

Federal Court



Cour fédérale

Date: 20240207

Docket: IMM-11702-22

Citation: 2024 FC 195

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 7, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**CARLOS KALONDA LUBANGI,
ANTONICA TANGO KALONDA,
CARLA TAUSI KALONDA,
DANIELE KALONDA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], of a decision by the Refugee Appeal Division [RAD] confirming the Refugee Protection Division [RPD] decision to deny refugee status to the applicants.

I. Law

[2] This case centres on the applicants' lack of credibility in relation to the two incidents on which they are relying to claim refugee status in Canada. Applicants face a difficult task when they seek judicial review of a decision made by an administrative tribunal that specializes in assessing the credibility of refugee protection claimants, among other things. Of course, this is especially true given that it is generally accepted, including by this Court, that the applicable standard of review is reasonableness. This means that a reviewing court on judicial review does not substitute its view of the merits of an administrative decision but must instead assess the decision's legality. The reviewing court reviews the legality of a decision, not its merits, by asking 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. As long as the decision meets these criteria, the reviewing court should not intervene, even if it may arrive at a different result. On issues of credibility, and therefore the reasonableness of a refugee protection claimant's story, the RAD's findings require a high degree of deference (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paras 59, 89).

[3] As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], a reviewing court seeks to develop an understanding of the administrative decision maker's r

[4] easoning process in order to determine whether the decision as a whole is reasonable. Therefore, "a reasonable decision is one that is based on an internally coherent and rational chain

of analysis and that is justified in relation to the facts and law that constrain the decision maker” (para 85).

[5] The reviewing court must therefore adopt the principle of judicial restraint, intervening only “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (para 13). We are told that “courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect” (para 14). Simply claiming that an administrative decision maker “erred” is not enough. Rather, the burden is on the applicant on judicial review to satisfy the reviewing court that there is a sufficiently serious shortcoming in the decision such that it does not exhibit the requisite degree of justification, intelligibility and transparency. The higher courts continue to uphold this principle. Only recently, the Supreme Court of Canada reiterated that a reviewing court does not undertake a *de novo* analysis and does not reweigh the factors underlying the decision. Citing abundant case law, it noted that “[i]f the decision maker took into account all the considerations that were relevant in the context, the reviewing court must uphold its decision” (*Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at para 71).

II. Facts

[6] Of the five original applicants, only the father (Carlos Kalonda Lubangi) and mother (Antonica Tango Kalonda) of the couple’s six children are now before this Court. Before the RPD were Carla and Daniele, two of the six children, and Noemia Tango Eduardo Lubangi, a

young adult, whose refugee protection claim had been joined to that of her parents and two sisters. The other siblings were not involved.

[7] Regarding Carla and Daniele, minor children who are American citizens, the RAD noted that the RPD's determination that they were not Convention refugees or persons in need of protection with respect to their country of citizenship, the United States, was not challenged. Moreover, two other adult daughters were living in the United States, and Carla and Daniele could eventually move there if they so desired. The RAD agreed with the RPD that a refugee protection claim by the two minor children was on the basis of their parents' claim but that, in any event, the record did not show any risk in the United States.

[8] Noemia and an older brother arrived in Canada on April 21, 2018, from the United States, where she had arrived on April 30, 2016, and unsuccessfully sought asylum. Arriving in Canada after her parents, she stated that she wanted to join them (they had arrived in March 2018), and her claim in Canada was therefore joined to that of her parents and younger sisters. The RPD found that her claim lacked credibility and therefore rejected it. Since Noemia had arrived from a safe third country, the United States, she could not appeal to the RAD under subparagraph 110(2)(d)(i) of the Act. In other words, the appeal before the RAD could not include Noemia, whose refugee protection claim had ended before the RPD. Nevertheless, the accounts of Noemia and her parents before the RPD are interwoven.

[9] Ultimately, for all intents and purposes, only the father and mother are challenging the RAD's decision on judicial review. In essence, they are challenging the conclusions that the two incidents referred to in support of their refugee protection claim do not have a credible basis.

First incident

[10] Dr. Lubangi is a surgeon in his country of nationality, Angola. Ms. Kalonda is also a citizen of Angola and is a nurse.

[11] The principal applicant, Dr. Lubangi, provided the core of the claim for refugee protection in his Basis of Claim Form [BOC Form]. Ms. Kalonda provided an additional sheet for her husband's BOC Form. On that sheet, she describes being kidnapped during the day on January 29, 2018. The kidnapping was allegedly carried out by the police force of one General Jose Alfredo Ekuiki. The officers questioned her violently and even beat her. They left her unconscious on the floor and drove off in her car. The alleged motive for this act of violence was that the officers had stopped seeing Dr. Lubangi [TRANSLATION] "out and about" and were looking for him.

[12] This alleged incident is related to the reason Dr. Lubangi is claiming refugee protection in Canada. He states in his BOC Form that General Ekuiki's sister, who was having abdominal pain, went to see him. Examinations and tests suggested appendicitis. On October 10, 2017, she returned to the hospital with her brother and had surgery the same day. She was discharged on October 13. She reportedly died on October 15.

[13] Dr. Lubangi states that he was arrested on October 15, 2017, by the police in Luanda, where he was practising. He states that he was arrested on the orders of the General after the General's sister died. He was detained for three days (October 15 to 17), and the abuse he endured included torture. The principal applicant states that the General ordered his killing should he be found responsible for the death of the General's sister.

[14] The principal applicant was allegedly released by a subcommander on October 17 and was given a document dated October 16. He was ordered to report to the police station every Tuesday. His passport and driver's licence were confiscated. The principal applicant states that he went every Tuesday as required. He states that he was watched 24 hours a day by [TRANSLATION] "the General's secret police" in Luanda.

[15] Lastly, the principal applicant links this to the kidnapping of his wife on January 29, 2018. January 29, 2018, was a Monday. His wife was allegedly kidnapped in broad daylight to force her to disclose her husband's whereabouts. He claims to have obtained assistance from the president of the medical association, whose wife had connections with the subcommander who had released him on October 17, 2017. Upon payment, he was able to get his passport and driver's licence back in mid-February. The president advised him to flee Angola. Again with the president's assistance, the couple left on the night of March 5, 2018.

Second incident

[16] Dr. Lubangi and Ms. Kalonda did not describe any other alleged incidents in their claim for refugee protection. However, Noemia made a completely new allegation on her form, dated May 8, 2018, in support of her claim for refugee protection in Canada.

[17] Noemia allegedly went with her father to provide medical care to [TRANSLATION] “Prophet Jose Kalupeteka”, the leader of the [TRANSLATION] “Seventh-day Adventist” Christian religion. He was on an evangelical mission outside the capital on April 16, 2015.

[18] Noemia states that the national police suddenly appeared and opened fire on the unarmed people present. Noemia, her father and two of Pastor Kalupeteka’s sons managed to get away, [TRANSLATION] “dodging police bullets”. During the night, they managed to drive back to Luanda. The following day, April 17, 2015, two police officers went to the principal applicant’s home. He was not there. In response, the principal applicant moved, allowing Jose Kalupeteka’s two children to live there for 11 months.

[19] Noemia states that Pastor Kalupeteka [TRANSLATION] “was beaten to death” and put in prison. Nine hundred followers were reportedly killed. She further states in the same form that 10 armed men went to the family home on December 15, 2015, in search of the principal applicant, who was still absent. She alleges that she was beaten to reveal the whereabouts of [TRANSLATION] “Prophet Jose Kalupeteka’s doctor”. Noemia was also sexually assaulted (raped) by two of the armed men.

III. RAD decision

[20] In a lengthy, well-articulated decision, the RAD agreed completely with the RPD, which rejected the testimony of the various individuals, concluding that they had failed to discharge their burden of establishing a serious possibility of persecution. Testimony in support of the statements in the BOC Forms severely undermined the credibility of the witnesses and the plausibility of their allegations.

[21] Before the RPD, two separate incidents were referred to in support of the refugee protection claims of Noemia and her parents. The parents' BOC Form refers to a fear of a certain General Ekuiki, whose sister had allegedly been treated by Dr. Lubangi. As stated above, she reportedly died (on October 15, 2017) a few days after the principal applicant operated on her. The General allegedly blamed Dr. Lubangi for her death, had him arrested on October 15 and more or less authorized his torture until he was released on October 17. The co-applicant was allegedly kidnapped on January 29, 2018, because the principal applicant had disappeared despite being under constant surveillance, 24 hours a day, with no passport or driver's licence, and despite his claim that he had reported to the police every Tuesday since October 2017.

[22] Noemia's story begins in April 2015. She was accompanying her father, who was treating a pastor, Jose Kalupeteka, the head of the Light of the World Church in Angola. A large number of followers were killed. She managed to get away, but two police officers went to the family home the next day. A group of police officers went to the family home again a number of months

later, in December 2015, again looking for the father, who was still absent. Two of the police officers tied up Noemia's brother and then sexually abused her.

[23] Before the RPD, the principal applicant confirmed both incidents in support of the refugee protection claims (RAD decision at para 7). In any case, he is involved in both accounts. Note that the second incident, which is not trivial, is referred to in the principal applicant's testimony before the RPD but not in his BOC Form.

[24] In its decision, the RAD noted that Noemia's account in her asylum claim in the United States was highly implausible. In fact, the Minister of Citizenship and Immigration [Minister] intervened to complete the record before the RPD.

[25] The chronology of events then became clearer:

- On March 6, 2018, the parents arrived in Montreal.
- On March 22, 2018, Carla and Daniele arrived in Canada by land from the United States.
- On April 21, 2018, Noemia and her brother arrived in Canada from Maine.
- After the alleged kidnapping of the co-applicant on January 29, 2018, the principal applicant managed to recover his passport and driver's licence. He was then able to leave Angola on March 5, arriving in Montréal the following day.

[26] After arriving in the United States in April 2016, Noemia sought asylum there, giving the American authorities an account dated May 11, 2016, in which she described the kidnapping of her parents on February 15, 2016, and claimed that they had been missing ever since.

[27] According to the version given to the American authorities, the parents were abducted by the Angolan authorities because the father was suspected of belonging to Pastor Kalupeteka's religious rebellion group, even though he was the pastor's doctor only. The account is detailed. On March 5, 2016, while her brother was away from home, some men came and threatened to kill her and her sisters. The account states that they were not sexually abused. In the wake of these incidents, she, her sisters and her brother decided to leave for the United States, arriving there on April 30, 2016.

[28] The problem with this story is that the parents, who were said to be missing because they had been kidnapped in February 2016, had in fact arrived in the United States at the same time as Noemia. The RAD pointed out that the parents "were fingerprinted within seconds of each other at the airport after landing on the same flight" (RAD decision at para 8). The American authorities decided to refer the application for asylum to an immigration judge. Noemia did not wait for an immigration judge's decision on her application for asylum in the United States; she came to Canada in April 2018, well before a decision was made by an American judge on November 2, 2020.

[29] The Minister also noted in his notice to intervene before the RPD that no sexual abuse was committed in Angola according to the American version, whereas an allegation of sexual abuse was made in Canada.

[30] The principal applicant testified regarding not only the risk posed by the General but also the risk posed by his association with Mr. Kalupeteka.

[31] The RAD reviewed the RPD's reasons for finding the allegations not credible and agreed with the RPD:

- The parents did not mention any incidents related to Pastor Kalupeteka in their BOC Form; this was added to the set of allegations at the hearing before the RPD.
- Noemia's testimony regarding the April 2015 massacre was vague despite the RPD's prompting for more details.
- There was a major discrepancy regarding sexual abuse, in that the American version stated explicitly that none had occurred.
- After arriving in the United States in April 2016, the parents returned to Angola several times despite alleging that their lives were at risk.

[32] The RAD reviewed each of the RPD's conclusions. First, the RAD noted the principal applicant's statement at the hearing that he feared persecution in Angola because of his links with Mr. Kalupeteka. It would have been reasonable for this association to have been included in the BOC Form. This was no small issue. The RAD stated that this was especially significant because it was the basis of their daughter's fear of persecution, and they were associated with it. An absence of contradiction between Noemia's testimony and that of her father does not make the father more credible, since Noemia's testimony was not credible to begin with. The RPD was criticized for failing to refer to the National Documentation Package regarding Angola in relation to the April 2015 massacre. As the RAD stated, the issue was not whether this tragedy had occurred. Rather, it was whether the alleged links with Mr. Kalupeteka gave rise to a credible fear of persecution.

[33] The RAD also concluded that the applicants' credibility was undermined by their repeated returns to Angola. The RAD rejected the explanation that conditions, in terms of the persecution they might face in Angola if their allegation were true, had improved because

Mr. Kalupeteka had been sentenced to 28 years in prison. One might have thought that they would have wanted to seek asylum in the United States, as Noemia did, on the basis of the same allegation regarding the link with the pastor. Instead, they returned to Angola.

[34] The RAD then considered the blatant contradiction between Noemia's testimony in Canada and her testimony in the United States regarding sexual abuse. The explanation given for the misrepresentation was that a pastor she had met in the United States had counselled her not to include sexual abuse in the American version of the grounds for asylum. The RAD rejected this explanation as implausible, stating that "[s]uch an explanation makes clear that the Appellants are willing to make false representations if they believe it will enhance their chances of gaining refugee protection, even on false grounds" (RAD decision at para 29). In addition, there was the lie that the parents had disappeared in Angola, even though they were with their daughter when they arrived in New York.

[35] Counsel for the applicants relied on *Chairperson's Guideline 8: Procedure for Vulnerable Persons Appearing Before the IRB*. It was argued that Noemia should have received more favourable treatment because her trauma would have affected her ability to testify. As I pointed out at the hearing of the application for judicial review, Guideline 8 is very limited and deals solely with providing procedural accommodations where necessary (see s 5.2). Moreover, no submissions were made as to the legal effect that such a guideline might have on the trier of fact, in terms of the reasonableness of the trier of fact's decision, if indeed the guideline had not been observed. In any event, the RAD concluded that Noemia had never been identified as vulnerable under the guideline and, more importantly, she never even attempted to explain her statements as

having been caused by trauma or shame. There was no evidence of this, and “it was clear that Mr. L and Ms. K [the parents] were fully involved in the preparation of her claim, and they allowed their daughter to go forward with allegations that they knew to be untrue” (RAD decision at para 30).

[36] Finally, regarding the allegations relating directly to the link with Pastor Kalupeteka, the RAD noted that Noemia’s testimony was indeed vague about the April 2015 tragedy in which followers of the pastor were killed. The reasons given (young age, trauma, amount of time that had passed) do not explain why the testimony contained only information that was available in news articles and reports. This raised concerns for the RPD about whether Dr. Lubangi and his daughter were present at the time of the tragedy. The RPD did not err in factoring these concerns into its credibility assessment.

[37] The RAD then examined the allegation of fear of a certain General. The RPD had identified inconsistencies in the evidence regarding the alleged detention and torture of the father. As a reminder, the father was detained from October 15 to 17, 2017, and the mother was kidnapped on January 29, 2018. The parents left for Canada on March 5, 2018, and Noemia arrived at a border crossing from Maine on April 21, 2018. The RPD was of the opinion that the allegation of the father’s arrest had not been established on the balance of probabilities. Various factors were considered:

1. When she arrived at the Canadian border on April 21, 2018, Noemia stated that she could not return to Angola because of the violence that existed due to the government crisis that was then occurring. She made no mention of the abuse

endured by her father and mother. She failed to mention it both at the port of entry and in her BOC Form dated May 8, 2018.

2. Ms. Kalonda alleged that she was kidnapped on January 29, 2018, because her husband had not been seen for some time (for a number of weeks, according to the sheet attached to her husband's BOC Form). Yet Dr. Lubangi stated that he had reported to the police every Tuesday after his arrest. In addition, he stated that he was under constant surveillance. His explanation that the concern over his absence that led to the kidnapping of his wife had been caused by his having spent 48 hours on duty at the hospital was not accepted. He had in fact stated that a search was done because he had been missing for a number of weeks, not merely 48 hours.
3. The BOC Form narrative stated that the detention took place from October 15 to 17, 2017. Another form referred to an arrest on November 15 with detention until November 16, 2017. A third document showed the date of arrest as October 15 but with detention ending on October 16, 2017. The differences were not explained before the RPD, which stated that it expected better, especially since the documents had been completed on the same day.
4. Lastly, the principal applicant filed a document dated October 16, 2017, but allegedly given to him on October 17. One would have thought that the document might provide some form of corroboration. However, given what it contained, it had no probative value. The document did not establish an arrest or detention. The document merely required that the principal applicant report to the authorities

when required while an investigation into a homicide he allegedly witnessed was under way. As well, he was not allowed to leave the country.

[38] The RPD asked Noemia why she feared returning to Angola. It pointed out that, upon arriving at the Canadian border, she stated that she had a general fear of the violence that existed due to the government crisis that was then occurring. Not a single word about the detention and torture endured by her father a few months earlier. Although notes taken on arrival in Canada should be treated with caution, the RAD agreed that the RPD was justified in considering this omission as it was a central element of the claim. Noemia never contested the accuracy of the port of entry notes. If the father had been arrested and tortured a few months earlier, it would be surprising for his daughter not to mention it but instead merely express a general fear of violence due to a government crisis that was occurring at the time, despite there being a specific incident that had given rise to the fear. The RAD agreed with that criticism, stating that “the credibility regarding the Appellants’ alleged problems with the General” (RAD decision at para 45) was undermined because one would reasonably have expected that, if these incidents had occurred, they would have been mentioned.

[39] The other elements that cast doubt on the incidents referred to were directly linked to the two applicants.

[40] First, there were inconsistencies in Ms. Kalonda’s version of her alleged kidnapping on January 29, 2018. The RAD pointed out that it was difficult to explain the kidnapping in terms of the applicants’ story. Paragraph 48 of the decision describes the difficulties encountered:

[48] On appeal, Counsel argues that RPD misinterpreted Mr. L's narrative due to the inclusion of awkward syntax within it. In his narrative, Mr. L stated "Elle [Ms. K] a été frappé et ils sont partis avec sa jeep Hyundai neuve et lui questionnant sur moi depuis quelques semaines ils ne me voient plus et sont allé l'abandonner sur la route." [original narrative in French] Counsel argues that Mr. L did not intend to say that he had disappeared for a few weeks but instead that they asked Ms. K about his activities over the last few weeks. While it is true that the narrative could be clearer, it does suggest that the police questioned Ms. K about Mr. L and that the police had not seen him for a few weeks. This contradicted both Mr. L's testimony that the police kidnapped Ms. K because they had not seen him for 48 hours. It was also inconsistent with his testimony that he reported to the police every week. In addition, it was inconsistent with Mr. L's testimony that the police had him under surveillance 24 hours per day both at work and at home. The Appellants' evidence that the police had kidnapped Ms. K because they did not know Mr. L's whereabouts was inconsistent with all of the above other parts of their evidence about Mr. L being carefully watched 24 hours per day and reporting to the police once a week every week.

[41] The RAD acknowledged the inconsistency in the dates of arrest and detention in late 2017 noted by the RPD but concluded that it was insufficient to draw a negative inference regarding the plausibility of the account. Lastly, the document dated October 16, 2017, filed by the principal applicant was of no value in establishing an arrest. As the RPD concluded, the contents of the document did not establish that the arrest had been made: "The document does not make any mention of Mr. L's arrest or detention" (RAD Decision at para 50). This is true. I read the document. The RAD stated that the existence of this document did not establish the arrest or detention, as the applicants claimed it did.

[42] Having examined in detail the errors alleged by the applicants, the RAD concluded that it disagreed with counsel for the applicants "that the [applicants had] testified in a detailed and straightforward manner that was free of contradictions due to the various credibility concerns

detailed [earlier]. Given that their account of the events that led them to leave Angola was not credible, [the RAD did] not find that they face[d] a forward-looking risk if they [were to] return to Angola” (RAD Decision at para 62).

IV. Arguments and analysis

[43] As I stated earlier, the reviewing court does not substitute itself for the administrative tribunal. It seeks to develop an understanding of the administrative decision so as to be satisfied that it is based on an internally coherent and rational chain of analysis. Are the factual and legal constraints such that the decision can be said to be justified?

[44] An applicant hoping to succeed on judicial review should not seek to persuade the court as to the merits of the case, in the sense that the reviewing court ought to prefer the applicant’s version. Rather, the applicant must demonstrate serious shortcomings that lead to the conclusion that the decision is unreasonable.

[45] The reason I have set out the facts of this case and the decision under review in some detail is that this application for judicial review should be based on an attempt to persuade the reviewing court that the RAD’s decision is not coherent or rational, that it is not justified.

[46] However, the memorandum of the applicants and their submissions before the Court basically mirror the memorandum submitted to the RAD (appeals to the RAD are decided on the basis of the record, with specific exceptions provided for in the Act). Appeals to the RAD are decided on a standard of correctness (*Canada (Citizenship and Immigration) v Huruglica*, 2016

FCA 93, [2016] 4 FCR 157), meaning that the RAD owes no deference to the RPD. That is not the case on judicial review. The difference is that it is not enough to argue before the reviewing court that one's own version should prevail, as if the reviewing court were proceeding *de novo*. Rather, the burden is to show that the decision was unreasonable, which is a different burden requiring a different proof because the reviewing court is required to show a degree of deference.

[47] It is a greater burden. I note that the applicants state that [TRANSLATION] "the RAD ... merely validated the RPD's arguments or interpreted its decision without conducting an independent and clear analysis that makes it possible to trace its reasoning" (Memorandum of Fact and Law at para 30). This is not true. On the contrary, the RAD provided detailed reasons that addressed the various complaints made. It is true that the RAD agreed with the RPD. That does not make the decision unreasonable.

[48] The applicants must now accept the evidence presented and reviewed by the RAD. They are therefore seeking to escape the devastating conclusions of the RPD, which the RAD has accepted on the basis of its own analysis, that the affiliation with Pastor Kalupeteka is marred by contradictions and implausibility. The trier of fact was authorized to examine the testimony of the principal applicant and his daughter for serious flaws. Note that the applicants' records and that of Noemia were attached to the applicants' application. The principal applicant was involved in the story relating to Pastor Kalupeteka. He chose to associate himself with these events, and I cannot see how the RAD (or the RPD) can be criticized for noting that the BOC Form does not refer to them at all. To simply claim that the reason behind the refugee protection claim was the arrest and detention in October 2015, and not Noemia's account, which her father supports, falls

short. After all, the applicants' credibility was at issue, and it was undermined by their testimony before the RPD. The administrative decision makers agreed that the account of the two incidents put forward was flawed, and I fail to see how it can be said that the RAD's decision is not entitled to deference on judicial review.

[49] The applicants are correct when they write at paragraph 51 of their memorandum that "[t]heir [the applicants' and Noemia's] individual accounts complemented each other since they were members of the same family". I fail to see how the applicants can now seek to dissociate themselves from a "common" narrative that was not believed. The applicants concede at paragraph 63 that significant contradictions may undermine the credibility of their application. The applicants then discuss the fantastical version given by their daughter after she arrived in New York on April 30, 2016. In her application for asylum, she stated that her parents had gone missing in February 2016. The story further stated that, after the disappearance, the police continued to go to their home. During one of these visits, Noemia and her sisters were roughed up. That was on March 5, 2016. However, the parents had not in fact been kidnapped. Rather, the American authorities discovered that the entire family had arrived on the same flight on April 30 and had been fingerprinted within seconds of each other. The parents returned to Angola later that year.

[50] The applicants stated that they wished to minimize the damage to the credibility of their refugee protection claim by invoking Chairperson's Guideline 8, on vulnerable persons, and *Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board*.

[51] However, the applicants never managed to articulate how these “Guidelines” would have a bearing on this case and what legal weight they would carry in relation to the standard of review; moreover, having read them, I fail to see how they could be of any help to the applicants. For example, Guideline 8 explicitly states that its sole objective is to ensure that procedural accommodations are made for vulnerable persons. When Noemia testified before the RPD, she was in her 24th year, and she was accompanied by her parents in a joint case in which they were represented by counsel. This guideline is clear that it refers only to procedural adjustments for a person identified as vulnerable, as explicitly stated in section 5.2. In its decision, the RPD panel stated that it had taken note of Guideline 4. The applicants sought to give the Guidelines undue weight, or they at least failed to show where the serious shortcomings were that allegedly rendered the decision unreasonable. The actions of the RPD and the RAD have not been shown to be unreasonable. On the contrary.

[52] The other incident involves a fear of the General. Here too, neither the RPD nor the RAD accepted the account because of contradictions noted in relation to this matter. For example, the RAD considered the kidnapping of the co-applicant not credible.

[53] In my opinion, there was ample reason not to be persuaded that the arrest, detention and torture of the principal applicant had not been established on a balance of probabilities, the standard of proof in civil cases. Since these incidents are now alleged to be central to the applicants’ refugee protection claim, Noemia’s failure to make any reference to them as a basis for her own refugee protection claim is puzzling. She spoke only of violence in Angola during a government crisis.

[54] More importantly, the kidnapping of the co-applicant is highly problematic. As the respondent has noted, it is unclear why she was allegedly kidnapped to find out where her husband was, since he testified that he reported to the authorities every Tuesday and was under 24-hour surveillance. The applicants' explanation for the kidnapping was that the principal applicant had been on call at the hospital for 48 hours; however, that not only seems implausible (the surveillance officers could have simply entered the hospital, since they were following him, or questioned his wife at home) but also contradicts the applicants' statements in the BOC Form, where the principal applicant alleges that the attackers stated that [TRANSLATION] "they had not seen [him] in a few weeks" and his wife alleges that the attackers interrogated her about the activities and presence of her husband [TRANSLATION] "whom, they said, they had stopped seeing out and about". In essence, the versions were considered to be at odds on key points and to be implausible. The applicants had to show that the decision for which they were seeking judicial review was not internally coherent or rational, that it was seriously flawed. They failed to do this.

[55] Corroborating evidence might have advanced the applicants' case. However, the only evidence provided, the document dated October 16, fails to corroborate the principal applicant's arrest and detention. The document contains nothing helpful to the applicants. It does not establish an arrest or detention but rather states that the principal applicant had to make himself available because he might have been a witness to a murder. If anything, it could be detrimental to the applicants.

[56] Lastly, the criticism that the RPD, and to some extent the RAD, failed to accept evidence from the National Documentation Package on Angola is without merit. That evidence in no way

corroborates the applicants' claims. Simply put, the evidence of the tragic events during Pastor Kalupeteka's evangelical mission has no bearing on the credibility of the applicants. The fact that such a tragedy occurred clearly does not corroborate the presence of people who claim that they managed to flee the scene. The fact that an incident took place does not mean that a given person was there.

V. Conclusion

[57] This case involved two incidents. The RAD's findings that the applicants lacked credibility were not validly challenged for either incident. The applicants are far from having demonstrated that these findings are unreasonable because the findings do not bear the requisite hallmarks of reasonableness—justification, transparency and intelligibility—and are not justified in relation to the relevant factual and legal constraints. The burden on applicants on judicial review is no less than that.

[58] Consequently, the application for judicial review is dismissed. The parties have not proposed any questions under section 74 of the Act. The Court agrees that there is none. Therefore, there is no question to be certified by the Court.

[59] The style of cause should designate the Minister of Citizenship and Immigration as the respondent. The style of cause will be amended accordingly.

JUDGMENT in IMM-11702-22

THIS COURT’S JUDGMENT is as follows:

1. The style of cause is amended to designate the Minister of Citizenship and Immigration as the appropriate respondent.
2. The application for judicial review is dismissed.
3. No question is certified.

“Yvan Roy”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11702-22

STYLE OF CAUSE: CARLOS KALONDA LUBANGI, ANTONICA TANGO KALONDA, CARLA TAUSI KALONDA, DANIELE KALONDA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 24, 2024

JUDGMENT AND REASONS: ROY J

DATED: FEBRUARY 7, 2024

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