



CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Judicial review of Immigration and Refugee Board, Refugee Appeal Division (RAD) decision declining to grant appeal from Refugee Protection Division (RPD) decision — Applicant, citizen of Chad who made refugee protection claim in Canada; accompanied by two daughters who are citizens of Great Britain — In Chad, applicant member of Coordination des associations de la société civile et de défense des droits de l'homme (CASCIDHO) since 2009, where applicant claimed involved in defence of women's rights — Was constantly threatened, feared for her life in country of origin but little evidence to support this — As CASCIDHO coordinator, applicant worked to mobilize, raise awareness among women; focussed on early marriage, female genital mutilation of young girls — Claimed she showed a film on female genital mutilation at local school; police officers intervening during screening — Applicant stated she was arrested, taken to police station, suffered injuries; released thereafter — Applicant fled her country after receiving summons to appear before superior council for Islamic affairs — RPD's decision short — Claim made on behalf of applicant's two children rejected at outset given that, as citizens of Great Britain, they had no claim against their country of citizenship — As for applicant's claim, RPD found it lacking credibility — Noted existence of two summonses from superior council for Islamic affairs, with second being summons to appear sent more than one year after applicant left Chad — RPD found these two summonses to be sham documents — Also noted that neither summons included word "Mrs.," which RPD wrote was contrary to norm in Chad — RPD also criticized applicant for not seeking asylum in United States, where she stayed for four days after leaving Chad — Applicant submitted that RAD should hear appeals *de novo*, invited RAD to consider evidence, draw its own conclusions — RAD, after considering evidence, carrying out its own independent assessment of evidence on record, including listening to recording, drew conclusion that RPD's decision correct but for other reasons — RAD agreed with RPD that while discrepancies, contradictions in summonses might appear insignificant when considered individually, when considered as whole, they could support finding of lack of credibility — RAD also noted other elements that appeared to support its conclusion, such as fact that film shown not illegal or prohibited, that applicant could not explain why police would have arrested her in such circumstances; that applicant could not explain her fear of council of Islamic affairs — RAD thus concluding that applicant had not established serious possibility of persecution in Chad — Regarding procedural fairness, applicant argued that RAD considered new ground given that additional elements relied on by RAD to make finding on credibility of refugee protection claim had not been decided on by RPD — Applicant complained to RAD that conclusions RPD reaching based on secondary facts only; arguing that additional submissions should have been sought prior to rendering decision under review if new information was to be considered that RPD had not considered — RAD examined issue of credibility further, made own findings; noted irregularities — Furthermore, other elements not put forward by RPD emerged when RAD listened to recording of hearing — Whether RAD's decision procedurally fair — Principle established that if new issue raised on appeal to RAD, notice should be given to applicant — Applicant argued that new elements used by RAD in discussing credibility requiring that notice be provided to allow her to make submissions — Nuance made here that RAD's decision was continuation of facts dealt with by RPD — Question of what findings should be made by RAD about applicant's credibility therefore not without nuance — Case law of Federal Court not monolithic, specific facts continue to be relevant — Depending on

case, applicant's credibility may take on different colour, new issue may require not new hearing but rather submissions from applicant — Decision in *Kwakwa v. Canada (Citizenship and Immigration)*, 2016 FC 600 noteworthy — Review of recent case law from Federal Court showing that, as stated in *Kwakwa*, there is fine line, sometimes blurred, between situations where RAD raising, dealing with “new question”, those where it simply makes reference to additional piece of evidence on record to support existing conclusion of RPD on factual assessment or on credibility issue — Present matter good illustration of such proposition — RPD rendered its decision on very narrow basis: summons from superior council of Islamic affairs, four-day delay in United States before applicant coming to Canada, made claim — On appeal, applicant complained that RPD's decision based on secondary, inconclusive facts that were insufficient to reject her sworn testimony on balance of probabilities — RAD sought further evidence from record — In this case, fine, blurred line from *Kwakwa* crossed — Issues raised by RAD considerably more significant than those raised by RPD — Applicant argued on appeal that RPD could not reach conclusions it did on such tenuous grounds, view echoed by RAD, which identified several additional elements to support its conclusion; elements that it considered probative without benefit of applicant's submissions — Final decision very different, with further explanation, which could make it reasonable decision under *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 — While applicant based her appeal on insufficient justification for conclusion, RAD identified elements that RPD ignored in reaching that conclusion — But this was different decision, taking into account elements that were not considered by RPD — If this were simply matter of supporting RPD's finding, it would not be necessary to seek applicant's submissions — However, basis on which RPD made its credibility finding so tenuous (very basis of appeal) that in circumstances of this case, RAD's intervention constituted new reasons — Any new reasoning on credibility cannot be considered without giving notice to person seeking refugee protection or person in need of protection status — RPD's decision very thin, focusing almost exclusively on summons that was found to be flawed while RAD considered other elements that were proportionately better developed, more numerous, carrying greater weight — Resolution of present matter largely based on very particular facts of case — When RAD's decision juxtaposed against that of RPD, RAD made decision on basis of new issue that was not subject of appeal — Prudent course of action would be for RAD to reconsider appeal of RPD decision — If RAD believing that credibility issue raised by RPD, appealed from requiring more in-depth review of evidence on record, it should consider giving notice to applicant so that she may provide submissions, comments — Given finding of breach of procedural fairness, neither necessary nor appropriate to consider whether RAD's decision reasonable — Application allowed.

BOUCHRA V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-7563-19, 2020 FC 1063, Roy J., reasons for judgment dated November 17, 2020, 22 pp.)