

Federal Court



Cour fédérale

**Date: 20230125**

**Docket: IMM-8444-21**

**Citation: 2023 FC 117**

**Toronto, Ontario, January 25, 2023**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**ALIMANY KABBA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] that confirmed the determination of the Refugee Protection Division [RPD], both of which concluded that he is not a Convention refugee. I dismissed the Judicial Review from the bench, with reasons to follow. These are the reasons.

I. Background

[2] The Applicant is a citizen of Sierra Leone. He claims that he is at risk of persecution because of his involvement with the All Peoples Congress [APC] party, which he allegedly joined in 2012.

[3] The APC became the opposition party in the 2018 election in Sierra Leone. The Applicant alleges that there was unrest over the result of the election and he became the target of supporters of the current ruling party. He claims he was attacked and beaten in April 2018, arrested and detained for two days in May 2018, and that his home was vandalized in an attack where female family members were also sexually assaulted. The Applicant did not provide a date for the attack on his home and family.

[4] The Applicant alleges that he and his family had to go into hiding in May 2018. His wife flew to Conakry (Guinea) with their children, while he fled to Canada, arriving on May 10, 2018. He filed for refugee protection in Canada, claiming that his life would be threatened if he returned to Sierra Leone, because he is an APC supporter and policy analyst.

[5] On July 7, 2020, the RPD rejected the Applicant's claim, finding that his allegations lacked credibility, because his testimony was vague and unresponsive; he omitted the central allegation that his home and relatives were attacked from his narrative; some of the affidavits he submitted were inauthentic; and his other supportive evidence was insufficient to overcome these credibility concerns. The Applicant appealed the RPD decision to the RAD.

[6] On October 28, 2021, the RAD rejected the Applicant's appeal, and confirmed the RPD decision that the Applicant is not a Convention refugee nor a person in need of protection [Decision]. The RAD upheld the RPD's findings about the Applicant's credibility and the objective evidence, and concluded that the Applicant has not established his allegations, on a balance of probabilities.

## II. Analysis

[7] The Applicant argues that the Decision was unreasonable, because the RAD erred by (A) rejecting two pieces of new evidence filed on appeal (B) finding that he was not credible and failing to consider the country condition evidence. These issues are reviewable on the standard of reasonableness, as outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

### A. *The RAD reasonably assessed the new evidence*

[8] The Applicant submitted the following new evidence for consideration by the RAD:

1. Letter from a lawyer in Sierra Leone, explaining the country's requirements for the commissioning of a sworn statement [Lawyer's Letter];
2. Letter from the APC National Youth League confirming the Applicant's involvement in political activities with the APC [APC Letter];
3. An article entitled "The Makeni Story / State Violence Against Armed Civilian Protesters" by the Consortium for Good Governance, Human Rights and Democracy;

4. A statement by the Global Network of Concerned Sierra Leoneans detailing the increase in civil disobedience and violence in Sierra Leone, calling on the government to take action; and
5. Affidavit evidence from the Applicant, namely a statement by the Applicant about why he omitted the attack on his home and his relatives from his Basis of Claim [BOC].

[9] The Applicant argues that the RAD erred when it determined that items 1, 3 and 4 met the criteria for presenting new evidence on appeal pursuant to subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] but that items 2 and 5 did not.

[10] I disagree. The RAD reasonably rejected the APC Letter (item 2) because it is another piece of evidence to confirm the Applicant's involvement in the APC, and that similar evidence on this allegation was already before the RPD. Similarly, the affidavit evidence (item 5) provides the same explanation than the Applicant did at the RPD hearing for why he did not mention the attack on his home and his female relatives in his BOC. These documents are essentially a repetition of the same information that was before the RPD and are not material to the claim, thus failing to meet the criteria in subsection 110(4) of the IRPA (*Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 64, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 16 and 18).

B. *The RAD did not err in finding that the Applicant is not credible*

[11] With regard to his credibility, the Applicant submits that the RPD and RAD showed a zeal to discredit his story and fixated on details only to forget the substance of the facts on which his claim is based. I find, however, that the RAD did not err in finding that the Applicant is not credible. He has not pointed to any flaws that are sufficiently central or significant to make the credibility finding unreasonable and his argument is an attempt to get this Court to reweigh evidence considered by the RPD and the RAD, which this Court must refrain from doing (*Vavilov* at paras 100 and 125).

[12] The Applicant contends that (i) his testimony before the RPD was not vague and unresponsive; (ii) he gave a reasonable explanation for why he did not mention the attack on his home and relatives; and (iii) the RAD unjustifiably determined that the documents he submitted as evidence were not authentic.

(1) Vague and Unresponsive Testimony

[13] The Applicant contests the RPD and the RAD's finding that his testimony before the RPD was vague and unresponsive. The Applicant argues that the example provided by the RAD in its reasons actually shows that he answered clearly and accurately the question about how his uncle's arrest is related to him. He explained to the RPD that his family was targeted because of his support of the APC, that his uncle's arrest is an example of this targeting and that it affected him because his uncle is a member of his family. The Applicant submits that the discrepancies

pointed out by the RPD and the RAD do not go to the heart of the issue and thus should not have diminished his credibility.

[14] I note that the RAD commented “[t]he RPD found that the Appellant’s oral evidence was vague and unresponsive and that this diminished his credibility. The Appellant does not challenge this finding”. The RAD’s Decision cannot be impugned by this Court on the basis of an issue which the Applicant did not challenge before it (*Canada (Minister of Citizenship and Immigration) v R.K.*, 2016 FCA 272 at para 6, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61 at paras 23–25).

[15] I also note that in the example provided by the RAD to illustrate the RPD’s finding that the Applicant’s testimony was vague and unresponsive, the question put to the Applicant was not how his uncle’s arrest affected him but how his uncle’s arrest was connected to him. In other words, whether his uncle’s arrest was connected to his relationship with the Applicant and his involvement with the APC. The RPD member asked the Applicant this question multiple times, phrased differently, but never received a straightforward answer. Due to this and other instances in the record, it was reasonable for the RPD and the RAD to find that the Applicant’s testimony was vague and unresponsive.

(2) Omission of the attack on the Applicant’s home and relatives in BOC

[16] The Applicant argues that he provided a reasonable explanation for why he did not mention the attack on his home and relatives in his BOC: his cultural background makes it difficult and unbearable for him to discuss the rape of female relatives, like his mother and his

wife. He submits that this is precisely why he told his mother and wife to explain their experiences in their affidavits, which he submitted as evidence. The Applicant argues that asking his mother and wife to document their experience instead of recount it himself in his narrative is not contradictory, as stated by the RPD and RAD in their reasons for rejecting his explanation.

[17] First, I note that the BOC mentions two other incidents of sexual assault that do not involve the Applicant but diminishes the credibility of his explanation that he cannot discuss sexual assault due to cultural and sensitivity issues. Secondly, as the Respondent points out, the Applicant did not just ask his mother and wife to discuss their sexual assault experiences so he would not have to, he wrote them an email – which he refers to as a “script” in his testimony – telling them to mention their experiences. The RAD found this to be in contradiction with the Applicant’s explanation that he did not wish to discuss sexual assault with his relatives. As for failing to mention the attack on his home, no explanation was provided.

[18] The RAD’s reasoning for why it rejected the Applicant’s explanation for omitting the attack on his home and relatives from his BOC are justified, intelligible and entirely reasonable. I find that the Applicant omitted a central allegation from his narrative, which was material to his claim, and thus it was reasonable for both the RPD and the RAD to doubt his credibility based on this omission (*Chinwuba v Canada (Minister of Citizenship and Immigration)*, 2019 FC 312 at para 22; *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 18).

[19] Ultimately, considerable deference must be given by this Court to the RPD and the RAD, which have the advantage of having heard the Applicant testify, either in person or through audio

recordings (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42; *Ugorji v Canada (Citizenship and Immigration)*, 2022 FC 937 at para 52).

(3) Authenticity of the documents submitted

[20] The Applicant argues that the RAD made egregious findings regarding the documentary evidence tendered in support of his claim and demonstrated a zeal to discredit him (*Attakora v Canada (Minister of Employment and Immigration)*, (1989), 99 NR 168 (FCA) at para 9). The Applicant submits the RPD and RAD focused on the minutiae of the affidavits he submitted in order to diminish their weight: the cut seal (the Applicant submitted the Lawyer's Letter to explain that a seal is not necessary for the commissioning of an affidavit in Sierra Leone); the staple marks (the Applicant submits he reasonably explained that he removed the staples to photocopy the documents); and the illegible signature of the Notary Public (the Applicant submits this is the "most ridiculous finding of all" and that there is no legal requirement for a signature to be legible).

[21] The Applicant argues that the RAD erred when it stated in its reasons, "I defer to the RPD in its finding about the appearance of the seal and staple marks, as it had the opportunity to inspect the original documents, and I find that this finding is reasonable." The Applicant relies on *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103 [*Huruglica*] to argue that the RAD should have carried out its own analysis of the record, which required it to obtain and inspect the original documents.



[22] I do not find that *Huruglica* creates a requirement for the RAD to examine original documents, as the Applicant contends. The RAD reasonably relied on the RPD's findings about the appearance of the original documents, and carried out its own assessment of these documents by reviewing photocopies and considering new evidence submitted on appeal that was relevant to the assessment of the authenticity of the documents (including the Lawyer's Letter). The RAD member held "I am also able to see the partial seals and staple marks in the photocopies of these documents that are before me" and concluded that these observations support the RPD's finding that the documents had been tampered with, which reduces their credibility. This Court has found that genuine stamps and seals are security features that lend authenticity to the documents on which they appear (*Dai v Canada (Minister of Citizenship and Immigration)*, 2015 FC 723 at para 27; *Mugisha v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 511 at para 13).

[23] Ultimately, the RAD found several problems with the affidavits, including additional issues with their appearance beyond the RPD's concerns, such as illegible signature and distorted commissioner's stamps. The RAD reasonably concluded that all the irregularities with the affidavits reduce their credibility. Most importantly, the RAD found that the contents of the affidavits – which were vague – failed to assist the Applicant, rendering them unreliable. It was entirely reasonable for the RAD to attribute little probative value to the affidavits.

(4) Insufficient corroborative evidence

[24] Lastly, I note that it was reasonable for the RAD to find that the documentation provided by the Applicant was insufficient to overcome the other serious credibility issues emerging from his evidence to establish that he was a member of the APC. The RAD stated in its reasons:

The membership card was issued only recently, in January 2018, despite the fact that the Appellant claims to have been involved with the APC since 2012; the letter from the APC is undated, unsworn and includes very general and limited detail about the Appellant's involvement; and the letter from a fellow member of his mosque is also unsworn and similarly terse and lacking in detail, and it does not say how he is aware of the Appellant's involvement with the APC. I find that this evidence is insufficient to overcome the significant credibility findings based on the Appellant's sworn oral and documentary evidence and the finding that he has submitted inauthentic documents as discussed above, and that he has not established that he is a member of the APC or involved in their activities. I make this as a supplementary finding on credibility.

[25] The Applicant submits that the membership card indicates that he is an "Honorary Executive" of the APC, and that this rank is only attributed to members who have been with the party for at least five years. The Applicant contends that this concords with his claim that he joined the party in 2012, as a regular member, and was elevated to the rank of "Honorary Executive" in 2018, which explains why his membership card was issued in 2018.

[26] Even if I accept this explanation about the date of the membership card, the RAD points out other contradictions and inconsistencies in the rest of the documentation provided by the Applicant, for which he has no explanation. I agree with the RAD that the Applicant's evidence is not sufficient to overcome the serious credibility issues noted by the RPD and the RAD.

C. *The RAD did not err in its consideration of country condition documents*

[27] The Applicant argues that the RAD erred when it determined that the consideration of the country conditions was moot given that it found the Applicant was not credible overall. The Applicant contends that he has established that he is a member of the APC and that the RAD ought to have considered the objective evidence regarding whether the Applicant's profile was such that he would be subjected to persecution.

[28] The Federal Court of Appeal held in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3, that "where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence" (see also *Kamwanga v Canada (Citizenship and Immigration)*, 2022 FC 556 at para 13).

[29] Here, the RAD relied on the RPD's assessment of the objective country conditions that there was mixed evidence regarding the situation of APC members in Sierra Leone: some were harmed, but the party also won a high number of seats in the election, and there was insufficient evidence of a systematic repression of APC or opposition party members. The RAD also admitted as new evidence the updated country conditions articles but neither of these specifically mention the situation of APC in Sierra Leone. I find that the Applicant has not met his burden to demonstrate that there was credible documentary evidence to support his claim, and thus the credibility determination was sufficient to dispose of his claim.

III. Conclusion

[30] The RAD's Decision was reasonable. The Application is dismissed. No question of general importance arises.

**JUDGMENT in IMM-8444-21**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review is dismissed.
2. No questions for certification were argued and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8444-21

**STYLE OF CAUSE:** ALIMANY KABBA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 18, 2023

**JUDGMENT AND REASONS:** DINER J.

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