Federal Court  Cour fédérale

Date: 20230427

Docket: IMM-6658-22

Citation: 2023 FC 617

Montréal, Quebec, April 27, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

JEAN CLAUDE NAMBAZISA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Jean Claude Nambazisa, is seeking judicial review of a decision rendered on May 31, 2022 [Decision] whereby the Refugee Protection Division [RPD] dismissed Mr. Nambazisa's claim for refugee protection under either section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD was concerned with Mr. Nambazisa's credibility.

[2] Mr. Nambazisa is asking the Court to set aside the Decision and to refer the matter back to the RPD for a new hearing. He submits that the RPD's assessment of his credibility is unreasonable as it allegedly failed to consider information in the documentary evidence that contradicted its implausibility findings. Furthermore, Mr. Nambazisa claims that the RPD breached his language rights by issuing its Decision in English rather than in French, the official language of record at the RPD hearing.

[3] The only issue to be determined is whether the RPD's Decision is reasonable. For the following reasons, I will grant this application for judicial review. After considering the RPD's findings, the evidence presented, and the applicable law, I find that, in the circumstances of this case, the RPD's conclusions are unreasonable, as the RPD erred in both its assessment of certain implausibility findings and its treatment of Mr. Nambazisa's language rights. This is sufficient to justify the intervention of this Court, and to remit the case for reconsideration by a different panel of the RPD.

II. Background

A. *The factual context*

[4] Mr. Nambazisa is a citizen of Rwanda. In 2011, his wife and children fled to Belgium because of their fear of Hutu extremists who were threatening the family. Mr. Nambazisa stayed in Rwanda to continue working. His wife and children later obtained refugee protection in Belgium.

[5] In December 2017, due to repetitive questioning from Rwandan authorities about his wife's possible association with opposition activists in Belgium, Mr. Nambazisa left Rwanda. He sought refugee status in Belgium in January 2018.

[6] In 2020, while waiting for his Belgian refugee status, an employee of the Rwandan embassy in Belgium informed Mr. Nambazisa that he should go back to Rwanda and abandon his refugee claim. In exchange, he would receive a good job in the country and would not be persecuted. Therefore, Mr. Nambazisa decided to withdraw his refugee claim in Belgium and to go back to Rwanda.

[7] Before his departure, Mr. Nambazisa learned, through a friend of his wife, that there was an arrest warrant against him in Rwanda. The arrest warrant was issued under section 233 of the Rwandan *Law Determining Offences and Penalties* pertaining to "humiliation of national authorities and persons in charge of public service." Because he had already asked for the withdrawal of his refugee claim in Belgium, Mr. Nambazisa left that country in February 2021. He went to Nairobi, Kenya to stay with a friend in order to figure out whether it was safe for him to return to neighboring Rwanda. During his stay in Kenya, Mr. Nambazisa contacted a friend working for RwandAir to get more information. The friend told him not to come to Rwanda, because he would be arrested upon his arrival at the airport.

[8] On February 20, 2021, the ambassador of Rwanda in Kenya contacted Mr. Nambazisa to set up a meeting with him. Fearing for his safety in both Rwanda and Kenya, Mr. Nambazisa left Kenya and arrived in the United States on February 25, 2021.

[9] On May 10, 2021, Mr. Nambazisa claimed asylum in Canada.

B. *The RPD Decision*

[10] In its Decision, the RPD found that the determinative issue was Mr. Nambazisa's credibility.

[11] First, the RPD held that the lack of documentation regarding Mr. Nambazisa's refugee claim in Belgium undermined his overall credibility, as he did not submit a copy of his or his wife's Belgian refugee claims. Accordingly, the RPD was not able to verify that Mr. Nambazisa's claim was based on his persecution by the Rwandan government because of his political opinions.

[12] Second, the RPD found contradictions and implausibility regarding the withdrawal of Mr. Nambazisa's claim for asylum in Belgium. The RPD was not convinced by Mr. Nambazisa's "vague testimony" about the job offer he received in Rwanda and lack of corroboration on how the arrest warrant against him was obtained. Additionally, due to irregularities with the arrest warrant submitted by Mr. Nambazisa, namely that it was issued in French and included the word "Public" on a line by itself, followed by a comma on the next line, the RPD assigned no probative value to the document.

[13] Third, the RPD found contradictions regarding Mr. Nambazisa's plans to return to Rwanda. Particularly, the RPD found Mr. Nambazisa's narrative on the course of events inconsistent with the letter from his friend — with whom he stayed while he was in Kenya. In addition, the lack of corroborative documents or letters from the alleged friends who alerted Mr. Nambazisa of his potential arrest upon returning to Rwanda undermined his credibility, as Mr. Nambazisa's explanations for the lack of documents were "vague and unsatisfactory."

[14] Finally, the RPD held that Mr. Nambazisa's explanation on his failure to seek permanent resident status in Belgium was not reasonable with regard to his subjective fear of persecution in Rwanda and his desire to obtain such status in Belgium through family reunification.

[15] Cumulatively, these findings led the RPD to arrive at a negative conclusion regarding the overall credibility of Mr. Nambazisa. The RPD thus rejected Mr. Nambazisa's refugee claim because he failed to establish that he faces a serious possibility of persecution or that, on a balance of probabilities, he would face a risk to his life or a risk of cruel and unusual treatment or punishment or a danger of torture if he were to return to Rwanda.

[16] On May 31, 2022, Mr. Nambazisa was issued a notice of decision in French — the language used at the RDP hearing —, accompanied by reasons in English. About three months later, he received the French translation of those reasons in a letter dated August 24, 2022.

C. *The standard of review*

[17] Mr. Nambazisa and the Minister of Citizenship and Immigration [Minister] submit, and I agree, that the standard of reasonableness applies to the judicial review of the Decision, and notably to the RPD's findings of credibility (*Tchiianika v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1119 [*Tchiianika*] at para 10). With respect to the language rights and the compliance of an administrative decision with the *Official Languages Act*, RSC 1985, c 31 [OLA], I must underline that language rights are substantive rights that are distinct from procedural fairness rights and principles of fundamental justice (*Mazraani v Industrial Alliance Insurance and Financial Services Inc*, 2018 SCC 50 [*Mazraani*] at para 20). On judicial review, they are not assessed like breaches of procedural fairness; rather, they require the reviewing

court to apply the standard of reasonableness (*Kaudjhis v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 567 [*Kaudjhis*] at paras 13–21).

[18] Reasonableness is the presumptive standard that reviewing courts must apply when conducting judicial review of the merits of administrative decisions. Two exceptions rebut the presumption and require judicial review under the correctness standard: where legislative intent or the rule of law requires it (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 17). Here, none of these exceptions applies.

[19] Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). To be reasonable, an administrative decision must be justified with transparent and intelligible reasons that uncover an internally coherent reasoning (*Vavilov* at paras 86, 99). The reviewing court must be knowledgeable of the factual and legal constraints upon the decision maker (*Vavilov* at paras 90, 99), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[20] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" to justify its intervention (*Vavilov* at para 100).

III. Analysis

A. *The RPD's findings on Mr. Nambazisa's credibility*

[21] Mr. Nambazisa first submits that the Decision does not meet the principles required to support the RPD's implausibility findings concerning: 1) the Rwandan arrest warrant being issued in French; 2) the typographical error in the Rwandan arrest warrant; 3) Belgium's refugee claimant process; 4) the content of the Belgian lawyer's letter; 5) the evidence on Mr. Nambazisa and his wife's refugee claims in Belgium; 6) Mr. Nambazisa being deceived by the Rwandan officials; 7) the discovery of the arrest warrant; and 8) Mr. Nambazisa's decision to travel to Kenya and Canada.

[22] The Minister did not meaningfully engage with Mr. Nambazisa's arguments in this respect. Rather, the Minister generally reiterates the RPD's position and argues that its findings are reasonable.

[23] Despite the fact that Mr. Nambazisa took issue with multiple implausibility findings made by the RPD, I will only address two determinations that, in my view, are sufficient to hamper the reasonableness of the Decision.

(1) Implausibility on the Rwandan arrest warrant

[24] According to Mr. Nambazisa, the RPD failed to consider conflicting evidence about the use of French as one of Rwanda's official languages. Accordingly, says Mr. Nambazisa, the RPD erred in giving no probative value to the arrest warrant based on the fact that it was written in the French language.

[25] I agree with Mr. Nambazisa. At paragraph 33 of the Decision, the RPD notes the following: “according to the objective evidence on Rwanda, although French remains one of three official languages, only English and Kinyarwanda are used by public agencies in Kigali. This arrest warrant, however, is in French.” This statement made by the RPD finds no support in the evidence. The document entitled “Rwanda. L’aménagement linguistique dans le monde,” a document written in French on which the RPD specifically relies to establish this finding, says the opposite. Section 5.3 of the document, which deals with the languages of public administration in Rwanda, states the following: “[i]n fact, official trilingualism has remained symbolic, because depending on the province, district or prefecture, documents are written in either French or English” [my translation and my emphasis]. Furthermore, on languages used by courts and tribunals, section 5.2 of the document explains the following:

> In practice, most written court documents are written only in English or French. For example, indictments are often written in English (when the writer is “English-speaking”). They must be constantly translated from English to French or from French to English, depending on the “linguistic affiliation” of the person involved. In general, the proceedings are conducted in Kinyarwanda, but some judges render the sentences in French and others in English.
>
> [My translation and my emphasis.]

[26] Accordingly, I find that the RPD did not meaningfully engage with the evidence and clearly failed to consider conflicting evidence when it concluded that the arrest warrant could not have been issued in French. I do not dispute that a failure to mention a particular piece of evidence does not mean it has been ignored and does not, in and of itself, make a decision unreasonable (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador*

(Treasury Board), 2011 SCC 62 at para 16; *Bhuiyan v Canada (Citizenship and Immigration)*, 2023 FC 410 at para 24). However, the omission of essential evidence which directly contradicts the decision maker's conclusion can lead the Court to conclude that the RPD failed to consider the evidence before it (*Wopara v Canada (Citizenship and Immigration)*, 2021 FC 352 at para 19, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) at paras 16–17). This is the case here. The RPD's finding on the use of the French language by public agencies in Rwanda is directly contradicted by the very evidence relied on by the RPD, and therefore lacks justification, transparency, and intelligibility. In addition, as pointed out by counsel for Mr. Nambazisa at the hearing before the Court, numerous other documents in the national documentation package on Rwanda attest to the fact that French is one of three languages used in legal documents and legislation in the country.

[27] Another reason relied on by the RPD to justify the refusal of the Rwandan arrest warrant is an apparent typographical error it contains, namely, the use of the word "Public" on a line by itself, followed by a comma on the next line. I am not convinced that such a typographical representation is sufficient to conclude that the document is fraudulent, erroneous or unreliable. First, having the word "Public" on a separate line does not strike me as problematic, as it is clearly an acceptable and logical qualifier of the word "Ministère" found on the previous line on the arrest warrant. Moreover, as this Court stated in *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paragraph 24, "[i]f a document is suspected to be fraudulent, the decision-maker must make that factual finding and ground it in the evidence; after all, an allegation of fraud is a serious accusation. However, a handful of spelling, grammar and typographical errors cannot suffice." In the case of Mr. Nambazisa, the irregularity singled out

by the RPD is nothing but minor. I am not satisfied that it can be sufficient to reasonably refuse the Rwandan arrest warrant.

[28] Because the Rwandan arrest warrant is a central element of Mr. Nambazisa's subjective fear of persecution in Rwanda, I agree with Mr. Nambazisa that the RPD's refusal of this document based on two unreasonable grounds undermines the reasonableness of the Decision itself.

(2) Implausibility based on Belgium's refugee claimant process

[29] Mr. Nambazisa claims that the RPD also erred in stating that he should have provided the written statement he prepared for his refugee claim in Belgium. According to Mr. Nambazisa, the RPD unreasonably implied that Belgium's refugee determination system works like the one in Canada, without relying on any documentary evidence to support this conclusion.

[30] Again, I agree with Mr. Nambazisa. At paragraph 14 of the Decision, the RPD found that "[i]n Belgium as in Canada, refugee claimants are expected to provide a written application and documentation to substantiate their claims." However, I can find nothing in the record indicating that Belgium's refugee claimant process is similar to the Canadian process in that respect. I do not dispute that it was open to the RPD to make such a finding, but such determination had to be based on evidence, not on speculation. Here, the record contains no evidence on the Belgian refugee claimant process, and it is not disputed that this is not a matter that the RPD could simply take judicial notice of.

[31] On its own, this error might not have been sufficient to substantiate Mr. Nambazisa's claim that the Decision should be set aside. However, along with the absence of evidence

supporting the RPD's determination on the arrest warrant, it further contributes to the conclusion that the reasoning behind the Decision is not properly grounded in the evidence, and is thus unreasonable.

[32] I find that those two elements of the RPD's Decision (i.e., the treatment of the arrest warrant in French and the assumption about the Belgian refugee claimant process) do not bear the hallmarks of reasonableness, namely, justification, transparency, and intelligibility (*Vavilov* at para 99). I am mindful that reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). However, the above observations are sufficient to cause the Court to "lose confidence in the outcome reached" (*Vavilov* at para 106) because of the RPD's fundamental misapprehension of the evidence (*Vavilov* at para 126).

B. *Breach of language rights*

[33] As a second, and separate, major argument challenging the RPD's Decision, Mr. Nambazisa maintains that the RPD was not entitled to provide him with untranslated reasons in English as the hearing before the RPD took place in French and he had selected French as his official language of choice for the RPD proceeding. Mr. Nambazisa further submits that he had a reasonable expectation, from the RPD's own practice, that he should have received reasons in the official language he understands and which he had selected for the hearing.

[34] Again, I agree with Mr. Nambazisa and find that this failure to respect his language rights is an important additional element that contributes to the unreasonableness of the Decision.

[35] The Minister acknowledges that it would have been preferable for the RPD to provide its reasons in French right from the start, and that this was indeed a departure from the RPD's usual

practice — which is to issue decisions in both official languages at the same time when the original version is not written in an applicant's preferred language of choice or in the language of record. In fact, the RPD has apparently apologized to Mr. Nambazisa for the unfortunate turn of events he had to face. However, the Minister submits that this was an inadvertent, clerical error and that Mr. Nambazisa's request to vitiate the Decision on that basis is an unnecessary and extreme sanction to remedy the RPD's administrative error, now that the Decision has been issued in French. The Minister also argues that Mr. Nambazisa did not suffer any prejudice from the delay in obtaining the translation, and submits that an order of costs would be sufficient to remedy the error.

[36] The Minister further maintains that, under the OLA or even the *Canadian Charter of Rights and Freedoms*, Part I of *the Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 [*Charter*], claimants do not have a right "to be heard or understood in the official language of their choice or to obtain the original version" of an administrative decision in the official language of their choice (Minister's Memorandum at para 35). Rather, it would be the RPD members who would have a constitutional and quasi-constitutional right to write their decisions in the official language of their choice. According to the Minister, the RPD only had an obligation, under the OLA, to make its reasons available in one official language, and then, at the earliest possible time, in the other official language.

[37] For the reasons that follow, I am not convinced by the Minister's arguments and disagree with the narrow interpretation he proposes for the language obligations of the RPD and the language rights of litigants.

[38] I am mindful of the fact that, in *Kaudjhis*, Associate Chief Justice Gagné held that under the OLA, even if unilingual communications are problematic, "a minor violation that is quickly rectified may not warrant a drastic remedy" (*Kaudjhis* at para 19; *Leduc v Air Canada*, 2018 FC 1117 at paras 72–73). However, in the present case, I am of the view that the RPD's issuance of the Decision in an official language other than Mr. Nambazisa's preferred official language, with no simultaneous translation, is not a "minor" error.

[39] The OLA is a fundamental law that is closely linked to the values and rights set out in the *Charter*. Language rights are positive rights that "can only be enjoyed if the means are provided" and that must be given a broad and liberal interpretation "in a manner consistent with the preservation and development of official language communities in Canada" (*Canada (Commissioner of Official Languages) v Office of the Superintendent of Financial Institutions)*, 2021 FCA 159 at para 36, citing *R v Beaulac*, [1999] 1 SCR 768 at paras 20, 25). Pursuant to paragraph 3(1)(d) of the OLA, a "federal institution" includes "any federal court," and a federal court means "any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament" (subsection 3(2) of the OLA). As a federal tribunal, the RPD is thus bound by the requirements implemented by the OLA, which, among others, states that a judge or officer who hears a proceeding in French must be able to understand French without the assistance of an interpreter (paragraph 16(1)(b) of the OLA).

[40] I accept that this case is not one where the RPD, as a federal tribunal, was required to issue the Decision simultaneously in both official languages under subsection 20(1) of the OLA. Rather, pursuant to subsection 20(2) of the OLA, the RPD is only obligated to issue its decisions in one of the official languages, while the version of the decision in the other official language

must be issued at the earliest possible time. There is no indication that the RPD breached either of those obligations under section of the OLA in this case.

[41] However, the issue in the case of Mr. Nambazisa is not simply one of availability of reasons simultaneously in both languages, as provided by section 20 of the OLA. The issue is whether there is an obligation for a federal tribunal like the RPD to issue its decision in the official language chosen by a litigant, when the latter does not understand the other official language. Section 20 of the OLA does not deal with that particular situation. I am not aware of any specific provision in the OLA or in the *Charter* — and the Minister has not pointed to any — that would allow (or could be interpreted to allow) a federal tribunal to issue a decision in a language other than the official language of choice of a litigant, without at the same time providing a translation.

[42] I pause to make the following observation. Subsection 15(2) of the OLA, through the duty to provide simultaneous translation, generally protects the rights of parties to "understand" what happens in hearings in which they participate (*Mazraani* at para 26). Furthermore, section 20(1) of the *Charter* provides that "[a]ny member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of any institution of the Parliament or government of Canada in English or French." Sections 21 and 22 of the OLA echo this principle governing communications with and services to the public by federal institutions.

[43] There was therefore, arguably, a positive obligation upon a decision maker like the RPD to provide the Decision to Mr. Nambazisa in French, in light of the RPD's duty to communicate and offer services to any member of the public in the language of his choice (*Canada*

(Commissioner of Official Languages) v Canada (Employment and Social Development), 2022 FCA 14 at paras 110–112; *Fédération des francophones de la Colombie-Britannique v Canada (Employment and Social Development)*, 2018 FC 530 at paras 41–42, 48). In addition, the right of the public as to the language of communications and services prevail over the right of officers of federal institutions to work in their preferred official language (section 31 of the OLA; *Canadian Food Inspection Agency v Forum des Maires de la Péninsule Acadienne*, 2004 FCA 263 at para 48). It would be strange to interpret the OLA as protecting the right of litigants to understand what happens in hearings, but not the right to understand the decisions resulting from such hearings. In the same vein, I would find it odd to conclude that a litigant who has the right to select and be heard in the official language of his or her choice would not have a protected right to receive the federal tribunal's decision in that preferred language or in the language in which he or she was heard, or at least a simultaneous translation in that language.

[44] That being said, in the present case, I do not have to decide the proper interpretation of the OLA or of the *Charter* regarding the scope of Mr. Nambazisa's language rights since, for the reasons discussed below, the RPD's issuance of the Decision in English fails to meet the standard of reasonableness governing this application for judicial review. The question of a litigant's right, under the OLA or the *Charter*, to receive a federal tribunal's decision in his or her official language of choice or in the language of record is a broader issue that is best left for another day.

[45] In my view, the issuance by the RPD of the Decision in a language other than the official language of choice of Mr. Nambazisa calls for the Court's intervention as it contributes to make

the Decision unreasonable for two reasons flowing from the teachings of the Supreme Court of Canada in *Vavilov*.

[46] First, while administrative decision makers are not bound by their previous decisions in the same sense that courts are bound by *stare decisis*, they nevertheless must be concerned with the general consistency of administrative decisions (*Vavilov* at para 129). *Vavilov* directs the reviewing court to examine the reasonableness of an administrative decision in terms of the legal and factual constraints on the decision maker's discretion. Among the constraints that bear on the reasonableness of a decision are the governing statutory scheme, the evidence before the decision maker, the parties' submissions, the impact of the decision on the affected individual, as well as "past practices and past decisions." Where administrative decision makers depart from longstanding practices or established internal authority, they bear the justificatory burden of explaining that departure in their reasons. If they do not satisfy this burden, the decision will be unreasonable (*Vavilov* at para 131). What matters is that like cases be treated alike and that outcomes shall not be dependent on the identity of the individual decision maker (*Vavilov* at para 129).

[47] Here, the Minister admits that the issuance of the Decision in English rather than in French, without making the translation simultaneously available, is contrary to the RPD's own usual practice. Yet, the RPD was totally silent on any reasons for departing from this practice in the case of Mr. Nambazisa. This unjustified departure from past practice raises questions of arbitrariness in the decision-making process, and undermines public confidence in administrative decision makers and in the justice system as a whole (*Vavilov* at para 131; *Canada (Attorney General) v Honey Fashions Ltd*, 2020 FCA 64 at paras 39–40). This is clearly a "badge" of

unreasonableness (*Delios v Canada (Attorney General)*, 2015 FCA 117 at para 27), explicitly recognized by the Supreme Court in *Vavilov*. This justifies the Court's intervention.

[48] I point out that, in *AB v Canada (Citizenship and Immigration)*, 2021 FC 714, Justice Lafrenière held at paragraph 42 that he could not ignore his "strong disagreement with a practice that allowed IRCC officers to write their reasons for decision in an official language other than the preferred correspondence language of an applicant." Echoing the concerns of Justice Lafrenière, I cannot help but observe that, in this case, not only were the RPD's reasons issued only in English, but this error was coupled with the baseless observations (discussed above) made by the decision maker regarding the Rwandan arrest warrant issued in French. In light of the evidence on the record, the combination of these errors is sufficient to raise some doubts on the decision maker's language skills and knowledge of the French language, and to raise questions on whether the decision maker adequately understood Mr. Nambazisa's file.

[49] On this point, it is useful to reiterate Justice Walker's conclusion in *Tchiianika* at paragraph 28:

> Writing a decision in a language other than the official language of the hearing chosen by an applicant may create uncertainty and doubts about the language abilities of the decision maker. At the very least, the transmission of such a decision to the applicant by the RAD is a significant error that could call into question the procedural fairness of the tribunal and undermine confidence in the administration of justice.
>
> [My translation]

[50] I now turn to my second observation flowing from *Vavilov*. When the Supreme Court of Canada expressed the fundamental principle that the exercise of an administrative decision

maker's power must be justified, intelligible, and transparent, it observed that it must be so "not in the abstract, but to the individuals subject to it" [emphasis added] (*Vavilov* at para 95; *Farrier v Canada (Attorney General)*, 2020 FCA 25 at para 14).

[51] It is difficult to figure out how an administrative decision can bear the hallmarks of reasonableness, namely, justification, transparency, and intelligibility, if the language in which it is issued makes the decision opaque, unreadable, and unintelligible to the litigant directly affected by it. When, as the RPD did in the case of Mr. Nambazisa, an administrative decision maker issues a decision in an official language other than the litigant's preferred official language or the official language of record, without making a translation simultaneously available, it in fact abdicates its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived to its conclusion. This, again, clearly does not pass the test of reasonableness laid out in *Vavilov*, and calls for the Court's intervention.

[52] In sum, the breach of Mr. Nambazisa's official language rights is an additional, separate element which contributes to the Decision being unreasonable and to my loss of confidence in the determination made by the RPD.

[53] I underscore that, contrary to what the Minister argues, it is incorrect to state that this error on Mr. Nambazisa's language rights had minimal or no impact on Mr. Nambazisa and could be remedied by a simple order of costs. As rightly mentioned by counsel for Mr. Nambazisa at the hearing before the Court, the RPD error had a very serious impact on Mr. Nambazisa as it directly affected his participatory rights to the judicial review of the RPD's Decision before this Court. Given the short time limits to file an application for judicial review after receiving a notice of decision, it meant that Mr. Nambazisa and his counsel had no choice

but to prepare their application for judicial review on the basis of reasons available in a language Mr. Nambazisa did not fully understand. I have no hesitation to conclude that this was prejudicial to Mr. Nambazisa.

[54] Contrary to what the Minister argues, this is not a minor error that can be remedied by a simple order of costs. It takes more than costs to repair the adverse impact on the participatory rights of an applicant and the denial of his or her language rights. The proper, effective remedy to rectify the unreasonableness of the Decision on this front is to send the matter back for redetermination by a new panel of the RPD, in accordance with these reasons (*Mazraani* at paras 46–49).

IV. Certification question

[55] Before the hearing, Mr. Nambazisa submitted the following question for certification:

> When a refugee claimant has elected to proceed in one of Canada's official languages, and this becomes the language of record in the hearing, is the Refugee Protection Division required to release a copy of its reasons for decision in that official language simultaneously with its notice of decision?

[56] For the reasons that follow, I decline to certify the proposed question as I find it does not meet the requirements for certification developed by the Federal Court of Appeal and would not be dispositive of this matter.

[57] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved." To be certified, a question must be a serious one that: (i) is dispositive of the appeal; (ii) transcends the interests of the immediate parties to

the litigation; and (iii) contemplates issues of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 [*Mudrak*] at paras 15–16; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 [*Zhang*] at para 9). Furthermore, the question must not have already been determined and settled in another appeal (*Rrotaj v Canada (Citizenship and Immigration)*, 2016 FCA 292 at para 6; *Mudrak* at para 36; *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203 at para 98; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37). As a corollary, the question must have been dealt with by the Court and it must arise from the case (*Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 29).

[58] I do not dispute that the question formulated by Mr. Nambazisa appears to raise an issue of broad significance or general application, as it transcends the interests of the immediate parties of this case. However, in the case of Mr. Nambazisa, I also conclude that the RPD Decision is unreasonable because of its treatment of certain implausibility findings. In other words, the proposed question would not be determinative of the issues in this case. As indicated above, there are other findings, untethered in the evidence, that make the RPD Decision unreasonable.

V. Conclusion

[59] For these reasons, this application for judicial review is granted and the matter is returned to the RPD for redetermination by a different panel, in accordance with the Court's reasons.

[60] No question of general importance is certified.

JUDGMENT in IMM-6658-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted, without costs.

2. The decision of the Refugee Protection Division dated May 31, 2022, rejecting the applicant's refugee protection claim, is set aside and the matter is referred back to a differently constituted panel for reconsideration based on the Court's reasons.

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

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6658-22
STYLE OF CAUSE:	JEAN CLAUDE NAMBAZISA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 11, 2023
JUDGMENT AND REASONS:	GASCON J.
DATED:	APRIL 27, 2023

APPEARANCES:

Raoul Boulakia	FOR THE APPLICANT
Sharon Stewart Guthrie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raoul Boulakia Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT