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Docket: IMM-3722-18

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[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 12, 2019

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

PRISCA AUDREY MAVANGOU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Prisca Audrey Mavangou, is a citizen of the Republic of the Congo. She seeks judicial review of a Refugee Appeal Division [RAD] decision dated July 6, 2018 [Decision]. The RAD upheld the decision of the Refugee Protection Division [RPD] rejecting Ms. Mavangou's claim for refugee protection and denying her refugee or person in need of

protection status under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC, 2001, c 27 [IRPA], on the grounds that her claim was not credible.

[2] Ms. Mavangou alleges that the RAD made three errors in the Decision: by rejecting new evidence that she submitted, by determining that her story was not credible, and by neglecting the fundamental fact of the gang rape that she experienced in the Congo. She requests that the Court set aside the Decision and return the matter so that her appeal to the RAD can be reassessed.

[3] For the reasons stated below, I will dismiss Ms. Mavangou's application. After having assessed the RAD's findings, the evidence submitted to the tribunal, and the applicable law, I cannot find any reason to set aside the RAD's decision. The RAD's reasons take into account the evidence before the panel and possess the qualities that make the Decision reasonable, whether in terms of the reasons given for refusing the new evidence, the adverse findings as to Ms. Mavangou's credibility or the analysis conducted by the panel. The Decision therefore falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. There is therefore no reason to justify the Court's intervention.

II. Background

A. *The facts*

[4] Ms. Mavangou was born in the south of the Republic of the Congo. She entered Canada in July 2016, after briefly passing through the United States. Shortly after arriving in Canada, she

filed a refugee claim. She alleges that Sarah Ndenguet, the daughter of a general known for his ill-treatment of the southern population, was pursuing her in the Congo. From September to December 2015, Ms. Mavangou allegedly had a romantic relationship with Phillipe Eboa, a man who is allegedly married to Ms. Ndenguet. According to Ms. Mavangou, Ms. Ndenguet discovered their relationship and, on December 25, 2015, threatened and insulted Ms. Mavangou over the telephone. That same evening, a friend of Mr. Eboa's allegedly gave her money and advised her to be careful. Ms. Mavangou also claims that in April 2016, three men, two of whom were in police uniform, showed up at her home and raped and robbed her, asking her to return the money she received from Mr. Eboa and insulting her since she comes from the southern Congo. After the incident, which she attributes to men sent by Ms. Ndenguet, she alleges that she went to the hospital with a cousin, and then fled the Congo a week later. She alleges a fear of retaliation from Ms. Ndenguet's because of her relationship with Mr. Eboa.

[5] The RPD did not believe Ms. Mavangou's story and rejected her claim for refugee protection in November 2016. Ms. Mavangou appealed this decision to the RAD.

B. ***The RAD's decision***

[6] In the Decision of which Ms. Mavangou seeks judicial review, the RAD confirmed the RPD's decision, including the RPD's findings regarding the lack of credibility of Ms. Mavangou's story.

[7] The RAD first considered the admissibility, under subsection 110(4) of the IRPA, of six new pieces of evidence that Ms. Mavangou submitted in support of her appeal The RAD

concluded that none were admissible because of their lack of relevance, credibility or newness. Letters from a doctor and a psychosocial worker were rejected, as the RAD did not consider them to be linked with Ms. Mavangou's allegations. Although they repeat and support Ms. Mavangou's story, a letter and an email from Mr. Eboa were rejected because they could have been presented to the RPD and lacked probative value, being neither authenticated nor sworn. Nor did the RAD accept a *certificat de coutume* [a certificate of non-impediment to marriage] submitted as the marriage certificate between Mr. Eboa and Ms. Ndenguet because, at face value, this document is not dated and only refers to a possible marriage. Finally, the RAD did not accept a newspaper article that predates the hearing before the RPD, and that contributes nothing new.

[8] The Decision then examines each of the arguments raised by Ms. Mavangou to challenge the RPD's findings. The RAD stated at the beginning of its analysis that it took the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Guideline] issued by the Immigration and Refugee Board of Canada into consideration. The RAD first addressed the argument that the RAD did not consider the evidence presented. After conducting its own analysis of the case, the RAD concluded, as did the RPD, that it was not credible that Ms. Mavangou had had an intimate relationship with Mr. Eboa, given her inability to provide basic information about her lover, such as where he worked or how many children he had. The RAD also considered the RPD's decision to consult the Facebook pages of those concerned (Mr. Eboa and Ms. Ndenguet), as criticized by Ms. Mavangou, and concludes that the RPD did not err in this approach. Indeed, the evidence shows that this was done with Ms. Mavangou's implied permission and with a view to helping her complete her answers. The

RAD adds that the RPD's conclusion on the lack of credibility of Ms. Mavangou's story stems first and foremost from her weak and deficient testimony, not from information gleaned from social networks.

[9] Finally, the Decision validates the RPD's conclusion that the evidence does not support a finding of sexual assault allegedly ordered by Mr. Eboa's wife, since the relationship between Ms. Mavangou and Mr. Eboa is not credible and the medical certificate referring to the assault contains certain shortcomings.

[10] For all of these reasons, the RAD determined that the RPD made a correct decision in rejecting Ms. Mavangou's claim for refugee protection.

C. *Standard of review*

[11] The parties recognize that, for all the issues, the applicable standard of review is that of reasonableness. I agree with that. It is well established that the merits of RAD decisions must be assessed according to this standard (*Canada* (*Citizenship and Immigration*) *v Huruglica*, 2016 FCA 93 [*Huruglica*] at para 35). In particular, the RAD's interpretation of subsection 110(4) of the IRPA when considering new evidence is subject to review on the reasonableness standard (*Canada* (*Citizenship and Immigration*) *v Singh*, 2016 FCA 96 [*Singh*] at para 29; *Galamb v Canada* (*Citizenship and Immigration*), 2016 FC 1230 at paras 10-11; *Olowolaiyemo v Canada* (*Citizenship and Immigration*), 2015 FC 895 [*Olowolaiyemo*] at para 10). Finally, the reasonableness standard is also applicable to the assessment of credibility by the RPD or RAD (*Aguebor v Canada* (*Minister of Employment and Immigration*) (1993), 160 NR 315 (FCA)

[*Aguebor*] at para 4; *Lawani v Canada* (*Citizenship and Immigration*), 2018 FC 924 [*Lawani*] at para 13). Therefore, further analysis of the standard of review is not required (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 62).

[12] Where the standard of review is that of reasonableness, the Court must exercise deference and refrain from substituting its own opinion for that of the administrative decision maker, provided that the decision is justified, transparent and intelligible, and that the conclusions underlying it and whose validity is being challenged fall within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). The reasons for a decision are considered to be reasonable "if [they] allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador* (*Treasury Board*), 2011 SCC 62 [*Newfoundland Nurses*] at para 16).

[13] The standard of reasonableness requires deference to the decision maker because it "is grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton* (*City*) *v Edmonton East* (*Capilano*) *Shopping Centres Ltd*, 2016 SCC 47 at para 33; *Dunsmuir* at paras 48–49). In a review for reasonableness, where a question of mixed fact and law falls squarely within the expertise of a decision maker, the reviewing court's "task is to supervise the tribunal's approach in the context of the decision as a whole. Its role is not to impose an

approach of its own choosing" (*Canada* (*Canadian Human Rights Commission*) *v Canada* (*Attorney General*), 2018 SCC 31 at para 57).

[14] This deferential approach, and the limited window of intervention that results from it, is particularly required when, as in this case, the impugned findings relate to the credibility of a refugee claimant's story (*Lawani* at paras 15–16). It is well established that the findings in this regard require a high degree of deference on the part of a reviewing court on judicial review, given the administrative tribunal's role as a trier of fact.

III. Analysis

[15] Before addressing the three reasons provided by Ms. Mavangou to support her application for judicial review, two preliminary remarks are in order.

[16] To begin with, I note that Ms. Mavangou's claim for refugee protection was based on her fears of retaliation from Ms. Ndenguet, the daughter of an influential general in the Congo, because of the romantic relationship she allegedly had with Mr. Eboa, a man she described as Ms. Ndenguet's husband. According to Ms. Mavangou, it was because of this extramarital affair that she was the victim of a gang rape that was allegedly orchestrated by Ms. Ndenguet. Her own relationship with Mr. Eboa and the marital status of Mr. Eboa and Ms. Ndenguet were therefore the key aspects of Ms. Mavangou's refugee claim.

[17] It is precisely at this level that both the RPD and RAD concluded that Ms. Mavangou's story lacked credibility. In her testimony, Ms. Mavangou did not know basic things about

Mr. Eboa, such as his birthday, how long he has been married, whether he has children and how many, or his email address, and she was even uncertain of his first name. This, in the eyes of the RPD and the RAD, did not fit with what Ms. Mavangou described as an intense and daily romantic relationship over a period of more than three months, in which she and Mr. Eboa were very close. Similarly, the evidence did not establish that Mr. Eboa was Ms. Ndenguet's husband. At no time did Ms. Mavangou's claim for refugee protection invoke a need for protection due to a fear of persecution based on her gender or her membership in a social group such as an ethnic group in the southern Congo.

[18] In their pleadings before the Court, Ms. Mavangou's counsel relied extensively on Madam Justice Roussel's recent decision in *Kindo Lukombo v Canada* (*Citizenship and Immigration*), 2019 FC 126 [*Lukombo*], on the grounds that that decision granted judicial review of an RAD decision. With respect, this decision is of no relevance, directly or indirectly, to the case before me. Nothing in the factual background of the *Lukombo* decision, or in the nature of the errors committed by the RAD in that case, is related to the context and issues in the Decision of which Ms. Mavangou is seeking judicial review. In *Lukombo*, the Court had identified specific errors that were decisive in the RAD's finding on the lack of credibility. Moreover, in their oral representations, Ms. Mavangou's counsel were unable to establish any useful parallels between this decision and Ms. Mavangou's case.

[19] In fact, the only proximity that Ms. Mavangou's counsel have mentioned between *Lukombo* and this case is limited to the fact that it is the same RAD member who made both decisions. Needless to say, this is not enough to give the *Lukombo* decision any precedent value

whatsoever. As I mentioned at the hearing, a reviewing court does not consider a decision to be reasonable or unreasonable on the basis of the identity of the administrative decision maker who signed it. This is not at all how the rule of law works. Quite the contrary. In exercising judicial review, a reviewing court must focus on the decision made, the reasons given for it and the approach taken by the administrative tribunal to achieve it. The identity concern mentioned by Ms. Mavangou's counsel simply has no place here.

A. ***The RAD's findings rejecting the new evidence are reasonable***

[20] Ms. Mavangou first submits that the RAD should not have rejected the six new documents she was seeking to file. For example, she claims that the letters from the doctor and the psychosocial worker are related to her story and reveal that she was sexually abused, contrary to what is stated in the Decision. Similarly, she claims that Mr. Eboa's letter and email establish that she had a romantic relationship with him. Ms. Mavangou alleges that all these documents should have received more weight than the Facebook pages visited by the RPD. Moreover, she submits that the reasons why the new evidence was excluded are not sufficiently clear in the Decision. According to Ms. Mavangou, the RAD's conclusions to reject the new evidence are patently unreasonable in all respects.

[21] I do not agree with Ms. Mavangou on this point.

[22] To accept the new evidence provided by Ms. Mavangou, the RAD had to determine whether it was admissible under subsection 110(4) of the IRPA and the case law that has interpreted this provision. That is precisely what the RAD did in the Decision, and it was open to

the RAD not to admit this evidence. My role is not to revisit the question of whether the new evidence should have been accepted, but to determine whether the RAD's findings rejecting the new evidence were reasonable. I believe that this is the case.

[23] For new evidence to be admissible on appeal before the RAD, it must first fall into one of the three categories described in subsection 110(4) of the IRPA and contain (i) evidence that arose after the rejection of the refugee claim; (ii) evidence that was not reasonably available at the time of the rejection; or (iii) evidence that was reasonably available but that the person could not reasonably have been expected in the circumstances to have presented at the time of the rejection (*Singh* at para 34). Only new evidence that falls into any of these three categories is admissible (*Singh* at para 35). Given the use of the word "or" in subsection 110(4), the test is disjunctive, not conjunctive (*Olowolaiyemo* at para 19; *Galamb* at para 17).

[24] In addition, in *Singh*, the Federal Court of Appeal determined that the admissibility criteria for new pre-removal risk assessment evidence are also applicable to the admissibility of new evidence under subsection 110(4) of the IRPA (*Singh* at paras 49, 64). These admissibility criteria were developed in *Raza v Canada* (*Citizenship and Immigration*), 2007 FCA 385 [*Raza*], and include the following elements: credibility, relevance, newness, materiality, and express statutory conditions. Paragraph 13 of *Raza* summarizes them as follows:

> . . .
>
> 1. Credibility: Is the evidence credible, considering its source and the circumstances in which it came into existence? If not, the evidence need not be considered.
>
> 2. Relevance: Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving

> a fact that is relevant to the claim for protection? If not, the evidence need not be considered.
>
> 3. Newness: Is the evidence new in the sense that it is capable of:
>
> (a) proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD, or
>
> (b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or
>
> (c) contradicting a finding of fact by the RPD (including a credibility finding)?
>
> If not, the evidence need not be considered.
>
> 4. Materiality: Is the evidence material, in the sense that the refugee claim probably would have succeeded if the evidence had been made available to the RPD? If not, the evidence need not be considered.
>
> 5. Express statutory conditions:
>
> (a) If the evidence is capable of proving only an event that occurred or circumstances that arose prior to the RPD hearing, then has the applicant established either that the evidence was not reasonably available to him or her for presentation at the RPD hearing, or that he or she could not reasonably have been expected in the circumstances to have presented the evidence at the RPD hearing? If not, the evidence need not be considered.
>
> (b) If the evidence is capable of proving only an event that occurred or circumstances that arose after the RPD hearing, then the evidence must be considered (unless it is rejected because it is not credible, not relevant, not new or not material).

[25] These criteria from *Raza* do not replace the three conditions mentioned in subsection 110(4) of the IRPA but add to them, since they are necessarily implied from the purpose of the provision (*Singh* at subsection 63). Thus in deciding whether new evidence is admissible, the RAD must determine whether the criteria of credibility, relevance, newness and

materiality set out in *Raza* are met (*Singh* at para 49). However, the criteria set out in *Raza* require some adaptations when applied to subsection 110(4): for example, the newness test is redundant with subsection 110(4), and the materiality test is less rigid since the RAD has a broader mandate and can accept new evidence that, while not determinative, has an impact on the overall assessment of the claim (*Singh* at paras 46, 47).

[26] I would point out that the newness of documentary evidence cannot be tested solely by the date on which the document was created (*Raza* at para 16). What matters are the facts or circumstances that are sought to be established by the documentary evidence, and that is what must postdate the date of the rejection of the claim. Similarly, the relevance of the document must be demonstrated because it would be difficult to imagine that the presentation of new evidence could be somehow exempted from this test (*Singh* at para 45).

[27] The issue is therefore whether, in light of this case law, it was reasonable for the RAD to conclude that the new evidence submitted by Ms. Mavangou was not admissible. I think it was. The Decision analyzed each of the six documents Ms. Mavangou submitted, and concluded that they did not meet the requirements of subsection 110(4) of the IRPA and the implicit admissibility criteria of credibility, relevance and newness. These are determinations that demand deference and, in the circumstances, I am not persuaded that the RAD's conclusion to refuse to admit this new evidence does not fall in a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[28] It was not unreasonable for the RAD to reject the letters from the doctor and psychosocial worker since their content did not link the medical and psychosocial symptoms described to the story alleged by Ms. Mavangou. Although these two letters postdate the RPD's decision, and describe symptoms resulting from sexual assault, they do not clarify or link the symptoms to the most problematic part of Ms. Mavangou's story in the eyes of the RPD and the RAD, namely the alleged relationship between her and Mr. Eboa, described as Ms. Ndenguet's husband. It is the existence of this relationship, I would remind you, that was critical in assessing Ms. Mavangou's credibility. These two documents could therefore reasonably be rejected by the RAD for lack of relevance.

[29] With respect to Mr. Eboa's handwritten letter dated September 18, 2016, it clearly predated the RPD's rejection of the refugee claim in November 2016, which is sufficient to justify its inadmissibility. As for Mr. Eboa's email from December 2016, I note that it is neither authenticated nor sworn. In addition, although the document postdates the RPD's decision, it does not describe any facts that have occurred since the rejection of the claim, and no evidence was filed by Ms. Mavangou as to why such an email was not submitted to the RPD or how it was not reasonably available to her. I am satisfied that it was therefore possible for the RAD to highlight the lack of probative value of the document and to give it little weight. Moreover, it was not unreasonable for the RAD not to consider this evidence as new since it did not consist of information that was significantly different from what was already on file before the RPD.

[30] As for the *certificat de coutume*, it contained only a partial date that did not make it possible to determine whether it pre- or postdated the RPD's decision, and it could reasonably be

rejected for lack of credibility, since it was presented as a marriage certificate, which it is not on face value. Finally, the newspaper article dated back to May 2015, well before the RPD rejected the refugee claim, and did not deal with the existence of a relationship between Ms. Mavangou and Mr. Eboa, or between Mr. Eboa and Ms. Ndenguet. It therefore does not meet the requirements of subsection 110(4) of the IRPA, or the newness and relevance criteria of *Raza*.

[31] In short, I am not convinced that it was unreasonable for the RAD to conclude that the documents were not new within the meaning of subsection 110(4) of the IRPA, since they did not meet the requirements of credibility, relevance or newness. The RAD's reasoning regarding the admissibility of the new evidence was justified, transparent and intelligible, and it fell within a range of possible, acceptable outcomes in the circumstances.

[32] I acknowledge that the Decision is relatively terse on the issue of the new evidence rejected by the RAD and that it would have been preferable for the RAD to elaborate further in the explanations supporting the Decision in this regard. However, the lack of detail in a decision does not make it unreasonable, provided that the reasons allow the Court to understand why the impugned decision was made and permit it to determine whether the conclusion is within the range of acceptable outcomes (*Newfoundland Nurses* at para 16). The reasons for a decision need not be perfect or even complete. They need only to be comprehensible. The reasonableness standard of review is not concerned with the decision's degree of perfection but rather its reasonableness (*Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 29). The standard requires that the reviewing court start with the decision and recognize that the administrative decision maker has the primary responsibility for making factual determinations.

The reviewing court examines the reasons, the record and the outcome and, if there is an explanation for the result obtained, it refrains from intervening. In the case of Ms. Mavangou, I am satisfied that the explanations in the Decision make it possible to understand why the RAD did not consider the new evidence adduced by Ms. Mavangou. The Court need not intervene.

[33] In their submissions to this Court, Ms. Mavangou's counsel made extensive reference to my decision in *Olowolaiyemo*, where I found that the administrative decision maker had not reasonably applied the requirements of subsection 110(4) of the IRPA. However, the RAD's reasons in the Decision are quite different from those in *Olowolaiyemo*, and I am satisfied that here the RAD has taken into account the requirements of the Act and the case law (including the Federal Court of Appeal's decision in *Singh* following my decision in *Olowolaiyemo*). Admittedly, in Ms. Mavangou's case, the RAD did not perform a detailed analysis of the explicit conditions of subsection 110(4) and instead determined that the new evidence was inadmissible according to the criteria set out in *Raza*. However, in *Singh*, the Federal Court of Appeal stated that the criteria in *Raza* "add to" the explicit conditions in subsection 110(4) (*Singh* at para 63), meaning that the two are cumulative. It was therefore open to the RAD to focus its analysis on the *Raza* criteria, since the new evidence could be deemed inadmissible if it were to fail to meet either set of requirements. I would add that there is no evidence in this case to establish that, within the meaning of subsection 110(4) of the IRPA, evidence was not reasonably available at the time the claim was rejected or that, if evidence was reasonably available, Ms. Mavangou would not reasonably have been expected to present it in the circumstances at the time of the rejection.

B. ***The findings on the lack of credibility of Ms. Mavangou's story are reasonable***

[34] Ms. Mavangou's second argument is that the RAD's adverse finding regarding her credibility, particularly in respect of her relationship with Mr. Eboa, is unreasonable. She points out that the RAD did not take into account cultural differences and the short duration of their relationship. She further argues that the finding regarding her lack of credibility is based on findings of implausibility, which are subject to more rigorous scrutiny.

[35] I do not agree with Ms. Mavangou's claims.

[36] At the hearing before this Court, Ms. Mavangou's counsel suggested that the RAD, in its handling of the appeal, failed to meet the test set by the Federal Court of Appeal in *Huruglica*. That is not true, and I do not agree with that reading of the Decision. Rather, I believe that the RAD's reasons clearly demonstrate that it has met the standards set out in *Huruglica*. In fact, the RAD specifically stated that, in its analysis, it examined and reviewed "all the testimonial and documentary evidence on the record". It reiterated the principles set out in *Huruglica* and then stated that it had "conducted an independent analysis of all the evidence on the record to form [its] own opinion concerning this refugee protection claim and to determine whether the decision rendered by the RPD [was] correct". The RAD listened to the recording of the RPD hearing and examined the admissible evidence to form its own opinion. It is thus clear from the reasons for the Decision that the RAD conducted its own independent, full and thorough assessment of the evidence to establish whether Ms. Mavangou was credible. That is precisely the requirement of the intervention test set out in *Huruglica* (*Huruglica* at para 103). The fact that the RAD reached the same conclusion as the RPD regarding Ms. Mavangou's credibility does not mean that the RAD failed to do its job as an appeal tribunal.

[37] Regarding the assessment of credibility, I summarized, in paragraphs 20 to 26 of my decision in *Lawani*, the main principles governing the assessment of an administrative decision maker's handling of credibility issues. I have no hesitation in concluding that these principles have been observed by the RAD here.

[38] Nothing in Ms. Mavangou's arguments is sufficient to show that the RAD's findings regarding the lack of credibility of her story are outside a range of possible, acceptable outcomes in the circumstances or contain a reviewable error. Both the RPD and the RAD found that Ms. Mavangou's story lacked credibility for one main reason, namely that she could not demonstrate her intimate relationship with Mr. Eboa and his marriage to Ms. Ndenguet. Despite all the opportunities given to Ms. Mavangou to demonstrate this—and the onus was on her—she was unable to do so. I do not find it unreasonable to conclude that Ms. Mavangou's story lacks credibility given her inability to provide basic information about her relationship with Mr. Eboa or about his marriage to Ms. Ndenguet. In the absence of evidence on these key points at the heart of her claim for refugee protection, there is no basis for her allegations that Ms. Ndenguet was behind the sexual abuse she had experienced and at the root of her fears of retaliation and persecution in the Congo. I would add that the discussions about the use of social media information, which Ms. Mavangou now portrays as illustrating the unreasonableness of the Decision, were intended solely to give Ms. Mavangou an opportunity to fill the gaps that otherwise existed in her testimony. In no way did the Facebook pages viewed by the RPD take precedence over Ms. Mavangou's testimony.

[39] Moreover, it is true that findings of implausibility by an administrative decision maker must be formulated in clear and unmistakable terms and only in the most obvious cases. However, I do not see any finding of implausibility in the Decision. A negative credibility finding may be based on implausibilities in the applicant's story, contradictions or a lack of evidence to support the story. Here, it is not the implausibility of Ms. Mavangou's story that has undermined her credibility. The RAD did not find it implausible that Ms. Mavangou was assaulted because of a romantic relationship with Ms. Ndenguet's husband; on the contrary, the evidence submitted was analyzed in detail to see whether this had been the case. Instead, the RAD found insufficient evidence on the alleged intimate relationship with Mr. Eboa, and on Mr. Eboa's marriage to Ms. Ndenguet. For this reason, the evidence did not support the linking of the gang rape incident to Ms. Mavangou's story and to her fears of retaliation by Ms. Ndenguet.

[40] One of the reasons that the RAD stated for not believing in the existence of a romantic relationship is the contradiction between Mr. Eboa's identification card showing that he works for Total and Ms. Mavangou's statement that he works for ELF. Ms. Mavangou argues that this is not a contradiction, because ELF is owned by Total. Even if this were the case, I am not convinced that this is sufficient to push the Decision outside the range of possible, acceptable outcomes and make it unreasonable. A judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54). Rather, a reviewing court must approach the impugned decision "as an organic whole." In the Decision, the RAD mentions a number of elements in addition to the contradiction regarding Mr. Eboa's workplace that led it not to believe in the

existence of the relationship alleged by Ms. Mavangou, including the fact that she did not know basic information about Mr. Eboa.

[41] The RAD has given detailed, well-considered reasons for not finding Ms. Mavangou credible. The reasonableness test dictates that the reviewing court must begin with the decision and the reasons for the decision, recognizing that the administrative decision maker has the primary responsibility for making findings of fact. It is well established that the Court owes significant deference to refugee claimant credibility assessments made by the RPD and the RAD (*Dunsmuir* at para 53; *Aguebor* at para 4). Questions of credibility are at the very heart of their jurisdiction (*Pepaj v Canada (Citizenship and Immigration),* 2014 FC 938 at para 13). The arguments put forward by Ms. Mavangou simply express her disagreement with the RAD's assessment of the evidence and in fact urge me to favour her opinion and reading over that of the RAD. That is not my role in judicial review. The question before me is not whether any other outcome or interpretation could have been possible. The question is whether the RAD's finding falls within a range of possible, acceptable outcomes.

C. *The RAD did not fail to consider relevant facts*

[42] Lastly, Ms. Mavangou states that the RAD failed to consider a matter of fundamental importance, namely the fact that she was gang raped. She raises the fact that, at the RPD hearing, the member allegedly failed to ask her any questions about the gang rape and cut her off when she started to talk about it. She argues that the reasoning in the Decision lacks transparency, because the issue of the assault was not dealt with following the conclusion that she had not been

in a relationship with Ms. Ndenguet's spouse. She further alleges that the RAD did not apply the Guideline.

[43] Once again, I do not agree with Ms. Mavangou's reading of the Decision on these matters.

[44] I would like to emphasize at the outset that neither the RPD nor the RAD is disregarding or downplaying the fact that Ms. Mavangou has been gang raped. Rather, the RPD and the RAD question the link that Ms. Mavangou seeks to establish between the assault, the relationship she allegedly had with Mr. Eboa, and Mr. Eboa's marriage to Ms. Ndenguet. At the risk of repeating myself, I emphasize once again that the alleged relationship with Mr. Eboa and his marriage to Ms. Ndenguet are the driving force behind Ms. Mavangou's claim and her alleged fears of retaliation and persecution, which she attributes to Ms. Ndenguet.

[45] Upon reviewing the evidence in the record and the transcripts of the RPD hearing, I am satisfied that Ms. Mavangou's assertion that she was unable to testify about being gang raped is simply unfounded. A careful reading of the hearing transcript shows that Ms. Mavangou had the opportunity to testify on this matter and that at no time would she have been gagged in her attempts to discuss it. Contrary to the claims of Ms. Mavangou and her counsel, the transcripts do not show that Ms. Mavangou was interrupted or prevented from being heard with respect to the gang rape that she claims to have endured, or that the RPD refused to hear the details of her story.

[46] The fact that the RPD and the RAD did not further emphasize the gang rape can be easily explained. Ms. Mavangou's claim for refugee protection was based on her alleged relationship with Mr. Eboa and the fears of persecution by his wife, Ms. Ndenguet, the daughter of a well-known general in the Congo. At no time did Ms. Mavangou allege any fear of persecution because of sexual abuse unrelated to Ms. Ndenguet or because of her Southern ethnic background. Her entire claim for refugee protection revolved around her relationship with Mr. Eboa and his marital relationship with Ms. Ndenguet, the persecutor whom Ms. Mavangou feared.

[47] The RAD considered Ms. Mavangou's entire story before concluding that she lacked credibility. Since the gang rape was described as having been ordered by Ms. Ndenguet in response to the relationship between her husband and Ms. Mavangou, and since the relationship was not considered credible, it was reasonable for the RAD to conclude that Ms. Ndenguet had not sent men to assault Ms. Mavangou and to attach little importance to the allegation of gang rape as part of Ms. Mavangou's claim for refugee protection. If the evidence does not establish that the relationship with Mr. Eboa existed, there is no reason for Ms. Ndenguet to have ordered Ms. Mavangou's assault and to seek to persecute her.

[48] Moreover, contrary to Ms. Mavangou's argument, the Decision did not fail to take into account the Guideline. On the contrary, the RAD refers to it expressly at the beginning of its analysis. The Guideline is not intended to compensate for all omissions or deficiencies in a refugee protection claim or its supporting evidence (*Ismail v Canada (Citizenship and Immigration)*, 2016 FC 446 at para 26). It also does not require that all documents and

allegations be accepted at face value, but rather is designed to ensure a fair hearing (*Odurukwe v Canada (Citizenship and Immigration)*, 2015 FC 613 at para 40).

[49] For an administrative decision maker to take the Guideline into account in a meaningful way, it has to assess a claimant's testimony while being alert and sensitive to her gender, to the social, cultural, economic and religious norms of her community, and to the factors that may influence the testimony of women who have been the victims of persecution (*Odia v Canada (Citizenship and Immigration)*, 2014 FC 663 [Odia] at para 9). In *Boluka v Canada (Citizenship and Immigration)*, 2015 FC 37, Mr. Justice Gagné summarizes the application of the Guideline in a judicial review context, at paragraph 16:

> [16] The applicant is required to demonstrate a lack of understanding or insensitivity on the RPD's part to convince the Court that the Guidelines have not been applied (*Sandoval Mares v Canada (Minister of Citizenship and Immigration)*, 2013 FC 297 at para 43). Further, this Court has found that the RPD's failure to specifically refer to the Guidelines in its reasons does not, in and of itself, demonstrate insensitivity (*Akinbinu v Canada (Minister of Citizenship and Immigration)*, 2014 FC 581) and mere failure to consider the Guidelines is not fatal to a decision (*Higbogun*, above at para 65).

[50] In this case, Ms. Mavangou has not convinced me that the RPD or the RAD failed to show appropriate compassion or sensitivity in assessing her testimony. I agree that it is not enough for the RPD or the RAD to say that the Guideline has been considered or applied to conclude that it has been observed and followed. The decision must also show that it has been applied sufficiently (*Odia* at para 18). In my opinion, the RAD's reasons and the RPD hearing transcripts illustrate the compassion and sensitivity shown by the RPD and the RAD towards Ms. Mavangou. The Guideline is meant to ensure that gender-based claims are heard with

compassion and sensitivity and, although the RPD and the RAD ultimately found that Ms. Mavangou lacked credibility, I am satisfied that both the RPD and the RAD followed the letter and spirit of the Guideline fully in this case.

IV. Conclusion

[51] For the reasons above, Ms. Mavangou's application for judicial review is dismissed. I do not find anything irrational or arbitrary in the RAD's findings of fact. Rather, I find that the RAD's analysis of the admissibility of the new evidence and of Ms. Mavangou's lack of credibility and her assessment of the evidence has the required qualities of transparency, justification and intelligibility, and that there is no reviewable error in the Decision. The reasonableness standard requires only that the decision under judicial review fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. That is the case here.

[52] None of the parties has proposed any questions of general importance to be certified, and I agree that there are none.

JUDGMENT in IMM-3722-18

THE COURT ORDERS that

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

2. No question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
This 14th day of March 2019

Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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