

Federal Court



Cour fédérale

**Date: 20180727**

**Docket: IMM-4829-17**

**Citation: 2018 FC 786**

[ENGLISH TRANSLATION]

**Montréal, Quebec, July 27, 2018**

**PRESENT: Mr. Justice Locke**

**BETWEEN:**

**MASTAKI ATOME**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application for judicial review filed against a negative decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada dated August 7, 2017. This is a *de novo* hearing of a case that this Court had referred back to the RPD for redetermination with the parties' consent.

[2] For the reasons that follow, I find that this second decision must also be dismissed.

## II. Facts

[3] The applicant is a 19-year-old citizen of the Democratic Republic of the Congo (DRC). In November 2015, the applicant left the DRC and went to Haiti to join her father, who works for the United Nations. She obtained a U.S. visa and joined her sister in Canada on April 3, 2016.

[4] The applicant claims she was arrested and raped in Kinshasa by the Congolese government during violent demonstrations on January 20, 2015, against the amendment to the Constitution that enabled President Kabila to have a third term in office. Those demonstrations, which made headlines, had been organized in part by the Engagement pour la citoyenneté et le Développement (ECIDE) [engagement for citizenship and development] party, a political party opposed to President Kabila that she supported.

[5] The applicant was never an official member of the party because of her young age. However, she was influenced by her sister, who had been kidnapped and sexually assaulted for her involvement in the ECIDE party. The applicant's sister had managed to flee the country and obtain refugee status in Canada in 2012.

[6] The applicant alleges that she was released from prison on January 24, 2015, after a lawyer hired by her parents intervened. The government's repression continued despite her release, forcing her to leave the country after Kabila supporters attempted to kidnap her on September 9, 2015.

### III. Decision

[7] The RPD dismissed the applicant's claim for refugee protection for the following credibility reasons: (i) there was a major inconsistency with respect to the circumstances surrounding her release from prison following her arrest during the January 20, 2015, demonstrations; (ii) there was a contradiction between the applicant's testimony that she had kept a low profile after her release and her written narrative indicating that she had continued to participate in ECIDE meetings during that time; and (iii) the applicant failed to mention in her written account that a friend had disappeared after being arrested at the same time the applicant was arrested.

[8] The RPD had the following evidence at its disposal: letters from the applicant's Congolese lawyer, a medical assessment from a Congolese psychologist, a medical report and an affidavit from the applicant's sister. The RPD dismissed the refugee claim without giving that documentary evidence any probative value. The RPD explained that the documents recounted facts that it had found not credible.

### IV. Analysis

[9] Firstly, the applicant argues that the finding that she was not credible was unreasonable. Secondly, she argues that the RPD was not entitled to conclude that some of the evidence had no probative value simply because it recounted facts that it had already found not credible.

[10] I can conclude that the RPD's decision must be dismissed on the basis of the applicant's second argument. Therefore, I do not need to analyze the elements of her first argument.

[11] Firstly, the respondent opposes several paragraphs of the applicant's affidavit because they contain arguments and opinions. I did not consider the paragraphs in question in arriving at this decision.

[12] The findings on the applicant's credibility had to be made after considering all of the pertinent evidence. The RPD had to consider all of the evidence before concluding that it lacked probative value. The RPD cannot reach a conclusion on the claim based on certain evidence and dismiss the remaining evidence as inconsistent with that conclusion: *Chen v. Canada (Citizenship and Immigration)*, 2013 FC 311 at paragraph 20.

[13] The RPD considered the letters from the applicant's Congolese lawyer, but does not seem to have considered the other evidence referred to in the paragraph [8] above. Its finding that the other evidence lacked probative value because it contradicted the RPD's conclusions was unreasonable. This error by the RPD is sufficient to set aside its decision.

[14] In her memorandum, the applicant is asking that I grant her refugee status instead of referring her claim for refugee protection back to the RPD. At the hearing, the applicant instead requested that I set aside the RPD's decision and order that a new hearing be scheduled as soon as possible.

[15] I agree with the respondent that I should not grant refugee status. I am not satisfied that there are exceptional circumstances that would justify making such an order.

[16] With regard to the next hearing, I note that this will be the applicant's third hearing. She has been awaiting a final decision on her claim for refugee protection since her arrival in Canada in April 2016. Without wanting to force the RPD or disrupt its processes, I recommend that the applicant's claim for refugee protection be expedited.

[17] The parties agree that there is no serious question of general importance.

**JUDGMENT in IMM-4829-17**

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

1. The application for judicial review is allowed;
2. The case is referred back to the Refugee Protection Division for redetermination by a different officer, and the Court recommends that the applicant's claim for refugee protection be expedited;
3. There is no question of importance to be certified.

"George R. Locke"

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Judge

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

**DOCKET:** IMM-4829-17

**STYLE OF CAUSE:** MASTAKI ATOME v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JULY 11, 2018

**JUDGMENT AND REASONS:** LOCKE J.

**DATED:** JULY 27, 2018

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