Federal Court  Cour fédérale

Date: 20231218

Docket: IMM-10831-22

Citation: 2023 FC 1716

[ENGLISH TRANSLATION]

Montréal, Quebec, December 18, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

CLAUDINE BALONGELWA
ELIZABETH MAMBA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Claudine Balongelwa (alias Claudine Thomas Mwenda) and her minor daughter, Elizabeth Mamba, allege that they are citizens of the Democratic Republic of the Congo [DRC]. They are seeking a judicial review of a decision dated September 12, 2022,

[Decision] by the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD], which dismissed Ms. Balongelwa and her daughter's refugee protection claim because of Ms. Balongelwa's lack of credibility and her failure to prove her identity. In its Decision, the RAD confirmed the decision to the same effect by the Refugee Protection Division [RPD] and thus concluded that Ms. Balongelwa and her daughter are not refugees or persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protect Act*, SC 2001, c 27 [IRPA].

[2] Ms. Balongelwa claims that the Decision is unreasonable because it is based on abusive and unintelligible findings of fact and interpretations of law in relation to her credibility and identity. In particular, she submits that the exclusion clause in Article 1E of the *United Nations Convention Relating to the Status of Refugees*, December 14, 1950, Resolution 429 (V) of the General Assembly (adopted on July 28, 1951) [Convention] applied in her case. She also alleges that the Decision was rendered in contravention of the rules of procedural fairness.

[3] For the following reasons, I will dismiss the application for judicial review. After reviewing the conclusions of the RAD, the evidence that was before the panel, and the applicable rules of law, I see no reason to set aside the Decision. With respect to the application of Article 1E of the Convention and the identity or credibility of Ms. Balongelwa, the evidence reasonably supports the RAD's conclusions, and its reasons have the attributes of a reasonable decision. Moreover, I see no breach of the rules of procedural fairness in the process followed by the RAD. There is therefore no justification for this Court's intervention.

II. Background

A. *Facts*

[4] Ms. Balongelwa states that she fled DRC in October 1996 because of the war there and the fact that she was pursued there because of her religious activism. She moved to Tanzania, to a refugee camp called Nyarugusu. She lived in the camp from 1996 to 2005 and alleges that she obtained refugee status in Tanzania. In 1998, Ms. Balngelwa married Paul Lukanda Mamba (alias Paul Lucas Mamba and Paul Lucas Mwenda). Ms. Balngelwa alleges that her husband was born in Burundi, of refugee Congolese parents. The couple allegedly had three children while living in the Nyarugusu camp, Martha Paul, Venance Dume and Aabandelwa Paul.

[5] Ms. Balongelwa also alleges that, after arriving in Tanzania, she removed the name "Balongelwa" from her identity to make her Congolese origin more discreet. She allegedly changed her name to "Claudine Thomas Mamba". The name "Thomas" is her father's name, and "Mamba" her mother's name.

[6] In 2005, the couple and their three children allegedly left the Nyarugusu camp to live in Dar es Salaam, the former capital of Tanzania, where Ms. Balongelwa's husband worked as a pastor. Ms. Balongelwa alleges that she changed her name a second time after leaving the refugee camp, to take the name "Claudine Thomas Mwenda" to reflect her clan name in Tanzania. Between 2006 and 2012, she and her husband had three other children, Blessing Paul, Peace Paul and the minor applicant, Elizabeth Mamba. The couple also adopted five orphaned nephews and nieces in 2015, following the death of the brother of Ms. Balongelwa's husband.

[7] In 2017, after adopting the orphaned children, the family allegedly faced discrimination in Tanzania because the children were not fluent in Swahili, the official national language of the country. Ms. Balongelwa, her husband and their youngest daughter, Elizabeth Mamba, then left Tanzania for the United States, with Tanzanian passports obtained with the help of a pastor.

[8] Ms. Balongelwa's husband then returned to Africa to take care of their other ten children who remained on the continent. After attempting to return to DRC, he fled again with their children to a refugee camp operated by the Office of the United Nations High Commissioner for Refugees [UNHCR] in Burundi. They remain there today as refugees.

[9] Ms. Balongelwa alleges that, as a result to their frequent movements in the United States, she lost her identity documents.

[10] In February 2019, fearing being returned to DRC, Ms. Balongelwa and her daughter crossed the border into Canada at Roxham Road and filed a refugee protection claim on February 4, 2019. Ms. Balongelwa and her daughter were then detained for identification, as the identity documents provided by Ms. Balongelwa bore her second assumed Tanzanian name, "Claudine Thomas Mwenda", instead of her birth name, "Claudine Balongelwa".
Ms. Balongelwa and her daughter were thus detained until adequate identity documents were received.

[11] On March 1, 2019, Canadian immigration authorities received a copy of birth and nationality certificates in the name of Claudine Balongelwa. On March 14, 2019, although Canadian authorities were still awaiting a response to inquiries sent to the UNHCR, Ms. Balongelwa and her daughter were released with conditions.

[12] In March 2022, following a hearing, the RPD rejected Ms. Balongelwa's refugee protection claim on the grounds that she had not established her identity and that she was not credible because of several contradictions in the evidence. Ms. Balongelwa appealed the RPD decision, and in September 2022, the RAD also rejected Ms. Balongelwa's claim.

B. *RAD Decision*

[13] In the Decision, the RAD first determined that Ms. Balongelwa's written account is not credible. The RAD noted that the RPD was correct to conclude that Ms. Balongelwa's response that she did not remember whether she had obtained Tanzanian citizenship undermined her credibility. According to the RAD, given the numerous documents submitted by Ms. Balongelwa indicating that she and her spouse are citizens of Tanzania, it was normal for the RPD to know whether she had had that citizenship at a given time. The RAD concluded that Ms. Balongelwa's uncertainty in her testimony concerning her status in Tanzania was not satisfactory, particularly as she categorically asserted that she no longer had Tanzanian citizenship at the time of the hearing before the RPD.

[14] The RAD then concluded that the documents presented in the name of "Claudine Thomas Mwenda" have no probative value, as they were issued in the [TRANSLATION] "wrong name", according to Ms. Balongelwa's testimony at the RPD hearing. The RAD also observed that they were "counterfeit or apocryphal" according to the summary examinations before the RPD. On this point, the RAD relied on the expert reports that it admitted in evidence.

[15] With respect to Ms. Balongelwa's identity, the RAD concluded that she had not established her identity as "Claudine Balongelwa". The RAD gave little probative value to the

documents submitted in that regard, as they were contradicted by the use of five documents in the name of “Claudine Thomas Mwenda” that Ms. Balongelwa submitted to identify herself to Canadian immigration authorities. Moreover, the RAD noted that Ms. Balongelwa testified that her husband had obtained the identity documents bearing her name for her, through his uncle, simply by providing the names of her parents, as her father is known in the small community where she grew up in the DRC. However, the RAD asserted that it is not very credible that identity documents can be obtained through such a haphazard process, even in the DRC.

[16] Finally, the RAD expressed the view that the birth certificate for Ms. Balongelwa’s youngest daughter, Elizabeth, has no probative value because the name of the mother on it is incorrect. The RAD also noted that it is incorrectly indicated that the daughter Elizabeth and her parents have Tanzanian citizenship.

[17] In short, following its independent analysis of the evidence, and given the number of documents submitted under various names and various nationalities and the confusing and not very credible explanations concerning the steps taken to obtain additional documents, the RAD concluded that Ms. Balongelwa had not, on a balance of probabilities, established her identity or that of her daughter.

[18] On November 2, 2022, Ms. Balongelwa submitted her application for leave and for judicial review of the Decision before this Court, a month after the deadline for doing so under the applicable legislation.

C. *Standard of review*

[19] It is well established that reasonableness is the standard that applies when the Court is asked to review decisions related to identity (*Malungu v Canada (Citizenship and Immigration)*, 2021 FC 1400 at para 10; *Okbet v Canada (Citizenship and Immigration)*, 2021 FC 1303 [*Okbet*] at paras 23–25; *Woldemichael v Canada (Citizenship and Immigration)*, 2021 FC 1059 [*Woldemichael*] at para 15; *Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903 [*Terganus*] at para 15; *Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064 [*Edobor*] at para 6). The same is true for the issue of whether the facts allow a person to be excluded under Article 1E of the Convention (*Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274 at paras 5–6; *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 [*Zeng*] at paras 11, 34; *Zaman v Canada (Citizenship and Immigration)*, 2022 FC 53 [*Zaman*] at para 17; *Saint Paul v Canada (Citizenship and Immigration)*, 2020 FC 493 at paras 43–45; *Celestin v Canada (Minister of Citizenship and Immigration)*, 2020 FC 97 at paras 31–32).

[20] Moreover, the analysis framework for the judicial review of the merits of an administrative decision is now the one established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 7). That analysis framework rests on the presumption that reasonableness is now the applicable standard in all cases.

[21] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Mason* at para 64; *Vavilov* at

para 85). The reviewing court must therefore ask "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at paragraph 99, citing among other cases *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[22] It is not enough for the decision to be justifiable. In cases where reasons are required, "the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" [emphasis in the original] (*Vavilov* at para 86). Thus, a review based on the reasonableness standard considers both the outcome of the decision and the reasoning process (*Vavilov* at para 87). A review exercise based on the reasonableness standard must include a rigorous evaluation of administrative decisions. However, in its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach, examine the reasons given with "respectful attention", and seek to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must use restraint and intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). I would note that a reasonableness review always starts from a posture of judicial restraint and deference, and requires that reviewing courts show respect for the distinct role Parliament chose to confer on administrative decision makers rather than courts of law (*Mason* at para 57; *Vavilov* at paras 13, 46, 75).

[23] The burden is on the party challenging a decision to show that it is unreasonable. To set aside an administrative decision, the reviewing court must be satisfied that there are sufficiently serious shortcomings to render the decision unreasonable (*Vavilov* at para 100).

[24] However, with respect to issues of procedural fairness, the Federal Court of Appeal has repeatedly held that procedural fairness does not require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 54). Procedural fairness is instead a legal issue that must be assessed on the basis of the circumstances to determine whether or not the procedure followed by the decision maker complied with the standards of fairness and natural justice (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). The reviewing court must not show any deference to administrative decision makers on issues of procedural fairness.

III. Analysis

A. *Extension of time*

[25] Ms. Balongelwa's application for judicial review is out of time, and she must first satisfy the Court that she should be granted an extension of time. Ms. Balongelwa submits that she meets the criteria set out in case law for obtaining such an extension of time. Although the respondent, the Minister of Immigration and Citizenship [Minister], questions whether there is a reasonable explanation to justify the additional 30 days taken by Ms. Balongelwa in filing her application for judicial review and her very timid efforts to obtain information from her previous counsel, the Minister agrees that there is an arguable case in this matter and that there is no

prejudice from Ms. Balongelwa filing 30 days late. The Minister leaves the question of extending time to the discretion of the Court.

[26] For the following reasons, I grant Ms. Balongelwa an extension of time.

[27] To prevail in her application for an extension of time, Ms. Balongelwa must meet the four criteria established by the Federal Court of Appeal in that respect (*Thompson v Canada (Attorney General)*, 2018 FCA 212 [*Thompson*] at para 5; *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 61 [*Larkman*]; *Canada v Hogervost*, 2007 FCA 41 [*Hogervost*] at para 32; *Canada (Attorney General) v Hennelly*, 244 NR 399, 1999 CanLII 8190 (FCA) at para 3).

[28] These four factors are the following: (i) did Ms. Balongelwa have a continuing intention to pursue her application for judicial review; (ii) is there any merit to her application; (iii) is the Minister prejudiced by the delay; (iv) is there a reasonable explanation for the delay. Ms. Balongelwa has the burden of proving each of these factors (*Virdi v Canada (Minister of National Revenue)*, 2006 FCA 38 at para 2). However, the test is non-conjunctive: a motion for an extension of time may be granted even if not all the criteria are met (*Larkman* at para 62; *Hogervost* at para 33).

[29] That said, the power to grant an extension of time remains discretionary, and the four factors established by case law, while they frame the exercise of that power, do not limit that discretion. Ultimately, the overriding consideration in the exercise of the Court's discretion is that the "best interests of justice be served" (*Larkman* at paras 62, 85). The Court must therefore be flexible in considering each test to ensure that justice is done and decide whether it would be

in the best interests of justice to grant the extension of time (*Thompson* at para 6; *Larkman* at para 62; *MacDonald v Canada (Attorney General)*, 2017 FC 2 at para 11).

[30] Having considered the parties' written and oral representations, I am satisfied that this is a situation in which I should exercise my discretion in favour of Ms. Balongelwa and in which it would be in the best interests of justice to grant an extension of time. Indeed, with respect to the tests set out in case law, Ms. Balongelwa tried unsuccessfully to obtain information from her previous counsel concerning the process to follow to dispute the Decision. She also contacted the interpreter who worked with her former counsel, who confirmed that he did not give her the deadline to be met. Finally, Ms. Balongelwa then met with her current law firm and, informed that the deadline had passed, immediately asked them to apply for an extension of time. Certainly, those efforts were not the most valiant, but I am satisfied that they are sufficient to establish that Ms. Balongelwa had a continuing intention to dispute the RAD Decision. Moreover, the Minister concedes that Ms. Balongelwa has an arguable case and that he would suffer no prejudice from the delay. Finally, I am of the view that Ms. Balongelwa provided a reasonable explanation for the modest delay in filing her application for judicial review.

[31] Moreover, the interests of justice remain the paramount consideration in granting an extension of time, and I have no hesitation in concluding that the interests of justice support granting the extension of time requested by Ms. Balongelwa.

B. ***Exclusion under Article 1E of the Convention***

[32] In terms of her substantive arguments, Ms. Balongelwa submits first that the decision was unreasonable, as it was based on considerations related to the exclusion under Article 1E of the

Convention, not national identity, and that Ms. Balongelwa was unable to be heard on that issue of exclusion.

[33] According to Ms. Balongelwa, the reasoning used by the RAD in concluding that she was unable to establish her identity on a balance of probabilities was flawed by considerations related solely to a possible exclusion. Ms. Balongelwa acknowledges that it is established law that determining the national identity of a refugee protection claimant is an integral part of the analysis of identity. However, she notes that looking for a possibility of obtaining citizenship in a third country, and failing to do so, is instead part of the test for the exclusion under Article 1E of the Convention (*Zeng* at para 28).

[34] According to Ms. Balongelwa, the RPD in fact conducted an analysis of the Article 1E exclusion without giving her an opportunity to adequately address it at the hearing. Counsel for Ms. Balongelwa tried several times at the RPD hearing to raise this issue of the Article 1E exclusion but was interrupted. Ms. Balongelwa is of the view that the RPD and the RAD both dealt interchangeably with the issues of national origin and the Article 1E exclusion, when they are separate issues. According to Ms. Balongelwa, that conduct resulted in a breach of the RAD's duty of procedural fairness.

[35] I am not persuaded by Ms. Balongelwa's arguments.

[36] It is settled case law that refugee protection claimants who arrive in Canada with status similar to that of nationals of a safe third country must be refused refugee protection under Article 1E of the Convention. Indeed, that provision and section 98 of the IRPA are designed to prevent "asylum shopping" where claimants already enjoy protection in a third country (*Zeng* at

para 1). This is consistent with the principle that refugee law comes into play only where there is no alternative (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*] at 726). Indeed, the refugee protection regime is intended to assist people in need of protection, not those who prefer seeking asylum in one country over another. Accordingly, Article 1E of the Convention prohibits persons who already have status substantially similar to citizenship in the country in which they live from seeking status as a refugee or person in need of protection (*Zaman* at para 23).

[37] In *Zeng*, the Federal Court of Appeal set out the three-prong test that applies when determining if a person should be refused refugee protection under Article 1E of the Convention. That test is as follows:

> [28] [1] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, [2] the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, [3] the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.
>
> (*Su v Canada (Citizenship and Immigration)*, 2019 FC 1052 at para 23, citing *Zeng* at para 28 [numbering added].)

[38] As the Minister aptly argued in his representations, neither the RPD nor the RAD concluded that the exclusion clause in Article 1E of the Convention applies in this case. Indeed, there is no analysis of those issues in either of those decisions. Both the RPD and the RAD sought to establish Ms. Balongelwa's countries of nationality, as all refugee protection claimants

must demonstrate their fear in their countries of nationality to obtain the status of a refugee or a person in need of protection. At no time did the RAD undertake an analysis under Article 1E or exclude Ms. Balongelwa on that basis.

[39] The fact that the RAD emphasized a [TRANSLATION] "theoretical possibility" of obtaining a status or nationality in Tanzania does not mean that it conducted an analysis under Article 1E of the Convention. An analysis under Article 1E involves determining whether, in a third country, a person has status and access to services similar to that of citizens (*Lauture v Canada (Citizenship and Immigration)*, 2023 FC 1121 at para 30, citing *Zeng* at para 28). In Ms. Balongelwa's case, neither the RPD nor the RAD conducted such an analysis. Moreover, nothing is said in the RAD Decision that would support a conclusion that the RAD excluded Ms. Balongelwa under Article 1E of the Convention.

[40] That said, it was reasonable for the RAD to attempt to determine Ms. Balongelwa's status in Tanzania in its analysis of her identity. The identity of a claimant is a preliminary and fundamental issue, and failure to establish identity is fatal to a claim for refugee protection (*Terganus* at para 22; *Bah v Canada (Citizenship and Immigration)*, 2016 FC 373 [*Bah*] at para 7). As Norris J. wrote in *Edobor*, "[i]t is incontrovertible that proof of identity is a prerequisite for a person claiming refugee protection" (*Edobor* at para 8, citing *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at para 26).

[41] As I indicated in *Terganus*, a claimant's identity remains the cornerstone of Canada's immigration system. Identity establishes the uniqueness of an individual and differentiates that person from all others (*Terganus* at para 23). Incidentally, identity is the basis for issues such as a claimant's admissibility to Canada, assessment of the need for protection, assessment of

potential threats to public safety, or the risks of a subject evading official examination by authorities (*Bah* at para 7, citing *Canada (Minister of Citizenship and Immigration) v Singh*, 2004 FC 1634 at para 38 and *Canada (Citizenship and Immigration) v X*, 2010 FC 1095 at para 23).

[42] Both the IRPA and the *Refugee Protection Division Rules*, SOR/2012-256 [Rules] expressly establish that, to be recognized as a refugee, a claimant must first establish his or her identity on a balance of probabilities. That duty is expressly set out in section 106 of the IRPA and section 11 of the Rules. Section 11 expresses as follows the importance of establishing a refugee protection claimant's identity:

11. The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.	**11.** Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

[43] Section 106 of the IRPA creates a direct link between the duty to provide acceptable documents to establish identity (or to justify not having provided them) and the refugee protection claimant's credibility. It reads as follows:

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing	**106.** La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en

identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[44] The RAD therefore needed to establish Ms. Balongelwa's countries of citizenship, as all refugee protection claimants must demonstrate their fear in all their countries of nationality to obtain the status of a refugee or a person in need of protection under sections 96 and 97 of the IRPA (*Ward* at 751; *Lauture* at paras 35–37). It is with that in mind that the RAD attempted to establish Ms. Balongelwa's country or countries or citizenship. That process was in no way a masquerade to conceal an analysis of exclusion under Article 1E of the Convention. The RAD could very well determine whether Ms. Balongelwa had provided sufficient evidence of identity without conducting an analysis under Article 1E of the Convention.

[45] I would add in closing that it is very clear from the Decision that the RAD did not render any decision concerning Article 1E of the Convention. It thus follows that there is no breach of procedural fairness in relation to Ms. Balongelwa's right to be heard on an alleged analysis under Article 1E of the Convention.

C. *Legitimate expectation and requests for information*

[46] Ms. Balongelwa also maintains that the Decision suffers from another flaw in procedural fairness because of the RAD's failure to disclose to her the results of requests for information the Canada Border Services Agency made to Tanzanian authorities and the UNHCR to verify her identity.

[47] At the hearing before the Court, the Minister objected to this argument on the ground that the argument had not been raised in the appeal to the RAD. As it was not submitted to the RAD, it could not be used before this Court to set aside the Decision and question its legality.

[48] I share the Minister's view. Indeed, it is well established that, when a claimant did not raise an issue before the RAD, an argument that the RAD did not consider evidence cannot be suddenly be raised on judicial review before the Court (*Eyitayo v Canada (Citizenship and Immigration)*, 2020 FC 1072 at para 27; *Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at paras 29–32). In other words, an issue that was not raised before the administrative tribunal cannot be examined in a judicial review before the Court (*Guajardo-Espinoza v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 797 (FCA) (QL) at para 5; *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2015 FC 321 at para 23; *Mohajery v Canada (Minister of Citizenship and Immigration)*, 2007 FC 185 at para 28).

[49] This is sufficient to deal with this second argument by Ms. Balongelwa in relation to procedural fairness.

D. ***Assessment of the evidence***

[50] Finally, Ms. Balongelwa submits that the Decision failed to consider the objective evidence concerning key and determinative elements concerning her situation and that of her youngest daughter. Ms. Balongelwa adds that the RAD's analysis of her identity and her credibility is based on abusive and unintelligible findings of fact and that the balance of probabilities threshold apparently used by the RAD to prove her identity is unintelligible and unreasonable.

[51] Ms. Balongelwa thus claims that the RAD did not consider the National Documentation Package [NDP] for the DRC, which indicates that children with one parent of Congolese nationality—whether they are born in the DRC or elsewhere—automatically receive that nationality. As such, Ms. Balongelwa claims that it was unreasonable for the RAD to conclude that she had not established her youngest daughter's DRC citizenship. Ms. Balongelwa also states that she provided an honest explanation about why she arrived in Canada with documents bearing her [TRANSLATION] "assumed name". In short, Ms. Balongelwa claims that the RAD placed an overly heavy burden of proof on her.

[52] I am not persuaded by Ms. Balongelwa's arguments.

[53] The failure by a refugee protection claimant to establish his or her identity is a "preliminary and fundamental issue", and failure to establish identity makes it impossible to grant a claimant refugee protection (*Weldeab v Canada (Citizenship and Immigration)*, 2021 FC 161 at para 23; *Woldemichael* at para 28).

[54] In Ms. Balongelwa's case, the problem does not stem from the documentation in the NDP for either country on obtaining and passing on Congolese or Tanzanian citizenship. It instead stems from numerous contradictions and inconsistencies in the evidence presented concerning her identity.

[55] In a convincing, meticulous and very effective exercise, counsel for the Minister, at the hearing before the Court, adeptly went through the record to reveal the cracks in the evidence on which Ms. Balongelwa relied before the RAD. As the RAD highlighted well in the Decision, the

record is overflowing with inconsistencies and contradictions concerning Ms. Balongelwa's identity.

[56] I will mention a few. First, although Ms. Balongelwa states that it was unreasonable to speculate on her spouse's Tanzanian citizenship, it is clear from the record that it was her spouse himself who told Canadian authorities that he was Tanzanian. Second, the exhibits submitted by Ms. Balongelwa in the name of "Mwenda" to establish her identity as a citizen of the DRC were not supported by any explanation about the origin of those identity documents issued in a name that was only created in 1996 in a refugee camp in Tanzania, after Ms. Balongelwa had left the DRC. Third, the evidence also reveals several elements that raise doubts about the authenticity of the documents submitted by Ms. Balongelwa. For example, her voter's card is likely counterfeit, as the medium and the lamination are hand cut and the printing technique was considered by the RAD to be associated with counterfeits. Fourth, Ms. Balongelwa states that, after she arrived in Canada, she submitted Congolese documents to replace the documents issued in the [TRANSLATION] "wrong name". However, when asked about the source of those documents, she stated that she obtained new copies simply by giving the names of her parents, who were known in the region. The RAD concluded that it was not very credible that identity documents could be obtained through such a haphazard process, even in the most rural areas of the DRC. As well, even the testimonies of Ms. Balongelwa and her husband are sufficient to establish that they had personally dictated the content of those Congolese identity documents, thus corroborating the counterfeit nature of that evidence. Fifth, while Ms. Balongelwa accuses the RAD of not having advised her of its concerns about the documents in the name of "Balongelwa", it is apparent from the Decision that all of the RPD's concerns are clearly laid out in paragraphs 42 to 47 of its reasons. Finally, the birth certificate of Ms. Balongelwa's daughter bears the wrong name for

her, and according to the certificate, Ms. Balongelwa is a Tanzania citizen, despite her many statements to the contrary. With respect to the documents concerning her husband, they indicate three different nationalities and birthplaces, namely the DRC, Burundi and Tanzania.

[57] In addition, as submitted by the Minister, this is not a situation in which a refugee protection claimant had to hurry to obtain identity documents to flee his or her country of citizenship. Ms. Balongelwa's identity documents issued in the [TRANSLATION] "wrong name" were instead sent to her when she was already in the United States.

[58] Given all these contradictory and irreconcilable statements by Ms. Balongelwa, it was certainly open to the RAD to conclude that what was provided by Ms. Balongelwa and her spouse concerning their identities and backgrounds could not be trustworthy.

[59] It is well known that, in assessing credibility and identity, the RPD and the RAD have discretion to determine the weight to be assigned to evidence (*Okbet* at paras 32–33, citing *Tariq v Canada (Citizenship and Immigration)*, 2015 FC 692 [*Tariq*] at para 10). Analyzing findings of fact and findings concerning credibility are within the heartland the expertise of those decision makers, and the Court must not substitute its own findings for those of the RPD or the RAD when it is reasonably open to them to reach their conclusions (*Tariq* at para 10; *Ahmedin v Canada (Citizenship and Immigration)*, 2018 FC 1127 at para 35). If there is one place where the Court must be cautious about second-guessing the RAD's conclusions, it is clearly the issue of identity (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 48).

[60] I also note that, according to case law, the RAD is assumed to have analyzed all the evidence before it unless proven otherwise (*Khelili v Canada (Public Safety and Emergency*

Preparedness), 2022 FC 188 [*Khelili*] at para 29, citing *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36 and *Florea v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No. 598 (FCA) (QL) at para 1). In this case, there is no evidence to say that the RAD did not consider the evidence submitted.

[61] Ultimately, Ms. Balongelwa's arguments instead show her disagreement with the RAD's assessment of the evidence and suggest that the Court adopt a different assessment from the administrative decision maker. However, it is well established that this not sufficient for the Court to intervene (*Khelili* at para 25). Ms. Balongelwa did not identify any serious falws in the Decision and, in such a situation, the Court must avoid interfering with the RAD's conclusions (*Vavilov* at para 100). Indeed, the RAD's expertise in immigration requires that the Court show great deference to its findings of fact. In this case, I am of the view that the Decision has the attributes of intelligibility, transparency and justification required under the reasonableness standard, and that there is no reason that could justify the Court substituting its opinion for that of the RAD.

[62] In other words, the RAD reasonably concluded that Ms. Balongelwa's numerous inconsistencies and contradictions undermined her credibility, and that Ms. Balongelwa did not establish her identity. I am satisfied that the reasons for the RAD's Decision fully justify its conclusions in a transparent and intelligible manner and allow the Court to clearly understand why the RAD concluded that Ms. Balongelwa failed to establish her identity (*Vavilov* at paras 81, 136). They show that the RAD followed a rational, coherent and logical reasoning in its analysis and that the Decision is consistent with the relevant legal and factual constraints.

Nothing in the errors alleged by Ms. Balongelwa lead me “to lose confidence in the outcome reached by the decision maker” (*Vavilov* at para 122).

IV. Conclusion

[63] For the following reasons, the application for judicial review by Ms. Balongelwa and her minor daughter is dismissed.

[64] Neither party proposed a question of general importance for certification, and I agree that there are none.

JUDGMENT in IMM-10831-22

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.

2. There is no question of general importance to certify.

"Denis Gascon"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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