

Federal Court



Cour fédérale

Date: 20220222

Docket: IMM-6622-20

Citation: 2022 FC 235

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 22, 2022

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

JULIEN BOPE BENTHY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD) rejected the applicant's refugee protection claim on the grounds that he did not adequately establish his identity. The applicant identifies himself as Julien Bope Benty, a citizen of the Democratic Republic of the Congo (DRC) who was persecuted by the Congolese authorities due to his Tutsi and Banyamulenge ethnic background and his so-called Rwandan [TRANSLATION]

“morphology”. He submitted his refugee protection claim in Canada with a passport under that name. However, the applicant arrived in Canada with a Congolese passport bearing his photo, but with a different name. The RAD determined that the applicant did not present acceptable evidence to establish his identity. It found that it was not possible to categorize one of the passports as being more authentic than the other, that there were several inconsistencies between the documents presented and the applicant’s testimony, and that an affidavit submitted in support of his identity was not in itself sufficient evidence.

[2] The applicant criticized the RAD for drawing conclusions as to his identity and his credibility that were not based on the evidence and for unreasonably dismissing his explanations. In my view, the RAD did not make such errors in its analysis. The RAD decision was based on an accumulation of inconsistencies and inadequate explanations that prevented the RAD from confirming the applicant’s identity. The RAD decision is transparent, intelligible, and justified in light of the evidence before it and the Court sees no reason to intervene. This is not to say that the applicant is not Julien Bope Benthly as he claims, but simply that the RAD reasonably determined that the applicant did not discharge his burden of credibly demonstrating his identity.

[3] The application for judicial review is therefore dismissed.

II. Issue and standard of review

[4] The applicant’s various arguments in this application for judicial review raise the following main issue:

Was the RAD finding that the applicant had not established his identity unreasonable?

[5] The parties agree that the RAD's decision about the applicant's identity is reviewable by the Court according to the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Terganus v Canada (Citizenship and Immigration)* at para 15. A reasonable decision must be “based on an internally coherent and rational chain of analysis” and that is “justified in relation to the fact and law that constrain the decision maker”: *Vavilov* at paras 85, 90, 99, 105–107.

[6] When conducting a review in accordance with the reasonableness standard, the Court cannot simply reweigh or reassess the evidence and draw its own conclusions (*Vavilov* at para 125). The Court must instead defer to the RAD's review and only determine whether the RAD's decision was reasonable, given the evidence on record and the factual framework.

III. Analysis

A. *The applicant's arrival in Canada, his refugee protection claim, and the RAD decision*

[7] The applicant entered Canada with a Congolese passport and a visitor's visa under another name. Because it may be the name of an innocent third party and the name matters little to the outcome, I will not include it in this judgment. Indeed, the applicant claims that this name is that of an innocent third party, that the passport bearing that name is false, and that the Congolese passport that he subsequently obtained in the name of Julien Bope Benthly is authentic.

[8] The applicant's refugee protection claim is based on a fear of persecution by Congolese military authorities due to his Tutsi and Banyamulenge ethnic background and his [TRANSLATION] "morphology", which he says is that of a Rwandan. The incident that prompted him to flee the DRC occurred on July 28, 2017, at 5:00 a.m., when he was beaten, threatened, and robbed by the military authorities. Following this incident, the applicant alleges that he engaged the services of a smuggler to facilitate his escape from the DRC. The applicant took steps to obtain a passport and he received a coupon that was to be submitted when he received his passport. The smuggler used the coupon to obtain a passport in the name of a third party bearing the applicant's photo and signature, but indicating a different date of birth than the one alleged by the applicant. The applicant then obtained a Canadian visa and travelled to Canada in October 2017 with this passport.

[9] In December 2017, the applicant submitted his refugee protection claim under the name Julien Bope Benty. He also presented a passport under this name, bearing the same photo, signature and address as the first passport. According to the applicant, his aunt subsequently used the same coupon as the smuggler to collect the passport bearing the name Benty and sent it to the applicant. In addition to the passport bearing the name Benty, the applicant submitted other documents bearing this name in support of his refugee protection claim, including a driver's licence, an individual civil status record, a certificate of good behaviour, school documents, a letter from an individual identifying herself as his aunt, and an affidavit from an individual identifying himself as his cousin.

[10] The RAD did not accept either the applicant's testimony or his explanations. It noted that the passport bearing the name Benthly cannot be presumed to be authentic due to the other Congolese passport, which seemed equally authentic at first. In addition, the RAD found that it could not determine the authenticity of the other presented documents, given their inconsistencies. It also determined that the cousin's affidavit was not sufficient to establish the applicant's identity. It therefore dismissed the applicant's appeal and rejected his refugee protection claim.

[11] The RAD noted that the date of issue on the first passport, July 27, 2017, preceded the date when the applicant claimed to have acquired a passport himself, which was a few days after the alleged incident on July 28, 2017. Incidentally, the applicant testified that he had signed the documents presented by the smuggler in late July or early August, but a notarized letter signed with the other name explaining the visa application is dated July 28, 2017. When he was asked about this discrepancy, the applicant replied that he did not sign the documents on July 28, and he had not read the documents that the smuggler had him sign.

[12] The applicant also testified that the only document needed to apply for a passport in the DRC is an elector's card, which serves as a national identity card and which he claims that he lost before arriving in Canada. He used this card to obtain the coupon in question that was used by the smuggler to obtain the first passport and by his aunt, a few months later, to obtain the second passport bearing the name Benthly. However, the National Documentation Package for the DRC indicates that a passport application must be accompanied by a police certificate, two passport-sized photos, proof of identity, and proof of nationality.

[13] According to the RAD, the other documents bearing the name Benthly were insufficient to establish the applicant's identity. The residential addresses on the documents do not always match the addresses in his Basis of Claim (BOC) Form. Additionally, the driver's licence bearing the name Benthly had a different address from the one shown in the BOC Form. The RAD did not accept the applicant's explanations on this point in light of the documentary evidence that specified the procedure for obtaining a Congolese driver's licence.

[14] Lastly, the RAD found that the affidavit from the so-called cousin was not in itself sufficient evidence to establish the applicant's identity. The applicant met the affiant for the first time following his arrival in Canada and it appeared that the affiant relied solely on what the applicant had told him, with no proof of the accuracy of the information. The RAD also found that the affidavit did not benefit from the presumption of truthfulness, since the applicant did not try to have him appear as a witness during the RPD hearing.

B. *Legal background*

[15] People escaping persecution will commonly follow the instructions of a person or a smuggler who is organizing an escape. This may lead to the use of false documents or the disposition of travel documents. This Court has regularly warned decision-makers against the tendency to draw adverse conclusions regarding credibility simply because the applicant travelled with false documents: *Gulamsakhi v Canada (Citizenship and Immigration)*, 2015 FC 105 at para 9; *Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at paras 42–44. That said, however, the use of false documents may raise questions about the authenticity of documents and does not discharge applicants from their obligation of proving

their identity with acceptable documents or provide a reasonable justification for the failings of these documents.

[16] This obligation is set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and in the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules]. In particular, section 106 of the IRPA explains the link between the documents that establish the applicant's identity and credibility:

Credibility

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

Crédibilité

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[17] Rule 11 of the RPD Rules also confirms that the claimant must provide acceptable documents establishing their identity or explain what steps they took to obtain them:

Documents

11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and

Documents

11 Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a

what steps they took to obtain them. prises pour se procurer de tels documents.

[18] These provisions emphasize that a claimant's identity is a preliminary and fundamental issue in any refugee protection claim: *Terganus* at paras 22–25; *Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064 at paras 8–11. The failure to prove identity on a balance of probabilities is fatal to a claim: *Terganus* at para 31; *Edobor* at para 8. Thus, contrary to the applicant's argument, it was not necessary for the RAD to continue to examine the basis for the claim any further after finding that the applicant had not established his identity.

C. *The RAD's decision is reasonable*

[19] The applicant criticizes the RAD for not accepting his explanation as to how he acquired both passports. He argues that the use of a false passport obtained with the help of a smuggler is not uncommon and the RAD unreasonably drew speculative inferences and established a timeline of events that was not based on evidence. I disagree.

[20] The RAD did not base its conclusions regarding the applicant's credibility and identity on his use of a false document. The RAD had to assess two apparently authentic passports with the same photo, address, and signature. The applicant explained how he obtained both passports and submitted additional evidence in support of the claimed identity. However, there were several inconsistencies in the evidence supporting the chronology of events and the action taken by the applicant that were inconsistent with the evidence on record. This was sufficient to rebut the presumption of the applicant's truthfulness: *Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at paras 29–32; *Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at

para 21. As a result, the RAD could not determine that the passport issued bearing the name Benty was more reliable proof of the applicant's identity than the first passport issued in the other name. I agree with the Minister that this was a reasonable conclusion based on the evidence on record.

[21] In this regard, *Habimana*, cited by the applicant, does not support his arguments: *Habimana v Canada (Citizenship and Immigration)*, 2021 FC 143. As Mosley J. stated in that case, possession of a national passport creates a presumption that the holder is a national of the country of issue: *Habimana* at para 18. However, the presumption of the validity of such a document is rebuttable: *Canada (Citizenship and Immigration) v Joseph*, 2011 FC 1481 at paras 43–45. In this context, where the applicant presented two different Congolese passports—both of which appeared authentic—it was reasonable for the RAD to find that the applicant had not benefited from the presumption regarding his chosen passport.

[22] The applicant also claims that the RAD did not conduct a full review of the evidence and did not refer to all the documents submitted in support of his refugee protection claim. Contrary to the applicant's arguments, the RAD did examine the identity documents and adopted the RPD's reasoning with respect to these documents, noting in particular "the impressive number of different addresses that do not always correspond to the information the appellant provided in his immigration form". It is not an error to adopt and share the same concerns as the RPD: *Ayele v Canada (Citizenship and Immigration)*, 2021 FC 11 at para 52.

[23] In particular, the RAD conducted an in-depth analysis of the driver's licence, the only document presented that included the applicant's photo. I do not support the applicant's argument that the RAD erred by not conducting an individual analysis of each and every document. The applicant is correct that report cards and certain government documents do not regularly include a photo. However, that is not the issue. In this context, the RAD had to determine whether the submitted documents were sufficient to establish that the person appearing before the court was the person identified in the documents. Thus, the lack of a photo in these documents was relevant for the purposes of this analysis. In any event, the RAD is not required to make an explicit finding on each constituent element of the reasoning that led to its final conclusion: *Vavilov* at paras 91, 128.

[24] Based on the accumulation of inconsistencies and inadequate explanations that did not correspond to the evidence, it was reasonable for the RAD to not accept the applicant's testimony and find that the documents were insufficient to establish his identity. The presumption of truthfulness is not absolute; it is rebuttable when the evidence is inconsistent with the testimony or when the decision maker is unsatisfied with the applicant's explanation for those inconsistencies: *Abolupe* at para 21. In the case at hand, the RAD considered the authenticity of two passports, but the applicant did not discharge his burden of providing "acceptable documents" to establish that his personal identity is the one that he is claiming: Rule 11, RPD Rules; IRPA, s. 106. Absent exceptional circumstances, a reviewing court will not interfere with an administrative decision-maker's factual findings: *Vavilov* at para 125. I find that the RAD decision in the case at hand does not include any of these circumstances.

[25] I am of the same view regarding the RAD's conclusion regarding the affidavit of the individual who identified himself as the applicant's cousin. The RAD reasonably determined that because this individual had not met the applicant before his arrival in Canada and the information in his affidavit came directly from the applicant, the value of this evidence is limited. I agree with the applicant that the RAD erred by finding that the affidavit did not benefit from the presumption of truthfulness because the affiant did not testify in person. It is well established in jurisprudence that it is not reasonable to give little weight to an affidavit because its author is not available to testify, especially since the attendance of authors is not required: *Oria-Arebun v Canada (Citizenship and Immigration)*, 2019 FC 1457 at paras 51–52; *Shahaj v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1044 at para 9; *Fajardo v Canada (Minister of Employment and Immigration)*, [1993] FCA No 915 (FCA). However, although this finding is clearly not a reasonable ground to diminish the weight assigned to an affidavit, it was made by the RAD alternatively and does not affect the reasonableness of the decision as a whole.

IV. Conclusion

[26] For these reasons, the application for judicial review is dismissed.

[27] The Court agrees with the parties that there is no question to certify.

JUDGMENT in IMM-6622-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6622-20

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