

Federal Court



Cour fédérale

Date: 20240709

Docket: IMM-7115-23

Citation: 2024 FC 1071

Ottawa, Ontario, July 9, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

**ADNAN BATINIRA KIZITO and ESSAM
TALUTAMBUDDE KIZITO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated May 16, 2023 by the Refugee Appeal Division [RAD] denying Adnan and Essam Kizito [Applicants] refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] from

Uganda because they do not face a serious risk of persecution or a likelihood of a risk to life, a risk of cruel and unusual treatment or punishment, or a danger of torture in Uganda [Decision].

[2] For the reasons that follow, I find the Decision is not unreasonable and the application for judicial review is dismissed. The RAD considered all relevant evidence, appropriately factored that the Applicants were minors, applied the law correctly, and reasonably found that the Applicants had not established a basis for protection under either section 96 or 97 of the IRPA.

II. Background

[3] The Applicants are both minors. Their father, Adam Kizito, was their designated representative in the immigration proceedings. For ease of reference, I will refer to the Applicants' individual family members by their first names.

[4] The Applicants' older brother, Hosne, attended protests in Uganda supporting an opposition candidate. In November 2020, Hosne was arrested and detained by Ugandan authorities. The Applicants state that when he was interrogated, Hosne revealed that Adam supported the opposition party. Hosne's release was allegedly secured through a bribe to the local police, after which he fled Uganda to North America where he continued to criticize the government through social media. The Applicants alleged that Hosne's opposition to the government made the family more vulnerable to persecution, particularly because dissent is closely monitored by Ugandan authorities.

[5] Adam primarily expressed his political views privately. He allegedly contributed to the opposition party and encouraged Hosne's non-violent activism. Additionally, Adam was a government employee who held various diplomatic posts. He ultimately abandoned his last post and fled to the United States before seeking refuge in Canada. The Applicants advance that Adam's background marked him as a dissident and political enemy.

[6] The Applicants argued that their father and brother's political positions and activities placed the Applicants at risk if they returned to Uganda. They feared persecution based on their political opinions, religion (as Muslims), ethnicity (Baganda), and age. This cumulative fear led them to submit claims for refugee protection in Canada, seeking safety.

III. Decision under review

[7] The RPD determined that neither of the Applicants faced a serious risk of persecution or likelihood of harm under Section 97 of the IRPA in Uganda. On appeal to the RAD, the RAD assessed the Applicants' risks and acknowledged their fears related to their father and brother's political activities and their identities as young Bagandan Muslim boys. The RAD found that the RPD had made the correct determination.

[8] The RAD reviewed Adam's political activities but found that there was insufficient objective evidence to conclude that these activities put the Applicants at significant risk. Adam's political opinions were expressed privately and there was no evidence they attracted the authorities' attention. Similarly, with respect to Hosne's activities, there was no evidence that authorities targeted families of political dissidents who acted privately or non-violently.

[9] The RAD also considered broader risks based on religion, ethnicity, and age. The RAD concluded that, while there were instances of societal discrimination against Bagandan Muslims, these did not amount to persecution or a likelihood of harm as contemplated under section 97 of the IRPA. The RAD noted that the Applicants would likely return to Uganda with their parents, reducing their vulnerability. They also found that the arguments about the Applicants' future political activities were speculative, thus the resultant risk was not grounded in the current objective evidence.

[10] Finally, the RAD accepted some new evidence submitted by the Applicants, such as the U.S. Department of State Human Rights Report, but concluded it did not substantially alter the risk assessment. The report's broad statements about familial punishment did not speak to any specific evidence of targeting families with the Applicants' personalized circumstances. The RAD's thorough analysis led them to affirm the RPD's decision, emphasizing that the evidence did not support a serious risk of persecution or harm for the Applicants in Uganda.

IV. Issues and Standard of Review

[11] While the Applicants only frame one issue, whether the Decision is reasonable, they made a number of arguments related to various errors committed by the RAD. These include:

- a) The RAD erred in considering Adnan and Essam's refugee applications as linked to their parents' then-ongoing Pre-Removal Risk Assessment [PRRA] applications and failed to consider them as minors;
- b) The RAD failed to consider Adam and Hosne's political opinions, which were "the key element of persecution that was central to the Applicants' case";

- c) The RAD was required to consider the circumstances the Applicants would face if they grow up in Uganda;
- d) The RAD should have considered the forward-looking risks the Applicants will face by not being able to freely express their political views in Uganda;
- e) The RAD did not sufficiently consider that the Applicants could be recruited by Ugandan militias;
- f) The RAD erred in considering Adam's risk profile when assessing the Applicants' claims;
- g) The RAD was unreasonable in suggesting the Applicants would not be persecuted "if they keep a low profile";
- h) The RAD was required to accept and consider evidence on Ugandan country conditions;
- i) The RAD failed to consider that local police officers who arrested Hosne might have documented his arrest;
- j) The RAD accepted then unreasonably discounted evidence regarding the Ugandan government targeting individuals for the crimes of their families; and,
- k) The RAD erred in considering Adam's testimony "as that of a mere witness" instead of a designated representative.

[12] The Applicants have not identified any issues to be reviewed on the standard of correctness, so the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]).

[13] When assessing a decision on the standard of reasonableness, the Court must assess whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

[14] While I noted the specific arguments above I understand that, globally, the Applicants challenge the RAD's Decision on the basis that the RAD failed to assess the Applicants as child refugees under sections 96 and 97 of the IRPA as a forward-looking and cumulative assessment of risk and persecution. The RAD is alleged to have focused only on section 97 of the IRPA.

[15] The Applicants submit as a component of their arguments that Adam and Hosne's political opinions expose them to harm, and that the RAD failed to consider their political opinions in assessing potential persecution under section 97 of the IRPA. They characterize Adam and Hosne's political opinions as the key element of persecution that was central to the Applicants' case, and the RAD's failure to consider it renders the Decision unreasonable.

[16] I disagree with the Applicants. I also find the Applicants' submissions that the RAD erred in considering Adam and Hosne's political opinions (and should have assessed the Applicants on their own) at odds with their submissions that the RAD erred in not considering Adam and Hosne's political opinions.

[17] The RAD was alert to the issue that the Applicants are minors, and the RAD assessed their claims on the likelihood of risks based on the record before them. The RAD considered and analyzed Adam and Hosne's political opinions and activities in the context of the Applicants' case. The RAD considered that Adam's political opinions were expressed privately and there was no evidence that they attracted the authorities' attention. The RAD also considered that, while Hosne was arrested, threatened, and tortured, the evidence also showed that after he was released, the authorities did not pursue him any further and that no other risks or threats were made against him. It was open to the RAD to find that the Applicants' alleged risks associated with political opinions were hypothetical and speculative, as there was no other information before the RAD to support that they would be at risk due to the political opinions of their father and brother. The RAD also considered the Applicants' personal profiles.

[18] The Applicants also assert that, as minors, they have a "lesser capacity to communicate their beliefs and experiences" and, as such, the RAD should have accepted Adam's testimony as their designated representative to be the testimony of the Applicants themselves. However, they also argued that, where the RAD found Adam's evidence was speculative, this assessment was an error. Yet, when his evidence is supportive of their claim, the Applicants insist the RAD should

have accepted this evidence. The Applicants also submit that the RAD erred by not considering the risks the Applicants will face upon return to Uganda.

[19] With respect, the RAD was clear that Adam gave testimony as the Applicants' designated representative in these proceedings both as their representative on their behalf and as their father and one of the central reasons put forward as their risk. The RAD accepted the factual testimony as credible, but noted that Adam's opinion testimony on the persecution of Bagandan people and Muslims, particularly youth, was not grounded in the objective evidence before it. In fact, the RAD found that the objective evidence indicates that, while Muslims generally face some level of societal discrimination, this discrimination does not rise to the level of persecution or harm under the IRPA. It was open to the RAD to make this conclusion.

[20] The Applicants rely on *Ghasemian v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266, *Golesorkhi v Canada (Citizenship and Immigration)*, 2008 FC 511, and *Okoli v Canada (Citizenship and Immigration)*, 2009 FC 332, for the proposition that a decision of the RAD is unreasonable when based on reasoning that a claimant will not be persecuted if they keep a low profile upon return to their country of origin.

[21] Respectfully, the RAD did not make such a finding here. Indeed, the RAD noted that the Applicants' submissions about the risks they might face in Uganda were "speculative to say there is a serious possibility or likelihood that the Appellants will oppose the regime and resultingly behave in a certain way or that the current regime will even be in power at a point in the future

when the Appellants establish political views.” The RAD’s Decision was not a suggestion that the Applicants “keep a low profile.”

[22] Finally, the Applicants submit that the RAD erred in ignoring or unreasonably discounting their evidence. With respect, taking into account the Decision as a whole, I find that the RAD did consider the evidence, assessed it reasonably and understood the Applicants’ submissions in its analysis.

VI. Conclusion

[23] I view the sum of the Applicants’ arguments as an effort to have this Court reweigh evidence, which I cannot do on judicial review. The Applicants may disagree with the RAD’s conclusions but the question before the Court is whether the RAD’s Decision was unreasonable based on the evidentiary and legal constraints that bind it.

[24] Reviewing the Decision, the applicable law and the record before the RAD, I cannot find that the Decision was unreasonable. It bears the hallmarks of being justifiable, transparent, and intelligible. As such, the application for judicial review is dismissed.

[25] The parties have proposed no questions for certification and I agree none arise in these circumstances.

JUDGMENT in IMM-7115-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There are no questions for certification.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7115-23

STYLE OF CAUSE: ADNAN BATINIRA KIZITO, ET AL. v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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