

Immigration and
Refugee Board of Canada

Refugee Appeal Division



Commission de l'immigration
et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD File No. / N° de dossier de la SAR : MB3-04233

Private Proceeding / Huis clos

Reasons and decision – Motifs et décision

Person Who Is the Subject of the
Appeal

XXXXXXXX

Personne en cause

Appeal Considered / Heard at

Montréal, Quebec

Appel instruit à

Date of Decision

February 25, 2014

Date de la décision

Panel

Normand Leduc

Tribunal

Counsel for the Person Who Is
the Subject of the Appeal

Abdelaaziz Maghrab

Conseil de la personne en cause

Designated Representative

N/A

Représentant désigné

Counsel for the Minister

N/A

Conseil du ministre

REASONS AND DECISION

INTRODUCTION

[1] XXXXXXXX, a citizen of Senegal, is appealing against the decision of the Refugee Protection Division (RPD) rejecting his claim for refugee protection.

[2] In his memorandum, he presented new evidence in support of his appeal.

DETERMINATION OF THE APPEAL

[3] Pursuant to subsection 111(1) of the *Immigration and Refugee Protection Act* (IRPA), the Refugee Appeal Division (RAD) confirms the determination of the RPD that XXXXXXXX is not a “Convention refugee” under section 96 of the IRPA, or a “person in need of protection” under section 97 of the IRPA.

BACKGROUND

[4] The appellant is a 41-year-old man who alleged before the RPD that he fears returning to Senegal because of his homosexuality.

[5] The appellant alleged that his father discovered him in their family home on May 12, 2013, engaging in homosexual activity with a male cousin. His father allegedly called the police, who arrested the appellant because homosexuality is considered a crime in Senegal. He was allegedly released the same day on the promise that he would return to the police station the next day.

[6] The appellant alleged that he fled to Dakar and then left his country on May 16, 2013, for Canada, where he claimed refugee protection.

[7] The RPD rejected his claim for refugee protection on the grounds that the appellant’s essential allegations were not credible. In particular, the RPD did not believe that the appellant lived in the city where he was allegedly discovered by his father, or that he was homosexual.

[8] The appellant argued before the RAD that the RPD had erred in its assessment of his credibility in requiring evidence to corroborate his place of residence in Senegal, and in failing to take into account in its analysis the documentary evidence that he had submitted.

[9] For these reasons, the appellant is asking the RAD to set aside the RPD decision.

ADMISSIBILITY OF NEW EVIDENCE

[10] The appellant's memorandum contains documentary exhibits marked D-13 to D-17 that are not included in the RPD record (see pages 14 to 23 of the appellant's memorandum).

[11] Subsection 110(4) of the IRPA states that the person who is the subject of the appeal may present to the RAD 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.

[12] Subparagraph 3(g)(iii) of the RAD Rules also requires that the appellant's memorandum include full and detailed submissions regarding how any new documentary evidence submitted meets the requirements of subsection 110(4) of the IRPA and how that evidence relates to the appellant.

[13] I note that, in his memorandum, the appellant does not comply with the requirements of subparagraph 3(g)(iii) of the Rules in that he does not provide full and detailed submissions regarding how this new evidence meets the requirements of subsection 110(4) of the IRPA.

[14] Consequently, I do not accept these exhibits as evidence before the RAD.

STANDARD OF REVIEW

[15] The IRPA does not expressly set out the standard of review that the RAD should apply when reviewing RPD decisions, nor is that standard of review set out explicitly in the case law. In his memorandum, the appellant does not suggest what the standard of review should be.

[16] In *Dunsmuir*,¹ rendered in 2008, the Supreme Court of Canada revisited the foundations of judicial review and the standards of review applicable in various situations. In order to simplify the analysis, the Supreme Court determined that there should now only be two standards of review: correctness and reasonableness.

[17] Although the RAD does not conduct judicial reviews of RPD decisions, but rather acts as an appellate body within the same administrative tribunal (the IRB), I am of the opinion that without more direct guidance from the higher courts, the principles developed in *Dunsmuir* can be applied to the RAD.

[18] Paragraph 51 of the Supreme Court's decision in *Dunsmuir* states that

...questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues, however, attract the more deferential standard of reasonableness.

[19] In this case, I am of the opinion that the errors alleged by the appellant are questions of credibility—therefore of fact—and, consequently, are reviewable under the reasonableness standard of review.

[20] In paragraph 47 of *Dunsmuir*, the Court states that “reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” Judicial deference is therefore required and deference must be given to the RPD decision.

ANALYSIS

[21] The issue in this case is whether the RPD erred in its assessment of the appellant's credibility.

¹ *Dunsmuir v. New Brunswick*, 2008 SCC 9, (2008) 1 SCR 190.

[22] First, the RPD found that the appellant's allegation that he was living in the family home in the city of XXXX, Senegal, and that this was where he was surprised by his father and arrested by the police, was not credible, because the three identity documents that he submitted—his passport, his identity card and his driver's licence—all indicate that his place of residence is the city of Dakar, since at least 2003.

[23] The RPD did not consider the appellant's explanations on this subject to be reasonable, namely, that he had had the identity card and the passport issued in Dakar in February 2013 on an urgent basis, after losing his documents. The RPD was of the opinion that the appellant likely could have provided the Dakar authorities with documents establishing that he was living in XXXX in order to obtain a passport. Furthermore, the appellant had no explanation for the Dakar **address on his driver's licence (see paragraphs 10 to 14 of the RPD reasons).**

[24] In addition, the RPD was of the opinion that the appellant's credibility regarding his place of residence was undermined by other documents submitted, namely his Facebook page, which the representative of the Minister of Citizenship and Immigration Canada (the Minister) submitted in evidence, and which indicates that the appellant lives in London, England, and is presently in Montréal, Canada (see paragraphs 15 and 16 of the RPD reasons).

[25] On this subject, the appellant argues that the RPD erred in requiring evidence to corroborate the fact that he was actually living in the city of XXXX, Senegal, and that the RPD drew a negative inference regarding his credibility based on a lack of evidence.

[26] I do not agree with the appellant's submission.

[27] On the contrary, I am of the opinion that it is clear from the RPD reasons that it drew negative inferences regarding the appellant's credibility not on the basis of the lack of corroborating evidence, but based on documentary evidence that contradicts the appellant's allegations. Furthermore, the appellant provided no documents showing that he was living in the city of XXXX. In my opinion, it was open to the RPD to draw the negative inferences that it did.

[28] The appellant's second argument before the RAD is that the RPD erred in not taking into account the documentary evidence that he submitted regarding how homosexuality is treated in Senegal.

[29] In my opinion, the RPD did not err, considering that it did not believe that the appellant is homosexual. In light of his [translation] "evasive" testimony regarding his sexual orientation, the fact that he belongs to an Islamic movement that condemns homosexuality, and his comments condemning homosexuality on his Facebook page, the RPD wrote in paragraph 22 of its reasons that: [translation] "In summary, considering all the evidence, I conclude that the claimant has not established the central allegation of May 2013, and, at the same time, has not established his alleged homosexuality."

[30] Consequently, the RPD was not required to consider the documentary evidence regarding the treatment of homosexuals in Senegal in its reasons.

[31] In light of the foregoing, I am of the opinion that the RPD decision as a whole is reasonable because it is transparent and intelligible and falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

REMEDY

[32] For these reasons, I confirm the determination of the RPD that XXXXXXXX is not a Convention refugee or a person in need of protection.

[33] The appeal is dismissed.

Normand Leduc

Normand Leduc

February 25, 2014

Date

IRB translation
Original language: French