

Federal Court



Cour fédérale

**Date: 20190507**

**Docket: IMM-2102-18**

**Citation: 2019 FC 602**

**Ottawa, Ontario, May 7, 2019**

**PRESENT: Mr. Justice Favel**

**BETWEEN:**

**ALOIS MURANGANWA MATSIKA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] against a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [Board], dated April 11, 2018. The RPD determined that the Applicant is not a Convention refugee and is

not a person in need of protection within the meaning of sections 96 and 97(1) of the IRPA, pursuant to subsection 107(1) of the IRPA.

I. Background

[2] The Applicant, aged 39, is a citizen of Zimbabwe. He is Shona and his indigenous language is Shona.

[3] In his Basis of Claim [BOC] Form, the Applicant claims having a fear of persecution on grounds of his membership in the Zimbabwean political opposition group, the Movement for Democratic Change [MDC-T]. As an active member who joined the party in January of 2006, the Applicant claims to have participated in political activities by attending rallies, distributing flyers and putting up posters. He does not occupy an official position with MDC-T.

[4] On July 7, 2016, the Applicant was allegedly kidnapped while walking to find public transportation by a group of men who were in a van. In his BOC narrative, the Applicant mentioned being threatened by these men for his involvement in the MDC-T party, and was sent to an anonymous location where he was beaten and assaulted by men in Zanu PF regalia and in police uniforms. The Applicant was later brought to the Chitungwiza Hospital. Upon leaving the hospital he went into hiding at his father's house for a few days.

[5] While in a rural location for work, the Applicant alleges that a man who is known to be an intelligence officer inquired about him. Another man identifying himself as a police officer also approached and questioned the Applicant. After discussing these incidents with his wife, the

Applicant was informed by his wife that his wife's sister managed to arrange a United States of America [USA] visa interview for the Applicant on July 21, 2016. The Applicant alleges that his wife and children remain in hiding in Zimbabwe.

[6] On July 27, 2016, the Applicant left Zimbabwe without his family and arrived in South Africa the same day. He then arrived in the USA on July 29, 2016 before he came to Canada on October 13, 2016. On October 27, 2016, the Applicant filed for asylum in Canada. He was found to be eligible to have his claim referred to the RPD as it was more probable than not that he had a Canadian relative, his maternal aunt, living in Ontario.

## II. The RPD's Decision

[7] In a decision dated April 11, 2018, the RPD determined that the Applicant was neither a Convention refugee nor a person in need of protection. The Board rejected the claim on the basis of one determinative issue: the lack of credibility in the Applicant's testimony, as well as in the supporting documents before the panel.

[8] The RPD found, on a balance of probabilities, that the Applicant was not assaulted in July of 2016, as alleged. It also found that the Applicant was not being sought by the authorities in Zimbabwe. "He has not provided sufficient credible and trustworthy evidence to establish his membership in the MDC-T party". It was the panel's conclusion that the Applicant would not face a serious possibility of persecution in his country of origin.

[9] After stating that “[a] claimant’s sworn testimony is presumed truthful unless there are reasons to doubt the veracity of their allegations”, the RPD outlined several concerns related to the material evidence that was found to be not credible:

- (1) In support of his alleged assault in July of 2016, the Applicant provided a hospital medical report “written in a small brown school exercise notebook” which did not identify the doctor and contained a hospital stamp that contained irregularities. The panel did not accept this document and stated that an official medical record from a hospital cannot be expected to be found in a school exercise notebook. The panel therefore made a negative credibility finding against the Applicant for providing the panel a fraudulent document in support of his claim.
- (2) The RPD found, on a balance of probabilities, that the Applicant was not being sought by the authorities in Zimbabwe for his involvement with the MDC-T party. After the Applicant testified that he was being sought since his departure from Zimbabwe, the panel noted that this information was omitted in the Applicant’s BOC narrative.
- (3) The panel made a negative credibility finding against the claimant for including in his BOC Form that his co-worker was questioned about his whereabouts in Zimbabwe. However, the Applicant omitted to mention that his wife had also been approached and asked about his whereabouts. The panel thus did not accept the Applicant’s response in explaining why he provided the Board with an affidavit from his co-worker and not one from his wife.
- (4) The panel raised concerns about the genuineness of the Applicant’s MDC-T membership card, particularly with regards to the subscription schedule.

He [the Applicant] testified that by 2016 he was sometimes paying for several months at a time, up to 6 months at a time. The panel noted however that all 60 entries in the subscription schedule on the MDC-T card appear to have been done at the same time as the amounts (\$1), the signature and even the pen all appear to be consistent.

- (5) The RPD noted that the Applicant did not try to prove his wife's affiliation towards the political party, by either getting a copy of her MDC membership card or providing any evidence from other members of the MDC-T.
- (6) The Applicant's answers regarding the MDC-T party's activities were "vague and lacked details" considering that he claimed to have been a member of the party for over a decade.

### III. Issues

[10] After reviewing both parties' written submissions, the Court is of the view that this matter raises the following issues:

- (1) Did the RPD err in determining that the Applicant is neither a Convention refugee nor a person in need of protection?
- (2) Did the RPD err in its analysis of section 97 of the IRPA?
- (3) Did the RPD breach the Applicant's right to procedural fairness?

[11] Both parties agree, and the Court concurs, that the reasonableness standard applies to the RPD's determinations of fact and mixed fact and law, such as its assessments of credibility and plausibility (*Kastrati v Canada (Citizenship and Immigration)*, 2008 FC 1141 at para 12; *Malveda v Canada (Citizenship and Immigration)*, 2008 FC 447 at para 18). "[T]he RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its

specialized knowledge” (*Tariq* at para 10). Therefore, the Court should not substitute its own findings for those of the RPD if its conclusions fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). As for issues of procedural fairness, the applicable standard of review is that of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

#### IV. Relevant Provisions

[12] Section 96 of the IRPA states:

##### **Convention refugee**

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

##### **Définition de « réfugié »**

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[13] Subsection 97(1) of the IRPA states:

**Person in need of protection**

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

**Personne à protéger**

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

V. Analysis

[14] For the following reasons, the application for judicial review is dismissed.

A. *Did the RPD err in determining that the Applicant is neither a Convention refugee nor a person in need of protection?*

[15] The following passage accurately sets out the role of this Court:

[42] First, and perhaps most importantly, the starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule. [Emphasis added by the Court].

*(Rahal v Canada (Citizenship and Immigration), 2012 FC 319)*

[16] The Court agrees with the Respondent and finds that the Board did not err in its assessment of credibility (which was the determinative issue in the present claim). The Court is satisfied that the panel considered the entire evidence on file, including the Applicant's testimony and his BOC narrative.

[17] In finding the Applicant not credible, the RPD raised concerns about the hospital report that was submitted before the panel to establish the alleged assault in July of 2016. Based on the



medical report that was most likely found to be “a fraudulent document”, the panel provided a detailed explanation as to why it did not believe that the Applicant was assaulted on July 7, 2016:

The hospital ‘report’ is written in a small brown school exercise notebook, the cover of which reads Brown’s Stationary; Newsprint Exercise Book and there are line for Name, Subject, Class and Year. There are notes on the first 3 pages of the notebook and the rest is blank until the back page. On the back page of the notebook are three stamps, which are the same as the stamp on the first page and which reads “Chitungwiza Central Hospital, 70 July 2016, P.O. Box CZA 245, Chitungwiza Zimbabwe.”

[...]

There is nothing in the ‘hospital report’ to indicate who treated or examined the claimant as there are no doctors names or any signatures on the ‘report’.

[Emphasis added.]

[18] The Court notes that the RPD also gave the Applicant an opportunity to provide an explanation about the ‘hospital report’ before rejecting the evidence. It was reasonable for the panel to give no weight to the evidence before it, as it is within the RPD’s special expertise to assess and to consider evidence. The RPD did not err in its finding of implausibility whereas the Applicant was not assaulted as he alleged on July 7, 2016, due to the fact that the RPD’s conclusion was clearly outlined with all the reasons as to why the hospital report was not accepted as an official medical report (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 15). The Court also notes that the Applicant’s BOC narrative did not include his second visit at the Chitungwiza Hospital dated July 14, 2016, as discovered on one of the stamps found in the ‘hospital report’.

[19] The Applicant's wife was also questioned by the authorities in Zimbabwe about the Applicant's whereabouts. Therefore, the RPD drew a negative inference on the Applicant's credibility for omitting to mention in his BOC narrative that his wife was in hiding and moving from place to place. The Applicant argued that the RPD erred in focusing on a minor or elaborative detail from the BOC Form (*Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101 at para 19; *Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249 at para 16). However, taken as a whole, the Court is of the view that the RPD's credibility findings were based on more than the Applicant's mere failure to mention a minor or elaborate detail in his BOC Form.

[20] The panel also considered, however rejected, the Applicant's explanation for not attempting to obtain evidence from his wife. The panel noted that the affidavit from the Applicant's alleged co-worker was not supported by any identity documents. There is no general requirement for corroboration, "unless there are valid reasons to question a claimant's credibility" (*Pooya v Canada (Citizenship and Immigration)*, 2018 FC 1019 at para 26). Consequently, the Court finds that the lack of corroborating evidence did not, in and of itself, undermine the Applicant's credibility (*Abd v Canada (Citizenship and Immigration)*, 2017 FC 374 at para 23; *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 6).

[21] The RPD found that the Applicant was not an active member of the MDC-T party, particularly for his lack of knowledge on the political party and his failure to provide the panel with a more recent membership card than the one dated from 2009 to 2013. The Court finds that the RPD reasonably explained why the objective evidence submitted by counsel on the difficulty

of obtaining a new membership card was not accepted, and it also clearly mentioned why it did not accept the Applicant's explanation in thinking that the expired MDC-T Membership Card would be sufficient to support his claim. The onus was on the Applicant to support his claim (*Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at para 49).

[22] After reviewing the record, the Court is convinced that the RPD considered the evidence in its entirety, referred to the material submitted by the Applicant, and clearly explained in its decision why it gave little or no weight to the material evidence before it. The Court reminds that it is not its role to interfere on judicial review by reweighing the entire evidence before the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

B. *Did the RPD err in its analysis of section 97 of the IRPA?*

[23] The Court agrees with the Respondent and concludes that the Board was under no obligation, in the case at bar, to conduct a separate analysis under section 97 of the IRPA after considering the section 96 IRPA claim. The main issue in the claim was credibility and the RPD found that the Applicant lacked credibility. As a result, the panel believed neither the allegation that the Applicant was assaulted in July of 2016 nor that he was an active member of the MDC-T party. As mentioned by the Respondent in its written submissions:

[50] The Board is not obliged to conduct a separate analysis under section 97 in each case. Whether it has an obligation to do so will depend on the particular circumstances of each case (*Kandiah v Canada (Minister of Citizenship and Immigration)*, at para 16, 137 ACWS (3d) 604). Where no claims have been made or evidence adduced that would warrant such a separate analysis, one will not be required (*Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at paras 17-18, 254 FTR 244; *Velez*, above at paras 48-51).

[51] Given that the allegations made by Ms. Kaur in support of her claims under section 97 were the same as those that she advanced in support of her claims under section 96, the Board was under no obligation to undertake a second analysis of those claims under section 97, once it had found that her allegations were not credible.

[Emphasis added.]

(*Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379)

C. *Did the RPD breach the Applicant's right to procedural fairness?*

[24] The Applicant argued that the Board erred in failing to give the Applicant an opportunity to respond. At the hearing, the panel raised concerns on the inconsistencies with the amounts paid for the MDC-T Membership Card and the Applicant was not asked to provide an explanation. Even if the Court were to accept this error, it would not grant this application on this basis alone as it would not have changed the outcome of the impugned decision at bar.

A distinction might perhaps be made according to the nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless.

(*Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202)

[25] For these reasons, the Court concludes that the RPD's decision is reasonable as it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

VI. Conclusion

[26] The application for judicial review is dismissed. No question of general importance will be certified.

**JUDGMENT in IMM-2102-18**

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

There is no question of general importance for certification and none arises. There is no order as to costs.

“Paul Favel”

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Judge

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

**DOCKET:** IMM-2102-18

**STYLE OF CAUSE:** ALOIS MURANGANWA MATSIKA v MINISTER OF  
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