

Federal Court



Cour fédérale

Date: 20220607

Docket: IMM-5557-21

Citation: 2022 FC 823

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 7, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

**LÉNINE KAJANGWE
JESSE MUHIRE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The principal applicant, Lenin Kajangwe, is a citizen of Rwanda and her minor son, Jesse Muhire, is a citizen of the United States. They are seeking judicial review of the decision of the Refugee Appeal Division [RAD] rendered July 27, 2021, dismissing their appeal and confirming

the decision of the Refugee Protection Division [RPD] refusing to recognize them as refugees and as persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The applicants argued that the RAD erred because (1) it erred in relying on Ms. Kajangwe's memory lapses regarding irrelevant details to draw a negative conclusion about her credibility; (2) it found that the vagueness of Ms. Kajangwe's testimony is not supported by the evidence; and (3) it placed too much weight on the contradiction between Ms. Kajangwe's testimony and one of her port-of-entry forms. The applicants are asking the Court to set aside the RAD's decision and to send the case back for reconsideration of their appeal by a differently constituted RAD panel.

[3] For the following reasons, the application for judicial review will be dismissed.

II. Background

[4] Since 2013, Ms. Kajangwe has held a multiple entry visitor visa to the United States. On July 31, 2019, the applicants left Rwanda for the United States, arriving on August 1 . On August 2, 2019, they entered Canada and claimed refugee protection.

[5] On August 14, 2020, the RPD heard Ms. Kajangwe's refugee protection claim and she testified. The transcript of the RPD hearing is included in the Certified Tribunal Record [CTR]. On October 19, 2020, the RPD denied the applicants' refugee protection claim, noting several significant problems with Ms. Kajangwe's credibility and not believing Ms. Kajangwe's

allegations. Among other things, the RPD noted that Ms. Kajangwe stated that she feared returning to Rwanda because authorities could say that she was working with government opponents, including the RNC, an opposition party, but she did not know what the acronym RNC meant. The RPD believed that if Ms. Kajangwe had engaged in any political activity in support of Ms. Diane Rwigara's candidacy, and Ms. Rwigara had been accused of working with the RNC, she would have known what the acronym RNC stood for. Furthermore, in response to a question from the RPD, Ms. Kajangwe stated that the elections were held on July 17, 2017, when they were actually held on August 4, 2017. The RPD considered that this also undermined Ms. Kajangwe's credibility regarding her political engagement. Finally, the RPD pointed out that Ms. Kajangwe stated at the hearing that she moved twice before leaving Rwanda, once in August 2017 and again in September 2018, to ensure her survival, but she failed to declare her moves or addresses on her Basis of Claim Form [BOC Form]. The RPD considered this omission to be significant given its nature and context.

[6] On June 21, 2021, the RAD offered the applicants the opportunity to respond to three questions. In particular, the RAD asked the applicants whether the principal applicant's evidence in relation to her political activities with Ms. Rwigara and the resulting persecution is, or is not, vague and general. On July 5, 2021, the applicants filed additional submissions with the RAD to address these questions.

[7] In its decision, the RAD confirmed that it agrees with several credibility findings made by the RPD, highlighted three in particular, and added another reason, related to the additional questions raised, which the applicants had the opportunity to answer.

[8] The RAD noted that Ms. Kajangwe (1) confirmed the wrong date for the 2017 elections, even though that date is central to her claim; (2) was unable to provide the full name of the RNC, which is the Rwandan National Congress; (3) submitted vague and general evidence about the consequences of her involvement with Ms. Rwigara, limiting the account in her BOC Form to a few paragraphs and avoiding providing details during her testimony before the RPD; and (4) failed to mention her address changes in 2017 and 2018 in her BOC Form.

[9] The RAD also noted that Ms. Kajangwe has not submitted any corroborating evidence or affidavits about her political activities, and that the only evidence is therefore the allegations made by Ms. Kajangwe, which are not very credible.

[10] The RAD noted that the RPD made additional findings related to Ms. Kajangwe's credibility, but that the findings discussed by the RAD are sufficient to confirm the decision. The RAD found that Ms. Kajangwe has not demonstrated, on a balance of probabilities, that she supported or volunteered for Ms. Rwigara or that she was politically involved.

[11] The RAD dismissed the appeal and confirmed the RPD's decision.

III. Standard of review

[12] The parties do not dispute that the standard of reasonableness applies in this case given the arguments involved (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). Where the standard of reasonableness applies, the role of the reviewing court is to review the reasons given by the administrative decision maker and determine whether the

decision is based on “an inherently coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The reviewing court must consider “the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). The reviewing court must therefore consider “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 that bear on the decision” (*Vavilov* at para 99 citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

[13] As the Court noted in *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at paragraph 11, “the credibility finding is a question of fact that deserves deference” (see also *Charles v Canada (Citizenship and Immigration)*, 2021 FC 520 at para 22 and *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42). As my colleague Justice Gascon explained in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, “[t]his deferential approach is particularly required when, as in this case, the impugned findings relate to the credibility and plausibility of a refugee claimant’s story”. On such issues of credibility and reasonableness, the reviewing court cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence (*Diallo v Canada (Citizenship and Immigration)*, 2007 FC 1062 at para 30).

IV. Analysis

A. *First argument: the RAD erred in relying on Ms. Kajangwe’s memory lapses regarding irrelevant details to draw a negative conclusion about her credibility*

[14] The applicants argue that the RAD's findings are unreasonable because they are based on contradictions that are irrelevant, peripheral or incidental to the claim in question (*Sheik v Canada (Citizenship and Immigration)*, [2000] FCJ No 568). The applicants argue that the RAD erred in requiring Ms. Kajangwe to have the level of political knowledge of someone who has been involved in politics for many years, rather than just a volunteer who has been canvassing door-to-door for two and a half months. The applicants add that, in addition, the RAD has lost sight of the fact that the claim is based on Ms. Kajangwe's imputed political opinion and has ignored the impact of the trauma she has experienced. In sum, the applicants argue that it was unreasonable for the RAD to draw a negative conclusion from the fact that Ms. Kajangwe could not remember the date of the election and that she could not recite the name of the RNC at length, since these elements are not central to the claim.

[15] The respondent, the Minister of Citizenship and Immigration, replies that the RAD's decision is reasonable and that the issues raised by the RAD are not minor or peripheral. I agree.

[16] I note, first, that there is no evidence that the RAD relied on any lapses in Ms. Kajangwe's memory. Moreover, the applicants have not persuaded me that the credibility findings the RAD made are directed at peripheral or irrelevant elements of the application. First, regarding the error in the date of the 2017 elections, I note that Ms. Kajangwe based her claim on the persecution she has experienced, and will experience, as a result of her support for Ms. Rwigara and her participation in Ms. Rwigara's 2017 election campaign. It is not unreasonable to conclude that a person, even a volunteer, working to support a candidate in an election would remember the date of the election, especially if, as she alleged, such participation puts her life

and that of her family at risk. Second, a reading of the transcript of the hearing revealed that the RPD did not ask Ms. Kajangwe to recite the name of the RNC at length without context and without connection to the previous questions, as suggested by the applicants; rather, it was Ms. Kajangwe herself who raised the name of the RNC in confirming to the RPD the nature of her fear should she return to Rwanda. It is therefore not unreasonable to expect, given the alleged fear, that Ms. Kajangwe would be able to describe or elaborate on who or what it is.

[17] Thus, the applicants have not convinced me that these two negative credibility findings made by the RAD are based on irrelevant considerations, given the allegations presented by Ms. Kajangwe in support of her claim.

B. *Second argument: the RAD's finding of vagueness in Ms. Kajangwe's testimony is not supported by the evidence*

[18] The applicants argue that the RAD's finding of vagueness in Ms. Kajangwe's testimony is not supported by the evidence because (1) the RPD's questions were limited and ambiguous; (2) Ms. Kajangwe's testimony was reasonably detailed under the circumstances; and (3) Ms. Kajangwe's BOC Form included sufficient detail about the persecution.

[19] Before the Court, the applicants argued that the RPD (1) did not ask Ms. Kajangwe for detailed information; (2) asked very few specific questions about the threats and harassment Ms. Kajangwe experienced after volunteering; and (3) asked vague and general questions about persecution.

[20] I note, first, that the arguments the applicants presented to the Court are contrary to those they presented to the RAD in their appeal. In the written submissions they filed in response to the questions posed by the RAD, the applicants argued instead that Ms. Kajangwe's evidence was not vague and general since the RPD's questions were detailed and comprehensive, and Ms. Kajangwe gave detailed answers.

[21] It is settled case law that the Court cannot consider arguments that have not been raised before the administrative decision maker (*Goodman v Canada (Public Safety and Emergency Preparedness)*, 2022 FCA 21 at para 4; *Khalid v Canada (National Research Council)*, 2013 FC 438 at para 49). In this case, the arguments raised before the Court were not presented to the decision maker; what is more, the arguments that were in fact presented to the decision maker were to the contrary.

[22] I have not discussed this with the parties, and they have not had an opportunity to make submissions. I therefore do not base this decision on this finding.

[23] Thus, and as the respondent stated, it is the applicants who have the burden of establishing the merits of their claim before the RPD, not the RPD through its questions.

[24] In addition, the Court notes that in the four-page written account attached to her BOC Form, Ms. Kajangwe devoted three pages to her employment with the Bank of Kigali and the fact that on October 7, 2015, she was terminated without notice and stepped down after more than 14 years with the Bank of Kigali. Ms. Kajangwe devoted less than a page to her political

activity in support of Ms. Rwigara and the resulting allegation of persecution. She basically mentions that during the 2017 election campaign, she was active in the campaign in support of Ms. Rwigara, a candidate denouncing FPR abuses, and canvassed door-to-door, and that wherever Ms. Rwigara's supporters went in Rwanda, they were called enemies of Rwanda. She also says she and her family have continued to face different threats. She points out that on July 15, 2019, Ms. Rwigara wrote an open letter to Mr. Paul Kagame and that, since that day, there has been tension in Kigali because Ms. Rwigara's supporters are being pressured, in order to eliminate them one by one in total anonymity. Finally, she states that a friend of hers who works in the intelligence service told Ms. Kajangwe to leave as soon as possible and helped her through the security checks for her departure to the United States.

[25] Given the evidence, it is not unreasonable to consider Ms. Kajangwe's testimony vague in this regard. The RAD's conclusion is based on the evidence, regarding both the written account attached to the BOC Form and to Ms. Kajangwe's testimony before the RPD.

C. *Third argument: the RAD gave too much weight to the contradiction between Ms. Kajangwe's testimony and one of her port-of-entry forms*

[26] It is not disputed that Ms. Kajangwe testified at the RPD hearing that she had to move twice prior to her departure from Rwanda, once in 2017 and again in 2018, to ensure her survival. It is also undisputed that she did not record these moves in her BOC Form.

[27] The applicants ask the Court to change the weight given to this contradiction. It is not the Court's role on judicial review to change the weight given to the various pieces of evidence.

Under the standard of reasonableness, the Court must not substitute its own opinion for that of the panel, and the applicants have not shown that the RAD's conclusion is unreasonable.

V. Conclusion

[28] The applicants have not persuaded me that the RAD's decision is irrational or arbitrary and unreasonable in respect of the facts and the law. The process and the decision respect the principles of justification, transparency and intelligibility, and the decision is supported by the evidence on the record. The intervention of the Court is not warranted. The application will therefore be dismissed.

JUDGMENT in IMM-5557-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No issues are certified.
3. No costs are awarded.

“Martine St-Louis”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5557-21

STYLE OF CAUSE: LÉNINE KAJANGWE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 11, 2022

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: JUNE 7, 2022

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