

Federal Court



Cour fédérale

**Date: 20230907**

**Docket: IMM-4292-22**

**Citation: 2023 FC 1207**

**Ottawa, Ontario, September 7, 2023**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**FRANCOISE MUNEDU MUHEMBA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In a decision dated April 22, 2022, the Immigration Division [ID] of the Immigration and Refugee Board [IRB] found the Applicant, a citizen of the Democratic Republic of the Congo [DRC], to be inadmissible to Canada pursuant to paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The ID found that the Applicant had been a member of the Mouvement de Libération du Congo [MLC] from 2000 to 2016, and

that the MLC was an organization that had engaged in or instigated acts of subversion by force of the DRC government.

[2] In seeking judicial review of the ID decision under subsection 72(1) of the IRPA, the Applicant submits that the ID erred in three respects: (1) in assessing her credibility; (2) by ignoring or failing to assess evidence; and (3) by applying the wrong test when considering membership for the purpose of paragraph 34(1)(f).

[3] Having considered the arguments, I am of the view that a single issue arises: is the ID decision reasonable?

[4] The Respondent argues that the Applicant has failed to demonstrate that the ID's decision was unreasonable and that, consequently, the Application should be dismissed.

[5] For the reasons that follow, the Application is granted.

## II. Background

[6] The Applicant entered Canada in 2016 with her daughters, reporting that she had fled the DRC because she feared the security forces in that country.

[7] In her Basis of Claim [BOC] form, the Applicant reported membership in the MLC between January 2000 and September 2016. In the course of an interview conducted by the Canada Border Services Agency [CBSA], the Applicant again stated that she had been a member

of the MLC from 2000 to 2016. On the basis of Applicant's statements, an inadmissibility report was prepared alleging the Applicant to be inadmissible under paragraphs 34(1)(b) and (f) of the IRPA. The Applicant was referred to the ID for an inadmissibility hearing pursuant to subsection 44(2) of the IRPA.

[8] Prior to and during the hearing before the ID, the Applicant reported that her membership in the MLC had commenced in 2010. The Applicant clarified that, in her BOC and during the CBSA interview, she had mistakenly reported that she became a member in January 2000.

### III. Decision under review

[9] In considering the inadmissibility application, the ID first considered whether the Applicant was a member of the MLC.

[10] The ID concluded that the Applicant was a voluntary member of the MLC from January 2000 to September 2016 and was in charge of organizing meetings, recruiting and mobilizing third parties for membership. In considering the issue of membership, the ID:

- A. Noted that the IRPA does not define the expression "member of an organization." However, they cited *Poshteh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paragraph 27 in noting that the term "member" has been given a broad and unrestricted meaning that is evaluated in function of the nature and duration of a person's participation in an organization.

- B. Acknowledged the Applicant's revised dates of MLC membership but gave little weight to her testimony in this regard. They stated that, even if they were to accept that an error was made in completing the BOC, this failed to explain the fact that the Applicant reiterated the information in the course of the CBSA interview;
- C. Found that the documentary evidence submitted in support of the Applicant's revised membership dates was not credible. The ID noted that, even if they were to conclude otherwise on credibility, the documentary evidence failed to overcome the membership information provided in the Applicant's BOC and reiterated at the CBSA interview.

[11] Having concluded the Applicant to be a member of the MLC, the ID then considered whether there were reasonable grounds to believe that the MLC was an organization engaging in or instigating subversion by force. Reviewing the history and aims of the MLC, the ID concluded:

- A. the MLC to be an organization created in 1998, with the objective of overthrowing the DRC government;
- B. that the MLC grew into a political party, but that it nonetheless includes an armed wing and relies on "armed struggle" as one method of achieving its aims;
- C. that there were reasonable grounds to believe that the MLC had engaged in acts of subversion by force against the DRC regime, particularly between 2000 and 2003.

IV. Standard of Review

[12] The parties submit the standard of review is reasonableness. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], *Opu v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 650 at para 28 [Opu]).

[13] In conducting a reasonableness review, a reviewing court is first required to read the reasons holistically and contextually, in conjunction with the record that was before the decision maker (*Vavilov*, at paras 91-97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33). A reasonable decision is one that is based on an internally coherent and rational chain of analysis, and is justified in relation to the facts and law constraining the decision maker (*Vavilov* at paras 85, 99, 101, 105-106 and 194)

[14] A minor misstep or peripheral error by a decision maker will not justify intervention. In order to intervene, the reviewing court must find an error in the decision that is sufficiently central or significant so as to render the decision unreasonable (*Vavilov*, at para 100).

V. Analysis

A. *The ID's decision is unreasonable*

[15] The Applicant submits that the ID made negative credibility findings that are neither transparent nor justified, ignored the presumption of truthfulness and failed to consider the evidence that corroborated her testimony. She submits that the ID's adverse credibility finding

ignored three elements of her submissions: 1) the clarifications provided to account for the changed dates of reported MLC membership; 2) the explanation for the renewal of her MLC membership card after she departed the DRC; and 3) the submitted corroborating documents.

[16] The Respondent submits that it was reasonable for the ID to conclude that the Applicant's first reported dates of MLC membership (i.e., 2000-2016) were true and accurate. It was therefore reasonable for the ID to conclude that neither the Applicant nor the documentation provided to corroborate membership commencing in 2010 was credible.

[17] As the Respondent has argued, it may have been open to the ID to demonstrate a preference toward the membership dates that were set out in the Applicant's BOC and confirmed in the CBSA interview instead of the dates stated in the Applicant's testimony. However, reasonableness is not determined solely on outcome. A reasonable outcome must also be supported by a reasonable chain of analysis that is transparent and justified. The ID's decision is lacking in this regard.

[18] The ID rejects the Applicant's testimony to the effect she was an MLC member between 2010 and 2016. In support of their view, the ID stated that "...the panel gives little weight to Ms. Muhemba's testimony on this point because, even if the panel were to believe that she made a mistake on her refugee claim, how can it be explained that Ms. Muhemba reiterated the same information at her interview with the CBSA?"

[19] The ID relies on a rhetorical question to explain its preference and, by implication, to conclude the Applicant not to be credible on this point. But the rhetorical question provides no transparent reasoning at all. The ID's statement suggests that the Applicant provided no explanation for repeating the membership dates reported in her BOC during her CBSA interview. However, the Applicant did provide an explanation in her testimony before the ID. Did the ID misapprehend this fact, or did the ID consider and reject the explanation provided?

[20] The ID's consideration of the corroborative documentary evidence is similarly lacking in transparency. It concludes that the issuance of a replacement MLC membership card in July 2016 was inconsistent with the Applicant's testimony that she was a member of the MLC until September 2016 when she arrived in Canada. The inconsistency that the ID cites is neither apparent nor explained by them. The ID then concludes that it does not give credibility to any of the documentary evidence provided, but once again, does not provide any explanation.

[21] Finally, the ID fails to address evidence demonstrating that the Applicant had adopted the 2010-2016 membership dates in November 2017 before the Refugee Protection Division, and also reported the same membership dates in the PR applications submitted on behalf of her daughters.

[22] The ID was under no obligation to address every piece of evidence before it. Nevertheless, evidence indicating that the Applicant had previously revised her dates of MLC membership in proceedings under the IRPA relating to her daughters' protection claims was

relevant to the very question that the ID was purporting to address in its membership analysis. It was unreasonable for the ID to not acknowledge this evidence.

[23] I am unable to conclude that the ID's treatment of the evidence relating to the timing of the MLC membership or its credibility findings in this respect were reasonable.

[24] The Respondent argues that the ID's core finding – i.e., that the Applicant was a member of the MLC – is determinative. The Respondent cites and relies on the well established view that there is no temporal aspect to the application of paragraph 34(1)(f) of the IRPA (*Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1213 at para 23, aff'd 2010 FCA 274; *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at para 32; *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494 at para 16; *Anteer v Canada (Citizenship and Immigration)*, 2016 FC 232 at paras 50-57; *Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 at paras 11-14).

[25] I agree that temporality is normally not a consideration when conducting an analysis under IRPA paragraph 34(1)(f). However, the jurisprudence has recognized that paragraph 34(1)(f) of the IRPA may not apply where an organization has undergone a fundamental change in circumstances, such as one that “has transformed itself into a legitimate political party and has expressly given up any form of violence” (*Karakachian v Canada (Citizenship and Immigration)*, 2009 FC 948 at paragraph 48, cited in *Abdullah v. Canada (Citizenship and Immigration)*, 2021 FC 949 at para 27).



[26] In this instance, the ID's conclusions regarding timing were relevant to their determination of membership in light of the nature and duration of the Applicant's participation in the MLC. The ID's unreasonable determinations also likely impacted their requirement to consider whether the organization had fundamentally transformed in a manner that might exclude the application of paragraph 34(1)(f) of the IRPA in light of the jurisprudence cited in paragraph 24 above.

VI. Conclusion

[27] I am satisfied the Applicant has demonstrated that the decision is unreasonable. The Application is granted.

[28] The parties have not identified a question of general importance for certification, and I am satisfied none arises.

**JUDGMENT IN IMM-4292-22**

**THIS COURT'S JUDGMENT is that:**

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.

**"Patrick Gleeson"**

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Judge

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

**DOCKET:** IMM-4292-22

**STYLE OF CAUSE:** FRANCOISE MUNEDU MUHEMBA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2023

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** SEPTEMBER 7, 2023

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