

Federal Court



Cour fédérale

**Date: 20211215**

**Docket: IMM-938-21**

**Citation: 2021 FC 1420**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, December 15, 2021**

**PRESENT: The Honourable Madam Justice Walker**

**BETWEEN:**

**MIREILLE WEMBOLUA  
DEBORAH LUTSHUMBA  
EMMANUELLE LUTSHUMBA  
GABRIELLA LUTSHUMBA  
GEDEON LUTSHUMBA  
AMOS DAVID LUTSHUMBA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mireille Wembolua, the principal applicant, and her five children, the associated applicants, are citizens of Belgium. Ms. Wembolua is originally from the Democratic Republic of Congo (DRC). Ms. Wembolua and the associated applicants (together, “the applicants”) fear

returning to Belgium because of the domestic violence perpetrated by the father of the family against Ms. Wembolua since their marriage in 1999.

[2] The applicants are seeking judicial review of a January 26, 2021, decision by the Refugee Appeal Division (RAD) denying their refugee protection claim (Decision). The Refugee Protection Division (RPD) found that the applicants had failed to rebut the presumption that Belgium was able to provide state protection. Like the RPD, the RAD reached the same conclusion. Accordingly, the RAD confirmed the RPD's decision that the applicants were neither refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 21.

[3] For the following reasons, the applicants' application for judicial review is allowed.

I. Background

[4] Ms. Wembolua testified before the RPD that her husband began his abusive behaviour shortly after they were married. In 2000 and 2001, she and her neighbours in Belgium called the police several times as a result of her husband's violence. The police came to the home and her husband was issued a warning, but was not arrested. The violence escalated and her husband took away her phone. During the same period, Ms. Wembolua spoke with social workers, who offered to relocate her and her children. She declined the offer because she was afraid of being tracked down by her husband. Ms. Wembolua also contacted women's shelters, but they did not have space for applicants.

[5] From 2009 to 2011, the applicants lived in the DRC in order to escape the domestic violence they had experienced in Belgium. Following her family's intervention, Ms. Wembolua returned to Belgium with the children in November 2011 and resumed married life with her husband. She continued to suffer abuse until the applicants all left Belgium in July 2014 to travel to the DRC. Ms. Wembolua alleged that her husband had tracked her down in 2015 and that the abuse resumed.

[6] On August 3, 2017, the applicants left the DRC to travel to Belgium and, three days later, traveled to Canada, where they claimed refugee protection.

[7] The RPD's decision was issued on June 22, 2020. According to the RPD, the determining issue in the case was Ms. Wembolua's access to state protection in Belgium. The onus was on the applicants to demonstrate the absence of state protection in light of the fact that Belgium is presumed to be democratic. The RPD noted that Ms. Wembolua had stopped living in Belgium in 2014. More importantly, her calls to the police dated back to 2000-2001. Since that time, she had not sought help from the Belgian police. The RPD concluded that the applicants' dated evidence did not outweigh the objective documentation regarding the protection offered by the Belgian state to victims of violence. Further, the applicants had not demonstrated that they would not have access to those services because of their race.

[8] The RAD dismissed the applicants' appeal of the RPD's decision.

[9] The RAD reached the same conclusion as the RPD regarding the existence of adequate state protection for the claimants in Belgium. The RAD analyzed the RPD's findings and addressed the argument that the RPD had failed to consider Ms. Wembolua's race in its state protection analysis. The RAD concluded:

[38] . . . , I do not see where the RPD allegedly erred in its overall analysis of state protection in this case. Having analyzed all the evidence presented, I come to the same conclusion, for the same reasons.

[10] The RAD Decision is the subject of this application for judicial review.

## II. Analysis

[11] The issue in this application is whether the RAD committed a reviewable error in its analysis of state protection in Belgium. This issue must be examined under a reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Budai v Canada (Citizenship and Immigration)*, 2021 FC 313 at para 9).

[12] The applicants argued that the Decision was unreasonable because of the lack of reasons. They stated that the Decision failed to explain the RAD's analysis of their case. In their view, the Decision reads like a review tribunal decision rather than that of an appeal tribunal. They pointed out that the RAD's assessment of their case and the evidence was limited to a statement that the RAD analyzed "all of the evidence presented" and that it "[reached] the same conclusion, for the same reasons" as those set out by the RPD.

[13] I agree with the applicants that the Decision fails to demonstrate the RAD's analysis of the record and does not meet the guidelines set out by the Supreme Court in *Vavilov*, particularly the justification guideline.

[14] The RAD summarized the RPD's main findings while making brief references to the evidence cited by the RPD. The RAD noted that the RPD first repeated the jurisprudential principles relevant to the determination of state protection. Second, the RPD considered Ms. Wembolua's testimony about her contact with Belgian authorities in 2000 and 2001. The RAD noted that the RPD had analyzed the documentary evidence filed and found that the Belgian state was making serious efforts to address domestic violence. According to the RPD, and despite the principal applicant's representations, the applicants did not rebut the presumption that the Belgian state was in a position to offer them adequate protection. The RAD also noted the RPD's dismissal of Ms. Wembolua's allegation that the state was unable to protect her because of the influence of her husband and that of his accomplices involved in organized crime in Belgium.

[15] I agree that the RAD confirming the RPD's decision was not in itself a reviewable error. However, the RAD's Decision and reasons must demonstrate its review of the RPD's decision and its own analysis of the record and the applicants' main arguments in support of their appeal. I am not suggesting that the reasons must be lengthy or detailed in all cases, but the reasons should normally extend beyond an overall statement that the panel has considered the evidence presented.

[16] In addition, I agree with the respondent's argument that the RAD undertook a substantive analysis of the applicants' argument that the RPD erred in failing to consider Ms. Wembolua's race in its decision. However, in my view, that was the only one of the applicants' arguments in respect of which the RAD provided its own reasons. Apart from that limited assessment, the RAD merely adopted the RPD's reasons and findings.

[17] In addition to the above concerns, the RAD omitted any reference to the RPD's discussion of a 2017 RAD decision that also involved a claimant and her children of Belgian nationality and Congolese origin and reviewed documentary evidence on Belgian state protection (*X (Re)*). The applicants argued that this omission was a sufficiently significant error to render the Decision unreasonable (*Vavilov* at para 100).

[18] I agree with the applicants that the RAD's failure to consider the applicants' arguments regarding the decision in *X (Re)* and the RPD's reasons for pointing out that decision, undermined the substance of the Decision's rationale. Further, and although the RAD referred to other relevant aspects of the RPD's decision, the reiteration of the RPD's findings failed to provide the applicants with the RAD's reasoning. The reasons suggest, but do not confirm to the applicants, that a second assessment in the form of an appeal was conducted in accordance with the principles set out in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93. I therefore conclude that the RAD Decision does not bear the hallmarks of reasonableness, namely, justification, transparency and intelligibility (*Vavilov* at para 99).

[19] Accordingly, I allow the application for judicial review. The Decision must be set aside, and the applicants' case is to be remitted for redetermination by a different decision-maker.

[20] No questions of general importance were proposed certification and I agree that none arise.

**JUDGMENT in IMM-938-21**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is allowed.
2. The Decision is set aside, and the matter is remitted for redetermination by a differently constituted panel.
3. No question of general importance is certified.

“Elizabeth Walker”

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Judge

Certified true translation  
Sebastian Desbarats



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

**DOCKET:** IMM-938-21

**STYLE OF CAUSE:** MIREILLE WEMBOLUA, DEBORAH  
LUTSHUMBA, EMMANUELLE LUTSHUMBA,  
GABRIELLA LUTSHUMBA, GEDEON  
LUTSHUMBA, AMOS DAVID LUTSHUMBA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 23, 2021

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** DECEMBER 15, 2021

**APPEARANCES:**

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