



**Date: 20221108**

**Docket: IMM-185-22**

**Citation: 2022 FC 1521**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, November 8, 2022**

**PRESENT: The Honourable Associate Chief Justice Gagné**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**DANIEL BANKADI KOLESHAYI**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Minister of Citizenship and Immigration is challenging a decision in which the Refugee Appeal Division [RAD] set aside the decision of the Refugee Protection Division [RPD] and determined that the respondent had provided sufficient evidence of his identity for the RPD to review the respondent's refugee protection claim. The RAD will therefore refer the matter back to it for redetermination.

[2] Aside from the preliminary issue as to whether the Minister exhausted his administrative remedies before addressing the court, the only issue is whether the RAD was right to intervene and set aside the RPD's negative decision.

I. Facts

[3] Daniel Bankadi Koleshayi claims to be a citizen of the Democratic Republic of Congo. He sought refugee protection under this name in 2017.

[4] However, he entered Canada under another identity. There was no evidence as to the name he used and the exact circumstances of his arrival in Canada, but he alleges that he used a passport other than his own, which he apparently gave to an unknown person upon his arrival.

[5] The Minister has intervened in Mr. Koleshayi's refugee protection claim. He noted first that on form IMM0008, Mr. Koleshayi had indicated that he entered Canada on October 12, 2017, at Pierre Elliot Trudeau Airport. However, there is no evidence that he was at the airport.

[6] The Minister produced a copy of notes in the Global Case Management System (GCMS) that relate to an application for a temporary resident visa (TRV) received from Mr. Koleshayi in 2013. Mr. Koleshayi wished to visit his mother, a permanent resident in Canada, but was denied for reasons not related to this case.

[7] The GCMS notes originally indicated that the respondent apparently presented this TRV application under the name Daniel Bankadi-Kandolo. However, the respondent's name was changed a few hours later to read Bankadi, Daniel Koleshayi. The exact circumstances of this change are not known.

[8] The RPD rejected the respondent's refugee claim without ruling on its merits, as it was not satisfied with his proof of identity. The respondent successfully appealed this decision, without intervention by the Minister.

## II. Impugned decision

[9] To establish his identity, the respondent submitted an expired passport, a nationality certificate obtained after his arrival in Canada, and a driver's licence. Before the RPD, the respondent first claimed that he had these three documents in his possession when he entered Canada. When he was confronted with the fact that the nationality certificate was dated October 25, 2017, when he had in fact arrived in Canada on October 12, 2017, his lawyer intervened to remind him that he had received the documents after his arrival in Canada in an envelope with DHL courier markings. Although the RPD had not accepted the respondent's explanation that he had misunderstood the question, the RAD was satisfied with it.

[10] The RAD confirmed the lack of probative value given by the RPD to the passport and nationality certificate filed by the respondent. The expired passport was issued in 2002, when the applicant was 12 years old. Given that he is now 32 years old, it is impossible to identify him

using the photo. In addition, the RAD noted that the place reserved for the subject's first name had been left blank in this passport.

[11] With respect to the nationality certificate, the documentary evidence indicates that this is a difficult document to obtain, that few Congolese have one, and that it is obtained mainly for practicing a profession or acquiring a passport. The RAD therefore found it not very credible that the respondent was able to acquire this document between October 12, 2017, and October 25, 2017.

[12] The RPD and RAD questioned the absence of testimony, either oral or written, from the respondent's mother and aunt, both of whom live in Canada. They both drew a negative inference from this.

[13] Like the RPD, the RAD did not see a particular problem with the respondent's driver's licence, but it found that this document alone was not enough to establish the respondent's identity.

[14] However, contrary to the RPD's findings, the RAD determined that, when combined with the notes in the GCMS, the driver's licence was sufficient to demonstrate the respondent's identity on a balance of probabilities.

[15] The RAD noted that the RPD and the Minister failed to consider the similarity between the 2013 information found in the GCMS notes and the information provided by the respondent

in 2017 in support of his refugee claim. The notes contain the respondent's full name, date of birth, and what appears to be his place of birth.

[16] For these reasons, the RAD set aside the RPD's decision and returned the matter to the RPD for it to consider the merits of the claim for refugee protection.

III. Issue and standard of review

[17] This application for judicial review raises the following issues:

A. *Is the remedy premature?*

B. *Was the RAD justified in intervening and setting aside the RPD's decision?*

[18] Additionally, there is no dispute that the standard of reasonableness applies in this case.

IV. Analysis

A. *Is the remedy premature?*

[19] The respondent submits that since the RAD allowed the appeal and referred the matter to the RPD, the judicial review remedy is premature and should only be done once the refugee protection claim has been settled.

[20] With respect, I do not share this view. The RAD definitively settled the issue of the applicant's identity and if it was wrong and the identity has not been established, there is no need for the RPD to decide the refugee claim. The RAD concluded as follows:

[TRANSLATION]

50. The RAD directs the RPD to consider the issue of the appellant's identity as established, in the absence of additional evidence that contradicts this conclusion.

51. The RAD directs the RPD to review the merits of the refugee protection claim.

[21] Since the RAD was satisfied with the respondent's identity, it is difficult to imagine that the Minister would be able to submit any additional evidence to the contrary. The decision is therefore final on the issue of the respondent's identity, as the principle of *res judicata* applies here (unless this court intervenes) and if the RAD was wrong to intervene, it will dispose of the matter.

[22] The application for judicial review is therefore not premature.

B. *Was the RAD justified in intervening and setting aside the RPD's decision?*

[23] On the merits, the Minister argues that it was inconsistent and irrational for the RAD to conclude that the respondent's driver's licence alone could not establish the respondent's identity while concluding that the GCMS notes could serve as sufficient additional evidence.

[24] I agree with the applicant.

[25] First, the respondent testified before the RPD, which noted a number of contradictions in his testimony. It appears to me that the RPD had an advantage over the RAD in this regard and that its findings could not, in the circumstances, be so easily discarded. The RPD did not believe the respondent's explanations when he was confronted with the fact that the nationality certificate was from after his arrival in Canada. It noted that counsel for the respondent also had to intervene to provide his own explanations. Since it also shared the RPD's conclusions as to the probative value of the identity documents, the RAD should have shown greater deference to the finding on the respondent's credibility.

[26] Having said that, I am of the opinion that the decision loses its reasonableness when the RAD relies on the GCMS notes to be satisfied with the respondent's identity. Data entered into the GCMS by an employee of the Minister cannot reasonably be relied upon to establish the identity of a visa applicant. This is, after all, a transcription of the data appearing on a form completed by the visa applicant. The court, like the RAD before it, does not have in its possession the form in question or the documentary evidence produced at the time. In this sense, the RAD could not reasonably have given more weight to the GCMS notes than to the documents produced by the respondent to establish his identity.

[27] These notes were amended, for unknown reasons, shortly after they were initially recorded. The respondent's name in them was changed. The initial entry was made using the name Daniel Bankadi-Kandolo and the RAD did not explain what impact this change could have had on its conclusion. This change certainly affected the reliability of the notes, which is not

trivial, since the only document to which the RPD and the RAD gave probative value was the driver's licence, which alone is not evidence of the respondent's identity.

V. Conclusion

[28] For these reasons, I am of the opinion that the applicant's remedy is not premature and that the court's intervention is required; I am of the opinion that the RAD was wrong to set aside the RPD's decision and rely on internal notes that were entered in an unknown context to be satisfied as to the respondent's identity. The RAD's decision is set aside and the matter is referred back to it for a new determination.

[29] The parties did not submit any question of general importance for certification and the facts of this case do not give rise to any.



**JUDGMENT in IMM-185-22**

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

1. The applicant’s application for judicial review is allowed;
2. The decision by the Refugee Appeal Division is set aside and the matter is referred back for redetermination by a different member.
3. No question of general importance is certified.

“Jocelyne Gagné”  
\_\_\_\_\_  
Associate Chief Justice

Certified true translation  
Sebastian Desbarats

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

**DOCKET:** IMM-185-22

**STYLE OF CAUSE:** MINISTER OF CITIZENSHIP AND IMMIGRATION  
v DANIEL BANKADI KOLESHAYI

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 5, 2022

**JUDGMENT AND REASONS:** GAGNÉ A.C.J.

**DATED:** NOVEMBER 8, 2022

**APPEARANCES:**

Daniel Latulippe FOR THE APPLICANT

Aristide M. Koudiatou FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE APPLICANT  
Montréal, Quebec

Aristide M. Koudiatou FOR THE RESPONDENT  
Montréal, Quebec