

Federal Court



Cour fédérale

Date: 20220210

Docket: IMM-5963-20

Citation: 2022 FC 172

Ottawa, Ontario, February 10, 2022

PRESENT: Madam Justice Walker

BETWEEN:

ESPERANCA LUZOLO CULA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Esperanca Cula, is a citizen of Angola. She seeks judicial review of a decision of the Refugee Protection Division (RPD) dated November 2, 2020 (Decision) dismissing her claim for refugee protection. The RPD found that the Applicant has a viable internal flight alternative (IFA) available to her in the city of Cabinda, Angola, and is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained below, I find that the RPD erred in its assessment of the Applicant's evidence regarding the motivation of her Angolan agent of persecution to find and harm her in Cabinda. The RPD's error is significant and renders the Decision unreasonable. As a result, the application will be allowed.

I. Background

[3] The Applicant fears persecution from Jose Ekuikui, a former police commander and owner of Mambogi, a private Angolan security company.

[4] In January 2017, the Applicant's car was rear-ended by a vehicle owned by Mambogi while she was driving in Luanda, the capital city of Angola. The police came to the scene of the accident and the company's representative signed a police report stating that Mambogi would assume the cost of repairs to the Applicant's vehicle. Mr. Ekuikui repeated this undertaking when he met with the Applicant in March of the same year.

[5] When no action was forthcoming, the Applicant wrote to the Cabinet Juridique de la Présidence (Cabinet) to request assistance in addressing Mambogi's reimbursement undertaking. In May 2017, the Cabinet responded and directed her to resolve the matter with Mambogi. Soon thereafter, Mr. Ekuikui called the Applicant and threatened her for involving the Cabinet.

[6] The Applicant states that she received four additional phone calls from an unidentified individual calling her an enemy of the state and warning she could disappear at any time. The

Applicant also states that she was subject to two kidnapping attempts in Luanda, in June and August of 2017. Both were thwarted, one by the police and the second by co-workers.

[7] The Applicant testified that she attended at the National Department of Criminal Investigation (NDCI) in September 2017 to request an investigation. She was informed that the police would not assist her because she did not have a membership card for the People's Movement for the Liberation of Angola (MLAP), the governing party in Angola. In fact, the Applicant is a member of the Front for the Liberation of the Enclave of Cabinda (FLEC), a movement promoting independence for the Applicant's home province of Cabinda. She did not inform the police of this fact.

[8] In October 2017, the Applicant was kidnapped and held for two days. She states that she was threatened by the kidnappers due to her affiliation with FLEC and that they referred to her letter to the Cabinet.

[9] The Applicant then moved to Caxito in the province of Bengo where she remained for a month and a half. In November 2017, she returned to Luanda and lived with friends.

[10] The Applicant left Angola in August 2018 and travelled to the United States. From there, she came to Canada on August 25, 2018.

II. Decision under review

[11] The question of a viable IFA for the Applicant was the determinative issue in the RPD's consideration of the Applicant's refugee claim. The panel stated that the Applicant was generally credible but noted that its statement did not apply to inferences and speculation on her part drawn from the events she recounted. The RPD accepted that:

- Mr. Ekuikui is a former police commander;
- a car owned by Mambogi hit the Applicant's vehicle in 2017;
- the Applicant complained to the Cabinet regarding Mambogi's inaction and received a response;
- Mr. Ekuikui threatened the Applicant following her letter to the Cabinet;
- the Applicant's purse was taken on August 17, 2017; and
- the Applicant was kidnapped in October 2017 and released 2 days later.

[12] While the RPD considered both elements of the well-established test for an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*)), the focus of the Applicant's submissions challenge the RPD's analysis and conclusions on the first element of the test: that the Applicant will not be subject to a serious possibility of persecution or a section 97 risk in the proposed IFA.

[13] The RPD first reviewed whether Mr. Ekuikui had the means to locate the Applicant in Cabinda, a city in the Applicant's home province of the same name. Although Mr. Ekuikui was a police commander in Angola at some point prior to the 2017 car accident, the panel did not accept the Applicant's statement that he would continue to hold power over the police on a nation-wide basis until his death. In addition, the RPD found no evidence of bias against the

Applicant in her dealings with the police after the car accident. The evidence suggested they were following up on her reports. For these reasons, the RPD concluded that, on a balance of probabilities, Mr. Ekuikui had not maintained control over the police force throughout Angola and could not utilize the force to locate the Applicant.

[14] Second, the RPD considered whether Mr. Ekuikui remained sufficiently motivated to locate and harm the Applicant in the IFA. The RPD accepted that Mr. Ekuikui threatened the Applicant after her letter to the Cabinet and was implicated in her kidnapping and release in October 2017 based on conversations the Applicant overheard referencing her FLEC membership and the letter she had sent to the Cabinet. Nevertheless, based on all the evidence, the RPD found that she had not adduced sufficient evidence to demonstrate that he maintained the motivation to locate and harm her in Cabinda.

[15] The RPD noted that Mr. Ekuikui did not threaten her when she lived with various friends in Luanda until her August 2018 departure from Angola and found no link between Mr. Ekuikui and the two alleged kidnapping attempts. The first attempt consisted of a car approaching the Applicant as she was leaving a bank. When a police vehicle arrived, the car left the scene and the RPD found that the Applicant was speculating as to the motives of the individuals in the car. The second attempt involved an attempt to push the Applicant into a car and the theft of her purse when her work colleagues started running towards the Applicant and her aggressors. The RPD stated that the police report referred to a loss of documents but made no reference to an attempted kidnapping. The RPD concluded, on a balance of probabilities, that the incident was a robbery.

[16] Turning to the period subsequent to October 2017, the RPD referenced an email produced by the Applicant dated October 16, 2019 indicating that four men had been looking for her in Angola in 2018 and that one man had attended her former place of employment in 2019 claiming to have a delivery for the Applicant. Although she believed these individuals were working for Mr. Ekuikui, the RPD concluded that the Applicant presented no evidence to support her belief.

[17] The RPD also determined that the Applicant did not face a serious possibility of persecution in the IFA based on her gender or her membership in the FLEC and found that it was objectively reasonable in all the circumstances, including the Applicant's particular circumstances, for her to relocate to Cabinda.

III. Analysis

[18] The RPD's reasons and conclusions regarding the availability of an IFA in Cabinda are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32).

[19] Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision "is based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The burden is on the party challenging the decision to show that it is unreasonable and the Court "must be satisfied that any

shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100).

[20] The Applicant submits that the RPD committed errors in its consideration of both the means and motivation of Mr. Ekuikui to continue his threats and violence against her. In summary, I agree with the Applicant that the RPD’s review of the discrete incidents described in her narrative without review of whether the series of incidents reflects a single pattern of concerted conduct and motivation is a significant flaw in the Decision. In contrast, I find no reviewable error in the RPD’s consideration of the Applicant’s submissions regarding Mr. Ekuikui’s status as a former police commander as the source of his means to find her throughout Angola. However, the RPD’s omission of a cumulative analysis of the incidents in question undermines the panel’s justification for its evaluation of Mr. Ekuikui’s limited power base and its analysis of his means to locate the Applicant in Cabinda.

[21] The Applicant submits that the RPD’s assessment of Mr. Ekuikui’s continued motivation to find her is flawed in two respects. She argues that a) the panel’s review of each of the incidents in her narrative is unreasonable and b) the panel failed to consider the cumulative nature and significance of the incidents that befell her in 2017. As stated above, I agree with the Applicant’s second submission and find that the RPD committed a significant error in failing to assess whether the 2017 incidents can reasonably be viewed as a connected series of events. For this reason, the application must be allowed and the Applicant’s refugee claim reconsidered by the RPD.

[22] The RPD did not question the Applicant's evidence that the following incidents occurred after the January 2017 car accident involving Mr. Ekuikui's security company: (1) the threatening phone call from Mr. Ekuikui after the Applicant's letter to the Cabinet; (2) the four threatening phone calls from an unidentified individual; (3) the kidnapping/robbery attempts in June and August 2017; (4) the Applicant's visit to the NDCI in September 2017 during which she was asked for evidence of her political membership; (5) the October 2017 kidnapping and release by individuals associated with Mr. Ekuikui; and (6) the post-departure email suggesting continued interest in Angola in the Applicant.

[23] The Applicant established that Mr. Ekuikui threatened the Applicant after her May 5, 2017 response from the Cabinet and was involved in the October 2017 kidnapping, an incident that suggested some knowledge of the Applicant's interactions with the police and/or the NDCI. During the kidnapping, the Applicant was threatened for her political affiliation with the FLEC by perpetrators who were aware of her request for help from the Cabinet.

[24] I find that the rapid succession of escalating incidents in 2017 required the RPD to consider the impact of the events as a series in its analysis of motivation. The absence of this analysis compromises the panel's chain of analysis and impairs its justification for the existence of the IFA in Cabinda. The RPD's conclusion that some of the incidents could not be directly attributed to Mr. Ekuikui does not negate the importance of an overall consideration of the May-October events. The timing of the incidents and Mr. Ekuikui's involvement in pursuing her during that period cannot be ignored. Whether, when viewed as a pattern of attributed and unattributed threats, the 2017 incidents and post-departure inquiries in 2018-2019 are sufficient

to establish continued motivation on the part of Mr. Ekuikui is for the RPD to determine on reconsideration.

[25] The Applicant emphasizes that her fear of Mr. Ekuikui derives from recent events and that the RPD erred in finding that the passage of time was sufficient to conclude she faces no forward-looking risk of persecution in Cabinda. The Applicant's submissions based on the passage of time do not in isolation establish an error in the Decision but a decision maker should be cautious in drawing an inference of lack of means and motivation where no significant period of time has elapsed (*Espana Alvarez v Canada (Citizenship and Immigration)*, 2021 FC 935 at para 23).

[26] I will address briefly the RPD's analysis of Mr. Ekuikui's ability or means to trace the Applicant throughout Angola. I disagree with the Applicant's submission that the RPD erred in concluding that Mr. Ekuikui's former position as a police commander does not establish that he maintains sufficient control over the police to use them to find her in Cabinda. The Applicant relies on Mr. Ekuikui's alleged involvement in a multi-billion dollar fraud case in Angola. The RPD reviewed the news article in the record but concluded that it provided limited context of the scope of Mr. Ekuikui's involvement in the alleged fraud. The Applicant has pointed to no error in the RPD's review of the article. In addition, her submission that the issuance by the NDCI of a summons in her name was indicative of Mr. Ekuikui's influence over the police finds no basis in the evidence as the summons appears to result from the Applicant's police complaint.

[27] Further, the Applicant's generalized reliance on police corruption in Angola is not persuasive. The existence of police corruption in the country does not undermine the RPD's analysis of the evidence in this case. The panel considered the Applicant's allegations of police bias in favour of Mr. Ekuikui but reasonably found that she had sought the police's assistance without incident on multiple occasions. The RPD also noted her testimony that she had never had any problems with the police.

[28] The Applicant submits that the RPD made a number of reviewable errors in mischaracterizing the attempted kidnappings and October 2017 actual kidnapping and in engaging in impermissible speculation. I am not persuaded by the Applicant's submissions and find no mischaracterization or speculation on the part of the RPD. The Applicant's arguments effectively ask the Court to reassess the evidence before the RPD and ignore the fact that she bears the onus of demonstrating that at least one prong of the *Rasaratnam* test has been defeated (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA); *Obotuke v Canada (Citizenship and Immigration)*, 2021 FC 407 at para 16).

[29] Finally, the Applicant alleges throughout her written submissions that the RPD engaged in a series of implausibility findings in arriving at its conclusion that a viable IFA is available to her in Angola. There is no basis for the Applicant's submissions as the Decision contains no implausibility findings. The RPD's conclusions that the Applicant had not established Mr. Ekuikui's involvement in certain incidents in her narrative are based on the insufficiency or absence of evidence. The RPD did not find that the Applicant's belief as to his involvement was implausible.

IV. Conclusion

[30] The application is allowed.

[31] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-5963-20

THIS COURT'S JUDGMENT is that:

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

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5963-20

STYLE OF CAUSE: ESPERANCA LUZOLO CULA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 2, 2021

JUDGMENT AND REASONS: WALKER J.

DATED: FEBRUARY 10, 2022

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