

Federal Court



Cour fédérale

Date: 20170721

Docket: IMM-399-17

Citation: 2017 FC 712

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 21, 2017

Present: The Honourable Madam Justice Roussel

BETWEEN:

YOLLANDE MPASI MOKONZI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Yollande Mipasi Mokonzi, is seeking the judicial review of a decision of the Refugee Appeal Division [RAD], dated January 18, 2017, dismissing the appeal and confirming the decision of the Refugee Protection Division [RPD] under subsection 111(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The applicant is a citizen of the Democratic Republic of the Congo [DRC]. She entered Canada on September 13, 2015, and claimed refugee protection the next day.

[3] She claims that she was persecuted because of her activities as a finance manager with Assistance aux personnes vulnérables et enfants du Congo [APVEC], a non-governmental organization. She alleges that during protests aimed at preventing the enactment of a federal statute in January 2015, several people were killed by the police. APVEC launched an investigation to determine the exact number of victims. The applicant was then targeted by the police. In April 2015, a mass grave was discovered. The government stated that the bodies were of unidentified premature babies. APVEC investigated to verify the veracity of that claim. On April 6, 2015, men appeared at the applicant's house. Because she was not there, they beat her husband and brother. One week later, her husband and brother were beaten again when seven men, two of whom were wearing military uniforms, showed up at the applicant's house. On September 12, 2015, with the assistance of the chairperson of APVEC, the applicant left the DRC for Canada with a Canadian visa.

[4] On January 5, 2016, the RPD rejected the refugee protection claim on the ground that the applicant was not credible. First, it noted that the applicant was unable to describe the content of the reports that she had apparently prepared during the investigations carried out by APVEC and for which she was at risk of persecution. Furthermore, it found that the applicant had failed to provide a proper explanation of the contradictions regarding her marital status. While she stated in the generic IMM-0008 application form, dated September 14, 2015, that she separated from her husband on February 1, 2014, she indicated in her narrative in support of her Basis of Claim

Form, dated September 24, 2015, that her [TRANSLATION] “husband” had been threatened and beaten on April 6, 2015, and she stated in her visa application, dated May 12, 2015, that she has never been married or been in a common law relationship. Lastly, the RPD deemed not credible the threat that the DRC authorities represent for the applicant because she stated that she could be persecuted for her work for APVEC even though that same organization successfully obtained an authentic passport for her, in her name, and enabled her to circumvent security checks.

[5] On January 18, 2017, the RAD dismissed the appeal. It found, after conducting an independent assessment of the record and hearing the applicant’s testimony before the RPD, that the RPD had not erred in its assessment of the applicant’s credibility.

[6] In its decision, the RAD noted that the applicant hesitated when she was asked to specify the content of the reports that she apparently prepared and that she did not answer a direct question on the subject. The same thing happened when she was asked to specify the approach used in the investigation. Like the RPD, the RAD was of the opinion that the applicant’s inability to describe the contents of the reports and the approach used in the investigation undermine her credibility.

[7] The RAD then examined the issue of the applicant’s marital status. The applicant claims, in particular, that she cannot be held responsible for certain statements in her visa application because it was the chairperson of APVEC that took steps to obtain the visa. The RAD rejected that argument, pointing out that the applicant had signed the forms. The RAD also added that if

the applicant was single, as indicated in her visa application, it is hard to see how her husband could have been beaten twice by men who were looking for her.

[8] Lastly, the RAD found that the RPD did not err by finding that it is not credible that APVEC officials had managed to obtain a passport for her and had allowed her to circumvent security checks. The RAD found that if it was true that the authorities wanted to go after the applicant, those same authorities would have not allowed APVEC officials to obtain a passport for her or have allowed the applicant to leave the country.

[9] The applicant argues that it was unreasonable for the RPD and the RAD to doubt her credibility because she was unable to describe the approach used in the investigation or the contents of reports that she prepared in her role at APVEC. She claims that she provided detailed, spontaneous and credible testimony on her other activities with the organization and that her testimony should have been assessed as a whole. Concerning her marital status, she reiterates that her visa application was completed by the chairperson of APVEC and adds that it is common to find false information in visa applications. This point cannot be determinative. Lastly, she alleges that she does not know what steps APVEC took to obtain her passport or to help her leave the country. The applicant states that she testified before the RPD that the ministry that issues passports had not been the one that had caused her problems. She is of the opinion that the RAD speculated when it found that it is not credible that APVEC could have obtained a passport for her and successfully helped her leave the country.

[10] The Court cannot agree with the applicant's arguments.

[11] The standard of review that applies to the RAD's decision is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). It applies to the RAD's credibility findings and its assessment of the evidence (*Chen v Canada (Citizenship and Immigration)*, 2017 FC 539 at para 19).

[12] Where the reasonableness standard applies, the role of the Court is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law". As long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility", it is not open to this Court to substitute an outcome it prefers (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[13] The Court finds that the RAD's decision was reasonable in this case. The RAD applied the appropriate standard and carried out an independent assessment of all of the evidence in the record. It also conducted its own analysis of the applicant's credibility, not limiting itself to the RPD's negative credibility findings, which are generally entitled to a degree of deference. It listened to the recording of the hearing before the RPD and relied on its own assessment of the applicant's testimony and the evidence in the record to agree with the RPD's finding that the applicant is not credible. Its finding is supported by the evidence in the record and its decision contains sufficient reasons.

[14] While the applicant does not agree with the findings of the RAD or the RPD, it is not open to this Court to reassess and weigh the evidence to make a finding favourable to the applicant (*Khosa* at para 59).

[15] In conclusion, the Court is of the opinion that the RAD's decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and that it is justified in a manner that meets the criteria of transparency and intelligibility within the decision-making process (*Dunsmuir* at para 47).

[16] The application for judicial review is dismissed. No question of general importance has been submitted for certification and the Court is of the opinion that none is raised in this matter.

JUDGMENT in IMM-399-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-399-17

STYLE OF CAUSE: YOLLANDE MPASI MOKONZI v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JULY 12, 2017

JUDGMENT AND REASONS: ROUSSEL J.

DATED: JULY 21, 2017

APPEARANCES:

Claude Whalen FOR THE APPLICANT

Sherry Rafai-Far FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Whalen FOR THE APPLICANT
Counsel
Montréal, Quebec

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec