

Federal Court



Cour fédérale

Date: 20241106

Docket: IMM-5518-23

Citation: 2024 FC 1763

Toronto, Ontario, November 6, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

**CLOVIS MEBINAJI NJIKANG
MBEILYN MEBINAJI
CATHERINE YT EPSE MEBINAJI**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, Clovis Mebinaji Njikang, his wife, and their child, seek judicial review of an April 11, 2022 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed the applicants' appeal and confirmed the Refugee Protection Division's (RPD) decision that they are neither Convention refugees nor persons in

need of protection according to sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], with credibility being the determinative issue.

[2] The applicants are citizens of Cameroon. Their refugee claim rests on a fear of political persecution due to Mr. Njikang's political activities in Cameroon and abroad in support of the Southern Cameroons National Council (SCNC), an organization that advocates for self-determination for Cameroon's two anglophone regions. The SCNC was banned as a separatist organization in 2017.

[3] Mr. Njikang states he was inspired to join the SCNC after his father died in October 1999, while in prison for political activism as an SCNC supporter. Mr. Njikang claimed that he too was arrested and detained by Cameroonian authorities for his political activism. He changed residences to avoid attention and then moved to Japan for post-secondary studies in 2008 and resided there until 2021. Mr. Njikang returned to Cameroon three times in that period, including to marry his spouse in 2014, after which the couple returned to Japan where their child was born.

[4] Mr. Njikang decided to pursue further studies and obtained a Canadian student visa. He travelled to Canada in September 2021 with his wife and daughter accompanying him. Mr. Njikang states that after arriving in Canada he learned that his sister had been arrested for her involvement with the SCNC and suffered gunshot wounds as she attempted to escape. When the police searched the family home, they found Mr. Njikang's membership card and other papers implicating him in the SCNC's activities and later returned with a summons in his name.

[5] The RPD rejected the applicants' claim for protection, finding they had failed to establish that Mr. Njikang was an SCNC member or that he was targeted in Cameroon for his political activities. The RPD found that the applicants had filed fraudulent documents in support of their claim—the father's death certificate, the SCNC membership card, and the police summons—and this undermined the credibility of Mr. Njikang's testimony. While the RPD found there was credible evidence of Mr. Njikang's political activities in Japan and Canada, this evidence was insufficient to establish a *sur place* claim that the applicants would face a forward-facing risk of persecution in Cameroon due to Mr. Njikang's political activities abroad.

[6] The applicants appealed the RPD's decision to the RAD and sought to introduce new evidence. The RAD refused to admit the new evidence, finding it did not meet the requirements of *IRPA* subsection 110(4) for admitting new evidence on appeal. After conducting its own analysis, the RAD found the RPD did not err in its credibility assessment and Mr. Njikang's lack of credibility was determinative of all claims, including the *sur place* claim.

[7] The applicants submit that the RAD's decision was unreasonable. They submit the RAD erred by refusing to admit the new evidence. The applicants also submit the RAD erred when it confirmed the RPD's credibility findings and determined that the applicants had not established their claim for refugee protection, including the *sur place* claim, with sufficient credible and corroborative evidence.

[8] The sole issue on this application is whether the RAD's decision is unreasonable, based on the alleged errors above.

[9] The guiding principles for reasonableness review are set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. The Court's role is to conduct a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, was transparent, intelligible, and justified: *Vavilov* at paras 13, 99.

[10] For the reasons that follow, the applicants have not established that the RAD's decision was unreasonable. The RAD reasonably found that the new evidence the applicants sought to introduce did not meet the requirements of *IRPA* subsection 110(4). The RAD's findings and conclusion regarding the applicants' forward-looking risk of persecution were logical and justified in relation to the relevant legal and factual constraints.

A. *New evidence*

[11] The applicants sought to introduce (i) letters from Mr. Njikang's sister and from the SCNC regarding her membership and persecution; and (ii) articles explaining the prevalence of spelling mistakes in official documents in Cameroon, to address the RPD's concerns with the authenticity of documents.

[12] The applicants state Mr. Njikang became aware of the need for this evidence at the RPD hearing, testifying that he needed to provide confirmation of his sister's SCNC membership and persecution. They contend this explains why the evidence was obtained afterward. The applicants argue that the letters are crucial evidence because of the link between the sister's persecution and their claim for protection, and the RAD erred by refusing to admit the letters.

[13] With respect to the articles, the applicants submit they could not have been expected to present them to the RPD because the RPD's concerns were only made known in writing, by way of its decision. The applicants submit that Mr. Njikang had explained at the RPD hearing that official documents in Cameroon frequently contain spelling errors and the RPD gave no indication that it disagreed.

[14] I am not persuaded by the applicants' arguments.

[15] On judicial review, the Court does not re-examine whether new evidence should have been admitted; the question for the Court is whether the admissibility determination was reasonable: *Morales v Canada (Citizenship and Immigration)*, 2024 FC 133 at para 14 [*Morales*], citing *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 at para 28. The admissibility of new evidence was an issue for the RAD to decide, and its decision is owed deference: *Morales* at para 14, citing *Frank v Canada (Citizenship and Immigration)*, 2023 FC 696 at para 25.

[16] As the respondent correctly points out, subsection 110(4) of the *IRPA* provides that a refugee claimant may only present new evidence to the RAD that (i) arose after the RPD's rejection of their claim, (ii) was not reasonably available at the time of the RPD's rejection, or (iii) they could not reasonably have been expected in the circumstances to have presented at the time of the RPD's rejection: *IRPA*, s 110(4). The applicants had the onus to provide full and detailed submissions explaining how the proposed new evidence met the requirements of subsection 110(4): *RAD Rules* 3(3)(e), 3(3)(g)(iii), and 29(3).

[17] The RAD found that, while the letters relating to Mr. Njikang's sister post-dated the RPD hearing, their content did not. The applicants did not explain their efforts to obtain the letters, when they were obtained, or why they were not provided to the RPD before it rendered its decision. The RPD had pointed out at the hearing that there was no evidence of the sister's SCNC membership, and the RAD reasonably concluded the applicants could have been expected to provide the letters to the RPD before its decision, particularly since they were represented by counsel.

[18] Turning to the articles about spelling errors, the RAD expected the applicants to be aware that their own official documents contained spelling mistakes. Furthermore, the RPD raised the spelling errors at the hearing and the RAD did not accept that the applicants only learned of concerns after receiving the RPD's decision. The RAD further noted that the applicants had not explained why they could not have submitted the articles to the RPD after the hearing, particularly since their counsel made an application to submit new evidence (about a different issue) during the RPD hearing.

[19] An appeal to the RAD is not an opportunity to complete a deficient RPD record or address weaknesses identified in the RPD's decision: *Digaf v Canada (Citizenship and Immigration)*, 2019 FC 1255 at paras 25-26. The RAD's discretion to admit or reject new evidence does not permit it to disregard the requirements of *IRPA* subsection 110(4): *Figuroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at para 45. I agree with the respondent that the RAD's assessment of the evidence against the subsection 110(4) requirements was clear and justified, and the RAD reasonably refused to admit the evidence.

B. *Credibility*

[20] As noted above, the RPD had found that Mr. Njikang's credibility was undermined by the presentation of fraudulent documents. The applicants submit the RAD erred when it confirmed the RPD's negative credibility findings that led to the determination that the applicants had not established their claim for refugee protection with sufficient credible and corroborative evidence.

[21] The applicant's arguments before this Court repeat, almost verbatim, the arguments they made to the RAD about how the RPD erred in its credibility assessment. Essentially, the applicants seem to allege that by confirming the RPD's erroneous findings, the RAD committed the same errors as the RPD. However, the RAD conducted an independent assessment of the applicants' claims, based on its own analysis of the record. In its 40-page decision, the RAD addressed the applicants' arguments about how the RPD had erred, and explained why it disagreed. The RAD noted that the applicants had not challenged the bulk of the RPD's credibility findings and the RAD identified additional credibility concerns.

[22] In this proceeding, the Court does not step into the RAD's shoes to reassess whether the RPD erred. Rather, the Court must focus on the RAD's decision, and determine whether the applicants have identified sufficiently serious shortcomings to justify setting it aside. The applicants' disagree with how the RAD decided their appeal, but they have not identified a reviewable error that would render the RAD's decision unreasonable.

[23] The applicants raise the following alleged errors:

- *Father's death certificate*: The RPD/RAD erred in drawing a negative credibility inference on the basis that the applicants had submitted a fraudulent death certificate. The RPD/RAD relied on conflicting evidence as to the date Mr. Njikang's father died. Mr. Njikang stated that his father died on October 7, 1999 while in prison for his political opinion, and this is the date shown on the death certificate. Mr. Njikang acknowledged that he indicated a different date of death on his student visa application; however, he explained to the RPD that he did this to be consistent with an estate document he filed in support of the visa application, which stated his father died on August 4, 1993. Mr. Njikang stated there was a clerical error in the estate document and he was unable to get the error corrected due to a bureaucratic bottleneck in the Cameroonian civil service. The applicants contend the RPD/RAD also failed to consider independent evidence of the date of death, including an affidavit from Mr. Njikang's mother that confirmed her husband died on October 7, 1999.
- *SCNC membership card*: The applicants contend the RPD/RAD wrongly found that Mr. Njikang had not established his SCNC membership or alleged experience of persecution in Cameroon because his testimony was undermined by fraudulent documentation. The concerns raised with Mr. Njikang's SCNC membership card included the misspelled slogan "Justice Unity Demogracy", the absence of the Ambazonian flag shown on an example card from the country condition evidence, and the fact that the membership card indicated Mr. Njikang's profession as

“applicant”. The applicants explain that at the RPD hearing, they attempted to introduce an official letter the SCNC issued in 2017, acknowledging spelling errors in official SCNC documents. They contend the RPD erred by refusing to admit the SCNC’s 2017 letter to counter the RPD’s expectation that there should be fewer errors on membership cards that were issued before the SCNC was driven underground in 2017. The applicants further state that the RPD/RAD erred in comparing Mr. Njikang’s 2002 membership card to a 2005 example card shown in the country condition evidence, particularly since the country condition evidence acknowledges the existence of various versions of SCNC membership cards as well as the possibility of errors appearing on them. Finally, the applicants submit the RPD/RAD misapprehended Mr. Njikang’s testimony about how he was able to get a copy of his SCNC membership card, which was that after his sister’s arrest, his mother retrieved a copy of the card that the SCNC had on file.

- *Police summons*: The applicants submit that the RPD/RAD erred in finding that the police summons naming Mr. Njikang was fraudulent, based on spelling errors and irregularities. They applicants contend it is possible that the errors were made by the issuer, pointing to objective country evidence that the format and quality of summonses depends on the issuing police service. The applicants argue that the RPD relied on assumptions about what official documents should look like without considering the realities in Cameroon, and they say the RPD’s findings were inconsistent with case law indicating that: clerical errors are not necessarily determinative of authenticity; an applicant cannot be expected to explain spelling errors in documents he did not author; implausibility findings should only be

made in the clearest cases; and the evidence or reason for doubting authenticity must be based on more than generalizations about the availability of fraudulent documents in a county.

[24] The applicants state it was essential for the RPD/RAD to consider the totality of their evidence, including their explanations and the documentary evidence: *Jiang v Canada (Citizenship and Immigration)*, 2007 FC 1292 at para 7. The implication that they tendered fraudulent documents is serious enough that the appropriate response may have been to require proper authentication: *Agyemang v Canada (Citizenship and Immigration)*, 2016 FC 265 at para 14.

[25] The applicants contend that the findings regarding fraudulent documents extended to other key documents that independently corroborated their claim. They submit that all evidence must be considered before a global credibility finding is made, and a finding that one or more documents are fraudulent does not mean that all documents are fraudulent.

[26] The RAD addressed these arguments. The applicants have not established any error in the RAD's assessment.

[27] I agree with the respondent that the RAD considered the totality of the evidence and undertook a detailed consideration of Mr. Njikang's testimony that his father died on October 7, 1999, a date that was inconsistent with the date of death noted in Mr. Njikang's visa application and in an August 17, 2000 court judgment confirming that the father's estate had been settled in

Mr. Njikang's favour. The RAD noted that the RPD had made several findings to support its determination that the death certificate was fraudulent and the applicants had not challenged "the bulk of the RPD's findings" on this point—including the certificate's irregular appearance when compared to other documents issued by the same civil status registration centre in Buea, and the evolving nature of Mr. Njikang's testimony. The RAD addressed the argument that the affidavit from Mr. Njikang's mother confirmed that her husband died on October 7, 1999. It found the affidavit to be fraudulent. The applicants have not challenged this finding on judicial review. Having conducted its own independent assessment of the record, the RAD concurred with the RPD that the death certificate was fraudulent and this significantly undermined credibility. The RAD noted that the date of the father's death was highly significant given Mr. Njikang's testimony about the reason he joined the SCNC, and the 1993 date would mean that the father died before the SCNC was founded in 1995.

[28] Similarly, the RAD addressed the alleged errors with the RPD's findings about Mr. Njikang's SCNC membership and the police summons.

[29] With respect to the membership card, the RAD's analysis differed from the RPD's. The RAD chose not rely on spelling errors, a comparison of Mr. Njikang's card to the samples in the country condition documents, or the fact that the card stated his profession was "applicant". The RAD's finding that the copy of Mr. Njikang's SCNC membership card was fraudulent rested on concerns with Mr. Njikang's testimony about the provenance of the card. On this point, the RAD disagreed with the applicants that the RPD misapprehended Mr. Njikang's testimony. The RAD undertook a detailed analysis of Mr. Njikang's testimony, and in its assessment, the testimony

was vague, evasive, evolving, inconsistent, and not forthcoming. As Mr. Njikang had failed to establish how he obtained a copy of his SCNC card from Cameroon, the RAD determined it could not verify the source of the document and had doubts about its genuineness. The RAD assigned the document no weight and drew a negative credibility inference.

[30] On this application, the applicants do not address the RAD's analysis or the findings that were based on Mr. Njikang's testimony. They have not established that the RAD's findings were unreasonable.

[31] With respect to the police summons, the RAD noted that the RPD found it was fraudulent based on Mr. Njikang's failure to reasonably explain the following irregularities: the document was not bilingual as required by Cameroonian law; the header contained a misspelling of the issuing agency's name; the cited penal code provisions differed from those in a sample official summons; the coat of arms appeared to be a low-resolution digital image with pixelated edges; Mr. Njikang's profession was stated as "applicant".

[32] The RAD addressed the alleged errors with the RPD's findings (the same errors are repeated on this application) and found that the RPD did not err. Spelling errors were not the only problem with the summons and the RAD noted that the applicants had not challenged the RPD's other concerns. While the RAD acknowledged that a certain amount of variation would be expected, it did not accept that the variation would extend to the spelling of the issuing authority's name. The RAD found additional discrepancies in this regard—the issuing authority's name differed as between the header and the stamps on the police summons, and did

not match the name in the country condition evidence. Cumulatively, the RAD found that the discrepancies and errors went beyond those contemplated by the country condition evidence. Viewed together with the other credibility findings, the RAD found the summons was not genuine.

[33] The RAD referred to the RPD's finding that the extensive use of fraudulent documents going to the heart of the applicants' allegations of risk, as well as Mr. Njikang's shifting and evasive testimony about the documents, undermined his overall credibility as a witness. While the applicants had not challenged the RPD's finding independently, the RAD saw no error with it and concurred. The RAD went on to consider whether the remaining documentary evidence was sufficient to establish Mr. Njikang's SCNC membership and found that it did not.

[34] I agree with the respondent that the RAD reasonably found Mr. Njikang's claim that he was a member of the SCNC was not credible, and reasonably found that the other evidence was insufficient to outweigh the negative findings.

C. *Sur place claim*

[35] As with the credibility findings, the applicants' arguments before this Court repeat the arguments they made to the RAD about how the RPD erred in its assessment of the *sur place* claim.

[36] The applicants submit Mr. Njikang provided evidence that: (i) while in Japan, he raised funds under the umbrella of Help Southern Cameroon Fund (HSCF) to assist internally displaced

persons in Cameroon through the SCNC; and (ii) while in Canada, he was involved with the Southern Cameroons Relief Organization (SCRO) and attended protests against the government in Cameroon. The applicants rely on country condition evidence and argue that these activities will put them at risk of being targeted upon their return to Cameroon. The applicants submit that, while the RPD/RAD is entitled to weigh the evidence and assess credibility, it cannot reach a speculative conclusion that is so inconsistent with the preponderance of the relevant evidence so as to be unreasonable. The applicants submit that the RPD/RAD did so in this case.

[37] In addressing the applicants' arguments, the RAD found that the applicants had not alleged any errors in the RPD's reasoning, and the submissions they made did not accurately reflect the RPD's analysis. The RPD had acknowledged that the objective evidence was mixed and the RAD found the RPD undertook a thorough and balanced analysis. The RAD did not find the RPD's findings were speculative, or not based on objective evidence. In fact, the RAD found the applicants' allegation that they would face risk upon return to Cameroon was speculative.

[38] The RAD conducted its own independent analysis of the *sur place* claim and noted this Court's jurisprudence that it is permissible to import credibility findings into an assessment of an applicant's *sur place* claim: *Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067 at paras 27-28.

[39] With regard to Mr. Njikang's involvement with the HSCF to raise money, the RAD concurred with the RPD that his activities were not public knowledge and his involvement with HSCF would not come to the attention of the Cameroonian authorities. The money remittance

receipts showed no connection with the SCNC. The evidence did not credibly establish that donations were made to the SCNC or would be discovered by the Cameroonian authorities, and the RAD found these allegations were insufficient to establish a *sur place* claim.

[40] The RAD disagreed with the applicants' assessment of the country condition evidence and explained its reasoning. The RAD concurred with the RPD, finding that the applicants provided insufficient evidence that ordinary supporters of the SCRO, whose participation is limited to attending private meetings and taking part in occasional protests in Canada, have a sufficiently high profile that they would come to the attention of Cameroonian authorities or be targeted for political persecution if returned.

[41] Based on its findings regarding the *sur place* claim, and given the credibility findings imported into the *sur place* analysis, the RAD found on a balance of probabilities that Mr. Njikang only engaged in political activities in Canada for the purposes of bolstering a refugee claim and not because he holds a genuine political opinion against the Cameroonian government. The RAD further found he would not continue to participate in political activities in Canada or in Cameroon, if returned there. The RAD found the applicants failed to establish a *sur place* claim as there was no persuasive evidence that Mr. Njikang's political activities outside of Cameroon have or would come to the attention of the Cameroonian authorities or that he would be perceived to hold a genuine anti-government opinion.

[42] The applicants have not identified a reviewable error in the RAD's findings. They have not established that the RAD's independent assessment of their *sur place* claim was unreasonable.

[43] As noted above, the Court's role on judicial review is not to make its own determination, but rather, to decide whether the applicants have established sufficiently serious shortcomings with the RAD's decision so as to justify setting it aside. As the applicants have not established a basis for interfering with the RAD's decision, I must dismiss this application.

[44] The parties did not propose a question for certification. I find there is no question to certify.

JUDGMENT IN IMM-5518-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5518-23

STYLE OF CAUSE: CLOVIS MEBINAJI NJIKANG, MBEILYN
MEBINAJI, CATHERINE YT EPSE MEBINAJI v
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