Federal Court  Cour fédérale

Date: 20200922

Docket: IMM-2868-19

Citation: 2020 FC 918

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 22, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

CEDRICK KALALA MBUYAMBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD) that was delivered orally on March 21, 2019. The RPD determined that the applicant, Cedrick Kalala Mbuyamba, is not a Convention refugee or a person in need of protection as defined in section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [IRPA]. The RPD also found that his refugee protection claim was manifestly unfounded pursuant to section 107.1 of the IRPA.

[2] The applicant alleges that the RPD's findings as to his credibility and the manifestly unfounded nature of his claim are unreasonable. He submits that the RPD failed to take into account the current context in the Democratic Republic of Congo when assessing the evidence in support of his refugee protection claim, and that it misunderstood the key points of his testimony.

[3] I disagree. For the reasons that follow, the application for judicial review is dismissed.

II. The facts

[4] The applicant is a citizen of the Democratic Republic of Congo. He fears returning to his country because of his involvement in the political organization "Lutte pour le changement," also known as "LUCHA." He claims that he was caught by armed agents of the Republican Guard while he was putting up posters with two colleagues in anticipation of a demonstration scheduled for July 31, 2017. The purpose of the demonstration was to call for elections.

[5] The applicant and one of his colleagues managed to escape, while their other colleague was arrested. The applicant has reportedly been unable to contact that individual since.

[6] Following that incident, the applicant feared being found, and went into hiding in the home of a friend of his father. On August 10, 2017, police authorities reportedly gave his brother a notice to attend that was addressed to the applicant. His father was also reportedly kidnapped on August 17, 2017 and has been missing ever since.

[7] After obtaining a study visa, the applicant left the Democratic Republic of Congo on December 28, 2018, and signed his Basis of Claim Form (BOC Form) on February 20, 2018.

III. The RPD decision

[8] The RPD found that the applicant's story was not credible because of the discrepancies between his testimony and the documentation on file. First, the RPD noted a significant inconsistency with respect to the applicant's involvement in LUCHA. On one form, the applicant stated that he had been an [TRANSLATION] "activist" with LUCHA since June 2017, but he also produced a membership card from the organization dated May 2, 2016. The RPD noted:

> [TRANSLATION]
>
> When asked to explain the difference between a "member" and an "activist," the applicant provided a confused and vague answer, stating that once he was an "activist" he became involved and participated in marches. However, minutes earlier, the applicant had also indicated that he participated in peaceful marches when he became a "member" in 2016. The applicant has therefore not demonstrated the difference between being an "activist" and being a "member." It follows that the explanation for the contradiction between the dates is not reasonable. Given that the applicant's involvement in the LUCHA organization is the catalyst for his problems, the panel considers this contradiction to be significant. The panel therefore draws a significant negative inference from this contradiction, which undermines the applicant's credibility.

[9] Furthermore, the RPD found the applicant's testimony regarding his activities with LUCHA vague in that he was unable to provide more than general examples of the organization's activities. The RPD drew a negative inference from this inability, suggesting that an "activist" who had been involved since 2016 would have been able to provide more concrete examples of activities carried out by the organization to which he was committed.

[10] The RPD also raised other inconsistencies in the applicant's story. The applicant claims to have left his home to go into hiding because he feared being picked up by the police. He reportedly stayed at his father's friend's house for three or four months; however, he did not indicate this address on his BOC Form. In addition, at the hearing the applicant testified that a notice to appear was sent to his home on August 10, 2017, but on his BOC Form he answered "no" to the question of whether he had ever been sought, arrested or detained by the police. He explained that he forgot this detail when he filled out the form. The RPD found that the first contradiction undermined his credibility, while the second contradiction [TRANSLATION] "significantly" affected it (RPD Reasons, Certified Tribunal Record [CTR], p 3).

[11] Finally, although the applicant had submitted a LUCHA membership card, the RPD concluded that it [TRANSLATION] "has no probative value because there is a significant inconsistency in the date of issue of the card" (RPD Reasons, CTR, p 4). The RPD also noted that the applicant had attempted to submit a fraudulent newspaper article in support of his claim. The article reported the applicant's disappearance in his country following the events leading to his claim for refugee protection. The RPD noted a significant difference between the version that was filed prior to the hearing and the one that the applicant filed at the hearing. The pre-hearing version includes an error in the title: the word "mouvement" is written "mauvement." The error was corrected in the version of the same article that the applicant filed at the hearing. The RPD noted:

> [TRANSLATION]
>
> Confronted with these two versions of the same article, the applicant stated that he had received the first version on WhatsApp, and that this version may have been taken from the Internet. Meanwhile, the original version, filed at the hearing, came directly from the Congo. However, the applicant was unable

> to direct the panel to the Internet, or online, version of this newspaper article, and even the panel's efforts to locate it were unsuccessful. Moreover, without being an expert in document analysis, the panel can see for itself that the version sent prior to the hearing was digitized from an original and that it is not an online version. The panel therefore rejects the applicant's explanation. Consequently, the panel believes that the newspaper article discussing the applicant's disappearance is a false document and was filed with the panel in an attempt to mislead it. This greatly undermines the applicant's credibility

[12] As a result, the RPD rejected the applicant's claim for refugee protection and found his claim to be manifestly unfounded pursuant to section 107.1 of the IRPA.

IV. Issues and standard of review

[13] The issues are as follows:

A. Were the RPD's findings as to the applicant's credibility reasonable?

B. Was the RPD's finding that the claim is manifestly unfounded reasonable?

[14] The case law has established that a finding that a claim for refugee protection is manifestly unfounded, as well as the RPD's credibility findings and its assessment of the evidence, must be reviewed on a standard of reasonableness (*Nweke v Canada (Citizenship and Immigration)*, 2017 FC 242 at para 18). The case law is clear that the standard of reasonableness applies to the determination of whether a refugee protection claim is manifestly unfounded. I agree with this proposition (*He v Canada (Citizenship and Immigration)*, 2019 FC 2 at para 17 [*He*]).

[15] The recent decision of the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], does not change that conclusion. In the specific

circumstances of this case, and considering paragraph 144 of *Vavilov*, it is not necessary to request submissions from the parties on the appropriate standard or its application. As in the Supreme Court's decision in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 24, "[n]o unfairness arises from [the application of the framework established in *Vavilov* to this case] as the applicable standard of review and the result would have been the same under the *Dunsmuir* framework".

[16] Judicial review under the deferential standard of reasonableness includes determining whether the process and the decision indicate that the decision maker actually "analyzed" the evidence, applying the appropriate legal test, and whether the decision maker's analysis is "based on reasoning that is both rational and logical" (*Vavilov* at para 102).

[17] In *Canada Post Corp*, the Supreme Court of Canada also noted the following:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> . . .
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100). . . .

V. Analysis

A. *Are the RPD's findings as to the applicant's credibility reasonable?*

[18] The applicant argues that the RPD's findings regarding his credibility are unreasonable in that they are based on minor contradictions. He also argues that the RPD failed to provide clear and unambiguous reasons for its findings (*Ramirez v Canada (Minister of Citizenship and Immigration)*, 166 FTR 158, 1999 CanLII 7827 (FC) at para 3), and that the RPD is required to consider all the evidence, including evidence relating to current conditions in the Democratic Republic of Congo. In this regard, the applicant relies on *Manickan v Canada (Citizenship and Immigration)*, 2006 FC 1525 [*Manickan*], which states at para 3 that "a finding of incredibility does not prevent a person from being a refugee if other evidence establishes both the subjective and objective branches of the test for refugee status." Since the RPD did not consider all the evidence, he argues that this, in and of itself, is sufficient to overturn the decision.

[19] He also argues that the RPD cannot make credibility findings that are unsupported by any evidence and are based on conjecture, resulting in unjustified inferences (*Afonso v Canada (Citizenship and Immigration)*, 2007 FC 51 at para 26).

[20] The applicant submits that the RPD erred in reaching its findings with respect to his role in LUCHA, his failure to include on his form the address where he had hidden, the fact that he forgot about the notice to appear, and the evidentiary weight given to the membership card.

[21] With respect to his role in LUCHA, the applicant argues that there is no contradiction in the evidence. He explained why he indicated on his BOC Form that he had been an activist since June 2017, rather than May 2, 2016, the date on his LUCHA membership card. He was a

member earlier, participating in demonstrations, but only became active on the ground, with regular involvement in the organization's meetings and campaigns, including putting up posters, beginning in June 2017. According to the applicant, the RPD misunderstood his explanations. He adds that, contrary to what the RPD claims, the details he provided regarding his activities in LUCHA were adequate, considering his position and the duration of his involvement. He explained that he contacted people through word of mouth, put up posters and talked to people discreetly.

[22] The applicant does not deny that he failed to indicate on his BOC Form the address of the place where he had been in hiding. He argues, however, that he explained to the RPD that Schedule A was submitted at the same time as his BOC Form, and that it mentioned that he had taken refuge with a friend of his father. He argues that it was unreasonable for the RPD to conclude that this omission undermines his credibility, given that he believed he was only required to list his permanent addresses in Schedule A.

[23] The applicant argues that sending a notice to appear to his parents' home does not amount to being arrested or wanted for an offence. The notice only stated that he had to report to the police. It was not, therefore, contradictory to answer in the negative the question in Schedule 12 as to whether he had been arrested by the police. He adds that his answer is an indication of his interpretation of the question, which is reflected in the title of the question itself: "Arrests and criminal offences."

[24] In addition, the applicant suggests that it was an error not to give probative value to his membership card. Although the RPD is of the view that there is an inconsistency in the date on

the card, he asserts that he had been a member of LUCHA since May 2, 2016, but that he had not been an activist.

[25] The applicant also claims that the RPD based its findings on minor or non-existent contradictions. He asserts that his testimony is consistent and that the RPD's findings of implausibility were reached in a capricious manner without regard to the evidence before it (*Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at para 14 [*Santos*]).

[26] Finally, the applicant asserts that the RPD did not take into account conditions in the Democratic Republic of Congo. Actions that appear implausible may be plausible when considered from within the claimant's milieu (*Elezi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 210 at paras 5, 7 and 8 [*Elezi*]).

[27] I am not convinced.

[28] The starting point for my analysis is the fact that Parliament has assigned the task of assessing the evidence, including the credibility of refugee protection claimants, to the RPD and the Refugee Appeal Division (RAD), when it is seized of a case. This Court's jurisprudence confirms that credibility is a question of fact that is central to the RPD's expertise (*Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at paras 31–32 [*Kahumba*]), and that the RPD's findings of credibility invite considerable deference (*Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at para 36), particularly since the RPD has the advantage of hearing witnesses testify and observing their demeanor (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 42–43).

[29] In this case, the conclusions drawn by the RPD are reasonable and evidence-based, and coherently explained.

[30] First, I am of the view that the RPD's findings are reasonable with regard to the applicant's credibility in distinguishing between a member and an activist, and his description of the activities in which he participated in LUCHA. It makes sense that a person could have a membership card before becoming more involved in a movement. However, in this case, the RPD explained its reasoning, indicating that the applicant provided [TRANSLATION] "a confused and vague answer". In his testimony, the applicant explained that the difference between his role in 2016 and 2017 within the organization was an increased presence on the ground as an activist, including participating in marches. However, he had just explained that he had also participated in marches in 2016 as a member. The applicant indicated that he had given out leaflets, put up posters, and talked to people. This appears to be more of a reference to what the applicant was doing when his colleague was arrested and he managed to escape (RPD Reasons, CTR, pp 2–3).

[31] The RPD also gave him an opportunity to explain the evidence regarding his involvement in the organization, but he was unable to persuade the decision maker. Furthermore, with respect to the activities of LUCHA, the RPD indicated that the applicant was only able to provide general examples of the organization's activities, such as [TRANSLATION] "demanding more rights for citizens, participating in marches" and [TRANSLATION] "numerous matters". I believe it was reasonable for the RPD to find that his explanations were insufficient and had the effect of undermining his credibility.

[32] With respect to the contradiction relating to the notice to appear, before this Court, the applicant explained his interpretation of the question found in Schedule 12. This argument was

not made before the RPD, however. In its decision, the RPD noted the contradiction between the form and the applicant's testimony. The applicant indicated that he had forgotten about the notice to appear when completing the form, but included this detail in his narrative. It should be noted that the question in the form on which the RPD based this finding reads as follows: "Have you . . . ever been sought, arrested, or detained by the police or military or any other authorities in any country, including Canada?" In my view, it was reasonable for the RPD to note that the applicant answered "no" to this question, whereas he testified that the notice to appear was sent to his home. The applicant's explanation did not satisfy the RPD. Its finding was based on an assessment of the evidence, which merits a great deal of deference from the Court. Moreover, the RPD cannot be criticized for failing to consider an argument that was not put to it.

[33] In support of his argument, the applicant cited the *Santos* and *Elezi* decisions. In my view, however, these decisions deal with findings of implausibility or plausibility or lack of understanding on the part of the decision maker. In this case, the RPD made findings resulting from contradictions or omissions in the evidence pertaining to essential points in the applicant's claim for refugee protection. The membership card, the claimant's involvement with LUCHA, and the filing of two versions of a newspaper article referring to the applicant are directly linked to the applicant's refugee protection claim based on his fear as a member of LUCHA.

[34] I agree with the applicant on two points. With respect to the residence address, the applicant is correct in pointing out that he stated in the narrative attached to his BOC Form that he went into hiding following the events. At the hearing before the RPD, he explained why he included only his permanent address on the form. In light of the totality of the evidence on this point, and in the absence of an analysis of the whole by the RPD, I find that it was unreasonable

to conclude that the failure to mention the address of his refuge on the form undermines the applicant's credibility.

[35] With respect to the LUCHA membership card, the RPD found that it [TRANSLATION] "has no probative value because there is a significant inconsistency in the date of issue of the card, which greatly undermines his credibility". The problem is that the RPD did not analyze the card separately to determine that it was not authentic. Corroborating evidence must be examined independently of concerns about the claimant's credibility before it is rejected; otherwise the evidence is not believed simply because the claimant is not believed (*He* at para 25).

[36] While I disagree with these two findings of the RPD regarding the applicant's credibility, I am of the view that these errors are not, in and of themselves, sufficient to justify allowing the application for judicial review.

[37] Given the accumulation of omissions and contradictions, it was reasonable for the RPD to conclude that the applicant's story was not credible (*Aguilar v Canada (Citizenship and Immigration)*, 2012 FC 150 at paras 35–42).

[38] In this case, I do not accept the argument that despite its credibility findings, the RPD must take country conditions into consideration as set forth in *Manickan*. I do agree with the respondent, however, that the statement in paragraph 6 of that decision applies: "Documentary evidence need not be consulted where the only evidence that links an applicant to the documents is the applicant's discredited testimony."

[39] Indeed, the RPD did not question the fact that activists and members of LUCHA were involved in a large demonstration, and that some were arrested. Rather, the RPD's assessment

relates to the fact that it does not accept that the applicant established his membership in that organization. This is a reasonable finding given the evidence before the RPD (*Kahumba* at paras 31–32; *Toma v Canada (Citizenship and Immigration)*, 2014 FC 121 at paras 21–22).

B. *Is the RPD's conclusion that the claim is manifestly unfounded reasonable?*

[40] Section 107.1 of the IRPA allows a decision maker to declare a claim for refugee protection to be manifestly unfounded if the decision maker is satisfied that "refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection will be granted" (*Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 31 [*Warsame*]; see also *He* at para 21). Because of the effects of this provision on the applicant–including the fact that the decision cannot be appealed to the RAD under paragraph 110(2)(c) of IRPA–the decision maker must explicitly state this finding and present supporting evidence. This may be through a determination of a single fraudulent element, or by cumulation *(Warsame* at para 24).

[41] In this case, the applicant submitted as evidence a newspaper article reporting on his disappearance. In reviewing the documents, the RPD noted a clear error in the headline ("mauvement" rather than "mouvement"). At the hearing, the applicant filed the original version, which did not include this mistake. The RPD questioned the applicant. He indicated that he had received the first version via WhatsApp and that it had likely come from the Internet, while the other version had been sent directly from the Democratic Republic of Congo. It is reasonable for the RPD to find the difference between the two documents problematic. The RPD gave the applicant an opportunity to explain the situation, but this gave rise to more questions, particularly because he indicated that the first version was taken from the Internet whereas it appeared to be a

scanned copy. In addition, despite searching, the RPD could not find the article on the Internet and the applicant could not provide a link to the article. The conclusion was reasonable (*Kahumba* at para 39).

[42] The applicant cites *Liang v Canada (Citizenship and Immigration)*, 2019 FC 58 at para 16 [*Liang*], to suggest that there was insufficient evidence with regard to the authenticity of the document. In *Liang*, the RPD found that a summons issued by a court in China was fraudulent because of the misplacement of one Chinese character on the document when the rest of the summons appeared to be in proper form. The Court found that the RPD had not made a reasonable assessment of the document because it focused its assessment of the document solely on the one character (*Liang*, at paras 19–20). In support of her conclusion in *Liang*, Justice McDonald cited *Ma v Canada (Citizenship and Immigration)*, 2018 FC 163, a case in which the Court determined that finding differences in form, rather than substance, when comparing sample summons had been an error, in that it was not clear from the evidence that the sample had not been updated between 2013 and the date of the decision (at paras 22–23).

[43] The situation is different in this case because the RPD did not compare the newspaper article with other newspaper articles, or even with other newspaper articles in the same newspaper at other times: it compared two versions of the same article.

[44] As Justice Roy stated in *Warsame* at paragraph 31, a claim will be “clearly fraudulent” under section 107.1 of the IRPA if “the decision maker has the firm conviction that refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection will be granted.”

[45] This is exactly the analysis that was conducted by the RPD in this case. The RPD's finding on this point is reasonable and its reasoning is well explained and coherent.

VI. Conclusion

[46] For all these reasons, the application for judicial review is dismissed. Most of the RPD's findings on the applicant's credibility are reasonable, as is its finding that the applicant's refugee protection claim is manifestly unfounded. Moreover, the RPD's analysis on these two points is clear and evidence-based, and the findings are well explained.

[47] There is no question of general importance to be certified.

JUDGMENT in IMM-2868-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2868-19
STYLE OF CAUSE:	CEDRICK KALALA MBUYAMBA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	NOVEMBER 26, 2019
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	SEPTEMBER 22, 2020

APPEARANCES:

François Kasenda Kabemba	FOR THE APPLICANT
Adrian Johnston	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet François K Law Office Counsel Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT