

Federal Court



Cour fédérale

**Date: 20151022**

**Docket: IMM-1080-15**

**Citation: 2015 FC 1195**

**Ottawa, Ontario, October 22, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**VANESSA ISHUNIYE MBIMBI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Refugee Protection Division of the Immigration and Refugee Board rejected Vanessa Ishuniye Mbimbi's claim for refugee protection, finding that as she had failed to establish her identity as a citizen of the Democratic Republic of Congo, there was no credible basis for her refugee claim.

[2] Ms. Mbimbi seeks judicial review of the Board's decision. She submits that she was treated unfairly by the Board when it made a finding as to the authenticity of one of her identity documents without first putting its concerns to her in order to allow her to address them.

Ms. Mbimbi further asserts that a number of the Board's findings regarding her identity documents were unreasonable, and that the absence of a transcript from her refugee hearing prevents the Court from properly considering her arguments.

[3] For the reasons that follow, I have concluded that the application for judicial review should be granted.

### **I. The Fairness Argument**

[4] Ms. Mbimbi's argument that the Board was obliged to identify its concerns with respect to the signatures on two of her documents raises a question of procedural fairness. Where an issue of procedural fairness arises, the Court's task is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.

[5] Ms. Mbimbi's refugee claim was based upon her alleged fear of persecution in the DRC resulting from her membership in the "Engagement pour la Citoyenneté et le Développement" [ECiDé] political party. The Board did not accept Ms. Mbimbi's ECiDé membership card as proof of her identity, in part because of the Board's finding that the signature of the party's Secretary General on the card differed from the one on a letter attesting to her party membership.

[6] The parties agree that there is no obligation on the Board to put an inconsistency in the evidence to an applicant where that inconsistency is apparent on the face of the record. Having carefully reviewed the two signatures in issue here, I am satisfied that the differences between them are not so obvious as to relieve the Board from its obligation to put Ms. Mbimbi on notice of its concerns.

[7] The signatures in question are quite distinctive and are very similar, although, as the Board observed, the signature on the letter has two small lines above the name, while the signature on the membership card does not. However, Ms. Mbimbi points out that the differences in the two signatures could be explained by the fact that the space provided for the signature on the membership card was small, and that this may have explained the omission of the two small lines over the signature. She was not, however, able to offer this explanation to the Board, as she was not aware of the Board's concern in this regard.

[8] It is not for me to decide whether this explanation should be accepted – that is the task of the Board. I am, however, satisfied that it was unfair of the Board to reject the documents on the basis of a perceived inconsistency in the signatures, without first giving Ms. Mbimbi a chance to address its concerns.

## **II. The Missing Transcript**

[9] Ms. Mbimbi also challenges the reasonableness of findings made by the Board with respect to other documents that she had provided to establish her identity. She further submits that the absence of a transcript of her refugee hearing prevents the Court from properly considering her arguments.

[10] In the absence of a transcript of a hearing, a reviewing Court must determine whether the record before it allows it to properly dispose of the application for judicial review. If it does, then the absence of a transcript will not violate the rules of natural justice: *Randhawa v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 595 at para. 8. The question is whether there is a 'serious possibility' that the effect of the absence of the transcript would be to

deny a ground of review: *City of Montreal v. Canadian Union of Public Employees, Local 301*, [1997] 1 S.C.R. 793.

[11] I am satisfied that there is indeed a serious possibility that the absence of a transcript in this case prevents the proper evaluation of Ms. Mbimbi's argument that the Board misapprehended the evidence regarding at least some of her identity documents.

[12] For example, the Board found that there was an inconsistency in Ms. Mbimbi's evidence as to when she first saw the school transcripts that she provided to the Board to establish her identity. Ms. Mbimbi claims in her affidavit that the Board misunderstood her evidence on this point, and that there was in fact no inconsistency in her testimony on this question. This argument cannot be evaluated without knowing what evidence was and was not before the Board on this point.

[13] The Board also rejected an electoral card as proof of Ms. Mbimbi's identity on the basis that the card did not conform to a format that was introduced in 2010. An electoral card is a key document in establishing the identity of a citizen of the DRC, as it is effectively a national identity card: *J.M.T.K. v. Canada (Minister of Citizenship and Immigration)*, [2013] F.C.J. No. 1167 at para. 20.

[14] Although she admits that she told the Board that she got the card in order to vote in the 2011 election, Ms. Mbimbi also states in her affidavit that she had explained to the Board that she had actually obtained the document in 2009, *before* the changes to the form of the document were made.

[15] While it was open to the Board to reject the explanation provided by Ms. Mbimbi for the perceived irregularities in the form of the electoral card, it had an obligation to at least consider any explanation that she may have provided in this regard. Once again, the absence of a transcript of the hearing means that we cannot be sure what evidence was before the Board on this point, and there is thus no way to evaluate the reasonableness of its finding regarding the authenticity of the electoral card.

### **III. Conclusion**

[16] As Ms. Mbimbi noted, a finding that a refugee claim has ‘no credible basis’ has serious implications for a refugee claimant. At the end of the day, it will be for the Board to consider Ms. Mbimbi’s evidence addressing the concerns that have been identified with respect to her identity documents, and for the Board to determine whether her evidence satisfactorily addresses those concerns. She is, however, entitled to address the perceived inconsistency in the signatures on the party documents, and to have her arguments regarding her evidence with respect to her other identity documents fully addressed – something that cannot be done in the absence of a transcript of the refugee hearing.

[17] Consequently, the application for judicial review is granted. I agree with the parties that the case is fact-specific, and does not raise a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed,  
and the matter is remitted to a differently constituted panel for re-determination.

"Anne L. Mactavish"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1080-15

**STYLE OF CAUSE:** VANESSA ISHUNIYE MBIMBI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 20, 2015

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