Federal Court  Cour fédérale

Date: 20160809

Docket: IMM-115-16

Citation: 2016 FC 905

Ottawa, Ontario, August 9, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JOANA PAXI
JOAO PAXI KIALA
AFONSO PAXI KIALA
PAOLO PAXI KIALA
ANTONICA KIALA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [Board], dated August 28, 2015 [Decision], which rejected the Applicants' claims for refugee protection pursuant to ss 96 and 97(1) of the Act.

II. BACKGROUND

[2] Joana Paxi [the Principal Applicant] and her children, Joao Paxi Kiala, Afonso Paxi Kiala, Paolo Paxi Kiala and Antonica Kiala, are citizens of Angola.

[3] The Principal Applicant's first husband, Joan Luvualu Kiala [Joan], passed away in September 2010. The family lived in Luanda, the capital of Angola. Before he died, Joan had been told by his father that he would succeed him as the tribal village chief for M'Banza Congo. However, Joan refused this position because many of the tribe's pagan customs conflicted with his Christian beliefs. Approximately two weeks after his refusal, on September 15, 2010, Joan died somewhat mysteriously after suffering from stomach pains and hallucinations.

[4] The Principal Applicant alleges that following his refusal of the succession, Joan's father along with other elders of the clan had threatened to kill Joan and his family. She believes that a spell was put on Joan and that he died as a result. She also claims that, on the night of Joan's death, while being taken to the hospital, he told her never to give their children to his family.

[5] A week after Joan's funeral, his family decided that the Principal Applicant would marry Joan's younger brother, Aphonso. Despite the Principal Applicant's refusal, Aphonso came to her home and acted as if he was already her husband. The Principal Applicant decided to move her children to a different part of Luanda and ceased communications with Joan's family members.

[6] In May 2013, after discovering that the Principal Applicant had remarried in 2012, Joan's family found out where she lived and told her that she and her children still belonged to them and that her new husband would have to divorce her. She was also told by Aphonso that, as his wife, she would have to participate in his induction ceremony, as he had succeeded his father as chief after his death. This would involve public acts of intercourse between the Principal Applicant and her son, Joao, as well as between Aphonso and the Principal Applicant's daughter, Antonica.

[7] Despite reporting Aphonso's threats, the Principal Applicant received no assistance from the police who indicated to her that it was a family matter and there was nothing that the police could do because, according to the Principal Applicant, "the police and government are afraid of traditional chiefs because they often receive their strength magic power from the traditional chiefs."

[8] In April 2014, the Applicants left Angola, travelling first to Morocco, where they attempted to apply for American visas. After being told that their applications would have to be made from Angola, they returned to their home country. In September 2014, they were found once again by Aphonso and his family who uttered death threats against them and assaulted the Principal Applicant's new husband, Yuvula. The assault resulted in Yuvula's sustaining serious injuries for which he received treatment at a hospital in the Democratic Republic of Congo (DRC). The Principal Applicant has not heard from him since that time. After receiving assistance from a local church, the Applicants were relocated to Bengula. They then travelled to the United States, remaining there for approximately two months.

[9] On March 23, 2015, the Applicants arrived in Canada and filed their claim for refugee protection on or about April 6, 2015. Their claim was heard on May 15, 2015 and June 16, 2015.

III. DECISION UNDER REVIEW

[10] Citing concerns with issues relating to credibility and an internal flight alternative [IFA], the Board concluded that the Applicants had failed to satisfy the burden of establishing a serious possibility of persecution on a Convention ground, or that they would be personally subjected, on a balance of probabilities, to a risk to life or a risk of cruel and unusual treatment or punishment, or that they would be in danger of torture upon their return to Angola. Therefore, the Applicants could not be found to be Convention refugees or persons in need of protection pursuant to ss 96 and 97(1) of the Act.

[11] As regards credibility, the Board found parts of the Principal Applicant's testimony to be vague, evasive and confusing and determined that she was not a credible or reliable witness. The Board placed little evidentiary weight on two photos filed by the Applicants which they claimed had been taken at Joan's funeral, finding that they failed to substantiate the Principal Applicant's claims regarding Aphonso and his alleged persecution of her family.

[12] Looking to reports published by the United States Department of State, the Board noted that the practice of witchcraft in Angola has diminished as a result of government action and that while there are anecdotal reports of women and children being abused in relation to witchcraft, this is generally limited to instances where the individuals in question had faced accusations of practising witchcraft themselves. The Principal Applicant's allegations that the police, a

government agent, would not assist her, and that she faced persecution for Joan's renunciation of witchcraft, do not align with the country information, and the Board drew an adverse inference on her overall credibility as a result.

[13] The Principal Applicant said that she had learned that her present husband, Yuvula, had been sent to a hospital in the DRC as a result of inquiries made by her pastor, Ricardo Eduardo. She filed an undated letter from Pastor Eduardo which detailed the church's initiative in raising funds to help the family leave the country. Because the letter lacked objective identifying features, the Board placed little evidentiary weight on it. Similarly, little weight was given to a letter from the Rexdale Women's Centre in Toronto, where the Principal Applicant had been receiving counselling; the Board concluded that staff at the Centre did not have first-hand knowledge of the Principal Applicant's having been harassed, threatened or assaulted by her in-laws in Angola.

[14] The Board went on to consider whether a viable IFA could be said to exist in Angola where the Applicants could live free from serious harm from Aphonso and his family. Looking to the first prong of the two-pronged test established in *Rasaratnam v Canada (Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*], the Board found that there were locations in Angola, such as Lucapa or Saurimo, where, on a balance of probabilities, it is likely that the Applicants would be able to live safely. While the Principal Applicant expressed concerns that, upon her and her children's registration in a new community, her persecutors could be informed of their whereabouts, the Board found that she was unable to demonstrate with any credible or trustworthy evidence how such information would be shared, or that their location could be

found out in some other way. Nor was she able to provide any acceptable evidence establishing Aphonso as the current tribal chief – an element at the core of the Applicants' claim. The Board concluded that it was not objectively unreasonable to expect the Applicants to seek refuge in an IFA.

IV. ISSUES

[15] The Applicants raise the following issues in this proceeding:

1. Were the Board's credibility findings reasonable?
2. Was the Board's finding that the Applicants had a viable IFA in the Lundas provinces reasonable?
3. Did the Board deny the Applicants natural justice in failing to give them adequate notice of the specific IFA? This ground was withdrawn at the hearing of this application.

V. STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[17] The first and second issues concern the Board's assessment of the Applicants' credibility and the weighing, interpretation and assessment of evidence. These issues are matters of mixed fact and law and address an administrative decision-maker's substantive decision regarding whether an applicant is a member of the Convention refugee abroad class or humanitarian-protected person abroad class. The standard of review that will be applied is that of reasonableness: *Pushparasa v Canada (Citizenship and Immigration),* 2015 FC 828 at para 19.

[18] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in this proceeding:

Convention Refugee	**Définition de « réfugie »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son

opinion,

appartenance à un groupe social ou de ses opinions politiques:

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

(b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by

(ii) elle y est exposée en tout

the person in every part of that country and is not faced generally by other individuals in or from that country,	lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir

VII. ARGUMENTS

A. *Credibility*

(1) Applicants

[20] The Applicants submit that the Board erred in failing to provide specifics as to which parts of the Principal Applicant's testimony were vague, evasive or confusing: *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228. They argue that the transcript reveals that the Principal Applicant was clear and consistent in the details she provided regarding her fear of Aphonso, her husband's death and the traditional ceremony she alleges she would be forced to undergo in order to empower Aphonso.

[21] The Principal Applicant did not know if there was any objective evidence available about the identity of chiefs in her community, or of the specific cultural practices she has described. A

negative inference should not have been drawn by the Board, as local traditional practices are not something one would expect to find in documentary evidence.

[22] The Applicants further submit that the Board's rejection of the Pastor Eduardo's letter was unreasonable. Further identification should not have been required as it was written on church letterhead and was stamped by the church. The letter confirmed the death threats against the Applicants.

(2) Respondent

[23] The Respondent says that the Applicants failed to establish through any objective evidence that Aphonso is now the tribal chief, a central element of their claim for protection. The Principal Applicant did not testify that no documentary evidence exists to demonstrate that he became the tribal chief, but that she was unable to obtain the evidence because of the way she left Angola.

[24] The Respondent further submits that the Board found that the Applicants' risk allegations were undermined by the objective documentary evidence, particularly the United States Department of State report that shows that cases of abusive practices have diminished significantly. The Applicants do not fit the profile of those who have most commonly been victims in the handful of reports of violence relating to witchcraft.

[25] It was reasonable for the Board to conclude that the Principal Applicant's vague evidence regarding her present husband's whereabouts, and the absence of medical documents to

corroborate the alleged attack and hospital visit undermined her credibility. It was also open to the Board to assign limited weight to the letter from Pastor Eduardo, which was not notarized, had no attached objective identification document and could have been written by anyone.

(3) Applicants' Reply

[26] The Applicants say that the Board's belief that evidence may exist is not a sufficient basis upon which to draw a negative inference from the absence of its submission: *Khine Nay v Canada (Citizenship and Immigration)*, 2012 FC 1317.

[27] The Applicants were not impoverished and were not practicing witchcraft. The Applicants argue that, given that they need only show that they face more than a mere possibility of persecution, the continued existence of abusive practices, diminishing or not, is in fact objective evidence in support of their allegations.

B. *IFA*

(1) Applicants

[28] The Applicants submit that the IFAs chosen by the Board were not reasonable. It was not sufficient for the Board to merely state that it considered the Immigration and Refugee Board Chairperson's *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* [*Gender Guidelines*]; the Board failed to address the implications of a woman with five children moving to one of the proposed IFAs alone. More specifically, the Board paid no regard to the

fact that the principal industry in the regions of the proposed IFAs is diamond mining, and that here have been regular reports of sexual assault of women associated with that industry.

(2) Respondent

[29] The Respondent submits that the Board reasonably considered the IFAs in terms of whether a serious possibility of persecution exists and whether it would be objectively unreasonable for the Applicants to seek refuge there. The general country conditions and the hardships associated with moving with young children brought forward by the Applicants do not render the proposed IFAs unreasonable.

VIII. ANALYSIS

[30] The IFA aspect of this Decision is determinative of the Applicants' claim, provided it contains no reviewable error. The Applicants originally alleged both a breach of natural justice and unreasonableness in the Board's treatment of a viable IFA. However, at the hearing, the procedural unfairness issue was withdrawn.

A. *Unreasonable IFA Findings*

[31] The Applicants' criticisms of the Board's IFA findings are aimed at the second prong of the test set out in *Ranganathan v Canada (Minister of Citizenship and Immigration),* [2000] FCJ No 2118 [*Ranganathan*]. The Applicants do not challenge the finding that there is no serious possibility of persecution in Lucapa or Saurimo. Their argument is that it is unreasonable to expect them to go there.

[32] On this point the Board finds as follows:

> [32] The Board notes that the claimant testified that if she moved to either Lucapa or Saurimo (or anywhere else in Angola) that it would cause her and the children hardship. She stated that having young children makes it difficult to move from one place to another. She also stated that she did not have family members and did not know anyone in Lucapa or Saurimo and as such there would be no one to help her. The Board finds that her explanations of the hardship that she would have to endure due to moving to the IFAs does not amount hardship [*sic*] as defined by the jurisprudence.

[33] The Federal Court of Appeal in *Ranganathan*, above, made clear what is required from an applicant in this regard:

> 13 The absence of relatives in the safe area where a claimant finds refuge in his home country is an issue that was canvassed by this Court in the case of *Thirunavukkarasu v. Canada (Minister of Employment & Immigration)* (1993), [1994] 1 F.C. 589 (Fed. C.A.). Speaking for the Court, Linden J.A. wrote at pages 5 and 6 of the decision:
>
> > An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. <u>But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there</u>, or that they may not be able to find suitable work there. <u>If it is objectively reasonable in these latter cases to live in these places, without fear of</u>

> persecution, then IFA exists and the claimant is not a refugee.
>
> Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one, that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.
>
> Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere.
>
> In conclusion, it is not a matter of a claimant's convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country. (Emphasis added)

14 I agree with Rothstein J., as he then was, in *Kanagaratnam v. Canada (Minister of Employment & Immigration)* (1994), 28

> Imm. L.R. (2d) 44 (Fed. T.D.), that the decision of our Court in *Thirunavukkarasu* does not exclude, as a relevant factor on the issue of the reasonableness of the IFA, the absence of relatives in or in the vicinity of the safe area. It makes it obvious though that more than the mere absence of relatives is needed in order to make an IFA unreasonable. Indeed, there is always some hardship, even undue hardship, involved when a person has to abandon the comfort of his home to leave in a different part of his country where he has to seek employment and start a new life away from relatives and friends. This is not, however, the kind of undue hardship that this Court was considering in *Thirunavukkarasu*.
>
> 15 We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. **The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.**
>
> [emphasis in bold added]

[34] It also has to be kept in mind that the onus was on the Applicants at the hearing to establish that the proposed IFAs were unreasonable in accordance with the jurisprudence on this issue. At the refugee hearing before the Board, Applicants' counsel made the following submissions on this issue:

> …
>
> **COUNSEL**: I want to just go back briefly to the United States Department of State Reports…
>
> **MEMBER**: Yes?

COUNSEL: ...and refer you to page 19 which talks about Internal Flight Alternative. Joana indicated to you that she would have difficulties if she were to relocate to a small village. It's my submission that among the difficulties would be other, you know, the relationship between the ... the relationship between the chiefs because they are the owners of the land.

But in addition to that, the Department of State report indicates, of which you may or may not have been aware, that "Extortion and harassment at government checkpoints in rural areas..." which are all the areas that were highlighted in the map of Angola as possible Internal Flight Alternatives,"...interfered with the right to travel. Although during the year the government decreased checkpoints between provinces, extortion by police was routine in cities on major commercial routes."

"A lot of this has got to do with the ... the diamond industry that is alive in Angola and in Kongo. Government and private security companies restricted access to areas around diamond concessions and the government regularly denied citizens access to live near concession areas even for obtaining water."

On the following page under the heading of Internally Displaced Persons ... and I submit that if Joana was required to return to Angola, although she is not necessarily a refugee for any particular reason, she would fall under the category of an internally displaced person not being able to reside in Luanda for the reasons which she's indicated.

The DOS report indicates that, "The majority of persons previously considered IDPs either returned home or did not intend to return to their area of origin and considered their new locations to be home, some stated a lack of physical infrastructure, government services such as medical care and the presence of landmines were major deterrents to their return."

I would submit that in addition to, you know, the lack of family, her inability to earn a livelihood together with her small family of five children would prove to be very difficult for her in addition to the other infrastructure issues that are referred to in the DOS report. In the DOS report in addition, at page 29 under the category of women, the DOS report indicates specifically, "Rape, including spousal rape, is illegal and punishable by up to eight years' imprisonment."

"However, limited investigive [sic] ... investigive [sic]..." I can say that, "...investigative resources, poor forensic capabilities,

> **and most importantly, an ineffective judicial system prevented ... prevented prosecution of most cases.** The Ministry of Justice and Human Rights worked with the Ministry of Interior to increase the number of police officers and intend to improve police response to allegations."
>
> "Although ... although there were 27 domestic violence centres, statistics on prosecutions for violence against women were not available and there were 13,000 cases of domestic abuse nationwide from May 2013 through July 2013." That is a tremendous amount for a small country in one year like Angola. And the allegation from Joana is that Alfonso (ph) required as part of his empowerment that he sleep with one of her children which would be statutory rape under the laws of Angola which would hardly, if at all, be prosecuted by the ... by the police.
>
> [emphasis added]

[35] The Principal Applicant's own testimony on this issues was as follows:

> **MEMBER**: If you move to Lucapa, would there ... would that cause you hardships other than you believe that Alfonso (ph) and his family will follow you there? If you had to move to Lucapa, would it cause you any other hardships?
>
> **INTERPRETER**: What do you mean by hardship? Like, difficulty ...
>
> **MEMBER**: Difficulties.
>
> **INTERPRETER**: Okay.
>
> **CLAIMANT**: Yes, it will be difficult. And also that every place I will go, there's a chief village and I have to present myself. ·
>
> **MEMBER**: I'd like you to expand a little bit about when you said yes, there will be difficulties. What difficulties can you ... would you think there would be if you had to move other than the chief at every village? You mentioned difficulties. What difficulties would there be for you and your family?
>
> **CLAIMANT**: It's very difficult...
>
> **MEMBER**: Yes?

CLAIMANT: ...having children moving from one place to another, a place you don't even have family members, you don't have no one to ... to welcome you. It's difficult. You don't have any help.

MEMBER: In the map that's in front of you, I mentioned to other localities. And one's Saurimo, and the other is Latama. Have you heard ... have you heard of those two cities, those two towns?

CLAIMANT: Yes.

MEMBER: Have you ever gone to either of those towns?

CLAIMANT: No.

MEMBER: Okay.

CLAIMANT: Oh, yes, I went to Saurimo, but not in Latama.
MEMBER: And why did you go to Saurimo?

CLAIMANT: I went there to sell.

…

MEMBER: And you mentioned when we talked about Lucapa, the ... the difficulties you would have, for example, difficulties moving ... moving with children, no family, no one to welcome you, no one to help you. Would that be ... would you ... would those same difficulties occur if you moved to the ... these two other cities, towns that I've mentioned?

CLAIMANT: Yes, it will continue because I live in a big town and this one is like a smaller ... small towns. And ... and there is so many difficulties that is in those small towns that I cannot help myself.

MEMBER: And would you like to tell me some of the difficulties in these small towns? Or could ... or could you tell me?

CLAIMANT: Like a tradition is very in control in those places.

MEMBER: Thank you for answering my questions. Counsel, I'm finished with my questions so I think this is a good time for the break. And when we come back, she's your witness.

[36] On the basis of the Principal Applicant's own evidence, I don't think the Board's findings on the reasonableness of the proposed IFAs can be said to be unreasonable. However, there is also the evidence in the National Documentation Package to consider, some of which was referred to in submissions by Applicants' counsel before the Board.

[37] The Applicants' present counsel feels that the *Gender Guidelines* were not followed and that there was evidence before the Board of the following:

> 55. The State Department Report indicated that the government did not effectively enforce prohibitions against discrimination based on gender, and that violence and discrimination against women, as well as child abuse, are problems.
>
> **State Department Report, p. 29**
>
> 56. Most cases of spousal rape and domestic violence are not prosecuted.
>
> **Application Record, p. 69, State Department Report [p.] 29**
>
> 57. In areas near the DRC, where the purported IFA is located, there were reports of women ritualistically killed because their killers believed doing so would help bring them good luck in the diamond fields.
>
> **Application Record, p. 70, State Department Report, p. 30**
>
> 58. This believe [*sic*] is similar to Aphonso's belief that having sex with his niece would increase his powers.
>
> 59. Moreover, child abuse was widespread and local officials generally tolderated [*sic*] abuse.
>
> **Application Record, p. 72, 73, State Department Report [p.] 32, 33**
>
> 60. Despite laws to the contrary, women generally held low-level positions in state-run industries or work in the informal sector.
>
> **Application Record, p. 71, State Department Report, p. 31**

> 61. In addition to the gender issues, the IFA findings were also unreasonable because the board ignored evidence before it with respect to the proposed region.
>
> 62. The principal industry in the Lunda Norte and Lunda Sur regions is diamond mining. There have been regular reports of sexual assault of women, associated with this industry.
>
> **Application Record; p. 45, State Department Report, p. 5**
>
> 63. Extortion and harassment at government checkpoints in rural areas and at provincial checkpoints restricted freedom on [*sic*] movement in Angola.
>
> **Application Record, p. 59, State Department Report, p. 19**
>
> 64. The State Department Report reported that children in rural areas generally lacked access to secondary education. Moreover, even in provincial capitals, which the member believed the proposed IFA cities to be, there were not enough classroom spaces for all children.
>
> **Application Record, p. 72, State Department Report, p. 32**
>
> She would likely not have protection there because:mmLocal [*sic*] cases are often heard by traditional leaders. The law is sometimes unclear where their authority ends and the official legal system begins.
>
> **Application Record, p. 51-52, State Department Report, p. 11-12**

[38] This evidence has to be considered in conjunction with the *Gender Guidelines* (at Part C):

> In determining the reasonableness of a woman's recourse to an internal flight alternative (IFA), decision-makers should consider the ability of women, because of their gender, to travel safely to the IFA and to stay there without facing undue hardship. In determining the reasonableness of an IFA, the decision-makers should take into account factors including religious, economic, and cultural factors, and consider whether and how these factors affect women in the IFA.

[39] In *Syvyryn v Canada (Citizenship and Immigration)*, 2009 FC 1027, Justice Snider set out what is required in this kind of analysis:

> 6 However, the Board's analysis of the second prong of the IFA test was, in my view, inadequate. The Board concluded that it was not unreasonable for the Applicant to seek refuge in Kiev. In reaching this conclusion, the Board appears to have relied solely on the fact that the Applicant had over 20 years of experience in the accounting field. There is no analysis, in the reasons, of the Applicant's age, gender or personal circumstances.
>
> 7 Because the Board was dealing with a victim of domestic abuse, the *Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* (the Gender Guidelines)., as updated and continued are of particular importance. The Gender Guidelines do not change the well-established test for IFA but provide guidance to decision makers on the evaluation of the weight and credibility of evidence. Of particular relevance to this application, the Guidelines state (at section C4):
>
> > In determining the reasonableness of a woman's recourse to an internal flight alternative (IFA), the decision-makers should consider the ability of women, because of their gender, to travel safely to the IFA and stay there without facing undue hardship. In determining the reasonableness of an IFA, the decision-makers should take into account factors including religious, economic, and cultural factors, and consider whether and how these factors affect women in the IFA.
>
> 8 I am not satisfied that the Board had regard to the Gender Guidelines as they relate to a finding of an IFA. The documentary evidence shows that women of the Applicant's age and gender face considerable discrimination in finding employment in Ukraine. The Board did not take such factors into account in reaching its conclusion that it would be reasonable for the Applicant to relocate to Kiev. In fact, the Board failed to make any inquiries of the Applicant that would have assisted in the necessary analysis.
>
> 9 I am not saying that the Board must find that there is no IFA in Kiev. I am simply stating that the transcript of the hearing and the reasons for the decision do not show that the Board had regard to the Gender Guidelines or the documentary evidence

> relating to discrimination against women seeking employment in Ukraine. In the absence of an analysis of the personal circumstances of the Applicant, having regard to the documentary evidence and section C4 of the Gender Guidelines, I am unable to conclude that the decision was reasonable.

[40] The Board appears not to have engaged with, and considered, those parts of the National Documentation Package which, under *Ranganathan*, above, at para 15, deal with "the existence of conditions which would jeopardize the life of and safety of a claimant in travelling or temporarily relocation to a safe area." For instance, the Angola 2013 Human Rights Report [Human Rights Report], included in the National Documentation Package, indicated the following in regards to harmful traditional practices in Angola:

> A handful of reports from provinces bordering the DRC stated that societal violence against elderly persons and rural and impoverished women and children occurred, with most cases stemming from accusations of witchcraft. The leader of a human rights NGO in Lunda Norte reported at least six women were ritualistically killed during the year. He stated that certain diamond merchants believed that ritualistically killing these women, and sometimes harvesting parts of their bodies, would help bring them good luck in the diamond fields (Applicant's Record, p. 70).

[41] As regards conditions for children, the Human Rights Report indicated that "[t]he educational infrastructure in Angola remained in disrepair," "child abuse was widespread" and while the 2012 Law on the Protection and Holistic Development of Children greatly improved the legal framework protecting children, "challenges remained in its implementation and enforcement" (Applicant's Record, pp. 72-73).

[42] Discrimination against women and employment opportunities for women were also discussed in the Human Rights Report: "The law provides for equal pay for equal work, but

women generally held low level positions in state-run industries and in the private sector or worked in the informal sector." The concluding observations on the sixth periodic report of Angola adopted by the Committee on the Elimination of Discrimination Against Women at its fifty fourth session (11 February – 1 March, 2013), also included in the National Documentation Package, expressed concern about the "low level of women in formal employment, the concentration of women in the informal sector with no legal protection, social security or other benefits, and the lack of nation-wide micro-credit programmes" (Applicant's Record, pp. 71 and 88).

[43] As regards the diamond industry, the Human Rights Report stated that a "prominent human rights activist reported abuses by private security companies hired by diamond companies in Lunda Norte, noting these companies routinely killed and tortured miners in the province. He also reported regular complaints of sexual abuse of women" (Applicant's Record, p. 45).

[44] The fact that the Principal Applicant may have visited one of the IFAs in the past is not the same as living there with her five children. In my view, given these circumstances and the available evidence, the Board's IFA analysis was inadequate and unreasonable in this case.

B. *Credibility*

[45] In addition to the IFA finding, the Board also rejected the claim on the grounds that "there is not enough credible or trustworthy evidence to establish that the allegations in the claim are sound."

[46] The Applicants question some of the Board's findings on credibility. The Applicants do not challenge the Board's findings with regard to the letter from the Rexdale Women's Centre or the photographic evidence produced by the Applicants. Hence those findings stand. The findings that are challenged as unreasonable are:

(a) The lack of objective evidence to support the central allegations that the Principal Applicant's brother-in-law had succeeded his father – after the father's death – as the tribal chief;

(b) That the Applicants did not fit the profiles in the documentary evidence of those at risk;

(c) That parts of the Principal Applicant's testimony were "vague, evasive and confusing"; and

(d) The assignment of only "limited weight" to the letter from Pastor Eduardo.

[47] Dealing with the lack of documentary evidence to establish that the Principal Applicant's brother-in-law had become chief, the Board reasons as follows:

> [29] The Board notes that the claimant did not provide any objective documentary evidence to establish that Aphonso is the tribal chief of M'Banza Congo. The Board notes that section 11 of the *Refugee Protection Division Rules of Procedure* states that a claimant must provide acceptable documents establishing identity and the elements of the claim. In the Board's view, the allegation that Aphonso is the tribal chief (that is, he succeeded his father after his death) is a very important element of the claim and goes to the very core of this claim. For example, the claimant alleges that her former husband, Joan, was murdered due to a spell that was initiated and performed by members of Joan's family because Joan refused to succeed his father as chief after he died. The claimant further alleges that Aphonso uttered death threats and wanted to murder her and assaulted her current husband, Yuvula, because she would not marry him. She maintained that Aphonso wanted to marry her to obtain more traditional powers and his witchcraft would be enhanced by the marriage. She further stated that if she did marry Aphonso that she would be forced to have sex with her son, Joao, and Aphonso would have sex with her daughter, Antonica, so that Aphonso's traditional and witchcraft powers would increase. **Due to the claimant's lack of effort in acquiring evidence to substantiate such an important element**

> **in the claim (that Aphonso succeeded to become tribal chief after the death of his father), the Board draws and adverse inference to her overall credibility and the truthfulness of the allegations in the claim.**
>
> [emphasis added]

[48] The brief exchange on this point in the Certified Tribunal Record reads as follows:

> **MEMBER**: Do you have any objective… objective evidence that he is a chief of a clan? For example, has it been reported in any newspapers?
>
> **CLAIMANT**: No, as a chief of village I don't have any of them and also the way I left, I could not be able to obtain those kind of evidence [sic].

[49] The Board draws a negative inference "Due to the claimant's lack of effort in acquiring evidence to substantiate such an important element in the claim…." There was, however, no evidence before the Board of a "lack of effort." The Board did not ask the Principal Applicant what efforts she had made to obtain documentation after she left, or explore whether there was any such documentation, or whether any efforts could have succeeded. The Board says this was a central issue but makes little effort to find out what the situation was regarding documentation and/or whether the Principal Applicant could have obtained any documentation that did exist. The Board mentions newspaper reports but does not bother to find out whether such reports are even possible in this context. The Principal Applicant gave evidence on oral traditions that was not questioned by the Board:

> It is very difficult for me to find out if there is any written materials or is there something that, you know, they just speak about it because it's … it's above me. I cannot go in deep to find out if there is any written materials or it's something just they oral or speaking [*sic*].

[50] In this king of local, tribal, oral context, where women play a subservient role, it is not reasonably apparent that there would be newspaper reports or any documentation available to substantiate Aphonso's succession as chief, and there is no evidence to support a lack of effort on the part of the Principal Applicant, or whether efforts could have yielded any results.

[51] On the other hand, when the Applicants provide documentation in the form of Pastor Eduardo's letter, it is given little weight:

> [48] The claimant filed an undated letter from Ricardo Eduardo, a pastor with the Evangelical Christian Mission of Reconciliation in Angola, Kikolo Cidade Shaloom Church titled "Confirmation of Events Experienced by the Family of Mrs. Joana Tana Paxi." Pastor Eduardo confirms in his letter that the claimant, Yuvula, and the children have "been the target of death threats because of the refusal of the claimant's deceased husband (Joan) to succeed to the position of traditional chief (from his father)."Pastor Eduardo also stated in the letter that Aphonso has become the tribal chief and that he wants to marry the claimant and adopt the children.
>
> [49] Pastor Eduardo acknowledges in the letter that the claimant and her family came to his home after being threatened and assaulted in September 2014. He further stated that Yuvula "was beaten nearly to death by Aphonso." He also stated that Yuvula fled to the DRC due to his "lack of means and to his state of health, and was seeking medical treatment." Furthermore, the pastor stated that "because they [the claimants] were in mortal risk, the church took the initiative of helping them by raising money that they would leave the country."
>
> [50] The Board notes that the said letter was not notarized nor was there any objective identification documents of Pastor Eduardo attached to the letter to substantiate that he was indeed the author of it. As far as the Board knows, the aforementioned letter could have been written by anyone. Even if this letter was from Pastor Eduardo, which the Board does not concede, it does not address the Board's finding of the claimants having viable IFAs in Angola and the credibility concerns that were mentioned in this decision. As such, the Board will put very little evidentiary weight on the aforementioned letter.
>
> [footnotes omitted]

[52] The letter is written on church letterhead, it is dated, and is signed by the Pastor Eduardo. There is no legal or statutory requirement in the *Refugee Protection Division Rules of Procedure*, SOR/2012-256, that documents be notarized or that identification documents are required. However, the rationale for giving the letter "very little evidentiary weight" for credibility purposes is that it was not dated, it was not notarized, and there were no objective identification documents. The letter is, in fact, dated. The implication that documents must be notarized or accompanied by other "objective identification documents" before they can be given real evidentiary weight overlooks the strong evidence of authenticity contained in the letter itself. Besides the church letterhead, the date, and the signature of the Pastor Eduardo, the letter is detailed and authoritative, and it provides detailed contact information, including a phone number, and clearly makes it easy for anyone who doubts its authenticity to check it out. These are not the signs of an inauthentic document, and if the Board thought that a missing date was material, then the Board's mistake over the date means it overlooked a material fact. The letter is of extreme importance for the Applicants' situation. It seems odd that if the Applicants say they are fleeing what the Pastor Eduardo calls "a terrible situation," the Board would simply not take the opportunity to use the contact information provided by the letterhead before demanding notarized and other objective identification documents. Lives are at stake here, and yet a simple check is not made. For the Board to take issue with the authenticity of the document yet make no further inquiries despite having the appropriate contact information to do so is a reviewable error: *Kojouri v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1389 at paras 18-19; *Huyen v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1267 at para 5.

[53] It seems to me that these errors are so significant for the Applicants' claim that they render the Decision unsafe and unreasonable.

[54] Counsel concur that there is no question for certification and the Court agrees.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The Decision is quashed and the matter is referred back to a different Board member for reconsideration.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-115-16
STYLE OF CAUSE:	JOANA PAXI, JOAO PAXI KIALA, AFONSO PAXI KIALA, PAOLO PAXI KIALA, ANTONICA KIALA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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