

Federal Court



Cour fédérale

Date: 20210830

Docket: IMM-5583-20

Citation: 2021 FC 897

Ottawa, Ontario, August 30, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

CHRISTINE NANKUMBA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Uganda. She entered Canada in January 2017 and sought refugee protection on the basis that she fears persecution or danger at the hands of her deceased niece's former boyfriend. She alleges that, because she accused him of her niece's murder, she was threatened, kidnapped and sexually assaulted by individuals who identified themselves as being associates of him. Concomitantly, she alleges that she faces an exacerbated risk of gender-

based violence [GBV] because of the circumstances of her involvement with her niece's murder case.

[2] On November 30, 2018, the Refugee Protection Division [RPD] dismissed the Applicant's claim for protection. The RPD found that the Applicant generally lacked credibility and did not believe any of the specific allegations of mistreatment or harm outlined in her claim.

The RPD based its negative credibility finding on:

1. the contradictions between the Applicant's testimony and her written narrative regarding the date on which she identified the body of her deceased niece (July 13, 2015 or July 15, 2015) and the date of the vigil held by the family (July 15, 2015 or July 16, 2015);
2. the Applicant's inability to address why she thought she would still be targeted given the information in an article she submitted in evidence, which stated that her niece's former boyfriend had confessed to the killing, and therefore would no longer have a reason to fear her testimony; and
3. the contradiction between the Applicant's testimony and her evidence regarding the name of the woman who found her after she was released by her captors (Justine or Jane).

[3] The RPD also found that the Applicant, who lived in a secure house with other family members, had not demonstrated that she would be at risk of GBV were she to return to her country.

[4] The Applicant appealed the decision to the Refugee Appeal Division [RAD]. On October 7, 2020, the RAD dismissed the appeal and confirmed the decision of the RPD that the Applicant was neither a Convention refugee nor a person in need of protection.

[5] Like the RPD, the RAD did not believe the Applicant's allegations of mistreatment or harm. The RAD noted an additional discrepancy in the Applicant's evidence concerning the alleged kidnapping and sexual assault, and determined that the Applicant's lack of explanation for this discrepancy further undermined her credibility. In addition, the RAD agreed with the RPD that the Applicant's inconsistent evidence regarding key dates in her narrative and the identification of the woman who found her after her release undermined her credibility. The RAD did not deem it necessary to consider the effect of the confession given its finding that the alleged threats and kidnapping did not happen. The RAD then referred to three (3) documents submitted by the Applicant: a clinic report and affidavits from both the Applicant's sister and the woman who found the Applicant. The RAD found that the RPD was correct in attributing them less weight because they did not provide independent evidence of the kidnapping and assault. Finally, the RAD concluded that the Applicant was not at risk of GBV because her narrative was based on the threat posed by the niece's former boyfriend, which had nothing to do with her being a woman.

[6] The Applicant now seeks judicial review of the RAD's decision. She argues that the RAD conducted a microscopic analysis, erred in its credibility analysis and misapprehended the evidence on the record.

II. Analysis

[7] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

[8] When the standard of reasonableness applies, the Court shall examine “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83). It must ask itself “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[9] Upon review of the record, I find that the RAD’s decision must be set aside.

[10] I agree with the Applicant that the RAD erred in its assessment of the medical report, the affidavit of the Applicant’s sister and the affidavit of the woman who found the Applicant.

[11] The RAD found that the information in these documents relied upon information provided by the Applicant. In the RAD’s view, the medical professionals, the Applicant’s sister as well as the woman who found the Applicant did not have any independent knowledge of

whether the Applicant was kidnapped and assaulted “as they were not there”. While true, the RAD ignores elements described in these documents, which were within the personal knowledge of their authors and corroborated the circumstances surrounding the immediate aftermath of the kidnapping and assault.

[12] The medical report describes the Applicant’s injuries as “minor bruises on the body mainly the lower limb with blood stained clothes” and “Gyn exam: no signs of rape were noted”. This is not a situation where the report simply recounts what the Applicant said to the medical professional, as was the case in *Egwuonwu v Canada (Citizenship and Immigration)*, 2020 FC 231, cited by the Respondent. The medical professional describes his or her own observations of the Applicant’s physical injuries a few hours after the Applicant claims to have been sexually assaulted and released by her kidnappers. It also demonstrates that the medical professional judged it necessary to conduct a gynecological examination.

[13] As to the woman who found the Applicant after her release, she explains in her affidavit that she was walking her sons to school when she heard “a female voice crying” and found the Applicant, very weak and lying in the garbage. She states that the Applicant had some bruises and that her hands were tied. She further indicates that she brought the Applicant to her home and wanted to call the police but the Applicant refused. She instead called the Applicant’s sister. The woman also states she told the Applicant that she did not think she should take a shower because she could have been raped. This evidence is based on personal knowledge, not information provided by the Applicant.

[14] In addition, the Applicant's sister confirms in her affidavit that, on July 28, 2016, she was called by this woman, went to her home to pick up her "very scared sister" and took her to the clinic. Again, this evidence is not based on information provided by the Applicant.

[15] While I recognize that it is not the role of this Court to reweigh the evidence, I find that it was unreasonable for the RAD to reject these documents without considering the elements of the Applicant's story that were not second-hand information provided to the authors by the Applicant. The Applicant provided this evidence to corroborate the circumstances surrounding the immediate aftermath of the kidnapping and assault and to prove their veracity. The RAD's treatment of this evidence amounts to a misapprehension of evidence.

[16] Moreover, I find persuasive the Applicant's argument that the RAD could not reasonably expect the Applicant to provide corroborative evidence from eyewitnesses to the kidnapping and sexual assault. There is nothing in the evidence to suggest that anyone witnessed these events first-hand and it would be unrealistic to expect the Applicant's assailants to provide affidavits.

[17] Finally, the RAD indicates in its reasons that the RPD correctly gave these documents "less weight" on the basis that they did not provide any independent evidence to support the allegation the Applicant was kidnapped and assaulted. Upon review of the RPD's decision, I note that the RPD did not give less weight to these documents. It gave them no weight at all.

[18] While determinations of credibility lie at the heart of the RAD and the RPD's expertise and as such require considerable deference from this Court, in the circumstances of this case, I

find that it was unreasonable for the RAD not to address the elements in the documentary evidence that were meant to corroborate other aspects of the Applicant's claim. Had it done so, the RAD's credibility conclusions might have been different. As I find this issue to be determinative of the application, I need not address the Applicant's other arguments.

[19] To conclude, I find that the RAD's decision fails to meet the required threshold of reasonableness as set out in *Vavilov*. As a result, the application for judicial review is allowed and the matter is referred back for redetermination by a different panel. No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-5583-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the Refugee Appeal Division dated October 7, 2020 is set aside and the matter is remitted back to a different panel for redetermination; and
3. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5583-20

STYLE OF CAUSE: CHRISTINE NANKUMBA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 25, 2021

JUDGMENT AND REASONS: ROUSSEL J.

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APPEARANCES:

Arthur Ayers FOR THE APPLICANT

Amani Delbani FOR THE RESPONDENT

SOLICITORS OF RECORD:

Arthur Ayers FOR THE APPLICANT
Lawyer/Avocat
Ottawa, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario