Federal Court Cour fédérale

Date: 20240104

Docket: IMM-1259-23

Citation: 2024 FC 12

[ENGLISH TRANSLATION]

Montréal, Quebec, January 4, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

MARINA NABUGI MUNYANDAMUSA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Marina Nabugi Munyandamusa, is a citizen of the Democratic Republic of the Congo [DRC]. She seeks judicial review of a decision dated January 11, 2023, [Decision] by which the Refugee Appeal Division [RAD] of the Immigration and Refugee Board

of Canada concluded that she is neither a Convention refugee nor 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 RAD rejected Ms. Munyandamusa's claim for refugee protection because of her lack of credibility and the numerous inconsistencies, omissions and contradictions throughout her written account and her testimony at the Refugee Protection Division [RPD] hearing.

[2] Ms. Munyandamusa challenges the RAD Decision on three grounds. She first submits that the RAD breached the principles of natural justice by assessing, in an erroneous and biased manner, the evidence which she submitted regarding two notices to appear from the Congolese police. She also claims that the RAD erred by applying the incorrect standard of proof during its analysis under section 96 of the IRPA. Finally, she alleges that the RAD failed to provide a notice of specialized knowledge under subsection 24(1) of the *Refugee Appeal Division Rules*, SOR/2012-257) [Rules] before rejecting the evidence on the basis of this knowledge.

[3] For the reasons that follow, I will dismiss Ms. Munyanamusa's judicial review application. After reviewing the RAD's reasons and conclusions, the evidence before it and the applicable law, I can find no basis for reversing the Decision. The RAD's reasons possess the qualities which make its reasoning logical and coherent within the relevant legal and factual constraints. Moreover, I am of the opinion that the RAD respected all applicable principles of procedural fairness. There are therefore no grounds for the Court's intervention.

II. Background

A. *Facts*

[4] Ms. Munyandamusa belongs to the Lucha political movement ("*Lutte pour le Changement*" [struggle for change]), a political organization and citizen movement which fights for human dignity and social justice in the DRC. In February 2019, Lucha reportedly organized demonstrations against ex-president Kabila to ensure that he is prosecuted for his crimes. At the time, Ms. Munyandamusa was responsible for recruiting new members to Lucha. She says that she did not participate in the demonstrations because one of her female friends who worked at the DRC's ministry of the interior warned her that the Congolese authorities were searching for Lucha supporters.

[5] Furthermore, Ms. Munyandamusa and her spouse, who was a member of the former regime's party, the "*Parti du peuple pour la reconstruction de la démocratie*" [people's party for the reconstruction of democracy], had opposing political positions. Ms. Munyandamusa states that her relationship with her spouse was almost nonexistent because of these ideological differences.

[6] Later in 2019, her female friend who worked at the ministry of the interior provided her with the information that the DRC authorities thought that she was mobilizing people to finance the DRC's balkanization.

[7] On February 29, 2020, Ms. Munyandamusa left the DRC on a planned trip to her son's home in Canada. A few months later, on July 7, 2020, her children who live in Kinshasa

informed her that a notice to appear from the police, dated July 4, had been left at her home in the DRC. Ms. Munyandamusa later amended her written account in June 2022 to add that a second notice to appear from the police had been left at her domicile in Kinshasa on July 8, 2020.

[8] In October 2020, Ms. Munyandamusa filed a claim for refugee protection in Canada. She said that because of her participation in the Lucha movement, she feared being imprisoned and tortured by the police should she return to the DRC.

B. *RPD decision*

[9] On July 14, 2022, the RPD rejected Ms. Munyandamusa's claim for refugee protection on the basis that her written account was not credible. The RPD determined that Ms. Munyandamusa had not established a real fear of persecution related to her political opinion and her participation in the Lucha movement.

[10] In its analysis, the RPD did not give any probative value to the notices to appear from the Congolese police since, in its opinion, these notices contained irregularities. For example, the national police stamps appeared below, not above, the information relating to the signatories, and Ms. Munyandamusa had failed to mention the second notice in her initial written account.

[11] Furthermore, the RDP found it inconsistent that Ms. Munyandamusa had stated in her immigration form that her spouse would join her in Canada, whereas she asserted in her Basis of Claim Form that she had an almost nonexistent relationship with him.

C. *RAD's Decision*

[12] In its Decision, the RAD found that the determinative issue was credibility and confirmed the RPD's decision. Following its own review of the two notices to appear—which were the basis of Ms. Munyandamusa's fear of persecution—the RAD noted several irregularities and determined that Ms. Munyandamusa was unable to establish in a credible manner that she had actually received the two notices to appear from the national police. The RAD therefore decided not to give any weight to these documents.

[13] After analyzing Ms. Munyandamusa's political profile and considering her testimony and the documentary evidence on Lucha, the RAD also found that Ms. Munyandamusa did not establish a reasonable prospective fear of persecution because of her political profile.

[14] Moreover, in her appeal record before the RAD, Ms. Munyandamusa included three documents which she filed as new evidence supporting her memorandum: (1) a divorce petition dated July 1, 2022; (2) a notice of the divorce proceeding dated August 16, 2022; and (3) an affidavit signed by Ms. Munyandamusa. The RAD found the three documents to be inadmissible. With regard to the two divorce documents, the RAD considered them irrelevant to decide the credibility issue. With regard to the affidavit, the RAD determined that it added nothing new to the case with respect to the evidence raised at the hearing or included in Ms. Munyandamusa's written account.

D. *Standard of review*

[15] It is well known that RAD findings on credibility issues are reviewable on the standard of reasonableness (*Lin v Canada (Citizenship and Immigration)*, 2021 FC 380 at para 19; *Adelani v. Canada (Citizenship and Immigration)*, 2021 FC 23 at paras 13–15). Moreover, the framework for judicial review of the merits of administrative decisions is the one the Supreme Court established 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 framework is based on the presumption that the applicable standard of review in all cases is now that of reasonableness.

[16] When the applicable standard is reasonableness, the reviewing court's role is to examine the reasons given by the administrative decision maker and to 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). To make this determination, the reviewing court asks "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99, citing in particular *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[17] It is not enough that the decision be justifiable. Where reasons for a decision are required, "the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" [emphasis in original] (*Vavilov* at para 86). The focus of reasonableness review must therefore be on both the outcome of the decision and the reasoning process that led to that outcome (*Vavilov* at para 87). This review must entail a robust evaluation

of administrative decisions. However, in its inquiry into the reasonableness of a decision, a reviewing court must "take a 'reasons first' approach", examine the reasons provided with "respectful attention" and seek to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must show restraint and intervene "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). I note that reasonableness review always finds its starting point in the principle of judicial restraint and deference and demonstrates a respect for the distinct role that the legislature chose to vest in an administrative decision maker rather than in a court (*Mason* at para 57; *Vavilov* at paras 13, 46, 75).

[18] The party challenging a decision has the onus of proving that it is unreasonable. To set aside an administrative decision, the reviewing court must be satisfied that there are sufficiently serious shortcomings to make the decision unreasonable (*Vavilov* at para 100).

[19] However, with regard to issues of procedural fairness, the Federal Court of Appeal has repeatedly found that procedural fairness does not require the application of the usual standards of review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). Rather, procedural fairness is a legal question which must be assessed on the basis of the circumstances to determine whether or not the procedure followed by the decision maker

respected the standards of fairness and natural justice. (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). A reviewing court does not owe any deference to administrative decision makers on issues of procedural fairness.

III. Analysis

A. *Handling of notices to appear*

[20] Ms. Munyandamusa argues that a breach of procedural fairness occurred because of the RAD's bias in its analysis of the evidence's credibility. In particular, Ms. Munyandamusa alleges that the RAD incorporated nonexistent evidence to discredit the notices to appear received from the Congolese police. According to her, the RAD adopted a closed-minded and biased attitude that is contrary to procedural fairness. To this end, she indicates that at paragraph 50 of the Decision, the RAD erroneously found that there were dissimilarities between the copies of the two notices to appear filed before the RPD and the originals sent to the RAD. According to Ms. Munyandamusa, these notices to appear are identical.

[21] I do not agree with Ms. Munyandamusa's arguments.

[22] In its analysis of the notices to appear, the RAD conducted a comparative examination of the notices dated July 4 and July 8, 2020, using the copies and the originals of these documents. I note that the RAD's examination did not aim to compare the copies with the originals, but rather to analyze the differences between the two notices to appear which Ms. Munyandamusa claims to have received from the same person four days apart. At the conclusion of its examination, the RAD found that it could not give them any weight because of the credibility issues regarding the

circumstances in which Ms. Munyandamusa received them (and her failure to mention the second notice's existence in her initial written account) and the numerous irregularities identified in their content.

[23] In its reasons, the RAD observed many notable differences and anomalies between the July 4 and July 8 notices. On the notice dated July 4, 2020, the date was stamped, but on the notice dated July 8, 2020, the date is handwritten. Moreover, although the signatory's title is typewritten in both notices, it reads "*Le Chef de Département des Opérations de la Direction des Renseignements*" [the head of the department of operations of the intelligence directorate] on the July 4 notice, whereas it reads "*Ce Chef*" [this head] on the July 8 notice. Also, as noted by the RPD, the national police stamps appearing on both notices were applied under the title, name and signature of the notice's authors, and not over these (as is usually done with official stamps). Finally, the RAD noted that the July 4 notice contains spelling and syntax errors and that the days are not capitalized identically in the two notices.

[24] It appears from the Decision that the combination of these irregularities in the notices to appear and the credibility issues regarding the circumstances in which the notices were received led the RAD to doubt their probative value and to give them no weight in its analysis. Given the evidence before the RAD and the incomplete explanations provided by Ms. Munyandamusa, I cannot find anything unreasonable in this analysis.

B. *Evidence under section 96 of IRPA*

[25] Ms. Munyandamusa also claims that the RAD applied the wrong standard of proof under section 96 of the IRPA to conclude that she did not have a political profile which could put her in danger. The RAD noted that Ms. Munyandamusa did not protest and never publicly spoke out defending Lucha. Therefore, she does not have the political profile of Lucha movement members who have been arrested and persecuted by the Congolese police. Ms. Munyandamusa submits that the RAD erred by failing to consider that her membership in Lucha itself opens the door to persecution based on political opinion, even in the absence of participation in the group's demonstrations.

[26] I do not share this opinion.

[27] In the Decision, the RAD examined in detail the allegations regarding Ms. Munyandamusa's limited participation in the Lucha movement's activities. It was open to the RAD to find that the political involvement entered into evidence did not establish that Ms. Munyandamusa had a well-founded prospective fear of persecution should she return to the DRC. Ms. Munyandamusa never personally had problems with the Congolese authorities from the beginning of her involvement with the Lucha movement in 2016 until her departure from the DRC in March 2020. She never participated in a protest. She did not encounter difficulties with the authorities when she left the country. She received the two notices to appear from the Congolese police only after she had been in Canada for several months, and it appears there were no incidents after the notices to appear were received in July 2020.

[28] Those findings of fact are well rooted in the evidence, and it is well understood that, in a judicial review such as this one, the Court must refrain from interfering and substituting its own assessment of the facts for that of the RAD.

C. *Section 24 of the Rules*

[29] Finally, Ms. Munyandamusa claims that the RAD rejected the two notices to appear from the Congolese police on the basis of specialized knowledge, and that prior to making this conclusion, the RAD was required to send a notice to that effect to the parties under section 24 of the Rules. She alleges that the omission of such a notice constitutes an error by the RAD which led to a breach of the rules of procedural fairness.

[30] I am not persuaded by Ms. Munyandamusa's arguments.

[31] With regard to section 24, Ms. Munyandamusa relied on *Abdelrahman v Canada (Citizenship and Immigration)*, 2021 FC 527 [*Abdelrahman*], where the Court stated that "a decision maker ought to provide an applicant the opportunity to respond if the decision maker is of the view a document was not authentic" (*Abdelrahman* at para 19, citing *Torishta v Canada (Citizenship and Immigration)*, 2011 FC 362 at para13) and that the failure to send a notice to that effect constitutes a breach of procedural fairness warranting the Court's intervention.

[32] This is not what happened here. The RAD did not avoid or ignore the issue and, in its reasons, it intelligibly explained why neither the RPD nor the RAD used any specialized knowledge to complete a simple examination of the notices to appear from the Congolese police. At paragraph 47 of the Decision, the RAD states that examining a seal's placement on a

document does not fall within the specialized knowledge of an administrative decision maker. Moreover, according to the Court's case law, it is well established that the rules of procedural fairness do not require refugee protection claimants to be confronted about information that they were aware of, that they themselves provided or that they relied on (*Akanniolu v Canada (Citizenship and Immigration)*, 2019 FC 311 at paras 46–47; *Moïse v Canada (Citizenship and Immigration)*, 2019 FC 93, at paras 9–10; *Konare v Canada (Citizenship and Immigration)*, 2016 FC 985, at para 16). In other words, the RAD did not use any knowledge or extrinsic evidence to set aside the notices to appear from the Congolese police in its assessment of the risk of persecution which Ms. Munyandamusa claimed to be facing.

[33] I am satisfied that the RAD's reasons clearly explain why the notice required under section 24 of the Rules was not required in these circumstances, and that the failure to give a notice did not constitute a breach of the requirements of procedural fairness. Here, it is clear that the documents at issue were notices to appear which Ms. Munyandamusa claimed to have received and which she herself provided to the RAD.

[34] In *Torishta* and in *Abdelrahman v Canada (Citizenship and Immigration)*, 2021 FC 527, at para 19 (also mentioned by Ms. Munyandamusa), the Court stated that a claimant must have the opportunity to respond and to be heard when the RPD (or the RAD) is of the opinion that a document is not authentic and when it relies on specialized knowledge to discredit the document by declaring it fraudulent. Failure to do so gives rise to a breach of procedural fairness as well as a violation of section 24 of the Rules. However, this is not the situation in Ms. Munyandamusa's case. On the contrary, the RAD clearly established that it did not rely on its specialized knowledge to seal the fate of the two notices to appear. The RAD states that, contrary to

Ms. Munyandamusa's statement, the "RPD was not obligated to submit the notices to appear for expert assessment in order to conclude that they contained anomalies, and neither does the RAD. In the view of the RAD, simply examining the placement of a seal on a document does not fall under a decision-maker's specialized knowledge, which is knowledge accumulated over time as a result of their adjudicative functions" (Decision at para 47).

[35] It was reasonable for the RAD to note the stamp's strange placement under the text, the handwritten date on one notice and the stamped date on the other as well as the spelling and syntax errors in the body of the text and in the official title of the signatory. Since the entire analysis stems from the intrinsic evidence submitted by Ms. Munyandamusa in support of her refugee protection claim, no issue of procedural fairness came into play and section 24 of the Rules simply does not apply.

IV. Conclusion

[36] For all of these reasons, Ms. Munyandamusa's judicial review application is dismissed. In sum, the Decision does not suffer from a failure of rationality internal to the reasoning process or a shortcoming of capital importance, and Ms. Munyandamusa did not identify an error affecting the intelligibility, justification or transparency of the RAD's reasons that would render them unreasonable and require judicial intervention.

[37] There is no question of general importance for certification.

JUDGMENT in IMM-1259-23

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed, without costs.

2. There is no question of general importance for certification.

"Denis Gascon"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1259-23
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