

Federal Court



Cour fédérale

**Date: 20190211**

**Docket: IMM-828-18**

**Citation: 2019 FC 169**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, February 11, 2019**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**IDRISSA KOANDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The applicant is challenging, by way of judicial review, the legality of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. The RAD confirmed a decision of the Refugee Protection Division [RPD] which found that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

## II. Facts

### A. *Applicant's immigration process*

[2] The applicant is a citizen of Burkina Faso aged 35. He is apparently a fervent militant of the former President, Mr. Blaise Compaoré, who was leader of the Congress for the Progress of Democracy party [Congrès pour le progrès et la démocratie] [CPD].

[3] After Mr. Compaoré's fall from power, the applicant's home was purportedly set on fire and his family reportedly suffered physical violence by individuals in the neighbourhood who were unhappy about his association with the former regime.

[4] A friend of the family, Mr. Simparé, apparently hid him at his home and helped him obtain a Canadian student visa, issued on April 27, 2016, for the purpose of fleeing Burkina Faso. On June 12, 2016, the applicant left his native country and claimed protection from Canada a few days later.

### B. *RPD decision*

[5] Although the RPD found the applicant's testimony to be credible, it concluded that he had not demonstrated, on a balance of probabilities, that there was a serious possibility of persecution or that he would face a risk of torture, a risk to life, or a risk of cruel and unusual treatment or punishment should he return to Burkina Faso.

[6] The RPD examined the fall of the ex-president in detail. More specifically, it noted that the objective documentation indicated that on November 29, 2015, Burkina Faso was entering

into a new, more democratic, era with the holding of free and fair presidential elections.

According to this same documentation, there were no reported cases of violence against members of the CPD based on their membership in that political group.

[7] With respect to the applicant's testimony, the RPD wrote that the applicant's responses to the questions of the panel were insufficient. First, the applicant stated that he had followed the news about the treatment of members of the CPD while he sought refuge at Mr. Simparé's home; however, he failed to provide information sources in that regard, other than Mr. Simparé. Second, when the RPD invited him to comment on documentary evidence pointing to the lack of cases of police or mob violence against members of the CPD, the applicant replied that he was certain that he would be the victim of threats if he was to return to Burkina Faso.

[8] Convinced that the applicant's fear of returning was founded solely on speculation or on snippets of information provided by Mr. Simparé, the RPD dismissed his claim for refugee protection.

### C. *RAD decision*

[9] Before the RAD, the applicant argued that there had been a change in circumstances and that his fear of returning was based on information he had received from Mr. Simparé, and not on mere speculation.

[10] The RAD began its analysis by determining the applicable standard of review. Citing *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, and the decision in *X (Re)*,

2017 CanLII 33034 (CA IRB), the RAD declared that it must show deference where the RPD enjoys a meaningful advantage in making a particular finding. Where a question calls for deference, the RAD must nonetheless proceed with a comprehensive and independent review of the evidence. Lastly, it set out that the overall assessment of credibility should be reviewed on a correctness standard.

[11] First, on the basis of the recording of the RPD hearing, the RAD criticized certain aspects of the applicant's questioning by the RPD. Second, the RPD engaged in an analysis of the applicant's testimony and found inconsistencies in his narrative. Among other things, the applicant recounted that his work in the community was appreciated by his fellow citizens, when he had previously claimed that he had been a victim of these same individuals shortly after the fall of the former president. Furthermore, the applicant allegedly feared for his life in Burkina Faso, when he had in fact remained there for up to a year and a half after the fall of the regime, including spending several months only four kilometres from his usual residence, before leaving the country.

[12] Lastly, on the issue of threats against members of the CPD, the RAD preferred, as with the RAD, to rely on objective evidence filed that found no threat against these persons.

### III. Parties' positions

#### A. *Applicant's position*

[13] The applicant contends that the RPD enjoyed a meaningful advantage vis-à-vis the RAD in assessing his credibility regarding his political involvement. Thus, the RAD ought to have

shown deference in that regard. Accordingly, in the applicant's view, the RAD should have explained how the RPD's credibility finding was unreasonable. He further argues that if the RAD wished to test his credibility, it should have questioned him. Finally, the applicant notes that the RAD failed to address the argument regarding the change in circumstances.

B. *Respondent's position*

[14] The respondent is of the view that before the RAD, a reasonableness standard applies in matters of assessing credibility. He argues that the RAD engaged in its own analysis of the record and reviewed the decision of the RPD on a reasonableness standard, apart from the credibility issues to which it applied a correctness standard. Contrary to the argument that the RAD should explain how the RPD's decision was reasonable, the respondent asserts that the RAD carried out its own analysis and, in so doing, never concluded that the applicant lacked credibility or that the decision was unreasonable. The respondent did not address the argument on the change in circumstances.

IV. Issues

1. Did the RAD err in re-examining the credibility of the applicant when the RPD had found him to be credible and given that the issue of his credibility was not raised by the parties?
2. Did the RAD address the applicant's argument regarding the change in circumstances?

V. Analysis

[15] The applicant maintains that the RAD engaged in its own credibility analysis, even though the RPD had already found him to be credible. In examining the reasons, the RAD criticized the manner in which the RPD reviewed the evidence regarding the applicant's credibility.

[16] I am of the view that the RAD made an unfavourable finding with regard to the applicant's credibility and that this issue was not raised by the parties. Further, comments were made about the poor quality of the RPD's questioning. In such circumstances, if credibility had been the determinative issue, the matter should have been referred back to the RPD for redetermination.

[17] Where the parties do not dispute the RPD's credibility findings, the RAD is bound to respect the framework of evidentiary issues established by the parties. Otherwise, the conduct of the RAD raises an issue that was not raised by the parties, which could be perceived as an injustice.

[18] From time to time, it may be appropriate for the RAD to comment on the RPD's fact-finding process by pointing out inconsistencies or evidence that may have been overlooked. However, where the parties have not raised issues with regard to the applicant's credibility, the RAD's comments in that regard should be worded with prudence, so as to not overturn the RPD's determination regarding the credibility of the applicant.

[19] In the applicant's memorandum adduced before the RAD, it is clear that he claims that the RPD failed to give sufficient consideration to the change in circumstances since the fall of the former president in its fear of persecution analysis. That does not concern the new evidence submitted on appeal.

[20] The RPD and RAD both concluded that there was insufficient evidence to establish the existence of a new risk: indeed, the applicant presented only vague and uncorroborated generalizations provided by one of his friends living in Burkina Faso. Both decision-makers also found that the objective documentation on conditions in the country did not corroborate any serious risk to the applicant if he was to return to Burkina Faso.

[21] The findings of the RPD and RAD based on documentation about the situation in the country must be considered as findings of fact. They must not be overturned, except in cases in which they contain egregious errors. These would generally be limited to errors in the process of establishing the facts, such as failing to consider important evidence specifically noted, or referring to irrelevant evidence that might affect the final outcome.

[22] If there is probative evidence in the documentation about the country's situation in support of the findings of fact regarding a lack of risk to the applicant, the Court must not engage in a new assessment of the evidence.

[23] Accordingly, the application for judicial review is dismissed and no question will be certified.

**JUDGMENT in Docket IMM-828-18**

**THIS COURT’S JUDGMENT is that:**

1. The style of cause is amended to correctly reflect the respondent, namely, the  
Minister of Citizenship and Immigration,
2. the application for judicial review is dismissed; and
3. no question will be certified.

“Peter Annis”

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Judge

Translation certified true  
On this 28th day of February 2019

Sebastian Desbarats, Translator



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

**DOCKET:** IMM-828-18

**STYLE OF CAUSE:** IDRISSA KOANDA v. MCI

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JANUARY 9 2019

**JUDGMENT AND REASONS** ANNIS J.

**DATED:** FEBRUARY 11, 2019

**APPEARANCES:**

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