Federal Court  Cour fédérale

Date: 20220325

Docket: IMM-1627-20

Citation: 2022 FC 414

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 25, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

CARMEN MARIE ANGE LUTONDO LABANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Carmen Marie Ange Lutondo Labana, is a citizen of the Democratic Republic of the Congo [DRC]. She is seeking judicial review of a decision by the Refugee Appeal Division [RAD] dated February 10, 2020. In that decision, the RAD dismissed her appeal

and confirmed the decision of the Refugee Protection Division [RPD] that she was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant alleged that on January 20, 2015, she had participated in a demonstration against the adoption of an electoral law that would delay the 2016 elections in her country. She claimed that she was arrested, handcuffed, beaten and tortured by police forces, and that some of her friends went missing. She believes that they were killed.

[3] On April 23, 2015, she left the DRC for Canada on a visitor's visa. She remained in this country for four months before returning to the DRC on September 3, 2015, to continue her studies. On September 10, 2015, the National Intelligence Agency [ANR] showed up at her residence on the university campus and asked her questions about the January 2015 demonstration. She received death threats. With the help of her parents and a general, she left the DRC again for Canada on September 29, 2015. She filed her refugee protection claim in early November 2015.

[4] In January 2016, the RPD rejected her refugee protection claim a first time. The claimant appealed that decision. The RAD found in her favour in January 2017 and returned the matter to the RPD for a new hearing.

[5] On February 19, 2018, the RPD rejected the refugee protection claim. It found that the applicant's conduct was not consistent with that of a person who has a well-founded fear of

persecution. In addition, the RPD doubted the authenticity of the documents submitted in support of the refugee protection claim and gave them little weight, as they were unable to corroborate the applicant's main allegations.

[6] The applicant appealed this second decision to the RAD, which determined that the RPD had not erred in its assessment of the applicant's credibility. First, it found that the inconsistencies and contradictions between the applicant's testimony and the alleged fear had undermined her credibility. The RAD then questioned the authenticity of the documentary evidence, which did not significantly corroborate the applicant's account. Finally, it concluded that the applicant's actions demonstrated that she had very little subjective fear.

[7] Although phrased differently in her memorandum, the applicant essentially criticized the RAD for having rendered a decision that was not based on the evidence in the record. She argued that the analysis of her credibility and the evidence was unreasonable.

II. Analysis

[8] The parties agreed that the applicable standard of review is reasonableness. The Court concurs.

[9] Where the reasonableness standard applies, the Court must ensure that it understands the decision maker's reasoning to determine whether the decision as a whole is reasonable. It must ask whether the decision bears the "hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal

constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Further, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[10] Having reviewed the record and considered the parties' submissions, the Court is not persuaded that there is a basis for intervention in this case.

[11] First, the Court cannot agree with the applicant's argument that the RAD's reasons were vague and unstructured because they did not specify at which exact points in the process the applicant had testified using standard phrases, such as "I think" and "I do not know exactly". Referring to these standard phrases, after listening to the recording of the RPD hearing, the RAD gave its general impression of the applicant's testimony and indicated that it considered it to have been detached at times. The RAD was under no obligation to indicate where in her testimony the applicant had used the phrases in question. Further, just because the RPD instructed a witness on how to answer when the witness did not know the answer to the question, it does not excuse vague testimony. Although the RAD did not see the applicant testify, it has extensive experience in evaluating testimony before the RPD. It could therefore reasonably find that the applicant's testimony had been detached at times.

[12] Second, the Court finds the RAD's conclusion about the applicant's lack of knowledge about her mother's employment to be reasonable. The applicant was very specific about her father's job, but not about her mother's. The RAD could reasonably determine that someone of

the applicant's age could have provided a little more detail about her mother's work. The applicant is essentially asking the Court to reassess her evidence.

[13] Third, the RAD could reasonably conclude that the portion of the applicant's account of the circumstances of the ANR's interrogation at her residence was not credible because of inconsistencies in her account. The applicant alleged that it is well established that university students are supportive of each other and therefore it was not implausible that her roommates would heckle the ANR officer because of ridiculous questions. The RAD found this statement paradoxical since the applicant alleged that she had been threatened with death and had feared for her life during that same interrogation. It added that the manner in which the applicant testified on this point was "convoluted", given that the ANR is known to be a fierce and brutal police force that does not hesitate to use any means necessary to achieve its objectives. While the events may have unfolded as the applicant suggested, the Court can understand the reasoning of the RAD on this point and finds it reasonable. The Court finds that the applicant's argument is again tantamount to asking for a reassessment of the evidence on this point.

[14] Fourth, the Court cannot agree with the applicant's arguments regarding the evaluation of her documentary evidence. With respect to the photos submitted in evidence of the applicant's arrest during the January 2015 protest, the RAD reasonably noted the difficulty in interpreting their content and identifying the individuals in the photos. They were not dated, and they did not demonstrate that the applicant had been arrested and abused during the protest. There was no explanation of the circumstances of the photos, aside from the applicant's testimony.

[15] While it is accurate to contend that an applicant's sworn testimony is presumed to be true according to the principle established by the Federal Court of Appeal in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA), the presumption is not absolute. If there is a valid reason to doubt the testimony of a refugee protection claimant, the Court may override the presumption of truthfulness. In this case, the RAD found the applicant's allegations not to be credible because of omissions, inconsistencies and implausibilities arising from her testimony on central elements of her story, and its concerns were clearly articulated in its decision.

[16] With respect to the letters from *Avocats des droits de l'Homme* [ADH] [Human Rights Advocates], it is true that the RAD erred when it asserted that one of the letters was unsigned. However, the error was not sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100), since it is also true that the formats of the two (2) letters were different. Furthermore, one was not dated, and the other referred to [TRANSLATION] "investigations [which] have effectively determined and confirmed that [the applicant's] allegations are true", without providing any additional details. Although the letters referred to the January 2015 protest, they offered no specifics regarding the alleged events and did not describe any steps that were subsequently taken. It also appears from the RPD's decision that the ADH organization was nowhere to be found in the National Documentation Package on the DRC. Thus, it was reasonably open to the RAD to doubt the authenticity of the letters from that organization.

[17] With respect to the applicant's other documents, it is well established that the RAD is presumed to have considered and taken into account all of the evidence (*Florea v Canada*

(Minister of Employment and Immigration), [1993] FCA No. 598 (FCA) (QL)). Nor is it required to make an explicit finding on each component of its reasoning leading to its ultimate conclusion (*Vavilov* at para 91; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). In the present case, the findings made by the RAD were supported by the evidence before it.

[18] Fifth, the Court finds that it was reasonable for the RAD to have concluded that the applicant's conduct was hardly consistent with that of a person who claimed to fear for her life. The RAD was of the opinion that a person who alleges torture and ill-treatment of any kind and who has the opportunity to leave his or her country should have sought the protection of a safe country at the very first opportunity. It pointed out that the significant incident had taken place in January 2015, but that the applicant had not left until April of that year. Once in Canada, the applicant did not check with Canadian authorities or consult her parents about the security situation in her country before returning to continue her studies. Despite threats from the ANR upon her return, the applicant waited over a month before claiming refugee protection from Canada. The RAD concluded that the contradictions in the applicant's testimony had undermined her credibility. Contrary to the applicant's contention, it was open to the RAD to consider all of the of delays given the severity of the events experienced by the applicant in January 2015.

[19] While failure to seek refugee protection is not in itself a determinative factor, it is well established that failure to make a timely claim can be a significant factor in assessing the credibility of a refugee protection claimant (*Zeah v Canada (Citizenship and Immigration)*, 2020 FC 711 at para 61; *Kayode v Canada (Citizenship and Immigration)*, 2019 FC 495 at para 29;

Dawoud v Canada (Citizenship and Immigration), 2015 FC 1110 at para 41). In this case, it was open to the RAD, like the RPD, to find the explanations provided by the applicant unsatisfactory, given her allegations of detention, torture and mistreatment. The *Chairperson's Guideline #4: Women Refugee Claimants Fearing Gender-Related Persecution* is of no assistance to the applicant.

[20] Finally, the Court is of the view that the RAD was not required to consider objective documentary evidence about the situation in the DRC, nor was it required to conduct a separate analysis of the alleged risks under section 97 of the IRPA after concluding that the applicant was not credible. The RAD made clear findings about the applicant's credibility and subjective fear. It had no obligation to conduct an objective fear analysis after such a finding. Moreover, the RAD's adverse finding on the applicant's credibility based on section 96 of IRPA eliminated the need for a subsection 97(1) analysis (*Hoyos Soto v Canada (Citizenship and Immigration*), 2019 FC 127 at para 23; *Mailvakanam v Canada (Citizenship and Immigration*), 2011 FC 1422 at paras 41-42; *Mejia v Canada (Citizenship and Immigration)*, 2010 FC 410 at para 20)

[21] In short, the arguments raised by the applicant must all be rejected. The RAD assessed the credibility findings made by the RPD and, after conducting an independent analysis of all the evidence, including the recording of the RPD hearing, concluded that the applicant's allegations were not credible.

[22] It is important to remember that findings regarding the credibility of a refugee protection claimant and the assessment of the evidence require a high degree of deference from this Court.

Although the applicant disagreed with the findings of the RAD and the RPD, it is not for this Court to reassess and reweigh the evidence in order to reach a conclusion that would be favourable to her (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[23] In conclusion, the Court finds that, when the RAD's reasons are read holistically and contextually, they bear the hallmarks of reasonableness (*Vavilov* at para 97, 99).

[24] For these reasons, the application for judicial review is dismissed. There are no questions of general importance for certification, and the Court is of the view that none arise in this case.

JUDGMENT in IMM-1627-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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