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Docket: IMM-6122-19

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[ENGLISH TRANSLATION]

Montréal, Quebec, October 21, 2020

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

KOKO KIAMUANGANA LUBAMBA PAULO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Koko Kiamuangana Lubamba Paulo, is a citizen of Angola. He is seeking judicial review of a Refugee Appeal Division [RAD] decision, dated September 17, 2019 [Decision]. The RAD affirmed the Refugee Protection Division [RPD] decision rejecting Mr. Paulo's refugee protection claim and denying him the status of a refugee or a person in need

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

[2] Mr. Paulo is now seeking judicial review of the RAD's Decision. Mr. Paulo alleges that the RAD erred in rejecting his refugee protection claim and submits that the Decision is unreasonable on three main grounds: (1) the RAD unreasonably analyzed the medical report filed in support of the claim, among other things, because of a determinative translation error, which resulted in a violation of the rules of natural justice; (2) the RAD drew unreasonable conclusions regarding the existence and seriousness of contradictions alleged against him; and (3) the RAD erroneously concluded that he had no fear of persecution because of his return to Angola. Mr. Paulo is asking the Court to set aside the Decision and to refer the matter back to the RAD so that his claim may be reconsidered by a differently constituted panel.

[3] For the reasons set out below, I will dismiss Mr. Paulo's application. After considering the RAD's reasons and conclusions, the evidence that was before it and the applicable law, I see no reason to set the Decision aside. First, I am not satisfied that, in these circumstances, the translation error identified by Mr. Paulo following the RAD's Decision is a serious and significant error violating the rules of procedural fairness. Second, the evidence on the record and the numerous contradictions in Mr. Paulo's testimony reasonably support the RAD's negative findings regarding his credibility and the absence of a fear of persecution. The RAD's reasons also possess the qualities making its reasoning logical and rational in light of the relevant legal and factual constraints. Therefore, there are no grounds for the Court's intervention.

II. Background

A. *Facts*

[4] Mr. Paulo is a citizen of Angola. Until December 2016, he was employed by the company Sonangol [Sonangol], whose president, Isabel Dos Santos, is the daughter of Angola's then president, José Eduardo Dos Santos.

[5] Mr. Paulo alleges that, after he publicly criticized decisions made by Sonangol in November 2016, he was threatened and humiliated by his supervisors and colleagues, which led to his being kidnapped from November 29 to December 3, 2016. During his kidnapping, he was severely physically and psychologically abused before being released. Since he already had a business trip to Portugal planned, Mr. Paulo fled there for about two weeks at the beginning of December 2016 in the hopes that the tension resulting from his kidnapping would dissipate. On his return to Angola on December 21, 2016, police officers came to his parents' home to arrest him, but he was able to hide while his father was beaten. A warrant for Mr. Paulo's arrest was then issued by Angolan authorities, according to him, because of his opposition to and criticism of decisions made by the Angolan president's daughter.

[6] On December 26, 2016, Mr. Paulo left Angola to seek asylum in the United States. He filed a claim for asylum there. However, fearing the anti-migrant policies prevailing in the United States at the time, Mr. Paulo ended up going to Canada, where he claimed refugee protection on April 11, 2017.

B. ***RPD and RAD decisions***

[7] Both the RPD and the RAD found Mr. Paulo not to be credible because of myriad contradictions between his refugee claim's account and his testimony before the Canadian immigration authorities.

[8] In its decision, the RPD first raised the contradictions in Mr. Paulo's description of his alleged kidnapping of November 29, 2016, particularly regarding the time of the kidnapping, the number of people who allowed him to flee on December 3 and his captors' motivations in letting him go. Thus, the version given to the American authorities describes a kidnapping that took place at "11 pm", while the Basis of Claim [BOC] Form states "1 pm" and Mr. Paulo's testimony "1 am". Although it could simply be a typo (a "1" missing from the BOC Form), the RPD considered that this was a contradiction between the time presented in writing (23:00 hours) and the time presented orally (1 o'clock in the morning). The RPD also noted a contradiction regarding the motivations of Mr. Paulo's captors, who apparently released him either out of compassion or for reasons of corruption after finding money on him.

[9] Then, the RPD raised inconsistencies regarding the doctor's visit following Mr. Paulo's kidnapping. In two short paragraphs, it identified contradictions regarding the fact that Mr. Paulo never mentioned being hospitalized in his BOC Form or his account to the American authorities, could not name the medical facility he had visited at the hearing and testified that he had been wounded in his left ear, while the medical report filed in evidence describes injuries to his right

ear. In its reasons, the RPD made no reference to what turned out to be a translation error with respect to Mr. Paulo's testimony about the nature of the injuries he sustained to his right foot.

[10] The RPD also noted a significant contradiction and omission at the heart of a central incident in Mr. Paulo's account, namely, the date of the police raid that took place upon his return to Angola and the issuance of a capture warrant at the time of that raid. In his BOC Form, Mr. Paulo stated that he returned from Portugal to Angola on December 20, 2016, and that [TRANSLATION] "the next day at dawn, on December 21, the police came and knocked on the door of my addition". However, his BOC Form does not match up with the stamp in his passport showing that he returned to Angola on December 21, 2016. In addition, Mr. Paulo's oral description of this alleged event includes the issuance of a capture warrant. However, the existence of such a document is completely omitted in his BOC Form. The RPD also questioned the authenticity of the capture warrant filed by Mr. Paulo given a contradiction between the name of the police department appearing in the letterhead and those contained in the objective evidence as well as a difference between the name of the person who signed the warrant and the name given as that of the person who approved the warrant.

[11] Finally, the RPD observed that Mr. Paulo behaved in a manner inconsistent with his alleged subjective fear of persecution because he failed to claim asylum in Europe when he was there in December 2016 and decided to return to Angola, where he had been kidnapped and tortured not long before. The RPD did not accept Mr. Paulo's explanation that a warrant had not yet been issued against him and that he believed that he could continue to live normally in Angola while keeping a low profile.

[12] Before the RAD, Mr. Paulo raised three main grounds of appeal: the RPD's "microscopic" analysis of his credibility, the lack of probative value attributed to his medical report, and the assessment of his subjective fear following his return to Angola. When he filed his appeal with the RAD, Mr. Paulo made no allegations regarding any translation error before the RPD. I also note that Mr. Paulo had submitted no new evidence and requested no hearing before the RAD.

[13] In the Decision, the RAD reviewed the evidence, analyzed the RPD's hearing transcript and noted multiple contradictions and inconsistencies in Mr. Paulo's testimony, which it organized in six different categories. The RAD thus reviewed the following factors in detail: (1) the facts related to the time of the alleged kidnapping of November 29, 2016; (2) the compassionate and pecuniary motives of Mr. Paulo's captors in releasing him; (3) the circumstances surrounding Mr. Paulo's hospitalization and medical report; (4) the date of his return to Angola in December 2016; (5) the capture warrant issued against Mr. Paulo; and (6) his failure to claim asylum in Europe in December 2016 before instead returning to Angola. More specifically, in its analysis of Mr. Paulo's medical report, the RAD noted, among other things, a contradiction between Mr. Paulo's testimony regarding the nature of his right foot injury (a burn) and the description in the medical report (a puncture wound). The RAD dedicated five paragraphs to Mr. Paulo's injuries and medical evidence, and, at the end of its analysis, it concluded that the RPD's decision was "correct" with respect to Mr. Paulo's medical problems.

[14] In the end, the RAD affirmed all of the RPD's analysis and determined that it had rendered the correct decision in light of the evidence on the record.

C. *Standard of review*

[15] Since *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the analysis framework for judicial review of the merits of an administrative decision now rests on the presumption that the reasonableness standard of review is the applicable standard in all cases (*Vavilov* at para 16). This presumption can be rebutted only in two types of situations. The first is where the legislature prescribes the applicable standard of review or has provided a statutory appeal mechanism from an administrative decision to a court. The second is where the issue under review falls into one of the categories of questions where the rule of law requires that the standard of correctness be applied (*Vavilov* at paras 10, 17; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post Corp*] at para 27). This will be the case for constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at paras 17, 53). None of these situations that warrant diverging from the presumption of reasonableness review applies in this case. The merits of the RAD's Decision will therefore be reviewed on the reasonableness standard.

[16] When the applicable standard is that of reasonableness, the role of a reviewing court is to examine the administrative decision maker's reasons and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corp* at paras 2, 31). The reviewing court must ask "whether the decision bears the hallmarks of

reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick,* 2008 SCC 9 [*Dunsmuir*] at paras 47, 74).

[17] It is not enough for the decision to be justifiable. Where reasons are required, the decision "must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86). Thus, reasonableness review is concerned with both the outcome of the decision and the reasoning process followed (*Vavilov* at para 87). I note that this view is also part of the *Dunsmuir* instruction that judicial review should focus on both the outcome and the process (*Dunsmuir* at paras 27, 47–49). That said, the reviewing court must concentrate on the administrative decision maker's decision itself, including its justification, not on the conclusion that the court would have reached if it was in the decision maker's shoes.

[18] Reasonableness review must include a rigorous evaluation of the merits of administrative decisions. However, as part of its framework for analyzing the reasonableness of a decision, the reviewing court must examine the reasons provided with "respectful attention" and seek to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of deference and intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). It is important to remember that reasonableness review finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers (*Vavilov* at paras 13, 75). The presumption of reasonableness review is based on "respect for the legislature's institutional design choice,

according to which the authority to make a decision is vested in an administrative decision maker rather than in a court" (*Vavilov* at para 46).

[19] That said, Mr. Paulo also submits that a translation error led the RAD to its erroneous findings and that such an error made by the interpreter is a breach of natural justice and the duty of procedural fairness. With respect to issues of procedural fairness, *Vavilov* has had no impact on the approach to be adopted by reviewing courts (*Vavilov* at para 23).

[20] The courts have generally ruled that the correctness standard should apply to determining whether an administrative decision maker complied with the duty of procedural fairness and the principles of natural justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). However, the Federal Court of Appeal has recently stated that questions of procedural fairness are not really decided according to any particular standard of review. Rather, it is a legal question to be answered by the reviewing court: it has to be satisfied that procedural fairness requirements have been met. Thus, when an administrative decision maker's duty to act fairly is at issue or when a breach of fundamental justice is relied on, the reviewing court must determine whether the procedure was fair having regard to all of the circumstances (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 54). The Court must, among other things, take into account the five contextual

factors making up the non-exhaustive list set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] (*Vavilov* at para 77).

[21] Questions of procedural fairness and the duty to act fairly do not concern the merits or the content of a decision. Rather, they relate to the process followed. Procedural fairness has two components: the right to be heard and the opportunity to respond to the case that a party must rebut; and the right to an impartial hearing before an independent tribunal (*Therrien (Re)*, 2001 SCC 35 at para 82). It is also well established that the requirements of the duty of procedural fairness are "eminently variable", inherently flexible and context-specific (*Vavilov* at para 77; *Dunsmuir* at para 79), and that they do "not reside in a set of enacted rules" (*Green v Law Society of Manitoba*, 2017 SCC 20 at para 53). The nature and extent of the duty will fluctuate with the various factual situations dealt with by the administrative decision maker as well as the nature of the disputes it must resolve (*Baker* at paras 23–27; *Suresh v Canada (Minister of Citizenship and Immigration*), 2002 SCC 1 at para 115). As the Federal Court of Appeal stated in *CPR*, "[n]o matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*CPR* at para 56).

[22] In sum, when procedural fairness is at issue and breaches of fundamental justice are alleged in an application for judicial review, the true question raised is whether, taking into account the particular context and circumstances at issue, the process followed by the administrative decision maker was fair and offered the parties a right to be heard and the

opportunity to know and respond to the case against them (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54).

III. Analysis

A. *Translation error*

[23] Mr. Paulo first alleges that the RAD's analysis of the medical report submitted in support of his refugee claim was unreasonable, particularly because of a determinative translation and interpretation error which, according to him, resulted in a breach of the rules of natural justice. This is the argument on which Mr. Paulo focused his submissions at the hearing before the Court and on which he is increasingly banking to justify the Court's intervention.

[24] In support of his argument, Mr. Paulo relies on the expert linguistic opinion of Normand Raymond, member of the Ordre des traducteurs, terminologues et interprètes agréés du Québec [order of certified translators, terminologists and interpreters of Quebec], which he filed in evidence. The linguistic opinion establishes that, at the hearing before the RPD, the interpreter made an error in the interpretation and translation of Mr. Paulo's testimony regarding his medical report. The interpreter stated that Mr. Paulo told the RPD that [TRANSLATION] "they put a hot iron on my right foot", whereas Mr. Paulo's statement in Portuguese, "Eles me picaram ferro no pé, no pé direito", should have been translated as [TRANSLATION] "They poked me with an iron in the foot, in the right foot". The Minister does not contest the translation error.

[25] According to Mr. Paulo, that error is material and determinative because it coloured the RAD's negative inferences regarding his credibility in the Decision. Mr. Paulo submits that these errors constitute a denial of natural justice and a breach of the duty of procedural fairness, warranting the Court's intervention.

[26] I am not persuaded by Mr. Paulo's arguments.

(1) Legal framework

[27] First, let us discuss the legal framework applicable to translation and interpretation errors that can occur before an administrative decision maker determining a refugee claim. Relying on the Federal Court of Appeal decision in *Mohammadian v Canada (Citizenship and Immigration)*, 2001 FCA 191 [*Mohammadian*], Mr. Paulo is correct in stating that a person claiming refugee protection is entitled to interpretation that is "continuous, precise, competent, impartial and contemporaneous" (*Mohammadian* at para 4). I would specify right away that a refugee claimant's right to reliable interpretation at a hearing before the RPD is protected by section 14 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11. Therefore, it is not something that reviewing courts take lightly.

[28] The standard of translation and interpretation is strict, but it is not necessary for translations to be flawless. Mr. Paulo does not dispute that translations are not required to be perfect and that any errors identified must be serious, material and non-trivial to attain the threshold for a breach of procedural fairness (*Tsigehana v Canada (Citizenship and*

Immigration), 2020 FC 426 [*Tsigehana*] at para 18; *Siddiqui v Canada (Citizenship and Immigration)*, 2015 FC 1028 [*Siddiqui*] at paras 68–72; *Bidgoli v Canada (Citizenship and Immigration)*, 2015 FC 235 [*Bidgoli*] at para 12; *Mah v Canada (Citizenship and Immigration*), 2013 FC 853 [*Mah*] at para 26).

[29] Regarding the significance of errors, the standard requires that translation or interpretation errors influence "the heart of the RPD's decision", "[give] rise to one or more of the determinative findings" and "affect a central aspect of the RPD's conclusions" to lead the Court to find that a deficient translation is a breach of procedural fairness (*Thsunza v Canada (Citizenship and Immigration)*, 2014 FC 1150 at para 41). Thus, according to several decisions of this Court, the translation error "must be material to the [decision maker's] credibility findings" (*Batres v Canada (Citizenship and Immigration)*, 2013 FC 981 at para 12; *X.Y. v Canada (Citizenship and Immigration)*, 2020 FC 39 [*X.Y.*] at paras 32–33; *Gebremedhin v Canada (Citizenship and Immigration)*, 2017 FC 497 [*Gebremedhin*] at para 14). For others, it is not necessary to show that the translation error was material to the decision maker, but merely to establish that the error itself was real and significant (*Akkaya v Canada (Citizenship and Immigration)*, 2015 FC 1162 at para 22). However, "once an applicant establishes that there was a real and significant translation error, he or she is not required to also demonstrate that the error underpinned a <u>key finding</u> before the RPD decision can be set aside" [emphasis added] (*Mah* at para 26; *Bidgoli* at para 13). In sum, the translation error must not be immaterial, insignificant or inconsequential.

[30] I would add that, if the translation does not meet these criteria, refugee claimants do not have to prove that they actually suffered prejudice (*Mohammadian* at para 4; *Casilimas Murcia v Canada (Citizenship and Immigration)*, 2019 FC 1182 [*Casilimas Murcia*] at para 56; *Batres* at para 12).

[31] Even though the standard for translation is not perfection, the translation must still always be continuous, precise, competent, impartial and contemporaneous (*Mohammadian* at paras 4–6, 16; *Gebremedhin* at para 13). The important principle is that of "linguistic understanding" (*R v Tran*, [1994] 2 SCR 951 at p 977; *Mohammadian* at paras 6, 16). Put another way, the question is whether the refugee claimant was allowed to tell his or her story, to understand the process and to be understood by the administrative decision maker (*X.Y.* at paras 32–33; *Batres* at paras 10–13). Thus, to constitute a breach of procedural fairness, translation errors must have a certain degree of seriousness and be of the nature that hinders the refugee claimants' ability to answer questions and to present their case to the decision maker.

[32] Accordingly, even though Mr. Paulo need not demonstrate actual prejudice, he must nonetheless show that the alleged translation error was serious and non-trivial, that it hindered his ability to present his allegations and to answer questions and that it was material to the RAD's findings. Any lower standard would demand perfection of the translation and interpretation, which is not the applicable test (*Gebremedhin* at para 14). Finally, I note that the onus is on Mr. Paulo to prove that the alleged error was serious and material to the RAD's findings (*Kidane v Canada (Citizenship and Immigration)*, 2019 FC 167 at para 23).

(2) No breach of procedural fairness

[33] In this case, I am of the view that Mr. Paulo's allegations of a breach of procedural fairness must fail because the alleged translation error was not a serious or non-trivial error that was material to the RAD's findings on Mr. Paulo's credibility. Those findings were rather based on numerous elements, and the alleged error was just one ingredient among many others. Furthermore, in Mr. Paulo's particular circumstances, the alleged translation error had no impact on his hearing before the RPD, on the decision rendered by the RPD or on Mr. Paulo's right to be heard and to present his allegations.

a) *Alleged error is minor*

[34] Mr. Paulo did not satisfy me that the translation error identified in Mr. Raymond's linguistic opinion may be considered serious, non-trivial and material to the RAD's findings. In my view, that error is not sufficient to vitiate the RAD's Decision or its findings as to Mr. Paulo's lack of credibility either with regard to his medical problems or in a more overall sense. When the decision is analyzed in its entirety by means of the holistic approach prescribed by *Vavilov*, it becomes clear that the translation error alleged by Mr. Paulo was not material to the RAD's findings. Quite the contrary, the RAD's analysis was based on a series of elements that went well beyond the identified translation error and enabled it to uphold the RPD's findings regarding Mr. Paulo's lack of credibility. In other words, the alleged error is far from reaching the threshold for a breach of procedural fairness. Since the error was not "significant" and therefore did not cross that first threshold of the analysis, I do not need to determine whether it underpinned a "key finding" in the RAD's Decision.

[35] I am referring to a translation error, in the singular, as that is what we are dealing with in this case. It should be noted that Mr. Raymond's linguistic opinion was extremely limited in scope here. Far from dealing with the entire hearing before the RPD and from containing a complete analysis of the hearing transcript or the translation provided by the interpreter, the opinion covered a short segment of about eight seconds, strictly focused on the above-mentioned excerpt regarding the iron that was put on Mr. Paulo's right foot. I note that Mr. Paulo did not provide a side-by-side translation of the entire hearing before the RPD. Accordingly, the Court can only rely on a very short excerpt translated in the linguistic opinion (a few seconds of the hearing) to determine whether there was a breach of procedural fairness (*Nebret v Canada (Citizenship and Immigration)*, 2017 FC 769 [*Nebret*] at para 12).

[36] After carefully reviewing the record and considering the arguments raised by Mr. Paulo, I find that the alleged error is clearly of minimal significance. This is the case with respect to analyzing Mr. Paulo's medical problems, and even more so regarding considering the six factors the RAD focused on to reach its Decision upholding the RPD's findings. In addition, nothing in the evidence shows or even suggests that this error could have hindered Mr. Paulo's ability to convey his allegations, to answer questions or to present his refugee claim before the RAD or the RPD (*Siddiqui* at para 71).

[37] In its Decision, the RAD spent five paragraphs discussing Mr. Paulo's alleged medical problems following his alleged kidnapping on November 29, 2016. With respect to the contradictions, which undermined the credibility of Mr. Paulo's account, according to the RAD, the panel noted the following: the fact that his hospitalization and medical consultation were not

mentioned in his BOC Form; the confusion regarding where his consultation took place (hospital or medical office); the detailed and thorough exam that Mr. Paulo underwent (including medical and dental consultations) whereas his visit was reportedly short; and the contradiction regarding the injury he alleges was to his left ear, while the medical report mentions the right ear. The question of the puncture wound to his right foot as opposed to a burn from a hot iron—arising from the translation error—was only one of several factors which, according to the RAD, cast doubt on Mr. Paulo's medical condition. I am not satisfied that, in the circumstances, this error can be described as serious and significant. Moreover, the RPD did not allude at all to the injury to Mr. Paulo's right foot. In trying to boost the importance of that translation error and elevate it to the status of a breach of procedural fairness, Mr. Paulo has unfortunately fallen into the trap of that fragmented "treasure hunt" approach that reviewing courts must guard against when conducting a judicial review of an administrative decision (*Vavilov* at para 102).

[38] In addition, the analysis of the medical problems conducted by the RAD is part of a range of other sources of contradictions that the RAD thoroughly examined in its Decision before concluding that the RPD had rendered the correct decision in light of the evidence on the record. I will reiterate them. In addition to Mr. Paulo's hospitalization and his physical mistreatment, the RAD identified inconsistencies in the following: (1) the facts relative to the time of the alleged kidnapping on November 29, 2016; (2) Mr. Paulo's captors' compassionate and pecuniary motives for releasing him; (3) the date of his return to Angola in December 2016; (4) the capture warrant issued against Mr. Paulo; and (5) his failure to seek asylum in Europe in December 2016 and his decision to return to Angola instead. Each and every one of these factors was considered by the RAD in support of its findings that Mr. Paulo lacked credibility and its Decision to uphold

the RPD's decision. The circumstances surrounding Mr. Paulo's hospitalization and medical report, giving rise to the translation error, were therefore just one of several components supporting the RAD's Decision.

[39] I must therefore find that the excerpt that Mr. Paulo is insisting on to have the RAD's Decision overturned is used out of context and without the necessary nuances, illustrating even further the risks of the "treasure hunt" approach discouraged by the Supreme Court. Once the few seconds of erroneous translation are put back, as they should be, into the overall context of the Decision read as a whole, they surely lose the flair that Mr. Paulo would like them to have.

[40] I reiterate again that there is no evidence of other translation errors that affect any other finding of the RAD or the RPD. With the evidence before the Court, it is therefore hard to see how the translation error relied on could in itself be serious and non-trivial and how it could have significantly influenced the outcome of the RAD's analysis. In addition, Mr. Paulo did not show how this small translation error hindered his ability to present his case or to answer questions or was material to the RAD's findings. In other words, the alleged error is not sufficient to lead me to find that Mr. Paulo did not benefit from a continuous, precise and impartial interpretation service at the hearing before the RPD (*Mohammadian* at para 4).

[41] I do not agree with Mr. Paulo's opinion suggesting that, according to *Bidgoli*, it would be permissible to find that there was a breach of procedural fairness even when translation problems are trivial or not serious. Mr. Paulo may not be required to show that the translation error caused him actual prejudice or that a "key" finding in the RAD's Decision was based on that translation

error, but that exception does not extend to minor translation errors that do not hinder his ability to present his allegations and to answer questions. Based on the requirements of the case law, to be able to find that there was a breach of procedural fairness, the translation must present serious and non-trivial problems. A less stringent standard would require perfection, and one small error would be enough to justify holding a new hearing. However, that is not what the principles in *Mohammadian* or in all of the decisions that follow it teach us.

b) *Alleged error is at level of RAD*

[42] Another important factor distances the translation error alleged by Mr. Paulo from a beach of procedural fairness. It is the unusual context of Mr. Paulo's allegation regarding that translation error. I find this context particularly telling.

[43] Unlike what is usually the case when translation errors are alleged in an application for judicial review of an RPD or RAD decision, Mr. Paulo's application regarding the RAD's Decision is one in which the issue of the translation error was not raised either before the RPD or the RAD. It was only when he read the RAD's Decision that Mr. Paulo noticed a translation error in the hearing transcripts that the RAD relied on in its Decision. I also note that Mr. Paulo filed the RPD hearing transcript with the RAD without pointing out any translation errors in it. Mr. Paulo's situation is therefore profoundly different from such precedents as *Mah, Siddiqui* or *Bidgoli* on which he relies heavily in his submissions.

[44] There is no doubt that the translation error that Mr. Paulo is alleging today was completely immaterial to the RPD's decision on Mr. Paulo's credibility since, in its reasons, the RPD made no reference to the excerpt now being impugned.

[45] As the Minister argued at the hearing, it is important to put everything in the context of the role the RAD plays in appeals from RPD decisions (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 [*Kreishan*] at paras 41–44). The RAD essentially acts as a "safety net" and catches errors of fact or law that may have been made by the RPD (*Kreishan* at para 41, citing *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 88, 98). In exercising its role as an appeal tribunal, the RAD conducts an independent analysis, and it must review the RPD's decisions on the correctness standard (*Kreishan* at para 43). Correctness before the RAD offers appellants the hope that a second hearing, albeit on the same record and without oral evidence, will generate a different result (*Kreishan* at para 45). But, in this case, the RAD did not point out any errors by the RPD that would involve the translation at issue.

[46] Mr. Paulo was unable to identify any precedents similar to the situation before me today, namely, a case where the translation error was never raised before the RPD or the RAD, where the translation error clearly had no impact on the RPD's decision and where the translation error emerged only after the RAD's decision was rendered. The Court was able to list about ten decisions where an issue of translation and the principles in *Mohammadian* and *Mah* were considered in the context of an application for judicial review of an RAD decision (*Tsigehana*; *Dalirani v Canada (Citizenship and Immigration)*, 2020 FC 258; *X.Y.*; *Casilimas Murcia*; *Defaite v Canada (Citizenship and Immigration)*, 2019 FC 620; *Nebret*; *Gebremedhin*; *Abegaz v*

Canada (Citizenship and Immigration), 2017 FC 306; *Siddiqui*). None of them involved a situation like that of Mr. Paulo. In all cases, the translation error issue was raised beforehand, either before the RPD or the RAD, and involved a translation error that had some impact (although it was not always "significant") on the RPD's original decision. They all dealt with situations where the translation errors occurred during the first hearing before the RPD and could be of such nature as to violate the claimants' right to be heard and to be able to present their cases.

[47] Even though, at the hearing before the Court, Mr. Paulo and his counsel ably attempted to use the principles of procedural fairness and natural justice to describe the translation error at issue, I am of the view that they are not at all at play in this case. We cannot automatically equate a translation error to a breach of procedural fairness. On the contrary, the Court's case law, discussed earlier, states that translation errors must meet certain requirements before they can be characterized as a breach of procedural fairness. For example, they must meet the requirement of being sufficiently serious and significant. However, in Mr. Paulo's case, the alleged translation error is far from being sufficiently significant and determinative to constitute a breach of natural justice.

[48] I reiterate that procedural fairness takes into account the particular context and circumstances of the case and ensures that the process followed by the administrative decision maker is fair and provides the parties with the opportunity to be heard and to be informed of the evidence to be rebutted and to respond to it. In Mr. Paulo's case, I see nothing that could lead me to conclude that the alleged translation error in the RAD's Decision infringed on his "right to be

heard" or the full and fair opportunity to exercise his rights with regard to his refugee protection claim.

[49] I would also add the following comment. There is certainly a line of decisions according to which any breach of the principles of procedural fairness, particularly of the right to be heard, must result "in the incorrect decision being set aside, without regard to the effect the violation might have had on the decision" (*Girouard v Canada (Attorney General)*, 2020 FCA 129 at para 95; *Cardinal c Director of Kent Institution*, [1985] 2 SCR 643 at para 23). However, as the Supreme Court notes in *Vavilov*, that statement is not absolute, and an exception must be made when the error made by an administrative decision maker is not determinative and the outcome would inevitably have been the same without the breach (*Vavilov* at paras 140–142; *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 [*Mobil Oil*] at pp 228–230; *Entertainment Software Assoc. v Society Composers*, 2020 FCA 100 [*Society Composers*] at paras 99–100; *Robbins v Canada (Attorney General)*, 2017 FCA 24 at paras 16–22). The reviewing courts' discretion to grant or not grant remedies exists in the contexts of both procedural errors and substantive defects (*Society Composers* at para 99).

[50] In the same spirit as what I stated in *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 [*Dugarte de Lopez*] regarding a decision that is "unreasonable" on its merits, I am of the view that reviewing courts' discretion not to remit to an administrative decision maker a decision that has an unreasonable breach of procedural fairness must be exercised carefully, prudently and sparingly and be limited to rare cases where the context can *inevitably* only lead to one outcome or there is no doubt about the result. Even if I found that

there had been a breach of procedural fairness because of the translation error alleged by Mr. Paulo, I am of the opinion that we would have found ourselves in one of those exceptional situations described in *Mobil Oil*. In other words, with or without a translation error, the RAD's conclusion upholding the RPD's decision and rejecting Mr. Paulo's refugee protection claim would have been inevitable.

B. ***Mr. Paulo's contradictions and credibility***

[51] Mr. Paulo also submits that the RAD drew unreasonable conclusions regarding the existence and seriousness of the contradictions alleged against him and that this is another ground requiring the Court's intervention with respect to the merits of the RAD's Decision. Mr. Paulo identified a series of contradictions raised by the RAD which he considers to be the result of a "microscopic" analysis of the facts. However, according to him, not every inconsistency and contradiction can authorize the RAD to draw a negative inference on a refugee claimant's overall credibility (*Mohacsi v Canada (Minister of Citizenship and Immigration)*, [2003] 4 FC 772 [*Mohacsi*] at para 20).

[52] Thus, regarding the contradictory explanation about being released by his captors, Mr. Paulo does not believe there is a contradiction between the fact that his captors released him for compassionate reasons and the fact that they received money from him for letting him go. In addition, according to Mr. Paulo, the RAD should not have faulted him for being mistaken about the date of the police visit when he testified that they came to his home on December 20, while he returned to Angola on December 21. Mr. Paulo argues that this error is explained by his long

return trip to Angola involving three layovers over two time zones. In any case, Mr. Paulo maintains that he was always consistent regarding the timing of the police visit, that is, the same day that he returned to Angola. Mr. Paulo also claims that the RAD unreasonably concluded that the time of his kidnapping did not match in the version provided to the American authorities and that in his BOC Form. Mr. Paulo maintains that the translation program used caused this error. In any event, he argues that the discrepancy between the two stories is not significant since both place the kidnapping early in the night. Mr. Paulo submits that he provided a reasonable explanation in his appeal memorandum to justify these minor inconsistencies.

[53] Regarding his hospitalization and his injuries following his kidnapping, Mr. Paulo considers that the RAD was unreasonable in analyzing his medical report, identifying non-existent contradictions. Thus, Mr. Paulo submits that, in its reasons, the RAD raised an erroneous contradiction regarding the fact that he testified that he had sought care in a hospital while the medical certificate indicates a medical clinic, namely, the Jadelle Medical Office (which is part of the hospital). He also criticizes the RAD for seeing a contradiction between the thorough medical exam that he claims to have undergone and his testimony that he stayed at the hospital for only one or two hours. Finally, he maintains that the RAD erroneously accepted that the medical report clearly indicates that Mr. Paulo was seen by the departments of medicine and dentistry, whereas he did not mention seeing two doctors.

[54] I do not agree with Mr. Paulo’s allegations, and I do not accept his reading of the Decision.

[55] In *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*], I summarized the principles governing the way an administrative decision maker like the RPD or RAD must assess the credibility of refugee claimants (*Lawani* at paras 20–26). Applying these principles, I find that the RAD's Decision is reasonable in every respect. In Mr. Paulo's case, the discrepancies in the evidence filed and the accumulation of contradictions and inconsistencies concerning crucial elements of his refugee protection claim amply support the negative finding made by the RAD regarding his lack of credibility (*Lawani* at para 21). In addition, the negative credibility findings did not result from minor contradictions that were secondary or peripheral to Mr. Paulo's claim; they went straight to the heart of his account, namely, the circumstances surrounding his alleged kidnapping, the injuries resulting from it, his release and his return to Angola.

[56] I do not dispute that not every inconsistency or implausibility can justify a negative credibility finding. Indeed, an administrative decision maker must not conduct an over-vigilant analysis of the evidence or a microscopic examination of irrelevant or peripheral details of the claimant's refugee claim. A negative credibility finding should not be based on a "microscopic" analysis of issues irrelevant or peripheral to the claim (*Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA) [*Attakora*] at para 9; *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 [*Cooper*] at para 4; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 116 [*Lubana*] at para 11). However, although they may be insufficient when examined individually or in isolation, the accumulation of contradictions, inconsistencies and omissions concerning the crucial elements of a refugee claim may support an adverse finding regarding a claimant's credibility (*Sary v Canada (Citizenship*

and Immigration), 2016 FC 178 at para 19; *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 at para 1).

[57] Upon reading the medical report and the evidence on the record, I am not satisfied that the contradictions raised by the RAD were unreasonable. It is not true that the medical report submitted by Mr. Paulo perfectly matched his testimony. For example, Mr. Paulo completely glosses over the issue of his ear injury, regarding which the reference to the right ear in the medical report directly contradicts his testimony regarding damage to his left ear. Therefore, I am of the view that it was open to the RAD to see in some parts of the medical report (for example, the references to a [TRANSLATION] "medical office", to the departments of medicine and dentistry and to the injury to the right ear) contradictions between the report and Mr. Paulo's testimony on these topics, and to conclude that the differences identified discredited his health condition following his kidnapping. I note that Mr. Paulo's kidnapping was at the heart of his refugee claim and of his fear of persecution, and it certainly merited to be examined thoroughly and closely by the RAD.

[58] I would point out that the issue before me is not whether the interpretations proposed by Mr. Paulo may themselves be defensible, acceptable or reasonable. I must rather ask that question with regard to the RAD's interpretation. The fact that there may be other reasonable interpretations of the facts does not in itself mean that the RAD's interpretation was unreasonable. Doing so would amount to indirectly applying the correctness standard, which *Vavilov* expressly instructs reviewing courts not to do.

[59] Furthermore, I am not persuaded that the RAD's analysis can be described as "microscopic". I will address the "microscopic" approach argument, which is a popular refrain in Mr. Paulo's submissions and on which he relies a great deal in seeking to have the RAD's Decision set aside. With all due respect, I am of the view that Mr. Paulo is mistaken about the meaning of the precedents relied on and the situations where a "microscopic" approach may result in the Court's intervention. Indeed, Mr. Paulo completely disregards an essential dimension of the authorities he cites regarding the "microscopic" approach issue. As the Court clearly explained in *Attakora*, *Lubana* and *Mohacsi*, an administrative decision maker's approach cannot be called "microscopic" (and result in a reviewing court's intervention) unless it clings to issues that are irrelevant or peripheral to the refugee claimant's claim.

[60] An analysis cannot be called "microscopic" or over-vigilant because it is exhaustive. It is not the thorough, detailed and rigorous nature of the analysis or examination conducted by an administrative decision maker that makes it "microscopic". Quite the contrary, such an approach reflects the rigour that we have the right to expect from an administrative decision maker's analysis. I would even say that such rigour is expected to satisfy the requirement for a "justified" decision established in *Vavilov*. An administrative decision maker's analysis veers towards being "microscopic" when it delves into peripheral issues and examines contradictions that are insignificant or irrelevant to the purpose of the refugee claim. In that case, the Court's intervention may be required.

[61] In this case, the analysis conducted by the RAD in no way targeted contradictions or inconsistencies irrelevant, insignificant or peripheral to Mr. Paulo's persecution allegations.

Quite the contrary, the factors found in the RAD's reasons concerned specific events which were right at the heart of Mr. Paulo's account supporting his refugee claim. In sum, the RAD's Decision cannot be pejoratively described as "microscopic" as Mr. Paulo seeks to do.

[62] I would add that the reasons for a decision do not need to be perfect or even comprehensive. They only need to be comprehensible and justified. The reasonableness standard does not concern a decision's degree of perfection, but only its reasonableness (*Vavilov* at para 91; *Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 29). The standard requires that the reviewing court start with the decision and with recognizing the fact that the administrative decision maker's first responsibility is to determine the facts. Such findings require deference. The reviewing court examines the reasons, the record and the outcome, and, if a logical and rational explanation justifies the outcome, the court refrains from intervening.

[63] Since *Vavilov*, the reasons provided by administrative decision makers have become more important and serve as the starting point for the analysis. They are the primary mechanism by which administrative decision makers show that their decisions are reasonable—both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They "explain how and why a decision was made", "demonstrate that the decision was made in a fair and lawful manner", and shield against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In sum, reasons help establish the justification for a decision. In Mr. Paulo's case, I am satisfied that the reasons for the RAD's Decision justify the decision in a transparent and intelligible manner (*Vavilov* at paras 81, 136; *Canada Post Corp* at paras 28–29; *Dunsmuir* at

para 48). They show that the RAD followed rational and logical reasoning in its analysis and that the Decision is justified in light of the relevant legal and factual constraints that bear on the RAD and on the issue (*Canada Post Corp* at para 30, citing *Vavilov* at paras 105–107). At the end of the day, the errors alleged by Mr. Paulo do not cause me "to lose confidence in the outcome reached by the decision maker" (*Vavilov* at para 123).

[64] In this case, I am satisfied that the RAD's reasoning can be traced without encountering any fatal flaws in its logic or rationality and that the reasons contain a line of analysis that could reasonably lead the RAD from the evidence before it and the relevant legal and factual constraints to the conclusion at which it arrived (*Vavilov* at para 102; *Canada Post Corp* at para 31). The Decision does not suffer from a serious shortcoming that would hamper the analysis and that would be likely to undermine the requirements of justification, intelligibility and transparency. Finally, Mr. Paulo's arguments regarding the contradictions and inconsistencies first and foremost express his disagreement with the RAD's assessment of the evidence. Mr. Paulo, in fact, invites the Court to prefer his opinion and his reweighing of the evidence to the RAD's analysis. However, that is not the role of a reviewing court in judicial review.

C. *Return to Angola*

[65] Lastly, Mr. Paulo submits that the RAD unreasonably concluded that his return to Angola following his stay in Europe established a lack of fear of persecution and once again undermined his credibility. He argues that he clearly explained that, at that time, he was not yet being sought

by the police and that he had returned to his country to see if the tensions and risk to his life had dissipated so that he could stay in Angola. According to Mr. Paulo, the RAD erroneously concluded that, despite the absence of an arrest warrant when he departed for Europe, a person having a legitimate fear in Mr. Paulo's situation would have claimed asylum in Europe after being kidnapped, without returning to Angola.

[66] Once again, I disagree with Mr. Paulo and am of the view that it was reasonable for the RAD to conclude as it did.

[67] Mr. Paulo explained that his captors did not know where he lived. Accordingly, he reasonably thought that he could be safe staying in Luanda, the capital of Angola. Mr. Paulo wanted to go back to normal life in his country, which, according to him, is a plausible explanation. But that is not the issue. The issue is whether the RAD's interpretation of the evidence was reasonable. I see nothing unreasonable in concluding that a refugee claimant's voluntary return to a country where he alleges to have been kidnapped, tortured and persecuted barely three weeks after his kidnapping, which he alleges to be at the source of his fear of persecution, is not behaviour consistent with that of a person legitimately fearing persecution. Regardless of whether an arrest warrant had been issued against him at the time, Mr. Paulo's decision to return to Angola was rather inconsistent with the fear of persecution that he claimed to have in that country.

IV. Conclusion

[68] For the above reasons, Mr. Paulo's application for judicial review is dismissed. I find nothing irrational in the decision-making process followed by the RAD or in its findings regarding Mr. Paulo's lack of credibility. Rather, I find that RAD's analysis of Mr. Paulo's contradictions and inconsistencies bears the required hallmarks of transparency, justification and intelligibility and that the Decision is not tainted by any reviewable error. Under the reasonableness standard, it is sufficient for the Decision to be based on an internally coherent and rational chain of analysis and to be justified in light of the legal and factual constraints that bear on the decision maker. That is the case here.

[69] Furthermore, the RAD complied with the rules of procedural fairness in every respect in its treatment of Mr. Paulo's file, and the translation error identified by Mr. Paulo in the RAD's Decision does not have the attributes of seriousness and significance needed to constitute a breach of procedural fairness warranting the Court's intervention.

[70] Neither of the parties proposed a question of general importance to be certified, and I agree that none arises.

JUDGMENT in IMM-6122-19

THIS COURT'S JUDGMENT is as follows:

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

2. No serious question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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