

Federal Court



Cour fédérale

**Date: 20230823**

**Docket: IMM-3188-22**

**Citation: 2023 FC 1132**

**Toronto, Ontario, August 23, 2022**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**SARAH MELODY NALUNKUMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This Judgment and Reasons address an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated March 14, 2022 [the Decision]. In the Decision, the RAD upheld the decision of the Refugee Protection Division [RPD], which found that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96

and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Applicant challenges the Decision, arguing that the RAD misconstrued the evidence before it.

[2] As explained in greater detail below, this application is dismissed, because the Decision is reasonable.

## II. Background

[3] The Applicant is a 29-year-old citizen of Uganda. She is the mother of a four-year-old daughter. She arrived in Canada in November 2019 and sought refugee protection, alleging in her Basis of Claim that she fears persecution in Uganda because she is a lesbian.

[4] On September 21, 2021, the RPD heard the Applicant's refugee claim. When the RPD member asked her about her previous relationship, she responded that she was not a lesbian. Rather, she explained that she moved to Canada because she grew up in poverty in Uganda and wanted a better place to raise her baby. When asked if she would be at risk if she returned to Uganda, the Applicant replied that she would not be at risk.

[5] In post-hearing submissions, the Applicant's counsel argued that she faced risk in Uganda because she is a woman and a single mother. Counsel submitted that the objective evidence shows that there is discrimination against women, lack of employment opportunities, lack of adequate health care, sexual harassment, and widespread rape in Uganda.

[6] On September 21, 2021, the RPD dismissed the Applicant's claim. Based on her testimony and post-hearing submissions, the RPD concluded that the Applicant did not establish a subjective fear of persecution based on her gender or her profile as a young single mother.

[7] On the objective element of the Applicant's claim, the RPD acknowledged that the National Documentation Package [NDP] for Uganda documents gender-based violence and discrimination against women. However, the RPD noted that the Applicant does not personally fear gender-based violence or discrimination based on her gender on a forward-looking basis. The RPD concluded that the evidence on gender-based violence in Uganda does not speak to such widespread occurrences that women in general face a serious possibility of persecution. The RPD further concluded that the discrimination against women in Uganda does not amount to persecution.

[8] The Applicant appealed to the RAD, arguing that the RPD erred in finding that she does not subjectively fear persecution and that she does not have a well-founded fear of persecution.

### III. Decision under Review

[9] In the Decision under review in this application, the RAD dismissed the Applicant's appeal and confirmed the RPD's decision. The RAD rejected her argument that the RPD erred by failing to infer that she subjectively fears persecution in Uganda based on her status as a woman and a single mother. The RAD confirmed the RPD's determination that the Applicant did not establish a subjective fear of persecution, finding that she foreclosed any inference of subjective fear by testifying that she is not at risk for any reason in Uganda.

[10] The RAD also rejected the Applicant's argument that the RPD erred by overlooking objective documentary evidence of gender-based discrimination and violence in Uganda. The RAD held that the RPD considered all of this evidence and found it insufficient to establish that a woman and a single mother like the Applicant faces a serious possibility of sexual violence and employment discrimination amounting to persecution. The RAD stated that it had conducted an independent assessment of the documentary evidence and concurred with the RPD on this point. The RAD therefore dismissed the Applicant's appeal, finding that she is neither a Convention refugee nor a person in need of protection.

IV. Issue and Standard of Review

[11] The sole issue raised by the Applicant is whether the RAD erred by misconstruing evidence before it.

[12] The parties agree (and I concur) that this issue is reviewable on the standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

[13] In relation to the RAD's analysis of the Applicant's subjective fear, she submits that the RAD erred by failing to infer subjective fear based on her testimony that she grew up in poverty and was unable to earn enough money to care for her daughter. The Applicant submits that, although she did not unambiguously testify that she fears persecution on the basis of her gender and her status, such evidence is not a prerequisite to establishing subjective fear.

[14] I agree with the principle upon which the Applicant relies, that a refugee claimant need not invoke the particular language of “fear of persecution” in order for such fear to be implicit in the refugee’s narrative (see *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 46). However, this principle is of little assistance to a claimant who expressly testifies that she would not be at risk in her country of origin. Applying the reasonableness standard of review, I find no error in the RAD’s reliance on the Applicant’s testimony to that effect, in concluding that she does not have a subjective fear of persecution or harm in Uganda based on her gender, status as a single mother, or any other reason.

[15] The Applicant also submits that the RAD failed to address the objective evidence in the NDP and erred in concluding that the evidence was insufficient in itself to indicate that a woman and single mother like the Applicant faces a serious possibility of sexual violence and employment discrimination amounting to persecution. The Applicant references excerpts from the country condition documentation in the NDP, describing the prevalence of gender-based violence and employment discrimination in Uganda.

[16] However, as the Respondent submits, the law creates a rebuttable presumption that the RAD has reviewed all of the evidence in the file, including the documents and the NDP. While the RAD must address any evidence that directly contradicts its findings on a fundamental issue, it is only when unmentioned evidence is critical and contradicts the RAD’s conclusion that a reviewing court may decide that its omission means that the RAD erred by not having regard to the material before it (see *Simolia v Canada (Citizenship and Immigration)*, 2019 FC 1336 at paras 20 to 24).

[17] In the case at hand, the RAD acknowledged the evidence considered by the RPD surrounding the sexual violence and employment discrimination against women in Uganda. However, the RAD concluded that evidence insufficient to indicate that the Applicant faced a serious possibility of such violence and discrimination amounting to persecution, particularly when the Applicant herself clearly denied that she faced any such risk in Uganda. As the RAD expressly acknowledged evidence of the sort upon which the Applicant relies and explained the reasoning underlying its conclusion, its analysis provides no basis for the Court to find that the RAD failed to address such evidence.

[18] Having considered the arguments raised by the Applicant, I find that the Decision is reasonable and that this application for judicial review must therefore be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-3188-22**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-3188-22

**STYLE OF CAUSE:** SARAH MELODY NALUNKUMA v. MCI

**PLACE OF HEARING:** BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 22, 2023

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** AUGUST 23, 2023

**APPEARANCES:**

Sarah Melody Nalunkuma  
(self-represented)

FOR THE APPLICANT

Giancarlo Volpe

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Department of Justice

FOR THE RESPONDENT