

Federal Court



Cour fédérale

**Date: 20240311**

**Docket: IMM-9633-22**

**Citation: 2024 FC 406**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, March 11, 2024**

**PRESENT: The Honourable Justice Pamel**

**BETWEEN:**

**ALGAPH SAMB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

[1] The applicant, Algaph Samb, is a citizen of Senegal. He is seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated September 6, 2022. The RAD confirmed the decision of the Refugee Protection Division [RPD] that Mr. Samb was neither a Convention refugee nor a person in need of protection. In short, Mr. Samb fears his family and his Muslim

community, because he is bisexual and this sexual orientation is frowned upon by his community. On April 1, 2018, he was allegedly seen kissing his friend Jules, whereupon two male members of the Baye Fall group, part of [TRANSLATION] “the most influential Muslim community in Senegal, the Mourides”, attacked Mr. Samb. Mr. Samb alleges that his attackers claimed to be the guardians of morality in the town of Mbour. As a result of the attack, he needed medical attention to treat his wounds.

[2] A few months after arriving in Canada on a visitor’s visa in November 2018, Mr. Samb learned that Jules had been arrested by the police for pimping homosexual men. Upon his arrest, Jules was searched and compromising photos of Mr. Samb were discovered. After Jules’ arrest, Mr. Samb received death threats and insults from family members because of his sexual orientation. It was for these reasons that Mr. Samb, for fear of being sent back to Senegal, claimed refugee protection in Canada.

[3] On February 14, 2022, the RPD rejected his refugee protection claim on the grounds that his testimony was not credible. On September 6, 2022, the RAD found that the RPD’s conclusions regarding the applicant’s credibility were correct, since there were valid reasons to doubt the truthfulness of Mr. Samb’s testimony and evidence, thus rebutting the presumption of truthfulness. The RAD was of the opinion that Mr. Samb’s answers were vague, hesitant and unclear with regard to the discovery of his sexual orientation.

[4] For the RAD, the determinative issue was credibility. After conducting its own independent analysis of the case, the RAD concluded that Mr. Samb’s account lacked credibility

and that he had not established, on a balance of probabilities, the key elements of his claim. The RAD noted that the RPD had duly reviewed and considered the documents submitted by Mr. Samb, including the letter signed by a Montréal LGBTQ association, the letter of support from a friend, the medical certificate and the photos, but that they were insufficient on their own to establish his sexual orientation. Nor did they resolve the many credibility issues raised by his story, some of which raised new questions.

[5] In sum, the RPD and the RAD drew an adverse inference as to Mr. Samb's credibility with respect to the discovery of his sexual orientation and his relationship with Jules, as his testimony was evasive, devoid of details and lacking in credibility, even though the RPD and the RAD took into account the Chairperson's Guideline 9 (*Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics*) [Guideline 9].

## II. Issue and standard of review

[6] This application for judicial review raises a single question: is the RAD's decision reasonable? The appropriate standard of review for a RAD decision is presumed to be reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 23).

## III. Analysis

[7] Mr. Samb argues before the Court that the RAD did not consider Mr. Samb's personal profile or the conditions in Senegal as set out in the National Documentation Package when it analyzed his credibility. In other words, Mr. Samb criticizes the RAD for not having correctly

applied Guideline 9 and maintains that the RPD and the RAD did not examine his testimony with the necessary respect, as required by Guideline 9. He believes that the RAD's criticism that he [TRANSLATION] "was unable to explain how he came to the conclusion about his sexual orientation" is problematic, as there is no [TRANSLATION] "specific event in [his] case that [he] can pinpoint as to when he realized he was attracted to men".

[8] However, Guideline 9 is clear: a claim based on sexual orientation and gender identity and expression is subject to the same standard of proof as any other claim (section 7.4.1 of the Guideline 9; *Lawal v Canada (Citizenship and Immigration)*, 2022 FC 601 at para 24). As a result, it is open to the RAD to draw a negative inference about a claimant's credibility based on inconsistencies, contradictions, and omissions.

[9] In this case, none of the issues Mr. Samb raised suggest that the RAD did not take into account his personal profile or the conditions in Senegal with respect to bisexual men. In my view, it is clear from the RAD's reasons that it took account of Guideline 9. The RAD clearly noted that the RPD had attempted to identify the problem in the applicant's account; it was aware of the evolution of Mr. Samb's discovery of his sexual orientation, had been open-minded and had not attempted to apply Canadian or Western criteria to Mr. Samb's situation, either to the account submitted or to his testimony. The RAD concluded that the RPD had sought to understand Mr. Samb's account, statements and explanations. However, there were many things left unsaid in his testimony, and Mr. Samb had expressed his sexual orientation with considerable hesitation.

[10] I note that the questions put to Mr. Samb were not of a confrontational nature and that the conclusions are not based on stereotypes. The problem in this appeal concerns Mr. Samb's testimony, which the RAD found to be vague. After analyzing the record, I can confirm that the RAD gave precise reasons to support its conclusion that the testimony was vague, and did so in accordance with section 7.6 of Guideline 9. The RAD even took into account Mr. Samb's particular characteristics. By way of example, here are paragraphs 14 and 15 of its decision:

Like the RPD, I considered Chairperson's Guideline 9 and I note that the appellant responded vaguely and adjusted his answers when the RPD and its counsel revisited questions, despite the fact that the appellant had shared some level of intimacy with Jules over a period of approximately 10 years, from 2008 to 2018. I would have expected him to be able to at least give some details about a significant moment, particularly given that this intimacy was of long duration, but the appellant instead provided very evasive answers. Like the RPD, I draw a negative inference as to credibility relating to the discovery of his sexual orientation and his relationship with Jules.

Even considering Guideline 9 and the appellant's argument that he did not have the vocabulary to properly express himself, I am of the opinion that on a balance of probabilities, this does not compensate for the appellant's evasive testimony with regard to his romantic relationship in Senegal and the people he associated with. The appellant's responses were lacking in detail and credibility.

[11] Accordingly, I am of the opinion that the RAD took into account Guideline 9. It was open to the RAD to consider inconsistencies, implausibilities and contradictions when assessing the credibility of Mr. Samb's testimony, and he has not established that, in doing so, the RAD improperly applied Guideline 9 (*Jayaraman v Canada (Citizenship and Immigration)*, 2022 FC 458 at para 24). This Court's jurisprudence confirms that these guidelines are not a panacea for negative credibility findings (*Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 [*Okunowo*] at para 66; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 179 at para 19).

The fact that the RAD found inconsistencies and implausibilities in the evidence does not mean that Guideline 9 was not applied, or that it was applied improperly. Moreover, all of Mr. Samb's arguments attack the RAD's assessment of his credibility, which amounts to asking the Court to reweigh the evidence, particularly Mr. Samb's testimony. However, it is well established that a reviewing court must refrain from reweighing evidence that was before an administrative decision maker, including the RAD (*Vavilov* at para 125; *Okunowo* at para 65).

[12] Indeed, the Court must show great deference to questions of credibility, as these are "the heartland of the Board's jurisdiction" (*Jimoh-Atolagbe v Canada (Citizenship and Immigration)*, 2022 FC 500 at para 18). In this case, I see no exceptional reason to re-evaluate the evidence that was before the RAD. The attempt to cherry-pick certain elements of the RAD's credibility analysis in order to discredit it is not convincing. For these reasons, I am not persuaded that the RAD erred in concluding that the applicant's vague answers during his testimony warranted a negative credibility finding. In summary, the RAD's decision is reasonable.

**JUDGMENT in IMM-9633-22**

**THE COURT'S JUDGMENT is as follows:**

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

“Peter G. Pamel”

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Judge

Certified true translation  
Janna Balkwill

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

**DOCKET:** IMM-9633-22

**STYLE OF CAUSE:** ALGAPH SAMB v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** FEBRUARY 19, 2024

**JUDGMENT AND REASONS:** PAMEL J.

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**APPEARANCES:**

Stéphanie Valois

FOR THE APPLICANT

Guillaume Bigaouette

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Stéphanie Valois  
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT