officers than from RPD and RAD members.
- [21] In support of his argument, the Applicant also relies on cases in which this Court has upheld decisions in which the RAD has, on its own initiative, referred to online materials not found in the NDP, and not disclosed to the appellant: *Ibarra Hernandez v Canada* (Citizenship and Immigration), 2025 FC 260 [Ibarra Hernandez].
- [22] Unsurprisingly, the Respondent disagrees that the RAD can consider information that does not meet the criteria set out at subsection 110(4), and argues that the Saifee and Ibarra Hernandez decisions have little application to this case.
- [23] For the reasons that follow, I agree with the Respondent.
- [24] I begin with a few well-established principles associated with the work of the Refugee Appeal Division.
- [25] The first is that RAD appeals are neither first instance refugee determinations, nor full de novo appeals; while the RAD must independently review the information before it and come to its own independent conclusion, it “is constrained by the record before it and its appellate function”: *Rozas Del Solar v Canada* (Citizenship and Immigration), 2018 FC 1145 at para 99; *Huruglica v Canada* (Citizenship and Immigration), 2016 FCA 93 at para 79. This is made explicit in subsection 110(3), above: the RAD proceeding must take place on the basis of the RPD record, and the RAD may accept documentary evidence and written submissions from

both the Minister and the appellant, subject only to information that is admissible pursuant to subsection 110(4) of the IRPA.

- [26] Second, refugee claimants bear the burden of establishing their claims for refugee protection and, similarly, refugee appellants bear the burden of establishing that their appeals ought to be granted: *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 47; *Bui v Canada (Citizenship and Immigration)*, 2014 FC 1145 at para 23; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (CA), 1993 CanLII 3011 (FCA); *Patel v Canada (Citizenship and Immigration)*, 2025 FC 1797 at para 19.
- [27] Third, unlike the visa office context, in all RPD and RAD proceedings the NDP that is relevant to the claim and appeal are formally admitted into the record. NDPs are intended to be “the standard source of country-of-origin information” against which claims and appeals are assessed. They provide a thorough evidentiary record of conditions in any given country, they are updated regularly, they frequently run into the thousands of pages of text, they include the most recent official human rights reports for each country, and they typically contain numerous specific reports on a large variety of themes relevant to common refugee claim types. More specifically, I note the following from the IRB’s Policy on National Documentation Packages in Refugee Determination Proceedings:

5. General Principles

- I. The IRB produces NDPs for every country from which refugee claims originate.
- II. The RPD and RAD will consider the most recent NDP(s) in support of assessing forward-looking risk.
- III. In order to respond to the information needs of the RPD and RAD, the RD consults with the Divisions in the development of NDPs.
- IV. NDPs are updated regularly, according to the RD's update schedule. NDPs are also subject to ad-hoc amendments in order to respond to the identification of newly emerging issues.
- V. The regular update of NDPs will take into consideration suggestions from external stakeholders.
- VI. NDPs are publicly available on the IRB's website.
- VII. The content of NDPs and their availability in Canada's official languages is subject to copyright considerations.

6. Disclosure of NDPs in Claims and Appeals

Relevant NDP(s) are disclosed to the parties in every refugee claim before the RPD as the standard source of COI evidence in refugee determination...

As such, the relevant NDP(s) considered by the RPD form(s) part of the RPD record that is provided to the RAD in every appeal. The RAD will disclose to the parties new NDP documents only when they wish to rely upon them. The parties are then provided with an opportunity to respond.

The use of NDPs does not preclude the disclosure of additional COI not contained in an NDP by the Division or a party to a proceeding. Such information must be disclosed on a case-by-case basis, subject to the legal and procedural requirements of each Division. [emphasis added]

- [28] Fourth, despite the Ibarra Hernandez case, where the RAD relies on evidence that is external to the record, and where this evidence is novel, significant, and demonstrates some change in the general country conditions that may affect the decision, such evidence should typically be disclosed to the refugee claimant: *Mancia v Canada (Minister of Citizenship and Immigration)* (CA), 1998 CanLII 9066 (FCA); *Zhang v Canada (Citizenship and Immigration)*, 2015 FC 1031.
- [29] The above considerations make it clear that the Applicant's position is simply not tenable. In the first instance before the RPD, once the member raised the possibility of an IFA as an issue, the Applicant bore the onus of establishing that the proposed location would not be viable. The RPD found that the Applicant had not met that onus, and that the Poro Society had neither the means, nor the motivation, to seek him out in Maryland County. The Applicant, who was represented at the time, did not adduce any evidence to challenge these findings prior to the RPD determination.
- [30] Therefore, the Applicant's ability to adduce new information before the RAD on the Poro Society's presence in Maryland County was limited to evidence that met the requirements of subsection 110(4) of the IRPA, and those further requirements set out by the Federal Court of Appeal in *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96.
- [31] There is no suggestion that country-related information is not "evidence" as the term is used at subsection 110(4) of the IRPA. This being the case, there is simply no escaping the explicit statutory language of that provision, which limits the admissibility of new evidence before the RAD to material that meets the conditions set out therein. The RAD considered the Applicant's submission that the documents in question did, in fact, meet the subsection 110(4) criteria, but concluded that they did not. The Applicant has not established that there was anything unreasonable about this conclusion.
- [32] It is for the above reasons that I find that the Saifee decision is of essentially no assistance to the Applicant. Saifee arose in a completely different decision-making context. Most notably, the Saifee matter did not relate to an appellate refugee determination process with a comprehensive record of country-of-origin information and clear statutory limits on the production of new evidence. Rather, it involved a first-instance decision in which there were no restrictions on the evidence that could be considered by the decision-maker.

- [33] Furthermore, the Applicant did not argue before the RAD that the documents in question should be admitted despite the fact that they did not meet the subsection 110(4) criteria. This is an argument he has made for the first time on judicial review. Rather, in the RAD proceedings, the Applicant argued that the documents should have been admitted because he could not reasonably have been expected in the circumstances to have presented them at the RPD stage and, as such, they did meet the requirements of subsection 110(4). The RAD explicitly considered this submission and rejected it. In other words, the RAD's reasons were responsive to the Applicant's submissions. In my review of the record, I have no basis on which to conclude that those reasons were in any way deficient.
- [34] The Applicant goes on to argue that his RAD submissions on the admissibility of the evidence under subsection 110(4) were essentially a "red herring" because, completely aside from that provision, the RAD is under an independent obligation to be aware of the kind of information contained in the proffered evidence. In other words, the Applicant argues that even if the evidence in question did not meet the requirements of subsection 110(4) and, indeed, even if he had not submitted any evidence at all, the RAD had a duty to apprise itself of publicly available information that may have contradicted its findings on the IFA issue. The Applicant further suggests that this must be the case because it would be an absurd outcome if visa officers in the Saiffee context had an obligation to seek out relevant information, with no corresponding obligation on members in the IRB context.
- [35] Respectfully, I fail to appreciate the absurdity. As noted above, IRB matters proceed in an entirely different decision-making milieu. In fact, functionally, the IRB does engage in precisely the kind of investigation that the Applicant suggests is required – this is manifested in the detailed and comprehensive NDPs that are entered into evidence, and must be considered, in every case. If, in any given case, claimants believe that the NDP may be deficient on a relevant issue, they may seek to supplement the record, but this is subject to certain limitations, one of which is subsection 110(4) of the IRPA.
- [36] In my view, it is the Applicant's position that could lead to unexpected and untenable outcomes. For instance, if the Applicant's position were adopted, it would mean that Applicant would bear little responsibility for adducing relevant evidence in the first instance. Instead, they could simply wait and point to evidence on judicial review, accompanied with an argument that this evidence should have been discovered and considered by the RAD. Stepping back and assessing the refugee appeals scheme holistically under section 110 of the IRPA, I do not believe that this possibility was intended by Parliament.
- [37] Beyond the above, I note that both the RPD and the RAD found that the Applicant failed to establish that the Poro Society would be motivated to find the Applicant in the IFA location, even if they did have the means to do so. This finding was specific to the Applicant's own circumstances and was largely independent of the question of means. In other words, if the Poro Society did not have the motivation to find the Applicant, as the RAD found, the documentary evidence on the capacity of the Society to find the Applicant in the IFA location

is of diminished significance. Given that the Applicant has not specifically challenged the RAD's determination on the issue of motivation, I conclude that this provides an additional basis on which to dismiss this application.

VI. CERTIFIED QUESTION

[38] Based on the issues raised above, the Applicant proposes the following certified question:

Does the Refugee Appeal Division have the legal authority to admit into evidence on appeal country condition information not addressed by the Refugee Protection Division and not found in National Documentation Package, without consideration whether the information meets any of the tests set out in Immigration and Refugee Protection Act section 110(4) where

- a) the source of the information is reputable and reliable,
- b) the information is public and reasonably available, and
- c) the information is part of a reasonable knowledge of country conditions?"

[39] In *Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151, the Federal Court of Appeal recently stated as follows with respect to the certification of questions of general importance (at para 28):

It is well established in the jurisprudence of this Court that a question cannot be certified unless it is serious, dispositive of the appeal and transcends the interests of the parties. It must also have been raised and dealt with by the court below, and it must arise from the case rather than from the judge's reasons. Finally, and as a corollary of the requirement that it be of general importance pursuant to section 74 of the IRPA, it cannot have been previously settled by the decided case law: see *Liyanagamage v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1637 (QL) at para. 4; *Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178 at para. 36; *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras. 36, 39 (Lewis).

[40] I decline to certify the proposed question for the following reasons. First, while the question is somewhat novel, it is not serious in that it proposes an approach to new evidence before the RAD that is explicitly, and admittedly, contrary to the express terms of subsection 110(4) of the IRPA. The Applicant may have a rationale as to why this provision should not apply to him, but a rationale is not, on its own, a serious question of general importance as that term is set out at subsection 74(d) of the IRPA.

[41] Second, questions related to the admissibility of new evidence before the RAD have been thoroughly considered by both this Court and the Federal Court of Appeal. There is no suggestion in any of these cases that country-related evidence is different or exempt from the criteria that applies to all evidence pursuant to subsection 110(4) of the IRPA.

[42] Finally, as noted above, the RAD in this case found that the Applicant failed to establish that the Poro Society was specifically motivated to find him in the IFA location. Aside from the Applicant's general suggestion that the RAD should have considered the evidence he

submitted, he has not provided any argument as to why the tribunal's motivation findings were unreasonable. The result of the above is that the Applicant has not specifically challenged a finding of the RAD that would, on its own, be determinative of the appeal. In this sense, the significance of the new evidence issue is diminished, and could not on its own be dispositive of an appeal.

VII. CONCLUSION [43] For the above reasons, this application for judicial review is dismissed and no question of general importance is certified.

JUDGMENT in IMM-22369-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

No serious question of general importance is certified.

"Angus G. Grant"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Philip Zayed

For The Applicant

Zoe Stevens

For The Respondent

SOLICITORS OF RECORD:

McIntosh & Zayed s.r.l.

Winnipeg, Manitoba

For The Applicant

Attorney General of Canada

Winnipeg, Manitoba

For The Respondent

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