

Federal Court



Cour fédérale

Date: 20220201

Docket: IMM-1904-21

Citation: 2022 FC 111

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 1, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

**LOUVIBOULOLOU, FELICITE
MOUTEWO, MONDESIR ARISTIDE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION OF CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Félicité Louvibouloulou, and her eight-year-old son [applicants] are citizens of the Republic of the Congo; Ms. Louvibouloulou alleges that she fears for her and her child's life because of her profile as a woman and her membership in an ethnic group, being originally from the southern part of the country. The applicants have filed an application for

judicial review of a decision of the Refugee Appeal Division [RAD] dated February 22, 2021, confirming the decision of the Refugee Protection Division [RPD] dated November 6, 2019, rejecting their claims for refugee protection. When she arrived in Canada, Ms. Louvibouloulou was pregnant with her fourth child, who was subsequently born in Canada.

Ms. Louvibouloulou's husband, Vital Moutewo, the father of her last two children, as well as Ms. Louvibouloulou's other two children from a previous relationship, are still in the Republic of the Congo.

[2] The determinative issue before the RPD and the RAD was Ms. Louvibouloulou's credibility. Having been a victim of sexual assault, Ms. Louvibouloulou alleged that she was the victim of rejection from society, including from her in-laws. The RAD dismissed the new evidence submitted by the applicants for lack of relevance or credibility. It dismissed the appeal from the RPD's decision concluding that Ms. Louvibouloulou had not provided credible testimony concerning the allegation of sexual assault that was central to her claim for refugee protection.

[3] The applicants submit that the RAD erred by refusing to admit as new evidence documents that were intended to provide answers to most of the RPD's findings regarding Ms. Louvibouloulou's credibility, and they consider that the RAD violated the principles of natural justice by refusing to hold a hearing. The applicants also argue that the RAD relied on inconsistencies that they consider to be unsubstantiated and that the RAD erred in concluding that Ms. Louvibouloulou's behaviour was inconsistent with that expected of a person who fears for their life.

[4] The Minister of Citizenship and Immigration [Minister] submits that the new evidence submitted by the applicants does not meet the criteria established in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*], and that having rejected the new evidence, the RAD was not required to hold a hearing. The Minister considers that the RAD's decision is reasonable as Ms. Louvibouloulou's testimony was not credible and contradicted the documentary evidence.

[5] For the reasons that follow, the application for judicial review should be dismissed. I am of the view that the RAD did not breach its duty of procedural fairness and that its decision was reasonable. Since I consider that the RAD's decision not to admit the new evidence was not unreasonable, it was not required to hold a hearing. I consider that the RAD's conclusion as to Ms. Louvibouloulou's credibility was not unreasonable, as it is based on the accumulation of contradictions and inconsistencies regarding crucial elements of the refugee protection claim and the RAD did not err in its analysis of Ms. Louvibouloulou's behaviour.

II. Background

[6] On April 5, 2016, Ms. Louvibouloulou was allegedly the victim of a sexual assault in Brazzaville by three men while she was alone at her sister's store. She claims that the men did not appreciate it when they asked her ethnicity and she told them she was from the south. They allegedly demanded that she open the safe and after she complied, the men sexually assaulted her in the back of the store. The three men allegedly fled with the money from the safe, leaving Ms. Louvibouloulou unconscious and tied up in the store. After regaining consciousness two hours later, Ms. Louvibouloulou dragged herself outside the store and was taken to the hospital

after passers-by called for help. A complaint was filed with the police [TRANSLATION] “a few days after” her sexual assault. However, the complaint in evidence is dated April 5, 2016, the same day as the incident. Ms. Louvibouloulou was summoned to the police station on April 7, 2016, for a hearing of her complaint. The police complaint did not lead to any arrests.

[7] Ms. Louvibouloulou claims to have been humiliated by her in-laws as a result of this event since, according to their customs, she lost [TRANSLATION] “her dignity as a woman” and they demanded that her husband find a second wife. Ms. Louvibouloulou nevertheless lived with her in-laws for two years, during which time she had to interrupt her activities and be followed by a psychologist. In addition, she alleges that during these two years she received a multitude of anonymous threats by phone regarding her complaint to the police. With the financial help of her two priest brothers, Ms. Louvibouloulou sought the services of an agent who enabled her to obtain a visitor’s visa for Canada issued on July 10, 2017. She fled the country and arrived in Canada with her son nine months later in March 2018, two years after the alleged sexual assault, and filed a refugee protection claim in May 2018.

[8] The RPD hearing was postponed following the announcement by the Minister of Public Safety’s representative of his intention to intervene. The Minister raised inconsistencies between the content of Ms. Louvibouloulou’s visa application forms and the content of her Basis of Claim Form. These included the names and dates of birth of family members that did not match, and information concerning the identity of her common-law partner and the relationship she had with the father of her first two children. Ms. Louvibouloulou submitted a statutory declaration explaining the contradictions raised in the Minister’s notice of intervention.

[9] At the October 8, 2019 hearing, Ms. Louvibouloulou was questioned about the inconsistencies in the information from the different forms. The RPD considered the consistency issues between the forms, but did not, however, give weight to the application form to modify the conditions of stay because of the confusion about its source. The RPD concluded that Ms. Louvibouloulou had not given credible testimony and had failed to demonstrate a serious possibility of persecution by reason of her gender or ethnicity if she returned to the Republic of the Congo.

[10] The RAD agreed with the RPD that Ms. Louvibouloulou had not given credible testimony regarding the allegation of sexual assault that is at the heart of her claim, and that she had not presented sufficient evidence to show that there is a serious possibility of persecution by reason of her gender and ethnicity. In addition, the RAD rejected the six documents submitted as new evidence and, as a result, denied the request for an oral hearing. The documents were either irrelevant or not credible and therefore did not meet the case law criteria in *Singh* and *Raza*. Finally, the RAD rejected the applicants' argument that the RPD failed to take into consideration the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, and that the principle of the best interests of the child was not addressed as the applicants did not present any evidence or raise any fears or risks specifically regarding Ms. Louvibouloulou's son.

III. Issues

[11] This application for judicial review raises two issues:

1. Is the RAD's decision to refuse to admit new evidence and, therefore, to hold a hearing reasonable?

2. Are the RAD's conclusions about Ms. Louvibouloulou's credibility reasonable?

IV. Standard of review

[12] In reviewing the RAD's conclusions about Ms. Louvibouloulou's credibility and its decision to refuse to admit new evidence, including whether the RAD should have held a hearing under subsection 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the reasonableness standard of review must be applied (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23 and 25 [Vavilov]; *Al-Abayechi v Canada (Citizenship and Immigration)*, 2018 FC 360 at para 11; *Hamid v Canada (Citizenship and Immigration)*, 2021 FC 100 at paras 17–18). The role of the Court is therefore to assess the RAD's decision and determine whether it is based on “an internally coherent and rational chain of analysis” and whether the decision as a whole is transparent, intelligible and justifiable (*Vavilov* at paras 85–86).

V. Analysis

A. *The RAD's decision to refuse to admit new evidence and to refuse to hold a hearing is reasonable*

[13] In principle, the new evidence submitted following the perfection of the appeal record must meet the criteria of subsection 29(4) of the *Refugee Appeal Division Rules*, SOR/2012-257

[Rules]:

Factors

29(4) In deciding whether to allow an application, the

Éléments à considérer

29(4) Pour décider si elle accueille ou non la demande, la Section prend en

Division must consider any relevant factors, including	considération tout élément pertinent, notamment :
(a) the document's relevance and probative value;	a) la pertinence et la valeur probante du document;
(b) any new evidence the document brings to the appeal; and	b) toute nouvelle preuve que le document apporte à l'appel;
(c) whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.	c) la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique.

[14] A document submitted as new evidence must meet the criteria of subsection 110(4) of the IRPA:

Evidence that may be presented	Éléments de preuve admissibles
110(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	110(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[15] In order to offer explanations for the credibility findings made by the RPD, the applicants submitted the documents listed below as new evidence. In this case, the RAD considered the documents to be new as they could not normally be submitted prior to the rejection of the

refugee protection claim, given that they attempted to offer responses to the RPD's credibility findings on Ms. Louvibouloulou. However, the RAD instead rejected the new documents because they did not meet the *Singh* and *Raza* case law criteria of credibility, newness and relevance. The RAD made the following findings for each of the documents:

1. Statutory declaration from Nkou Romaric dated January 8, 2020

[16] Ms. Louvibouloulou's visa application for Canada indicates that her spouse was a man named Monage Gustegu Reil-Eudes Mouanga and not Mr. Moutewo. In response to the RPD's finding that Ms. Louvibouloulou misrepresented her marital status on her visa application, Mr. Romaric, the officer who completed and submitted Ms. Louvibouloulou and her son's online visa application, acknowledges in his declaration that after checking his records, [TRANSLATION] "it turns out that an error was made when filling out the IMM 5257 forms" and that Mr. Moutewo "is indeed, the de facto spouse of Ms. LOUVIBOULOULO Félicité"; it would appear that the error was on Mr. Romaric's part. However, when questioned on this subject previously, Ms. Louvibouloulou stated as follows: [TRANSLATION] "That document [the IMM 5257 form] is not true. It was a way for me to facilitate the exit". I asked her lawyer to explain what this statement meant, and he indicated that it meant that either Ms. Louvibouloulou knew that the information on the form was false, or that the information was put on the documents voluntarily, even though it was false, in order to facilitate a visa. If this is the case, it can hardly be said that the listing of Mr. Mouanga as Ms. Louvibouloulou's common-law spouse on the forms was a mistake. In any event, the RAD found that Mr. Romaric's declaration was irrelevant since Ms. Louvibouloulou had already testified that the information in her visa application was false and that this exhibit therefore could not be admitted. I see nothing unreasonable with this decision.

2. Sworn certificate from the police station in Brazzaville dated January 15, 2020

[17] This document attests that Ms. Louvibouloulou’s family went to the police station on April 6, 2016, to file a complaint and that the police questioned Ms. Louvibouloulou about the complaint the following day. The RAD concluded that the certificate was not credible. First, the certificate contradicts the previous exhibits presented by Ms. Louvibouloulou (the complaint filed with the police and the notice to appear), as well as her version of events presented at the hearing. Second, the header of the certificate differs from that of the complaint, even though it comes from the same institution, and the certificate was allegedly drafted by a colonel on behalf of the police station, while it is mentioned at the bottom of the page that the document was seen and approved by an “‘officier de l’État civil’ [civil status officer]”.

[18] The applicants consider that the clerical issues identified by the RAD, namely the different headings and the fact that the certificate was written by a colonel, cannot justify the rejection of this document as new evidence. They argue that there is a period of several years between these documents and that there may have been changes in the names of the institutions on the letterhead. In any event, the RAD not only relied on the certificate’s formatting problems to conclude that the document was not credible, but also concluded that the content of the certificate contradicted the written record of the complaint.

[19] The applicants add that an act of state is presumed to be valid and therefore the RAD could not challenge the validity of the certificate. It is true that an act of state is presumed to be valid (*Ramalingam v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 (FC)). However, this is a presumption that can be rebutted by inconsistencies in the document or

by credible evidence that is inconsistent with the content of the document in question (*Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at paras 85-87).

[20] I see nothing unreasonable in the RAD's conclusion about the certificate from the police station.

3. Declaration by Father Aristide Milandou Diabakana dated January 6, 2020, and a declaration by Father Jean Paul Diakondoua-Sina dated January 4, 2020, Ms. Louvibouloulou's two brothers, as well as a copy of the French residence permit issued to Father Aristide Milandou Diabakana, sent to the Immigration and Refugee Board of Canada on March 3, 2020

[21] Ms. Louvibouloulou's brothers stated that they tried their best to help their sister leave the country after she was sexually assaulted; they explained that the nearly two-year delay between Ms. Louvibouloulou's violent assault and her departure from the country was due to the fact that they had very little money to buy a plane ticket for her. The SAR finds that these statutory declarations are not credible because of significant formatting problems, including the fact that the letters are written in the first person singular and first person plural interchangeably, have identical passages, and one of the declarations has significant grammar and punctuation errors, "to the point where the letter appears to be a montage"; the RAD found that these exhibits were not credible, and in light of this finding, the copies of the identity documents are not relevant. Ms. Louvibouloulou has not persuaded me that the RAD's conclusions are unreasonable.

4. Copy of the DHL envelope dated January 18, 2020

[22] The copy of the DHL envelope is also irrelevant in the context that it contained exhibits that were not admitted.

[23] In addition, the applicants argue that the RAD conducted a [TRANSLATION] “rough and biased” analysis of the new documents and that its conclusions about their relevance and credibility are not justified. I do not agree with the applicants’ position, as they have not raised any reviewable error. The RAD has set out in detail the reasons for its findings on the credibility or relevance of the new documents and I find that its decision to refuse to admit this new evidence is not unreasonable.

[24] I am also of the view that the RAD was not required to hold a hearing under subsection 110(6) of IRPA. The applicants argue that the RAD dismissed the new documents without providing them with an opportunity to dispel the RAD’s doubts about their credibility and authenticity (*Uwitonze v Canada (Citizenship and Immigration)*, 2017 FC 245).

Subsection 110(6) of the IRPA provides that the RAD may hold a hearing if, in its opinion, there is documentary evidence that raises “a serious issue with respect to the credibility of the person who is the subject of the appeal”. In this case, no new evidence was admitted by the RAD and therefore it was not required to hold a hearing (*Abdi v Canada (Citizenship and Immigration)*, 2019 FC 54 at para 29).

B. *The RAD’s findings on Ms. Louvibouloulou’s credibility are reasonable*

[25] The applicants argue that the RAD’s decision is unreasonable because it is based on inconsistencies that they consider to be unfounded. I disagree; the RAD took a proper approach, examined the evidence on file in detail independently of the RPD and found that Ms. Louvibouloulou’s testimony was not credible and contradicted the documentary evidence. The accumulation of contradictions and inconsistencies concerning the crucial elements of a refugee

claim may support an adverse finding regarding a claimant's credibility (*Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at para 56 [*Paulo*]).

[26] The applicants argue that the new evidence addressed the contradictions that were identified in the police documents. However, since the admission of the new evidence was refused by the RAD, it was not necessary for the RAD to consider the content of the new documents in its analysis. Furthermore, the applicants argue that the RAD was overzealous in noting a contradiction in the account of the sexual assault, namely whether or not Ms. Louvibouloulou recognized one of her assailants (*Adegbola v Canada (Citizenship and Immigration)*, 2007 FC 511 at para 35 [*Adegbola*]). The RAD concluded that “whether or not she recognized her assailant is not a mere detail”. I am of the view that this conclusion is not unreasonable. The details identified in *Adegbola* concerned the day the husband who assaulted the applicant left the home as well as whether he took his possessions with him. The Court considered that these elements were clearly peripheral to the case at hand (*Adegbola* at para 33). Here, the assailant's identity is not peripheral to the assault.

[27] The applicants also argue that the RAD erred in concluding that Ms. Louvibouloulou's behaviour was inconsistent with that expected of a person who fears for their life. First, they argue that the evidence on which the RAD based this conclusion—that Ms. Louvibouloulou did not take precautions by moving or changing phones to stop the phone calls—is speculative. Second, they dispute the fact that the RAD noted Ms. Louvibouloulou's confirmation that her assailants never showed up at her home, as the RAD cannot require applicants to clarify the

conduct of their assailants (*Rico Quevedo v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1264 at para 18).

[28] On the issue of the late filing of the refugee protection claim, the applicants argue that the RAD was required to consider all of the explanations provided by the refugee protection claimant as to the causes of the delay in filing a refugee protection claim (*Malaba v Canada (Citizenship and Immigration)*, 2013 FC 84 at paras 13–15). The Minister adds that delay can indicate a lack of fear of persecution (*Zeah v Canada (Citizenship and Immigration)*, 2020 FC 711 at paras 61-62; *Chinwuba v Canada (Citizenship and Immigration)*, 2019 FC 312 at para 18 [*Chinwuba*]). I agree with the Minister; I have not been persuaded that the findings of the RAD on this issue are unreasonable.

[29] I am of the opinion that the RAD did not err in its analysis of Ms. Louvibouloulou's behaviour. The inconsistency of Ms. Louvibouloulou's conduct with the alleged fear is a relevant factor in assessing credibility (*Calixte v Canada (Citizenship and Immigration)*, 2021 FC 55 at para 34). The RPD was not satisfied with the applicants' explanations that they would not have been safe anywhere else, as the Republic of the Congo is a very small country and that they did not have the financial means to change telephone numbers (and not their telephones). I see no reviewable error in the SAR's reasoning.

[30] Finally, the applicants argue that the RAD could not question the authenticity of the medical certificate because it had no sample to compare it to and its analysis of the reliability of the document was [TRANSLATION] "beyond the scope of the tribunal". Moreover, they consider

that the RAD erred in relying solely on spelling errors to assess the reliability of the certificate (*Balyokwabwe v Canada (Citizenship and Immigration)*, 2020 FC 623 at para 49). I tend to agree with the Minister that the RAD's conclusion on the reliability of the certificate was reasonable (*Chinwuba* at para 26). The RAD reasonably concluded that the errors reported in the certificate—the poor quality of the seal, the information in the header and the fact that the document states that it is a certified copy of the original when Ms. Louvibouloulou testified that it was the only document she received—raise sufficient doubt as to the authenticity of the medical certificate, and that these errors are not microscopic or peripheral (*Paulo* at paras 59–60).

VI. Conclusion

[31] I would dismiss the application for judicial review.

JUDGMENT in IMM-1904-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1904-21

STYLE OF CAUSE: LOUVIBOULOLOU, FELICITE, MOUTEWO,
MONDESIR ARISTIDE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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