

Federal Court



Cour fédérale

Date: 20211214

Docket: IMM-88-21

Citation: 2021 FC 1413

Ottawa, Ontario, December 14, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

BATHSON MUTANGA TANDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of proceedings and background

[1] The Applicant, Bathson Mutanga Tandi, is a 22-year-old citizen of Cameroon who arrived in Canada on a student visa in August 2018 and proceeded, shortly thereafter, to file a claim for refugee protection on the grounds that he fears persecution from the State of Cameroon on the basis of his political opinion as a member of the Southern Cameroons National Council

[SCNC] – an anglophone political self-determination organization seeking independence from the predominantly francophone Cameroon.

[2] Mr. Tandi alleges that he became aware of and frustrated with the widespread discrimination against anglophone students while attending the University of Buea when he was asked to pay an extra fee for a course for which he had already paid. He joined the SCNC after attending a meeting with one of his friends in October 2016; he began participating in organized meetings and rallies and distributed information about the SCNC to other students on campus. Mr. Tandi claims that on account of his activity with the SCNC, he was twice detained by the police, once in November 2016 and again in September 2017, during which time he was beaten and tortured, requiring hospitalization on account of his injuries.

[3] On November 20, 2017, the police purportedly went to Mr. Tandi's home with a notice to appear at the police station in two days. As he was not home, the police left the notice with his mother. Upon being advised of the notice to appear, Mr. Tandi went to live with his uncle and began applying to universities in Canada in order to flee Cameroon. With the help of his family and a friend who was a member of the armed forces, he was able to leave Cameroon in August 2018 through the Douala International Airport, and he entered Canada on the strength of his student visa, which expires on July 30, 2022; he filed his claim for refugee protection in September 2018.

[4] In its decision delivered orally on September 17, 2019, the Refugee Protection Division [RPD] found Mr. Tandi's evidence to be credible despite several irregularities and ultimately

determined that he was a Convention refugee, having rebutted, on the balance of probabilities, the presumption of state protection in Cameroon. In addition, the RPD found that as the agent of persecution was the State of Cameroon, Mr. Tandi has no viable internal flight alternative as he faces a serious possibility of persecution throughout the entire country.

[5] The Minister challenged the RPD's credibility findings on appeal and sought to introduce the following evidence before the Refugee Appeal Division [RAD] pursuant to subsections 110(3) and 171(a.5) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]:

- Excerpts from the University of Buea admissions list for its law program for 2016–2017 establishing that matriculation number SM16A210, which Mr. Tandi had identified as his own, was actually assigned to another student who was admitted one month earlier than Mr. Tandi;
- The admissions list for the University of Buea accounting program for 2016–2017, which omits to identify Mr. Tandi as a student enrolled in the program;
- Global Case Management System notes containing the address history for Mr. Tandi and the address history for Mr. Tandi's sister.

[6] The Minister argued before the RAD that the evidence had come to light since the RPD decision and demonstrates that the facts relied upon by the RPD were fundamentally wrong; Mr. Tandi was not an applicant for the B.Sc program in accounting and not a student at the University of Buea. In addition, the evidence showed that the matriculation number – the student identification number – listed on Mr. Tandi's provisional admission to the university in fact

belongs to a different student; the Minister argued that the documents are strong evidence that Mr. Tandi provided fraudulent documents to the RPD in support of his claim for refugee protection.

[7] The RAD determined that the evidence submitted by the Minister met the requirements of subsection 110(6) of the Act as raising a serious issue with respect to the credibility of Mr. Tandi and proceeded to direct an oral hearing, restricting the hearing to two issues: (1) the impact, if any, of the evidence presented by the Minister on the RPD's credibility findings; (2) if Mr. Tandi is found not to be credible, his serious possibility of persecution as an anglophone.

[8] Although he was represented by counsel before the RPD, Mr. Tandi chose to represent himself before the RAD. The RAD member advised Mr. Tandi at the outset of the hearing that he had the right to be represented by counsel and that he could request an adjournment in order to retain counsel. As set out in the RAD decision, Mr. Tandi "confirmed that it was his intention to represent himself on appeal." Mr. Tandi had the hearing procedures explained to him and was allowed to make oral submissions at the end of the hearing.

[9] In a decision dated December 17, 2020, the RAD granted the appeal and substituted its own decision to the effect that Mr. Tandi is neither a Convention refugee nor a person in need of protection. After considering the evidence presented by the Minister, the RAD found, on a balance of probabilities, that Mr. Tandi was not a student at the University of Buea; the excerpt of the admissions list for the law program showed that the identification number provided by Mr. Tandi was assigned to a different student one month prior to Mr. Tandi's supposed

enrolment at the university, and the admissions list for the accounting program in which Mr. Tandi professed to be enrolled did not include his name. The RAD was not satisfied by Mr. Tandi's explanation that his identification number must have been assigned to another student when he failed to pay his extra fee because the other student was admitted a month before Mr. Tandi was allegedly admitted. The RAD also rejected Mr. Tandi's explanation that he was likely removed from the admissions list of the accounting program because the University of Buea would not want to be associated with an SCNC member considering that the government considers the group to be a terrorist organization.

[10] Furthermore, the RAD drew an adverse inference as to Mr. Tandi's credibility because he failed to provide a reasonable explanation for his failure to seek corroborative evidence that would have been available to him to confirm that he was a student in the university program. The RAD did not believe Mr. Tandi when he said that he wanted to call some of his classmates as witnesses for the hearing before the RAD but was unable to reach the Case Management Officer for the RAD hearing to set this up. According to Mr. Tandi, he had left his telephone number on the message recorder of the Case Management Officer of the RAD, but not his name – the Case Management Officer denied ever receiving a message from Mr. Tandi in line with such a request. Why Mr. Tandi did not use the email address provided to him by the RAD to communicate with the Case Management Officer, or why he did not provide his witnesses in Cameroon with the link to join the video session of the RAD hearing so that they could give evidence on whether Mr. Tandi was in fact a student at the University of Buea, remains a mystery. In any event, the RAD rejected Mr. Tandi's explanation as to why he could not submit course work or handbooks to demonstrate that he attended the University of Buea.

[11] In the end, the RAD determined that Mr. Tandi had not established “by credible and trustworthy evidence that he attended the University of Buea, as he has alleged” and that it was “more likely than not that the Offer of Provisional Admission submitted by Mr. Tandi was fraudulent.” In addition, and considering that Mr. Tandi’s attendance at the university formed a central part of his account of the events that led him to leave Cameroon, the RAD determined that “then it is more likely than not that the allegations of persecution that followed were also fabricated.” The RAD also set out the basis of its determination that the RPD erred in assessing the contradictions in the documentary evidence.

[12] After finding that Mr. Tandi’s evidence was not credible and that he failed to establish that, if he returns to Cameroon, he would face a serious possibility of persecution or the likelihood of serious harm, the RAD assessed whether Mr. Tandi could be persecuted on the sole basis of his profile as an anglophone.

[13] The RAD rejected Mr. Tandi’s argument that he would likely be detained at the airport simply for being an anglophone. The RAD found that the objective evidence did not establish that the discrimination against anglophones in Cameroon, by its nature or repetition, amounts to the persecution of all anglophones, and that there is insufficient evidence to establish that Mr. Tandi’s profile as an anglophone and/or member of the anglophone diaspora would cause him a serious possibility of harm, mistreatment or arrest by the authorities upon his return.

II. Issues

[14] The present application raises three issues:

1. whether the RAD violated procedural fairness principles by not providing Mr. Tandi sufficient time to find a counsel to ensure a fair representation;
2. whether the RAD erred by accepting evidence from the Minister that was not new;
3. whether the RAD's assessment of Mr. Tandi's credibility and forward-looking risk was reasonable.

III. Standard of review

[15] The parties agree, as do I, that the applicable standard of review of the decision of the RAD is that of reasonableness (*Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at paras 22-26). As to the procedural fairness issue, this Court has to determine whether the decision-making process was fair in regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33-56).

[16] However, Mr. Tandi argues that I should “at the very least, review the evidence that was presented before the RPD and . . . conduct an independent assessment of all the evidence.” I fail to see any support for this proposition. As stated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], a reviewing court “must refrain from ‘reweighing and reassessing the evidence considered by the decision maker’” (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Reasonableness is concerned with the existence of

justification, transparency and intelligibility in the reasoning process of the decision-maker (*Vavilov* at paras 99 and 101).

IV. Analysis

A. *The RAD did not violate procedural fairness principles*

[17] Mr. Tandi submits that he was denied procedural fairness at the RAD hearing because he was not provided with sufficient time to find a counsel to ensure a fair representation although the RAD had an obligation, given his age, the complexity of the issues and the risk to his life, to insist that he retain counsel or at least provide him with more time to do so. Mr. Tandi added before me that he only received confirmation of the date a few days before the hearing was to take place and did not have time to retain counsel given that counsel who represented him before the RPD had since retired.

[18] I cannot accept Mr. Tandi's submissions. Mr. Tandi had more than ample time to retain counsel if he so chose; the Minister filed the notice of appeal of the RPD decision on October 24, 2019, and Mr. Tandi's notice of intent to respond received by the RAD on November 27, 2019 indicated that Mr. Tandi did not have a "representative or lawyer to guide [him] on [his] case." The written submissions included with the notice of intent to respond prepared by Mr. Tandi make no mention of any concern regarding the fact that he is representing himself in the appeal.

[19] The RAD hearing took place on December 11, 2020, giving Mr. Tandi more than a year to find counsel, yet Mr. Tandi did not demonstrate that he ever attempted to find a counsel. In addition, during the hearing, the RAD specifically advised Mr. Tandi of his right to counsel,

however he decided on his own to represent himself, as was his right. The RAD decision provides at paragraph 9:

Although Mr. Tandi was represented by counsel before the RPD, he represented himself on appeal. I advised him at the outset of the RAD hearing that he had the right to be represented by counsel and that he could request an adjournment in order to retain counsel. He confirmed that it was his intention to represent himself on appeal. I took care to explain the hearing procedures to Mr. Tandi and allowed him to make oral submissions at the end of the hearing in the same way that a counsel, or representative would have done.

[20] I put the issue, and paragraph 9 of the RAD decision, directly to Mr. Tandi's counsel, who responded simply that the RAD should have considered the history of the crisis that is taking place in Cameroon in relation to the anglophone minority and should have, given Mr. Tandi's age and risk to his life, insisted that he retain counsel. I find this submission perplexing. Suffice it to say that Mr. Tandi confirmed a full year prior to the hearing, with the filing of his notice of intent to respond, that he did not have a lawyer. At the hearing, he declined the opportunity given to him to adjourn the hearing and retain counsel; he chose to represent himself, as was his right. No case was cited to me which would suggest an obligation on the part of the RAD to insist that a claimant of the profile of Mr. Tandi be represented by counsel.

[21] Under the circumstances, I fail to see any breach of procedural fairness in the manner in which the RAD handled the situation.

B. *The RAD did not err by accepting the evidence of the Minister*

[22] Mr. Tandi submits that the RAD erred by accepting the evidence submitted by the Minister because the evidence was not new and thus did not meet the criteria of

subsection 113(a) of the Act. That may be so, but the criteria for allowing new evidence to be presented before the RAD set out in subsection 113(a) of the Act do not apply in this case; subsection 113(a) can be found in Division 3 of the Act, which deals with pre-removal risk assessments. Rather, the Minister relies upon subsection 171(a.5) of the Act, which provides as follows:

Refugee Appeal Division Proceedings	Section d'appel des réfugiés Procédure
171 In the case of a proceeding of the Refugee Appeal Division,	171 S'agissant de la Section d'appel des réfugiés :
...	...
(a.5) the Minister may, at any time before the Division makes a decision, submit documentary evidence and make written submissions in support of the Minister's appeal or intervention in the appeal;	a.5) il peut, en tout temps avant que la section ne rende sa décision, produire des éléments de preuve documentaire et présenter des observations écrites à l'appui de son appel ou de son intervention dans l'appel;
...	...

[23] The Minister submitted before the RAD that the documentary evidence he was seeking to present: (a) raises a serious issue with respect to the credibility of the person who is the subject of the appeal; (b) is central to the decision with respect to the refugee protection claim; and (c) if accepted, would justify allowing or rejecting the refugee protection claim.

[24] Mr. Tandi argues that the University of Buea's accounting program admissions list is not credible since his admission was provisional and it is highly probable that his name was removed

from the admissions list because of his affiliation with the SCNC. I must agree with the Minister – this argument is pure conjecture.

[25] In any event, Mr. Tandi did not provide any evidentiary foundation to support his claim. During the hearing before the RAD, Mr. Tandi was asked whether he had an explanation for the discrepancy between the admissions lists submitted by the Minister and the copy of his provisional admission which he had filed in support of his claim to be a student at the University of Buea, however, the RAD was simply not satisfied with Mr. Tandi's explanation that the University of Buea likely removed his name from the lists because he did not pay the extra fee or because of his affiliation with the SCNC. I see nothing unreasonable with such a finding.

C. *The RAD reasonably assessed Mr. Tandi's credibility and forward-looking risk*

[26] Mr. Tandi submits that the RAD erred in its analysis of his credibility by not taking into consideration his personal circumstances and by overly relying on the Minister's evidence. Mr. Tandi argues that adverse credibility findings should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case (*Haramicheal v Canada (Citizenship and Immigration)*, 2016 FC 1197 at para 15). In addition, Mr. Tandi further argues that the RAD did not analyze his forward-looking risk in the event that he is forced to return to Cameroon although he submitted evidence that the authorities are looking for him and there is objective evidence in the National Documentation Package [NDP] that demonstrates that people who oppose the government are subjected to reprisal and different forms of abuse.

[27] I must again disagree with Mr. Tandi. The RAD did not pursue a microscopic evaluation of the evidence. Rather, it properly reviewed the evidence and addressed the findings of the RPD as they related to such evidence. The RAD's credibility findings are grounded in the record, and contrary to the assertions of Mr. Tandi, the errors, inconsistencies and omissions which led to the determination by the RAD that the documents were fraudulent were not minor but rather quite significant; the RAD reasonably found that the documents were not credible and that such a finding raised serious issues regarding the central aspect of his claim, *to wit*, that he was a student at the University of Buea and that he was a member of the SCNC.

[28] From what I can tell, the RAD reasonably expressed serious doubts regarding the truthfulness of Mr. Tandi's evidence and testimony (*Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 at 305), and I have not been persuaded that I should disturb such findings.

[29] Furthermore, after determining that the notice to appear delivered by the police to Mr. Tandi's mother to be more likely than not fraudulent, the RAD considered Mr. Tandi's forward-looking risk by assessing whether his profile as an anglophone in Cameroon would lead him to face a serious possibility of persecution. After considering the evidence in the NDP and Mr. Tandi's particular profile, the RAD did not find that "he has established the kind of profile as an anglophone that would cause him a serious possibility of harm, mistreatment or arrest by the authorities." Again, I see nothing unreasonable with such a finding.

V. Conclusion

[30] On the whole, I see no reviewable error in the RAD's decision, and I would dismiss the application for judicial review. The Minister has not asked for costs, so none will be issued. However, I must say that had costs been requested by the Minister, I would have seriously considered granting them in this case under section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 (as amended by SOR/2002-232, section 11).

JUDGMENT in IMM-88-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-88-21

STYLE OF CAUSE: BATHSON MUTANGA TANDI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Alfred Ndumu FOR THE APPLICANT

Camille N. Audain FOR THE RESPONDENT

SOLICITORS OF RECORD:

First-Trust Law FOR THE APPLICANT
Calgary, Alberta

Attorney General of Canada FOR THE RESPONDENT
Edmonton, Alberta