

Federal Court



Cour fédérale

Date: 20240925

Docket: IMM-13707-23

Citation: 2024 FC 1506

Toronto, Ontario, September 25, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KABUNGA HENRY KYAGULANYI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision dated October 3, 2023 (the “Decision”) by the Refugee Appeal Division (the “RAD”). The Decision affirmed the Refugee Protection Division’s (the “RPD”) finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Background

[2] The Applicant, Kabunga Henry Kyagulanyi, is a citizen of Uganda who fears persecution based on his political opinion. In particular, he claims that he is being sought by the government of Uganda due to his past support of the Democratic Party and current support of the National Unity Platform political party (“NUP”).

[3] The Applicant received a Temporary Resident Visa in December 2021, but did not come to Canada until May 2022. He then sought refugee protection under section 96 and subsection 97(1) of the *Act* in June 2022.

[4] On April 17, 2023, the RPD rejected the Applicant’s claim. The determinative issue was credibility. Specifically, the RPD found:

- A. inconsistencies with respect to the Applicant’s testimony and personal evidence about his membership in the NUP, thereby determining that the Applicant was not a NUP member in Uganda;
- B. inconsistencies in the Applicant’s BOC and supporting evidence, such that it was unlikely the Applicant had suffered mistreatment by the authorities in Uganda, and unlikely to be subjected to danger of torture or risk of cruel and unusual punishment upon his return to Uganda;

C. the remaining supporting documents provided by the Applicant were insufficient to overcome the Applicant's credibility concerns and the finding that he was not a NUP member in Uganda; and

D. there was a lack of subjective fear because the Applicant had obtained his temporary resident visa on December 15, 2021, but did not leave Uganda until May 11, 2022.

[5] On appeal of the Decision, the RAD refused to admit the Applicant's new evidence, upheld the credibility findings of the RPD, and dismissed the appeal.

[6] The Applicant now brings an application for judicial review challenging the Decision, alleging the RAD unreasonably refused to admit his new evidence and made an unreasonable credibility assessment.

III. The Decision

[7] The RAD dismissed the appeal, also finding that the determinative issue on the appeal was the credibility of the Applicant's claim. The RAD held that the Applicant's testimony about his political activities in Uganda was "vague, contradictory, or unsupported by documentary evidence." Specifically the RAD found that the Applicant had not established the basis of his claim on a balance of probabilities for the following reasons:

- A. The RAD refused to admit 3 of the 4 pieces of new evidence adduced by the Applicant on the basis that it was not new or credible. In any event, the RAD found that all the documents, including the psychotherapy report accepted, did not speak to the credibility concerns raised by the RPD. Thus, the RAD refused to hold an oral hearing.
- B. The Applicant had not established his membership in the NUP in Uganda, his profile as a NUP mobilizer, or as a member of the NUP Mukono Chapter, because he could not answer any detailed questions about his local NUP chapter's structure, the party's slogan, and provided answers based on speculation or contradictions. Both the RPD and the RAD had very serious concerns with respect to the Applicant's credibility on this point, as he invented a story alleging that the NUP Mukono office was broken into and documents were stolen.
- C. The RAD drew further negative credibility findings as the letters of support directly contradicted the Applicant's narrative and the Applicant could not explain why the letters of support did or did not include relevant information. Importantly, the RAD found the Applicant had not established that he was mistreated by the Ugandan authorities since the Applicant did not allege torture by Ugandan authorities in his BOC, an important component of his claim, while a letter of support did mention it.
- D. The RAD also upheld the RPD's finding that the Applicant's five-month delay in leaving Uganda indicates a lack of subjective fear. It noted that while delay alone

is not determinative, the Applicant's temporary resident visa application indicates he always intended to travel in May 2022.

IV. Issues

[8] This application raises two issues:

A. Was the RAD's assessment of the new evidence reasonable?

B. Was the RAD's decision reasonable?

V. Analysis

[9] The standard of review with respect to the RAD substantive findings, including the assessment of new evidence, is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25; *Reham v Canada (MCI)*, 2022 FC 783 at para 30).

A. *Assessment of Evidence*

[10] The Applicant asserts that the RAD erred by failing to admit the new evidence, as the first Statutory Declaration contained new information and the second Statutory Declaration and bond release are "not so far outside the realm of what could reasonably be expected" so as to be "too convenient to be credible".

[11] Under subsection 110(4) of the *IPRA*, new evidence on appeal must have arose after the rejection of the claim or was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented. It must also be both relevant and credible, but need not be material (*Act*, s 110(4); *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 47-49).

[12] I find the RAD's conclusion on all three pieces of evidence was reasonable.

[13] With respect to the first Statutory Declaration, on review of the BOC and the information provided in the Statutory Declaration, I find the RAD reasonably concluded that the Statutory Declaration did not provide new evidence beyond what was mentioned in the BOC.

[14] With respect to the second Statutory Declaration and bond release, it is important to recall that a lack of credibility concerning central elements of a claim can trickle down to other elements of the claim, including the weight and assessment of evidence (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 24). This was the case here. The RAD provided transparent and intelligible reasons why, when viewed against this factual backdrop, including the inconsistencies and issues with the documents, it found the timing of an incident to be suspiciously convenient and extraordinarily coincidental to undermine the credibility of the documents (*Kumar v Canada (Citizenship and Immigration)*, 2024 FC 127 at para 12). The Applicant's speculations, in the absence of credible corroborative evidence, do not rebut the reasonableness of the RAD's findings (*Osinowo v Canada (MCI)*, 2018 FC 284 at para 22).

[15] It is not the Court's role to assess whether the new evidence should have been admitted, but to determine whether the RAD's finding that the new evidence did not meet the admissibility criteria. Here, the RAD provided transparent and justified reasons why it did not accept the evidence. This decision was reasonable.

B. *The RAD reasonably assessed the Applicant's credibility*

[16] The Applicant takes issue with five individual negative credibility findings upheld by the RAD, as well as the RAD's global negative credibility assessment. I find it unnecessary to repeat the Applicant's and the Respondent's submissions on each of these credibility findings, which refer to inconsistencies between oral testimony and personal documentation, including letters of support and Applicant's NUP membership information.

[17] I find that the RAD's credibility findings were reasonable for two main reasons.

[18] First, this Court has held that when a BOC omits significant or material details, such omissions can form a reasonable basis for doubting a claimant's credibility (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at paras 18 and 20). Here, the Applicant omitted the repeated instances of torture in his BOC, which the RPD and RAD found to be an important element of the Applicant's claim that should have been in the narrative.

[19] Second, the Applicant does not adequately address nor explain how the RAD's credibility findings were unreasonable. Notably, the Applicant fails to provide answers to many of the inconsistencies found by the RPD and RAD. It is not sufficient for the Applicant to say that the

inconsistencies were not important or material. The accumulation of contradictions, inconsistencies, and omissions can support a negative conclusion about an applicant's credibility, and so the RAD did not act unreasonably in making one in this case (*Lawani* at para 22).

[20] I do not find the RAD made any unreasonable findings on credibility. The Decision was reasonable.

VI. Conclusion

[21] This application for judicial review is dismissed.

[22] There is no proposed question for certification.

JUDGMENT in IMM-13707-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no proposed question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13707-23

STYLE OF CAUSE: KABUNGA HENRY KYAGULANYI v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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