

Federal Court



Cour fédérale

**Date: 20230227**

**Docket: No. IMM-4898-22**

**Citation: 2023 FC 250**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, February 27, 2023**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**FORTUNE FHARRAS ARTHURE GOMA  
BATCHY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Goma Batchy, a citizen of Congo-Brazzaville, is seeking judicial review of the decision of the Refugee Appeal Division [RAD] made on April 27, 2022. The RAD then upheld the decision of the Refugee Protection Division [RPD] rejecting Mr. Goma Batchy's refugee

protection claim and denying him status as a refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Immigration Act*]. Both the RAD and the RPD found Mr. Goma Batchy's lack of credibility to be the main reason for the rejection of his refugee protection claim.

[2] Before the Court, Mr. Goma Batchy is challenging the RAD's findings regarding the admissibility of the new evidence and the credibility assessment. Mr. Goma Batchy is asking the Court to allow his application for judicial review, to set aside the RAD's decision, and to recognize him as a Convention refugee and a person in need of protection under sections 96 and 97 of the *Immigration Act*.

[3] Having read and heard the parties' arguments, considered the RAD's reasons, considered the appeal record before it and the applicable law, I find no grounds to allow Mr. Goma Batchy's application. Mr. Goma Batchy has not demonstrated that the RAD breached the principles of natural justice or that the RAD's decision is unreasonable. I will therefore dismiss his application for judicial review.

## II. Background

[4] In January 2018, Mr. Goma Batchy came to Canada to attend university and in February 2018, he filed his refugee protection claim. In the Basis of Claim Form [BOC Form], which he signed on February 28, 2018, he states that he dropped out of university because he was no longer receiving financial support from his father and also stated that his fear of returning to his country stems from (1) the fact that his father, who works in the human resources of the

Société Nationale des Pétroles du Congo [the SNPC], allegedly, in 2017, hired an individual who had good skills without knowing that he was one of the main collaborators of Pastor Ntumi, a fierce opponent of President Denis Sassou Nguesso's who is vehemently pursued by him; (2) that his father was suspended, arrested, and taken to a destination that remains unknown while his mother was subjected to abuse and threats and had to flee Brazzaville and leave her home; (3) that Mr. Goma Batchy is known to be the sole son of his father and is likely to be persecuted by the Congolese authorities because of his membership; and (4) that he has been viewed with suspicion by the authorities since his return because he has not lived in Congo (Brazzaville) since 2016, having studied in Ghana from 2016 to 2018.

[5] On September 29, 2021, the RPD concluded that Mr. Goma Batchy was not a Convention refugee under section 96, nor a person in need of protection under paragraphs 97(1)(a) or 97(1)(b) of the *Immigration Act*.

[6] First, the RPD does not believe that Mr. Goma Batchy's father worked for the SNPC because there was information to the contrary in the visa application Mr. Goma Batchy presented to the Canadian authorities in November 2017. His father's occupation was then described as that of a businessman and even stated that he owned his own business. In this regard, a letter from Mr. Goma Batchy's father accompanied this visa application, attesting that he was neither a worker nor a monthly wage earner but [TRANSLATION] "a liberal man who manages his own affairs."

[7] Then and furthermore, the RPD (1) concluded that Mr. Goma Batchy's father had probably not been arrested; (2) found that it was not credible that Mr. Goma Batchy's mother fled her Brazzaville residence because, on the one hand, a letter written in May 2018 states that she is still in Brazzaville and, on the other hand, her identity card, issued in September 2019, indicates an address in Brazzaville; and (3) asserted that Mr. Goma Batchy's credibility was also undermined by the fact that he was unable to provide even one piece of information about the individual that his father supposedly recruited in 2017 to work for the SNPC.

[8] On October 22, 2021, Mr. Goma Batchy appealed this decision to the RAD. He then submitted that the RPD (1) erred in law in failing to objectively assess his risk under section 97(1) of the *Immigration Act*; and (2) made a determinative error by ignoring his testimony at the hearing. On November 24, 2021, he filed his memorandum of appeal.

[9] On January 13, 2022, Mr. Goma Batchy filed new evidence before the RAD to corroborate his testimony before the RPD regarding his father's employment with the SNPC and to explain why his mother's documents state that she is in Brazzaville although she allegedly fled the city. Mr. Goma Batchy then also filed an affidavit in which he points out that his delay in submitting new evidence was because it was only when he became aware of the RPD's decision that he realized that he should have produced additional evidence to address the panel's concerns.

[10] On April 27, 2022, the RAD dismissed Mr. Goma Batchy's appeal.

[11] With respect to the new evidence filed by Mr. Goma Batchy, the RAD was not satisfied that it met the eligibility requirements set out in the Act and the case law. In particular, the RAD was of the view that this evidence would normally have been available to the appellant prior to the date of the RPD decision and that it was not part of the evidence authorized under subsection 110(4) of the *Immigration Act*. The RAD considered the explanation provided by Mr. Goma Batchy for his delay in submitting this evidence and concluded that this explanation did not demonstrate that the evidence at issue was not available but that Mr. Goma Batchy had not anticipated that he would need it. The RAD added that Mr. Goma Batchy should have realized that his credibility would be an issue before the RPD, particularly with respect to the events surrounding his father's arrest and his mother's escape. According to the RAD, Parliament did not intend for circumstances like these to give rise to the possibility of presenting new evidence on appeal, because the evidence was certainly available when Mr. Goma Batchy appeared before the RPD, although he had not thought of it as he had not yet realized the contradictions in the evidence.

[12] The RAD was also of the view that this new evidence did not meet one of the three eligibility criteria set out in the case law: credibility. It also considered that the conditions in which the documentation in question had been prepared were somewhat suspicious, considering the late date on which it had been collected and stated that it was not satisfied with the authenticity of the documents that were supposedly from the SNPC and the veracity of the statements of Mr. Goma Batchy's cousin and mother, or even whether these statements were really from them. So, for these reasons, the RAD did not accept any new evidence.

[13] As to the merits, the RAD decided that the RPD had not erred in its assessment of the evidence, concluding that this evidence contained significant contradictions undermining Mr. Goma Batchy's credibility with respect to essential elements of the allegations as to what had happened to his parents. The RAD determined that it was therefore not established on a balance of probabilities that Mr. Goma Batchy would face a serious possibility of persecution because of his family relationship with his parents. The RAD further added that the evidence available did not support the conclusion that, on a balance of probabilities, as a result of living abroad Mr. Goma Batchy would be subjected to any risk.

[14] The RAD noted in particular that (1) it was not credible that Mr. Goma Batchy's father worked for the SNPC; (2) it was not credible that his mother feared being arrested or persecuted; and (3) emigrating did not create a personal risk or a serious possibility of persecution.

[15] The RAD concluded that the presumption of truth of Mr. Goma Batchy's testimony was rebutted by inconsistencies in the evidence and that he had not demonstrated that he was likely to be subjected to any personal risk. The RAD dismissed the appeal.

[16] Mr. Goma Batchy is seeking judicial review of this RAD decision.

### III. Positions of the parties

[17] In support of his application for judicial review, Mr. Goma Batchy has filed an affidavit signed on January 13, 2022, to which he has attached the affidavit dated June 13, 2021, which he

had filed with the RAD to justify the filing of new evidence. In this affidavit dated June 13, 2021, he stated the following:

[TRANSLATION]

I was unable to provide the attached evidence at my hearing before the Refugee Protection Division because I had not realized the importance that such evidence could have in supporting my refugee protection claim; it was only after Ms. Mai Nguyen had been hired for my appeal that she informed me of their relevance/importance; then it took several weeks before my mother found the evidence needed and before I received it.

[18] Before the Court, Mr. Goma Batchy is challenging the RAD's finding as to the admissibility of the new evidence and that related to his credibility.

[19] The Minister responds that the documents filed by the applicant do not raise any serious grounds likely to allow the Court to allow the remedy he wishes to present. The Minister submits that (1) given the presence of numerous deficiencies in Mr. Goma Batchy's written account, it was reasonable for the RAD to reject his refugee protection claim on that basis alone; (2) not only was the applicant in this case not credible, but the RPD stated in different places in its decision that he was not credible with regard to of key aspects of his refugee protection claim; and (3) the [TRANSLATION] "new evidence" submitted by the applicant was not intended to correct any error the RPD might have made, but to improve the record before this panel, which is not allowed.

#### IV. Determination

[20] The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]), including with respect to the admissibility of new evidence before the RAD under subsection 110(4) of the *Immigration Act*.

[21] Where the applicable standard of review is that of reasonableness, the role of the Court is to examine the reasons given by the decision-maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and whether it is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The Court must consider the “outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). The Court must also consider “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

[22] With respect to the RAD’s credibility assessment, I note the words of my colleague Gascon J. in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 15:

This deferential approach is particularly required when, as in this case, the impugned findings relate to the credibility and plausibility of a refugee claimant’s story. It is well established that RPD’s conclusions in that regard command a high degree of judicial deference upon judicial review, considering the role of trier of fact conferred to the administrative tribunal (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [Khosa] at



paras 59, 89; *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155 at para 9). Credibility findings go to the very core of the RPD's expertise and have indeed been described as the "heartland" of the RPD's jurisdiction (*Siad v Canada (Secretary of State)*, 1996 CanLII 4099 (FCA), [1997] 1 FC 608 (FCA) at para 24; *Gomez Florez* at para 19; *Soorasingam* at para 16; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 [*Lubana*] at paras 7–8). The RPD is better placed to assess the credibility of a refugee claimant as the panel members see the witness at the hearing, observe the witness's demeanour and hear his or her testimony. The panel members thus have the opportunity and ability to assess the witness in respect of frankness, readiness to answer, coherence and consistency of oral testimony before them (*Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at para 23) In addition, the RPD benefits from the specialized knowledge of its members to assess evidence relating to facts stemming from their field of expertise (*El-Khatib v Canada (Citizenship and Immigration)*, 2016 FC 471 at para 6).

[23] It is with this in mind that the Court must review the RAD's decision.

A. *New evidence*

[24] To be allowed to appeal to the RAD, new evidence submitted by an applicant must meet the requirements of subsection 110(4) of the *Immigration Act* and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*], of the Federal Court of Appeal (*Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at paras 16–21).

[25] As noted by the Minister in his memorandum, the RAD noted that the rationale provided by Mr. Goma Batchy, in fact, did "not demonstrate that the evidence was not available but that the [applicant] had not anticipated that he would need it." Mr. Goma Batchy confirmed this fact in the affidavit he filed with the Court.

[26] However, the Federal Court of Appeal confirmed that such evidence is not admissible in evidence before the RAD in view of “... the clear legislative intention to not authorize any new evidence on appeal other than in very specific and carefully defined circumstances. The role of the RAD is not to provide the opportunity to complete a deficient record submitted before the RPD, but to allow for errors of fact, errors in law or mixed errors of fact and law to be corrected” (*Singh* at para 54).

[27] Furthermore, and contrary to Mr. Goma Batchy’s allegation, the RAD considered his explanation (para 13 of the decision), but instead concluded that it did not demonstrate that the evidence was not available.

[28] Finally, the RAD’s finding on the credibility of this evidence is reasonable and justified given the evidence on record.

[29] Mr. Goma Batchy did not meet his burden of demonstrating that the RAD erred in this regard and that the RAD’s determination was unreasonable. Mr. Goma Batchy disagrees with the RAD’s findings, but that does not justify the Court’s intervention.

B. *Credibility findings*

[30] I note that the contradictions and inconsistencies raised by the RPD and confirmed by the RAD are substantiated and confirmed in the record and that they are central to Mr. Goma Batchy’s refugee protection claim.

[31] As the Court has already noted, and as the Minister notes, it is up to the RAD to make this type of assessment, and the Court cannot reassess the evidence and substitute its decision for that of the panel unless it identifies errors that would lead it to conclude that the credibility finding was unreasonable. However, Mr. Goma Batchy could not identify such errors.

[32] In this case, it is reasonable for the RAD to conclude that the inconsistencies and contradictions in Mr. Goma Batchy's account relate to central elements of his refugee protection claim and that they undermine his credibility. The RAD's decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility—and it is justified in relation to the relevant factual and legal constraints that bear on the decision.

**JUDGMENT in IMM-4898-22**

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

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

“Martine St-Louis”

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Judge

Certified true translation  
Francie Gow

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

**DOCKET:** IMM-4898-22

**STYLE OF CAUSE:** FORTUNE FHARRAS ARTHURE GOMA BATCHY  
v. THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QC

**DATE OF HEARING:** FEBRUARY 20, 2023

**JUDGMENT AND REASONS:** ST. LOUIS J.

**DATED:** FEBRUARY 27, 2023

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