Federal Court  Cour fédérale

Date: 20230404

Docket: IMM-4245-22

Citation: 2023 FC 473

[ENGLISH TRANSLATION]

Montréal, Quebec, April 4, 2023

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

PRECIEUX DICESE M'VILA BIABATANTOU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the Refugee Appeal Division [RAD] decision to dismiss the applicant's appeal and to uphold the Refugee Protection Division [RPD] decision that the applicant is not a person in need of protection under section 97 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27. For the following reasons, the application for judicial review is dismissed.

II. Background and facts

[2] The applicant is a citizen of Congo. He alleges a fear of persecution on the ground of his refusal to acknowledge a child born from a relationship with a former classmate [the classmate]. He alleges that he has been targeted by her uncle.

[3] The applicant alleges the following facts:

- In 2016, he had a one-night stand with the classmate.
- Five months later, the classmate and her parents arrived at the applicant's home to inform him that she was pregnant and that he was the child's father. He refused to acknowledge that he was the child's father.
- After the child was born in January 2017, the former classmate's parents again came to the applicant's home to demand that he acknowledge the child. The applicant again refused to do so.
- The classmate's uncle, a colonel and an advisor to the president of Congo [the colonel], took this refusal as an affront to his family and sent men into the streets of Brazzaville to look for the applicant.
- The applicant had to leave Brazzaville to hide in a small town in southern Congo.

- While he was away, the colonel's men arrived at the applicant's home in Brazzaville to threaten the applicant's parents.
- When the applicant left Brazzaville, he learned that he had received a scholarship from the Government of Congo to study in Canada.
- He left Congo for Canada once he received his student visa and arrived in Canada on August 5, 2018.
- Learning that the applicant had left Congo without acknowledging that he was the father of his niece's child, the colonel froze the applicant's scholarship as a way to pressure him to return to Congo.
- The colonel also obliged the applicant's parents to recognize the child under threat of imprisonment.

[4] The documentary evidence shows that the applicant acknowledged being the father of his classmate's child through a [TRANSLATION] "demand for late declaration of birth" made by the applicant's father and dated October 29, 2018.

[5] On November 29, 2018, the applicant claimed refugee protection after realizing that his scholarship had been frozen.

[6] The RPD heard the refugee protection claim on October 14, 2021. On November 18, 2021, the RPD rejected the refugee protection claim because of a lack of credibility.

[7] On December 7, 2021, the applicant appealed to the RAD. On April 13, 2022, the RAD dismissed the appeal and confirmed the RPD's decision [Decision]. That Decision is the subject of this application.

III. Analysis

[8] The applicant asserts that the Decision is not reasonable because the RAD erred in its analysis of procedural fairness and of the applicant's credibility. I will deal with the issue of procedural fairness first, followed by the issue of the applicant's credibility.

[9] To analyze issues of procedural fairness, the Court is required to ask whether the procedure was fair having regard to all the relevant circumstances, including those set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 2–28 (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; see also *Singh v Canada (Citizenship and Immigration)*, 2023 FC 239 at para 27).

[10] The applicant alleges that the RAD erred in its analysis when it found that it was reasonable for the RPD not to have analyzed the refugee protection claim under section 96. This argument repeats what the applicant already raised on appeal before the RAD. However, in its reasons, the RAD (i) noted that the RPD expressly acknowledged its obligation to analyze whether the applicant's allegations meet the requirements of section 96; and (ii) reproduced the RPD's remarks to explain that the RPD had in fact analyzed the refugee protection claim under section 96 but found that the applicant's allegations of discrimination were but [TRANSLATION] "pure speculation". Procedural fairness was therefore not breached.

[11] With respect to the reasonableness of the RAD's analysis of this question, I find that the RAD's analysis of the applicant's allegations of discrimination and its conclusion thereon are reasonable: "[n]othing in the evidence on the record indicates that the appellant's ethnicity was at the root of his fears, or at the very least constituted a reason that would peak (sic) the interest of the agents of harm to go after him".

[12] Before this Court, the applicant argues that section 1e) of his Basis of Claim Form indicates that his nationality, ethnic and racial group or tribe is [TRANSLATION] "Congolese, Kongo". However, I am of the view that the applicant did not refer to his ethnicity or any incident of discrimination in his written account. The applicant's allegations of prejudice, be it in his written account or in the affidavit he submitted to this Court, refer to a personal vendetta rather than a Convention ground.

[13] The objective evidence in the National Documentation Package (which indicates that people from the Lari or Laari ethnic group are persecuted by the authorities because they are considered to be government opponents) is insufficient to establish persecution of the applicant on the ground of his ethnicity. I note that this evidence does not connect the Lari ethnic group to the Kongo ethnic group to which the applicant indicated that he belonged (when the Court asked counsel for the applicant to clarify this matter at the hearing, he stated that the Laris were a sub-group of the Kongos). In addition, this evidence does not in any way confirm that the applicant's membership in this ethnic group was the reason why the colonel is persecuting him. The RAD therefore reasonably found that this allegation was speculative.

[14] With respect to the applicant's credibility, this issue is reviewable against a standard of reasonableness; in other words, the court must be satisfied that the RAD's finding as to the applicant's credibility is "based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 85).

[15] The applicant argues that the RAD erred in its credibility analysis because (i) the applicant provided a reasonable explanation for his delay in claiming refugee protection when he arrived in Canada; and (ii) he discharged his burden of proving, on a balance of probabilities, that he is being persecuted by the colonel for refusing to acknowledge that he is the father of his classmate's child.

[16] The applicant argues that his delay in claiming refugee protection is not determinative in itself and states that he filed his claim only three-and-a-half months after arriving in Canada because his student visa gave him a temporary status and he therefore knew that he would not be at risk of having to return to Congo as long as his student visa was valid. In addition, the applicant argues that the three-and-a-half month delay was reasonable because of the time that passed before he learned that his scholarship had been frozen, as well as the time he needed to find a lawyer, make an appointment with him and complete the necessary forms.

[17] I cannot accept the applicant's arguments, which the RAD directly and reasonably analyzed in paragraph 18 of its reasons:

> In his appeal memorandum, the appellant asserts that the RPD did not take into consideration that he had student status that protected

> him against a potential return to his country. While I agree with the appellant, the fact remains that this status was conditional on the unblocking of the alleged freezing of the scholarship, thereby subjecting him to the risk of being deported to his country. While the appellant's student visa was valid until [August 31, 2021], the fact remains that this validity depended essentially on adhering to the conditions of its issuance, including taking and successfully passing courses at the educational facility. I note that the appellant stated that he did not take any courses at Université de Sherbrooke. All in all, I am of the opinion that the appellant's behaviour is inconsistent with that of someone who alleges fearing for their life and that the RPD did not err in its conclusion, which I consider to be correct.

[18] In his affidavit, the applicant stated that he realized on August 27, 2018, around three weeks after his arrival in Canada and the day before his planned start at Université de Sherbrooke, that he had not received his scholarship and that he [TRANSLATION] "remained in an uncertain position for the entire month of September". Despite that, he still waited nearly two months, October and November, before eventually filing his refugee protection claim in late November 2018.

[19] It is my view that the applicant did not act in a reasonable manner and that his actions are not consistent with his argument that he did not feel the need to claim refugee protection because of his temporary status, given that he had been aware since at least late August 2018 that his student visa risked being revoked because his scholarship had not been paid to him. In addition to this, I note that the applicant did not show up for any courses at Université de Sherbrooke, which also jeopardized his student visa, as indicated in the Government of Quebec's "Declaration, undertakings and authorizations" form, which the applicant signed when he was granted his Québec Acceptance Certificate for studies, and in the study permit conditions required by the respondent, as well as in paragraph 220.1(1)(b) of the *Immigration and Refugee*

Protection Regulations, SOR/2002-227, which requires a study permit holder to "actively pursue their course or program of study".

[20] Absent a reasonable explanation for the delay in claiming refugee protection, it may be open to an administrative decision-maker to conclude that the claimant does not actually fear persecution and that this is why protection was not sought sooner (*Chen v Canada (Citizenship and Immigration)*, 2019 FC 334 at para 24). The RAD reasonably found that that the delay in claiming refugee protection reduced the applicant's subjective fear and undermined his general credibility. I add that it was clear to the RAD that the reason for the delay was not determinative and it was only one element in its findings on the applicant's credibility.

[21] Furthermore, the applicant argues that he presented sufficient evidence to establish that he is being persecuted by the colonel for refusing to acknowledge that he is the father of his classmate's child. He contends that the RAD erred by showing excessive vigilance and focusing on the details of his file, thereby overlooking the essence of the facts on which his claim is based.

[22] The applicant cites *Maldonado v Canada (Employment and Immigration*, [1980] 2 FC 302 (CA), and *Ahortor v Canada (Employment and Immigration)*, [1993] F.C.J. No. 705, to argue that the RPD and the RAD cannot rely on the absence of corroborating evidence to decide not to believe a claimant's allegations.

[23] Once again, I cannot accept the applicant's arguments. The RAD reasonably found that it was open to the RPD to require corroborating evidence given its doubts as to the applicant's

credibility (*Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at para 21). *Maldonado* and *Ahortor* must be taken to exist alongside section 11 of the *Refugee Protection Division Rules*, SOR/2012-256 (*Ni v Canada (Citizenship and Immigration)*, 2022 FC 460 at paras 19–20). Section 11 requires the claimant to provide acceptable documents establishing their identity and other elements of the claim, and if they do not provide acceptable documents, to explain why they did not provide the documents and what steps they took to obtain them.

[24] In this case, as the RAD pointed out in its reasons, although the applicant established the existence and influence of his agent of persecution, he did not submit any evidence beyond his father's sworn statement (to which I will return later) in support of the following allegations: (i) the family connection between the colonel and the classmate; (ii) the colonel's intervention with the applicant's parents to demand the paternity acknowledgment; and (iii) the fact that the colonel is in effect behind the applicant's scholarship being frozen.

[25] In addition, it was reasonable for the RPD and the RAD to find that the applicant's credibility was undermined by there being no statement or affidavit from his brother, who moved to Montréal 10 years ago. The applicant's explanation that his brother could not corroborate his allegations because he was not aware of the events or the persecution suffered by his family in Congo is not convincing.

[26] The applicant contends that his father's sworn statement [statement] is sufficient to corroborate all these allegations. However, the RPD and RAD gave little weight to it, given that it contains elements that contradict the applicant's testimony. In his statement, the applicant's

father confirms that DNA tests are available in Congo, whereas the applicant testified before the RPD that he did not seek to have a DNA test done to show that he was not the child's father because these tests were not available in Congo. Yet on appeal before the RAD, the applicant stated that the colonel had prevented him from carrying out a DNA test. These inconsistencies justify the little weight that the RPD and RAD gave the statement as well as the determination that the applicant did not submit sufficient evidence to prove his allegations.

[27] I also note that the RAD reasonably rejected the applicant's argument that he could not obtain other evidence because it would put his life in danger given that he did not elaborate on this argument and explain how he would put his life in danger by attempting to obtain such evidence.

[28] Lastly, I must point out that the applicant ultimately acknowledged the child through a [TRANSLATION] "demand for late declaration of birth" dated October 29, 2018, even before he claimed refugee protection. Moreover, the RAD noted at paragraph 35 of its reasons that the applicant did not provide a satisfactory explanation for the colonel's motivation to continue pursuing him after this official acknowledgment:

> I note that the appellant is simply repeating his allegations and submissions at the hearing. The appellant is not specifically challenging the RPD's conclusion that the absence of any problems since acknowledging paternity brought an end to the alleged fear. Like the RPD, I note that the appellant's allegations in his written account allude to his fear related to the failure to acknowledge the child's paternity. While the acknowledgement of the child occurred by way of the appellant's father, according to his allegations, a condition for not causing the appellant misfortune, the fact remains that the appellant stated that his family has not had any problems since the acknowledgement. To argue that the [Colonel] is after the appellant by reason of his

> mistreatment of his niece and his ethnicity are, in my opinion, speculations. Furthermore, nothing in the evidence indicated that the Colonel would have refused to allow the appellant to undergo DNA testing. This allegation is not based on the evidence on the record. All in all, I am of the opinion that the RPD did not err in its conclusion, which I consider to be correct.

[29] All these contradictions and inconsistencies are central to the applicant's allegations, and it was justifiable, intelligible and reasonable for the RAD to dismiss the applicant's appeal and confirm the RPD's decision.

IV. Conclusion

[30] For the above reasons, the applicant has failed to establish that the Decision is unreasonable, and, accordingly, I dismiss the application for judicial review.

JUDGMENT in IMM-4245-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

"Alan S. Diner"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4245-22
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PLACE OF HEARING:	MONTRÉAL, QUEBEC
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