

CANADA / JUDGMENT

Said v. Canada (Citizenship and Immigration)

2025 FC 317

COURT

Federal Court

DECIDED

19 February 2025

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- Said v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-02-19 Neutral citation 2025 FC 317 File numbers IMM-11786-23 Decision Content Date: 20250219 Docket: IMM-11786-23 Citation: 2025 FC 317 Ottawa, Ontario, February 19, 2025 PRESENT: The Honourable Madam Justice Ngo BETWEEN: MOHAMMED YUSSUF SAID Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Context [1] The Applicant, Mohammed Yussuf Said [Applicant], is a citizen of Tanzania who alleges a fear of persecution in his country of origin. He seeks judicial review of a decision dated August 28, 2023, where the Refugee Appeal Division [RAD] rejected the Applicant's refugee claim [Decision] on the grounds that he is not a refugee nor person in need of protection within the meaning of sections 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The RAD confirmed the decision of the Refugee Protection Division [RPD] and found that the Applicant did not establish his central allegation that he is bisexual nor a sur place claim based on his actual or perceived sexual orientation. Therefore, he did not establish that he would face a serious possibility of persecution or, on a balance of probabilities, a danger of torture, risk to life, or risk of cruel and unusual treatment or punishment, if he returns to Tanzania.
- [2] For the reasons that follow, this application for judicial review is dismissed. The Applicant has not demonstrated that the Decision is unreasonable. II. Facts [3] The Applicant is a citizen of Tanzania who claimed to be at risk because of his Sexual Orientation, Gender Identity or Expression, or Sex Characteristics [SOGIESC] as a bisexual man. On November 28, 2021, the Applicant arrived in Canada where he sought asylum.
- [4] On March 24, 2023, the RPD rejected the Applicant's asylum claim finding that he is not a Convention refugee nor a person in need of protection. The determinative issue in this claim was the Applicant's credibility, which is assessed under section 96 and subsection 97(1) of the IRPA.
- [5] On August 28, 2023, the RAD upheld the RPD's decision. The Applicant raised three issues on appeal to the RAD: that the RPD failed to consider and apply the SOGIESC Guidelines [Guidelines] to his claim, that the RPD erred in assessing his credibility when it found that

he failed to establish his sexual orientation and that the RPD erred in failing to consider whether the evidence gave rise to a sur place claim. The RAD rejected all the Applicant's arguments and stated that his credibility was also the determinative issue on appeal. III. Issues and Standard of Review [6] The issue on judicial review is whether the RAD's Decision was unreasonable.

- [7] The parties submit that the standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25). I agree that reasonableness is the applicable standard of review.
- [8] To avoid intervention on judicial review, a decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (Vavilov at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (Vavilov at para 90). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (Vavilov at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (Vavilov at para 100). IV. Analysis [9] The Applicant argues that the RAD erred in finding that the RPD reasonably applied the Guidelines despite finding that the RPD never mentioned them in its decision. The Applicant submits that this gravely affected the overall validity of the RPD's decision. A failure to apply the Guidelines amounts to a failure on the RPD's part to meaningfully grapple with a key issue (i.e., the Applicant's sexuality), calling into question whether the panel was actually alert and sensitive to the matter before it and thus rendering any decision unreasonable (citing *Siita v Canada (Citizenship and Immigration)*, 2022 FC 361 at paras 11-15). The Applicant states that the RAD erred by not sending the claim back to the RPD for redetermination.
- [10] The Applicant also alleges that the RAD erred in its analysis of the Applicant's credibility and challenges the RAD's conclusions on the death of his same-sex partner following an assault, the threats from the Applicant's cousins, the Applicant's brother's letter, his first alleged same-sex partner and his sur place claim. The Applicant states that the RAD misapprehended this evidence. The RAD erred in giving negative inferences to the evidence and then, consequently, concluding that there was insufficient evidence to establish his core allegations or his alleged sexual orientation.
- [11] The Respondent argues that the Applicant is essentially making the same arguments on judicial review that he made before the RAD. The RAD considered the Applicant's arguments that the RPD did not consider the Guidelines, addressed whether the RPD erred in finding the Applicant was not credible regarding his sexual orientation, and analyzed whether a sur place claim had arisen. These arguments were all considered and rejected by the RAD. The Applicant is asking the Court to reweigh the evidence but has not explained how the RAD's conclusions were unreasonable.

- [12] I agree with the Respondent's arguments. The Respondent identified the evidence that was before the RAD, including the Applicant's testimony. The RAD's Decision sets out in detail its evaluation of the evidence, which also included the consideration of whether the Guidelines could potentially explain discrepancies, gaps or inconsistencies in the evidence. The Applicant's failure to establish the core allegations of his claim undermined his credibility, and it was open to the RAD to reject the Applicant's claim on this basis.
- [13] It is helpful to consider the role of the RAD which the Federal Court of Appeal set out in some detail in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paragraphs 78 and 79 [Huruglica]:
- [78] At this stage of my analysis, I find that the role of the RAD is to intervene when the RPD is wrong in law, in fact, or in fact and law. This translates into an application of the correctness standard of review. If there is an error, the RAD can still confirm the decision of the RPD on another basis. It can also set it aside, substituting its own determination of the claim, unless it is satisfied that it cannot do either without hearing the evidence presented to the RPD: paragraph 111(2)(b) of the IRPA.
- [79] I also conclude that an appeal before the RAD is not a true de novo proceeding. Recognizing that there may be different views and definitions, I need to clarify what I mean by "true de novo proceeding". It is a proceeding where the second decision-maker starts anew: the record below is not before the appeal body and the original decision is ignored in all respects. When the appeal is a true de novo proceeding, the standard of review is not an issue. This is clearly not what is contemplated where the RAD proceeds without a hearing.
- [14] The RAD in the Applicant's case did confirm that RPD made an error in not referencing the Guidelines. However, the RAD's analysis subsequently undertook the application of the Guidelines and appropriately followed its scope in accordance with *Huruglica* and the IRPA.
- [15] The Respondent also relied on *Adelani v Canada (Citizenship and Immigration)*, 2021 FC 23 at paragraph 18 for the proposition that proving sexual identity may well require more than simply the sworn testimony of the claimant. The Guidelines cannot be a "cure-all" for evidentiary issues in a claim.
- [16] In *Ali Khan v Canada (Citizenship and Immigration)*, 2024 FC 797 [Ali Khan], Justice Favel recently summarized the Court's guidance in how to address this matter. First, while a lack of corroborating evidence of an applicant's sexual orientation, absent negative, rational credibility or plausibility findings related to that issue, is not enough to rebut the presumption of truthfulness, the RAD may make findings of a lack of credibility from an accumulation of inconsistencies and contradictions. Second, it is reasonable for the RAD to make a finding not based on the lack of corroboration but based on an applicant's inadequate answers and explanation for the failure to obtain corroborative evidence. Third, the Guidelines cannot be a "cure-all" for negative credibility findings (Ali Khan at para 35, other citations omitted).

- [17] Indeed, this Court has consistently held that the Guidelines cannot act as a “cure-all” to repair adverse credibility findings (*Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at para 66; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 179 at para 19). The fact that the RAD found inconsistencies and implausibilities in the Applicant’s evidence does not mean that the Guidelines were not applied or improperly applied. I also agree that the Applicant did not point to evidence demonstrating that the Guidelines were not followed.
- [18] The Applicant focused on the issues surrounding his former partner’s assault and the late disclosure of this evidence to the RPD. However, the RAD also made multiple other credibility findings on the evidence that the Applicant had submitted (which included his testimony) in support of his claim as it relates not only to his sexual orientation, but also to the threats he allegedly received. In the Applicant’s case, the RAD’s Decision was grounded in an accumulation of inconsistencies and contradictions, as well as an inadequate explanation with the respect to the absence of corroborative evidence to remedy issues with the Applicant’s evidence.
- [19] Given the above, I cannot find that the RAD unreasonably assessed the Applicant’s credibility nor can I find that the RAD did not engage with the Guidelines. As a matter of fact, the RAD provided specific reasons to support the finding that the Applicant’s testimony was insufficient, as it was required to do. V. Conclusion [20] The RAD’s Decision is transparent, intelligible and justifiable in light of the legal and factual constraints that bear on it. As such, I cannot find that the Decision is unreasonable. The application for judicial review is dismissed. JUDGMENT in IMM-11786-23 THIS COURT’S JUDGMENT is that: The application for judicial review is dismissed. There is no question for certification. "Phuong T.V. Ngo" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-11786-23 STYLE OF CAUSE: MOHAMMED YUSSUF SAID v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: VIDEOCONFERENCE DATE OF HEARING: FEBRUARY 3, 2025 JUDGMENT AND REASONS: NGO J. DATED: FEBRUARY 19, 2025 APPEARANCES: Ariel Hollander FOR THE APPLICANT Sarah Merredew FOR THE RESPONDENT SOLICITORS OF RECORD: LEWIS & ASSOCIATES LLP Barristers and Solicitors Toronto (Ontario) FOR THE APPLICANT Attorney General of Canada Toronto (Ontario) FOR THE RESPONDENT

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