

Federal Court



Cour fédérale

Date: 20220125

Docket: IMM-5854-21

Citation: 2022 FC 1614

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 25, 2022

PRESENT: Madam Justice Walker

BETWEEN:

NUNES VASCO DA GAMA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Nunes Vasco Da Gama, is seeking judicial review of the decision of the Refugee Appeal Division (RAD) dated August 5, 2021. In its decision, the RAD upheld the decision of the Refugee Protection Division (RPD) according to which the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] At the start of the hearing before the Court, counsel for both parties requested that the Court consider the applicant's application for judicial review on the basis of their respective written submissions.

[3] For the reasons that follow, the application for judicial review is dismissed.

I. Background

[4] The applicant is an Angolan citizen. He claims to have agreed to transfer money abroad in May 2018 for an army general. While the applicant was in Europe from September 2018 to December 2019, the general deposited another large amount into his Angolan bank account, which apparently drew the attention of the country's intelligence services.

[5] The applicant found out that intelligence officers were looking for him to ask him to justify these transactions. Back in Angola in December 2019, the applicant saw people in plainclothes in front of his house whom he believed to be intelligence officers. He was frightened and booked a hotel room. He started receiving calls from both the intelligence services and from the general and his associates threatening his life if he betrayed the general. The general also accused him of having sex with his spouse while all three were on a trip to China in August 2017. Fearing for his life, the applicant left Angola for the United States and travelled to Canada in March 2020.

[6] On March 2, 2021, the RPD rejected the applicant's refugee protection claim for lack of credibility. The panel found that the significant contradictions between the applicant's testimony

and the evidence on record tarnished and undermined his credibility. The RPD refused to consider the documents submitted by the applicant on the eve of the hearing, on the grounds that the documents were not translated, that the applicant had several months to have them translated yet did not offer reasonable explanations for filing them so late, and that the documents were not relevant to the basis of his refugee protection claim.

II. RAD's decision

[7] The applicant appealed the RPD's decision to the RAD. The RAD was of the view that the RPD was correct in finding that the applicant was not credible.

[8] The applicant submitted seven documents to the RAD for consideration as fresh evidence. However, the RAD refused to admit this evidence and denied his request to hold a hearing. The RAD concluded that the documents were available at the time of the RPD's decision and that the applicant's explanations for his efforts to obtain the documents prior to that decision were not persuasive. The RAD added that the seven documents were irrelevant.

[9] The RAD considered that the RPD had erred in finding that the applicant had never met the general in 2017. However, this error was not determinative in this appeal. The RPD was right to find that the applicant's failure to attempt to corroborate the freezing of his bank account and the deposits made by the general in his bank account significantly undermines his credibility. According to the RAD, the applicant's failure to contact the intelligence services upon his return to Angola was inconsistent, as it was the main reason for his return. The RAD also found that the

applicant had failed to establish that the general or his associates had threatened him over the telephone.

III. Analysis

[10] The issue in this case is whether the RAD's decision is reasonable. 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 paras 10, 23).

[11] The applicant argues that the RAD's decision is unreasonable because its conclusion is based on a lack of credibility resulting from minor contradictions in pieces of evidence that are of secondary or marginal importance to his claim. Furthermore, the RAD should consider the explanations for the omissions and contradictions that he raised at the RPD hearing. In support of his arguments, the applicant relies on the presumption of truthfulness that applies to a claimant's testimony (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA)).

[12] The applicant's arguments not persuasive.

[13] The RAD identified significant inconsistencies and omissions in the applicant's evidence that were "central to his claim". It concluded that the applicant's testimony regarding the freezing of his bank account and the sums deposited by the general was vague and contradictory as to whether the funds were transferred abroad or instead were frozen in his account. Moreover,

the applicant could not corroborate either the freezing of the account or the general's deposits. The RAD noted that the RPD was correct in finding that corroboration would have been necessary in this case, and I agree (*Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paras 27–36; *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at para 21).

[14] The RAD rejected the applicant's argument that no one would have ever thought of preserving communications with the bank. The RAD considered that this argument did not explain why the applicant did not contact his bank within 12 months prior to his hearing to request a letter confirming that his account was frozen. This conclusion was open to the RAD.

[15] Furthermore, the applicant has not persuaded me that it was unreasonable for the RAD to conclude that the applicant's failure to contact the intelligence services upon his return to Angola was inconsistent, as this was the main reason for his return. According to the applicant, he did not contact the intelligence services when he returned to Angola because he was afraid of the general. However, according to the timeline of the facts in the applicant's BOC Form, he saw the intelligence officers in front of his residence and went to hide at the hotel before receiving any threats.

[16] After reviewing all the RAD's reasons, I am of the opinion that the applicant has not shown that the decision was unreasonable. Although he does not agree with the RAD's conclusions, it is not for this Court to re-evaluate and weigh the evidence to reach a conclusion that would be favourable to the applicant.

[17] The application for judicial review is therefore dismissed. No question of general importance is certified.

JUDGMENT IN IMM-5854-21

THIS COURT ORDERS as follows:

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

“Elizabeth Walker”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5854-21

STYLE OF CAUSE: NUNES VASCO DA GAMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 23, 2022

JUDGMENT AND REASONS: WALKER J.A.

DATED: NOVEMBER 25, 2022

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