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Mohammed v. Canada (Citizenship and Immigration), 2024 FC 1942

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Federal Court Cour fédérale

Date: 20241202

Docket: IMM-7569-23

Citation: 2024 FC 1942

2024 FC 1942 (CanLII)

Ottawa, Ontario, December 2, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MASUD MOHAMMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Mohammed asks the Court to set aside a decision which denied his application for a Pre-Removal Risk Assessment [PRRA]. He alleged that he faces danger in Ghana due to being perceived as a member or supporter of the LGBTQ+ community.

[2] The decision followed an enhanced PRRA hearing with elevated procedural fairness requirements, which was mandatory pursuant to section 113.01 of the *Immigration and Refugee Protection Act,* SC 2001, C 27 as the Applicant was ineligible to make a refugee claim in Canada under subparagraph 101(1)(c.1) due to a prior asylum claim in the United States.

[3] The sole issue raised by the Applicant for determination is the reasonableness of the decision. However, the Applicant has embedded procedural fairness arguments in his submissions, which will be addressed.

II. Facts

[4] The Applicant is a citizen of Ghana. He is single and has an adopted daughter.

[5] The Applicant's claims of risk arise from events in Ghana where he rented his apartment to two men in Kumbungu, in the northern region of Ghana, in August 2014. Initially unaware of their sexual orientation, he developed a friendship with them, to the extent of allowing them to babysit his daughter and strolling together in the community.

[6] In October 2014, he says that a series of events unfolded:

1) On October 10, he was summoned to the local chief's palace where he was questioned about whether he knew the tenants, who were from outside the community;

2) On October 11, while out with his tenants, he first noticed they were homosexual;

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3) On October 14, at a second chief palace meeting attended by local youth community members, he was questioned about renting to homosexuals, ordered to evict them, and received death threats when he refused;

4) Shortly after the meeting, he sought police assistance but was informed the community had already reported the matter two days prior, and the police sided with the chief and community; and

5) On October 15, while returning home, he heard screaming and found his rental property on fire, with his daughter having been rescued from inside.

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[7] The Applicant states he believes that his tenants were killed by Muslim youth in the community. He fled to a nearby community overnight as he feared for his life. The next morning, he traveled to his mother's home but she would not permit him to stay as she was also afraid.

[8] In November 2014, the Applicant left Ghana for Ecuador, subsequently traveling through Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, and Mexico. He ultimately arrived at the United States.

[9] On February 19, 2015, the Applicant entered the United States at the Calexico border crossing, where he was detained for 7-8 months. After his release in October 2015, he made an asylum claim based on the same risks now advanced in his PRRA application. He obtained a work permit and worked as a forklift driver from April 2016 until March 2022. His asylum

claims in the United States remained unresolved, with a scheduled court date in 2020 that was disrupted by the COVID-19 pandemic.

[10] On March 29, 2022, the Applicant entered Canada at the Roxham Road border crossing in Québec. Being ineligible to make a refugee claim due to his prior asylum application in the United States, he was provided a PRRA with a mandatory hearing, which was conducted on January 26, 2023.

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III. Decision Below

[11] The Officer concluded that the Applicant would not be subject to risk of persecution, torture, risk to life, or risk of cruel and unusual treatment or punishment if returned to Ghana.

[12] The Officer accepted that members of the LGBTQ+ community in Ghana face widespread discrimination. The analysis turned to whether the Applicant is or would be perceived to be a member or supporter of this community.

[13] The Officer flagged several evidentiary gaps in the Applicant's documentary and oral hearing evidence:

1) An absence of documentation supporting property ownership, despite acknowledging different property documentation practices might exist in Ghana;
2) No corroborating evidence of the two meetings at the chief's palace, though the Officer noted the inherent difficulty in obtaining such evidence from an alleged persecutor;

3) Lack of evidence that authorities or community members were actively seeking the Applicant;

4) The absence of documents establishing the claimed adoptive relationship with his daughter, who reportedly now lives with a relative of his mother; and

5) Limited evidence supporting the Applicant's assertion that he was perceived as bisexual or an LGBTQ+ supporter by his community.

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[14] The Officer raised specific concerns about the credibility of several submitted documents:

1) The Officer was unable to verify the existence of the "Savanna Reports" newspaper tendered by the Applicant, despite finding other articles from the same newspaper page on legitimate news websites like Modern Ghana and Ghana Web;

2) The Officer noted the article about the Applicant's property contained distinctive stylistic differences from other articles, including repeated references to an unidentified "source;"

3) The Officer found the article's content suspiciously similar to counsel's written submissions;

4) The Officer noted identical word-for-word text between the newspaper article and a magazine article from "OGA Outline Ghana Magazine," the existence of which was also unverifiable;

5) It was observed that photographs of the property fire and motorbike he submitted were identical to those in both publications, and the photographs of the Applicant

with his claimed tenants appeared in the magazine, raising questions about the origin of the photos;

6) The Officer noted apparent digital editing of the family photographs submitted; and

7) It was found that the supporting letter from one childhood friend lacked photo identification or other verification.

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[15] Based on these findings, the Officer concluded the Applicant failed to meet the required threshold under the *Act*. Specifically, the Applicant had not demonstrated "more than a mere possibility" of a well-founded fear of persecution under section 96, and failed to establish on a balance of probabilities personal risk of torture, threat to life, or cruel and unusual treatment or punishment under section 97.

IV. Issues

[16] Two issues are raised: (1) the reasonableness of the Officer's decision that the Applicant failed to establish personal risk in Ghana due to perceived membership or support of sexual minorities; and (2) the embedded procedural fairness issue relating to the Officer's credibility and documentary findings made without providing adequate opportunity for explanation or response.

V. Standard of Review

[17] For procedural fairness, the standard of review is aptly described by Justice Pentney in *Kambasaya v Canada (Minister of Citizenship and Immigration)*, 2022 FC 31 at para 19:

> Questions of procedural fairness require an approach resembling the correctness standard of review that inquires "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107). As noted in *Canadian Pacific* at paragraph 56, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond", and at paragraph 54, "[a] reviewing court… asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed".

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[18] For substantive review, the parties submit, and I concur, that the decision is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[19] Reasonableness is a deferential, yet robust, standard of review: *Vavilov* at paras 12-13. The court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized knowledge and understanding of the "purposes and practical realities of the relevant administrative regime" and "consequences and the operational impact of the decision" that the reviewing court may not be attentive towards: *Vavilov* at para 93. For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[20] That being said, reasonableness review is not a mere "rubber-stamping" process: *Vavilov* at para 13. It is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

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VI. Legal Framework

[21] The PRRA is a formal risk assessment mechanism that ensures compliance with Canada's non-refoulement obligations under international law: *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at paras 4 and 116; *Alexander v Canada (Citizenship and Immigration)*, 2021 FC 762 at para 48. It assesses whether individuals face risks of persecution, torture, or cruel and unusual treatment if removed from Canada: *Valencia Martinez v Canada (Citizenship and Immigration)*, 2019 FC 1 at para 1; *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262 at para 11.

[22] The applicant bears the burden to show that the PRRA application should be granted: *GU v Canada (Citizenship and Immigration)*, 2021 FC 1055 at para 14; *Qosaj v Canada (Citizenship and Immigration)*, 2021 FC 565 at para 30.

VII. Analysis

A. *There was no breach of procedural fairness*

[23] While the Applicant did not explicitly claim issues with procedural fairness in the submissions, his arguments touch on several procedural fairness concerns. These primarily

relate to the Officer's treatment of documentary evidence and making of "veiled" credibility findings.

[24] The Applicant points to several credibility findings that appear only in the decision, without prior opportunity for explanation. These include the Officer's conclusions about the authenticity of newspaper articles from "Savanna Reports" and their writing style, the credibility of identical content appearing in different publications, the genuineness of photographs allegedly showing edited images, and the authenticity of property ownership, adoption documentation, and letters of support. While some credibility concerns were raised during the hearing, the Applicant argues many of these specific credibility findings are "veiled," as there was no chance for him to respond.

[25] The Respondent counters that the Applicant benefited from an oral hearing where credibility concerns were raised, that the burden remained on the Applicant to "put their best foot forward," and that there was no duty on the Officer to seek additional evidence. The Respondent emphasizes that the Applicant's own concession that certain credibility concerns were discussed during the hearing demonstrates procedural fairness was observed.

[26] I agree with the Respondent.

[27] The record does not support the Applicant's concern of "veiled" credibility findings without opportunity for response. The Officer's key findings flowed directly from examining the evidence the Applicant chose to present. The jurisprudence establishes that PRRA applicants must "put their best foot forward" with "all the evidence necessary for the officer to make a

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decision:" *Shallow v. Canada (Citizenship and Immigration)*, 2019 FC 911 at para 21; *Lupsa v Canada (Citizenship and Immigration)*, 2007 FC 311 at paras 12-13.

[28] The Officer's line of questions going to the lack of property ownership documentation or adoption papers did not introduce new issues requiring prior notice. These were central to the Applicant's own narrative in seeking protection. Similarly, findings regarding the photographs, such as their similarity to those in questioned publications or evidence of possible digital editing, were drawn directly from the materials provided by the Applicant.

[29] While the Applicant argues he should have been given opportunities to provide original documents or explain the local contexts, this misconstrues the PRRA process. The time to explain Ghanaian media practices, property documentation norms, or photograph authenticity was during the submission of his application or at the hearing. The Officer was not required to signal evidentiary concerns or seek supplementary documentation that would help the Applicant meet the burden of proof: *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 50.

[30] The Applicant knew he needed to establish his property ownership, his relationship with his daughter, and the authenticity of events described in his documentary evidence. Considering that some credibility concerns were raised during the hearing, he had the opportunity to answer the Officer's questions and provide further evidence and clarification that can help contextualize his case. The Officer's assessment of these materials, while adverse to the Applicant, did not raise new issues requiring additional procedural protections.

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B. *The decision is reasonable*

[31] The Applicant submits that the decision is unreasonable. While various arguments are advanced, they may be distilled into two main grounds: (1) that the Officer erred in assessing risk stemming from country conditions and the Applicant's personal circumstances in Ghana; and (2) that the Officer erred in ignoring and misconstruing corroborative evidence.

[32] I am not persuaded.

[33] First, The Applicant's challenge to the Officer's risk assessment fundamentally misapprehends the analysis. The Officer directly engaged with authoritative reports documenting the serious risks faced by sexual minorities in Ghana, including discrimination in education and employment, police harassment, reluctance to investigate assaults, and recent legislative developments criminalizing sexual minorities and their supporters. The issue was not whether such nationwide risks exist, as the Officer clearly accepted they do, but whether the Applicant has established he would face them.

[34] The Officer's subsequent risk assessment based on the nexus between country conditions and individual circumstances was reasonable. It did not improperly require the Applicant to show an individualized or personalized harm that was distinct from the general adverse conditions faced by sexual minorities in Ghana. Such requirement is not permitted in law: *Fodor v. Canada (Citizenship and Immigration)*, 2020 FC 218 at paras 40-43. Instead, the Officer focused on whether the evidence demonstrated that the Applicant would likely be identified as belonging to the persecuted group. The Officer also did not err in assessing whether authorities

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were pursuing the Applicant. With respect, the Applicant conflates police inaction in the face of discrimination with the separate question of whether there is evidence he is being actively sought. That the police may support discrimination through their inaction does not contradict the Officer's observation about the lack of evidence showing the Applicant is being pursued. These are distinct factual findings that can coexist.

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[35] Second, the record does not support the Applicant's argument that the Officer ignored or misconstrued corroborative evidence. The Officer's analysis of the submitted documentation identified specific concerns about authenticity that flowed logically from the evidence itself. For instance, when examining the newspaper article from "Savanna Reports," the Officer noted that while other articles from the same page could be found on verified websites like *Modern Ghana* and *Ghana Web*, only the article about the Applicant's property destruction was unverifiable. Moreover, the Officer observed that this article's content was suspiciously similar to counsel's written submissions and repeatedly referenced an unidentified "source" in a manner inconsistent with conventional journalistic practice. These observations reflect reasonable concerns about authenticity, not western bias.

[36] The Officer's treatment of other documentary evidence followed the same measured approach. While acknowledging that "different countries may have different processes" for property documentation, the Officer reasonably concluded that some evidence of ownership could be expected, particularly given the centrality of the property to the Applicant's claim. The Officer's concerns about the photographs were similarly grounded in specific observations that inherently raise questions: family photographs with signs of digital editing, photographs of the property fire being identical to those in questioned publications, and personal images of the

Applicant with his claimed tenant appearing in a magazine. While the Applicant provided explanation during the hearing, including that the magazine would have obtained these photographs independently without his involvement, the Officer is entitled to give it little evidentiary weight. Furthermore, for the supporting letter from the Applicant's childhood friend, the Officer's observation about the lack of photo identification went to basic authentication rather than imposing unreasonable documentation requirements. Considering the above, the Officer's finding of "little corroborative information" reflected a legitimate concern about whether the Applicant had provided reliable evidence of their membership in the at-risk group.

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VIII. Conclusion

[37] The Applicant's embedded procedural fairness arguments and reasonableness arguments cannot succeed. The Officer's findings about document authenticity flowed directly from examining the evidence the Applicant chose to present. The Applicant had the opportunity to put his "best foot forward" to provide explanations about local context and authenticate his evidence during the enhanced PRRA process. As a result, there were no "veiled" credibility findings requiring additional procedural steps. The Officer also reasonably assessed whether the Applicant would face the documented risks to sexual minorities in Ghana without imposing an improper requirement for individualized persecution. The Officer's concerns about the reliability of the Applicant's documentary evidence reflected logical analysis rather than imposition of inappropriate western standards.

[38] No question was proposed for certification.

JUDGMENT in IMM-7569-23

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

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