

Federal Court



Cour fédérale

**Date: 20240529**

**Docket: IMM-11326-22**

**Citation: 2024 FC 815**

[ENGLISH TRANSLATION]

**Montréal, Quebec, May 29, 2024**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**ROBERTO PATRICE MBONDELE MOKOKO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Roberto Patrice Mbondele Mokoko, is a citizen of the Republic of the Congo, also known as Congo-Brazzaville [Congo]. He is seeking judicial review of a decision dated October 11, 2022 [Decision] in which the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada refused to recognize him as a Convention refugee or as a person in need of protection under section 96 and subsection 97(1) of the *Immigration and*

*Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD rejected Mr. Mokoko's claim because of its lack of credibility and its numerous omissions and inconsistencies regarding the essential elements of his claim. The RPD also concluded that there was no credible basis for Mr. Mokoko's refugee protection claim under subsection 107(2) of the IRPA.

[2] Mr. Mokoko states that the RPD erred in its analysis of his credibility, in particular by failing to take into account the explanations he offered regarding the contradictions that the decision maker raised. Mr. Mokoko also submits that the RPD erred in concluding that there was no credible basis for his claim.

[3] For the reasons set out below, I will dismiss Mr. Mokoko's application. Having considered the RPD's reasons and conclusions, the evidence before it and the applicable law, I see no reason to overturn the Decision. The profound gaps in the evidence Mr. Mokoko submitted and the repeated contradictions in his testimony reasonably support the RPD's adverse credibility findings, and the RPD's reasons possess the qualities that make its reasoning logical and coherent in light of the relevant legal and factual constraints. The same applies to the RPD's conclusions on the manifestly unfounded nature of Mr. Mokoko's refugee protection claim. There are therefore no grounds for the Court's intervention.

## II. Background

### A. *The facts*

[4] In his refugee protection claim, Mr. Mokoko provided the following written account.

[5] In January 2011, he began seeing Stéphanie Mboulou, the daughter of Congo's Minister of the Interior, Raymond Mboulou. On August 18, 2012, while with Ms. Mboulou, Mr. Mokoko was attacked and injured by Ms. Mboulou's brother, as his family did not approve of their relationship. He was subsequently taken to hospital for treatment.

[6] On leaving hospital, Mr. Mokoko returned home and tried unsuccessfully to contact Ms. Mboulou by telephone. Later, he managed to speak with her, but she told him she could no longer leave her place.

[7] In September 2012, Ms. Mboulou's brother, then armed with a weapon, began to walk past Mr. Mokoko's residence and threaten him. A little later, towards the end of September 2012, Mr. Mokoko was again assaulted by Ms. Mboulou's brother. After this incident, Mr. Mokoko went into hiding at his aunt's home.

[8] Fearing for his life, Mr. Mokoko left Congo on December 2, 2012 to go to China, via Ethiopia. He says he studied and lived in China until 2020. He then resided in France from January 15 to February 2, 2020, then in the United States from February 2 to February 18, 2020, before entering Canada on February 18.

[9] He claimed refugee protection in Canada a few months later, on July 20, 2020.

B. *The RPD Decision*

[10] In its short Decision, the RPD concludes that Mr. Mokoko lacks credibility for several reasons. First, the RPD finds a significant contradiction in the evidence concerning the date of his departure from Congo, which Mr. Mokoko sets at December 2, 2012 in some documents but

July 11, 2017 elsewhere. The RPD also finds that Mr. Mokoko's behaviour is inconsistent with the existence of a fear for his life in Congo and rather consistent with a desire to immigrate to Canada, as he did not claim refugee protection during his trips to France or the United States between 2018 and 2020. The RPD also considers it implausible that Mr. Mokoko did not know that the woman he had been seeing since January 2011 was the daughter of Congo's Minister of the Interior before he was attacked by her brother in August 2012. Furthermore, the RPD considers that the long delay of six months before Mr. Mokoko claimed refugee protection in Canada contributes to undermining his credibility. Finally, the RPD determines that the documentary evidence filed in support of the claim has no probative value because of Mr. Mokoko's general lack of credibility and because it is a document of convenience that does not establish the facts underlying his claim.

[11] In light of all these elements, the RPD concludes that there is no credible basis under subsection 107(2) of the IRPA, as Mr. Mokoko has not presented any credible or trustworthy evidence on which the RPD could have based its decision to grant refugee status to Mr. Mokoko.

C. *The standard of review*

[12] It is well established that the standard of reasonableness applies when reviewing RPD findings of credibility or lack of evidence sufficient to establish the basis of a claim for refugee protection (*Regala v Canada (Citizenship and Immigration)*, 2020 FC 192 at para 5; *Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142 at para 17; *Yuan v Canada (Citizenship and Immigration)*, 2018 FC 755 at para 13; *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 25).

[13] The analytical framework for judicial review of the merits of an administrative decision is now that set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [Mason]). This analytical framework is based on the presumption that the standard of reasonableness is now the applicable standard in all cases.

[14] When the applicable standard of review is that of reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Mason* at para 64; *Vavilov* at para 85). The reviewing court must therefore ask itself “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[15] It is not enough for the decision to be justifiable. In cases where reasons are required, the decision “must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies” [italics in original] (*Vavilov* at para 86). Thus, review according to the standard of reasonableness is concerned as much with the outcome of the decision as with the reasoning followed (*Vavilov* at para 87). A reasonableness review must involve a rigorous evaluation of administrative decisions. However, in analyzing the reasonableness of a decision, the reviewing court must adopt an approach that “puts those reasons first”, examining the reasons given with “respectful attention”, and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at para 58, 60; *Vavilov* at para 84). The reviewing court must adopt a posture of restraint, intervening only “where it is

truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). The standard of reasonableness, I emphasize, is always rooted in the principle of judicial restraint and deference, and requires reviewing courts to show respect for the distinct role that the legislature has chosen to confer on administrative decision makers rather than on courts of law (*Mason* at para 57; *Vavilov* at paras 13, 46, 75).

[16] The burden is on the party challenging the decision to show that it is unreasonable. To set aside an administrative decision, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be considered reasonable (*Vavilov* at para 100).

### III. Analysis

[17] Mr. Mokoko first claims that the RPD erred in its analysis of his credibility, notably by failing to take into account the explanations he offered regarding the contradictions raised. More specifically, Mr. Mokoko states that the contradictions regarding the date of his departure from Congo are nothing more than an honest mistake, the source of which he is unaware. As for the RPD’s conclusions regarding his conduct inconsistent with a subjective fear of persecution due to his failure to apply for asylum in France or the United States, Mr. Mokoko argues that the failure to apply for asylum is not in itself a determining factor in concluding that there was no subjective fear. In his view, there is no presumption that an asylum seeker should apply for asylum at the first opportunity, and he therefore has no burden to rebut such a presumption. Mr. Mokoko further submits that the RPD had no evidence to contradict his allegations that he did not know that Ms. Mboulou was the daughter of a government minister, and argues that he should be given the benefit of the doubt in this regard.

[18] Mr. Mokoko also states that it was only the erroneous conclusions regarding his lack of credibility that enabled the RPD to conclude that there was no credible basis for his claim, which unduly deprived him of a right of appeal.

[19] With respect, Mr. Mokoko's arguments have no merit.

[20] As argued by the respondent, the Minister of Citizenship and Immigration [Minister], it is well established that the RPD can draw negative inferences with respect to credibility when a claimant presents contradictory or implausible evidence on the central points of his or her claim for refugee protection. This is precisely the case here with regard to when Mr. Mokoko allegedly left Congo to flee his persecutors, the date on which he learned that the woman he was seeing was the daughter of the Minister of the Interior, his delay in claiming refugee protection in Canada or his failure to seek asylum during his visits to France or the United States.

A. *RPD's credibility decision is reasonable*

[21] Although claimants are presumed to be telling the truth, a claimant's lack of credibility may be sufficient to rebut this presumption, particularly "where the RPD is unsatisfied with the [claimant]'s explanation for [his or her] inconsistencies" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 21 [*Lawani*], citing *Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at para 19). It is well known that the RPD is usually in a better position to assess a claimant's credibility, since it has the advantage of hearing the claimant's testimony (*Lawani* at para 22, citing *Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at para 10). Moreover, the accumulation of contradictions, inconsistencies and omissions on fundamental elements of the refugee claim may be sufficient to support a negative finding on a

claimant's credibility (*Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at para 56, citing *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 19; *Lawani* at para 22). Finally, lack of credibility can taint other elements of the claim (*Lawani* at para 24).

[22] In light of these principles, I am of the opinion that the RPD's conclusions on Mr. Mokoko's lack of credibility are entirely reasonable. When analyzed as a whole, Mr. Mokoko's numerous contradictions and inconsistencies were more than sufficient to lead to a negative conclusion regarding his credibility.

[23] Firstly, the contradictions regarding the date on which Mr. Mokoko left Congo cast doubt on a central element of his refugee protection claim. As the RPD found in the Decision, Mr. Mokoko was unable to provide an adequate explanation:

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[10] When confronted with question 9 of his IMM00084 form, which states that he left Congo on July 11, 2017 and not on December 2, 2012 as mentioned in his answer to question 2(e) of his BOC Form, the claimant remained silent. His lawyer then intervened and asked the question again, to which the claimant said "I don't understand". Asked again about this contradiction. The claimant replied that he did not know why it was mentioned that he had left Congo in 2017 because he was in China in 2017.

[11] His lawyer asked how it was possible that he had not seen this error, given that he had had this document for a long time. Visibly embarrassed, the claimant said that he had not paid attention to this part, implying the document.

[24] According to this Court's jurisprudence, "lack of ability to recall detail – especially in circumstances where it ought to be remembered – provides a tribunal a reasonable basis for rejecting testimony" (*Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 8, citing *Ma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 417 at paras 31–33; *Pjetri v*



*Canada (Minister of Citizenship and Immigration)*, 2013 FC 376 at para 43; *Li v Canada (Minister of Citizenship and Immigration)*, 2012 FC 998 at para 18). In Mr. Mokoko's case, the contradiction regarding the date of his departure from Congo goes to the very heart of his claim that he had had to leave the country because of the persecution of his girlfriend's brother in August 2012. Such a contradiction may well justify the negative inference drawn by the RPD. I would add that the contradiction does not boil down to a single error in a year or a confusion of months. The two dates mentioned by Mr. Mokoko show a significant discrepancy of five years, with completely different dates and months.

[25] Second, and as the Minister correctly notes, failure to claim refugee status upon arrival in a country, or within a reasonable time thereafter, may be an important factor in assessing credibility although, in some circumstances, this delay alone may not justify a negative finding of credibility (*Ndoungo v Canada (Citizenship and Immigration)*, 2019 FC 541 at paras 21–23 [*Ndoungo*]; *Guarin Caicedo v Canada (Citizenship and Immigration)*, 2010 FC 1092 at para 21; *Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923 at para 28). The Court noted that “delay may, in the right circumstances, constitute sufficient grounds upon which to dismiss a claim. It will ultimately depend upon the facts of each claim” [emphasis added] (*Duarte v Canada (Minister of Citizenship and Immigration)*, 2003 FC 988 at para 14). It is true, as Mr. Mokoko points out, that failure to claim asylum in the first possible country or promptly after arrival is not always a sufficient criterion for rejecting a claim. However, where, as here, there is a lack of reasonable explanation for the lateness of the claim or for the decision not to apply in a given country, it is entirely open to the RPD to infer that such behaviour undermines the credibility of the claimant (*Ndoungo* at para 23).

[26] In this case, therefore, the RPD could reasonably conclude that Mr. Mokoko's credibility was undermined by his failure to seek asylum during his multiple previous trips to France and the United States. Indeed, this conclusion was added to the other shortcomings that had eroded his credibility and to the explanations that were considered unsatisfactory to justify his delay in acting. On the other hand, Mr. Mokoko allegedly explored his options for immigrating to various countries, including Canada, and was motivated to choose the country that best suited him in terms of care, education, work and treatment of immigrants. It was therefore reasonable for the RPD to conclude that these elements are inconsistent with the situation of a person who says he fears for his life. In addition, the RPD noted that Mr. Mokoko adjusted his testimony in response to questions, and did not spontaneously offer reasonable or plausible explanations. When duly confronted with the contradictions and implausibilities in the evidence presented, Mr. Mokoko offered no satisfactory explanation to overcome these deficiencies.

[27] As the Court has already observed, "the onus is on refugee protection claimants to establish the central elements of their claims and that a claimant's demeanor, including vagueness, may reasonably underpin a negative credibility finding" (*Saidj v Canada (Citizenship and Immigration)*, 2023 FC 158 at para 24, citing *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 45). This is the case here.

[28] Third, it was also reasonable for the RPD to conclude that Mr. Mokoko's explanations were insufficient as to when he learned that the woman he was seeing was the daughter of a government minister. It is within the RPD's purview and expertise to determine the reasonableness of an explanation (*Blanco Ortega v Canada (Citizenship and Immigration)*, 2015 FC 190, at paras 8–9). Here, the RPD rejected Mr. Mokoko's explanations because it found it

implausible that, in a country like Congo, he would not be aware that Ms. Mboulou was the daughter of a member of parliament who had been in office since 1992 and a government minister since 2007. The RPD also found it implausible that after a year and seven months of dating, no one in Mr. Mokoko's entourage knew that Ms. Mboulou was the daughter of a government minister. Considering the evidence on file, and the differences of opinion between the two families, I see nothing unreasonable in this conclusion.

[29] Mr. Mokoko also submitted that the RPD had discarded several pieces of documentary evidence he had submitted without analyzing their content. According to Mr. Mokoko, this evidence had the potential to dispel any credibility concerns the RPD had with him. In his view, the RPD erred in dismissing this evidence without examining it.

[30] Once again, I disagree with Mr. Mokoko. Contrary to what Mr. Mokoko suggests, the RPD is presumed to have considered all the evidence (*Puebla v Canada (Citizenship and Immigration)*, 2022 FC 879 at para 24; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 38; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) at paras 16–17 [*Cepeda-Gutierrez*]). Thus, failure to mention a particular piece of evidence in the context of an administrative decision does not mean that it was ignored, nor does it constitute an error per se (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Cepeda-Gutierrez* at paras 16–17). As established in *Cepeda-Gutierrez*, it is only when the omitted evidence is essential and directly contradicts the administrative tribunal's conclusion that the reviewing court can infer that the tribunal failed to consider the evidence before it. Mr. Mokoko has not identified any such evidence in this case.

[31] In any event, in this case, it is clear from the Decision that the RPD did analyze the documents Mr. Mokoko submitted at the hearing. It found that this documentary evidence amounted to documents of convenience or which did not demonstrate the facts alleged in support of the refugee protection claim. The RPD therefore could not give them no probative value, given Mr. Mokoko's general lack of credibility.

[32] As Justice de Montigny noted in *Linares Morales v Canada (Citizenship and Immigration)*, 2011 FC 1496 [*Linares Morales*]:

[21] Given the many inconsistencies and contradictions in the applicant's testimony identified above, it was open to the panel to not give him the benefit of the doubt. Therefore, the panel was also entitled to attach little probative value to the documents adduced into evidence by the applicant. A non-credibility finding concerning central elements of a claim may extend to other elements of the claim, as the Federal Court of Appeal recognized in *Sheikh v. Canada (M.E.I.)*, 1990 CanLII 13057 (FCA), [1990] 3 F.C. 238 at paragraphs 7 to 9.

[33] Thus, having disbelieved Mr. Mokoko's story and allegations, the RPD was entitled to give no probative value to the exhibits submitted, which were based on the same story (*Linares Morales* at para 21; *Perjaku v Canada (Citizenship and Immigration)*, 2007 FC 496 at paras 28–29).

[34] Findings of lack of credibility are a matter within the RPD's expertise. As this Court has repeatedly stated, credibility is “a question of fact that is central to the RPD's expertise” and “the RPD's findings of credibility invite considerable deference” (*Mbuyamba v Canada (Citizenship and Immigration)*, 2020 FC 918 at para 28, citing *Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at paras 31–32 and *Lunda v Canada (Citizenship and Immigration)*,

2020 FC 704 at para 36). In sum, the arguments put forward by Mr. Mokoko to attack the RPD's findings of lack of credibility boil down to a disagreement with the weight given to the evidence and the interpretation adopted by the decision maker. However, it is well established that such disagreement is not sufficient to justify the Court's intervention.

B. *The RPD reasonably concluded that the claim lacked a credible basis*

[35] Under subsection 107(2) of the IRPA, where a claimant fails to present credible or trustworthy evidence on which a favourable decision could have been based, the RPD must find that there is no credible basis for the claim (*Aboubeck v Canada (Citizenship and Immigration)*, 2019 FC 370 at para 15, citing *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51 [*Rahaman*]; *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 19). Once again, this is clearly the case here.

[36] It is important to note that subsection 107(2) of the IRPA does not refer only to an absence of "credible or trustworthy evidence". The provision, which must be read in its entirety, refers to an absence of "credible or trustworthy evidence on which [the RPD] could have made a favourable decision" (*Rahaman* at para 28). Mr. Mokoko has submitted no credible or trustworthy evidence that would establish the elements supporting his written account and his claim for refugee protection, either as to the date of his departure from Congo, or as to when he learned that the woman he was seeing was the daughter of a government minister. Moreover, he was unable to explain why he had remained in France and the United States without making an asylum claim. Finally, his delay in claiming refugee protection and the reasons behind his refugee protection claim in Canada also undermined his credibility. It was therefore entirely reasonable for the RPD to conclude that there was no credible basis for his refugee protection

claim under subsection 107(2) of the IRPA, given the absence of evidence to support a finding that he was a refugee or a person in need of protection.

[37] I would add that a negative finding on a claimant's credibility may result in a lack of credible evidence to support a claim for refugee protection, and that such a finding may be sufficient for the RPD to determine that there is no credible basis (*Nezerali v Canada (Citizenship and Immigration)*, 2016 FC 1375 at paras 26–29).

[38] Mr. Mokoko has simply failed to put forward any solid argument or evidence to challenge the reasonableness of the RPD's findings in this regard.

#### IV. Conclusion

[39] For the foregoing reasons, Mr. Mokoko's application for judicial review is dismissed. I find nothing irrational in the decision-making process the RPD followed or in its conclusions. Rather, I am of the view that the RPD's analysis of Mr. Mokoko's lack of credibility or the manifestly unfounded nature of his refugee protection claim possesses all the requisite attributes of transparency, justification and intelligibility. The Decision contains no reviewable error.

[40] Neither party has proposed any questions of general importance to be certified, and I agree that there are none.

**JUDGMENT in IMM-11326-22**

**THE COURT ORDERS as follows:**

1. The application for judicial review is dismissed without costs.
2. No questions of general importance are certified.

“Denis Gascon”

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Judge

Certified true translation  
Janna Balkwill

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

**DOCKET:** IMM-11326-22

**STYLE OF CAUSE:** ROBERTO PATRICE MBONDELE MOKOKO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MAY 28, 2024

**JUDGMENT AND REASONS:** GASCON J

**DATED:** MAY 29, 2024

**APPEARANCES:**

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