



Date: 20230331

Docket: IMM-2763-22

Citation: 2023 FC 440

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 31, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

HELEINE NZOUANKEU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Heleine Nzouankeu, a citizen of Cameroon, is seeking judicial review of a decision of the Refugee Appeal Division [the RAD] dated March 2, 2022, dismissing her appeal and confirming the earlier determination of the Refugee Protection Division [the RPD]. The RAD determined

that the RPD had been correct in concluding that Ms. Nzouankeu was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Immigration Act].

[2] In its decision, the RAD noted that Ms. Nzouankeu had not adduced any new evidence in support of her appeal and, relying on subsection 110(6) of the Immigration Act, refused Ms. Nzouankeu's request for a hearing. The RAD then determined that the RPD had not breached the principles of natural justice and procedural fairness. With respect to the merits of the case, the RAD determined that (1) the RPD had not erred in conducting a selective analysis of the evidence contained in the National Documentation Package [NDP]; (2) the RPD had not erred in drawing a negative inference attributed to the lack of information provided in connection with the arrest of Ms. Nzouankeu's son; (3) the RPD had not erred in failing to consider the persecution suffered by her family 25 years earlier; (4) the RPD had not placed on Ms. Nzouankeu the burden of establishing, on a balance of probabilities, that the persecution she feared would in fact materialize; and (5) the RPD's uncontested findings were correct.

[3] Before the Court, Ms. Nzouankeu argued that the RAD had erred (1) in its assessment of the application of Chairperson's Guidelines 4 and 8; (2) in its analysis of the alleged grounds of persecution, specifically in its analysis of their intersectional nature; (3) in its selective analysis; and (4) in its refusal to acknowledge that credibility was not explicitly a determinative issue before the RPD.

[4] Ms. Nzouankeu is therefore asking the Court to set aside the RAD's decision and to return the matter to it for redetermination by a differently constituted panel.

[5] For the reasons set out below, and after a careful review of the record, I find no reason to allow this application for judicial review. On a reasonableness standard, Ms. Nzouankeu has not met her burden of demonstrating that the Court's intervention is warranted. I am therefore dismissing the application for judicial review.

II. Background

[6] In May 2017, Ms. Nzouankeu received a multiple-entry visitor visa from the Canadian authorities, and she entered Canada in August 2017. During her stay, she learned that her business in Cameroon had been set on fire by criminals. Ms. Nzouankeu left Canada in February 2018 and returned with her husband on September 20, 2018.

[7] On February 25, 2019, Ms. Nzouankeu travelled to Italy. In March 2019, her husband returned to Cameroon because their son had been arrested and falsely accused of having ties to the Cameroon Renaissance Movement [*Mouvement pour la Renaissance du Cameroun*, MRC]. On May 16, 2019, Ms. Nzouankeu returned to Canada and claimed refugee protection.

[8] On May 16, 2019, Ms. Nzouankeu signed her Basis of Claim Form. She stated that in October 2016, during social unrest in Bamenda, she fell and injured her foot while attempting to flee the clashes in the city. She alleged that she faces a risk of death should she return to Cameroon due to the general lack of security in Cameroon, in the context of which her spouse

and vinegar store was set on fire by unknown persons on October 22, 2017, and her son was detained by the Cameroonian police because they mistakenly believed that he had ties to the MRC. In addition, Ms. Nzouankeu further alleged that she faces a risk to her life because she is an ethnic Bamileke and a member of the particular social group of women, who face gender-related violence.

[9] In short, upon completing its analysis, the RPD found, on a balance of probabilities, that Ms. Nzouankeu had been the victim of indiscriminate violence in the northwestern region of the country, and that her son's clashes with the authorities were unlikely to have put him at any risk, so that neither those incidents nor the subsidiary elements she mentioned were sufficient to give rise to a serious possibility of persecution in the event of her return to Cameroon. The RPD therefore rejected her refugee protection claim.

[10] Ms. Nzouankeu appealed that decision before the RAD, adduced no new evidence and requested a hearing. Before the RAD, Ms. Nzouankeu argued that the RPD had erred in its assessment of the available evidence in the NDP, in conducting a selective assessment of the evidence, in drawing a negative inference attributed to the lack of information regarding her son's arrest and potential political activities, and in failing to consider an incident that had occurred 25 years earlier. Ms. Nzouankeu further argued that the RPD had erred in drawing a negative inference from her testimony when it identified the prospective risk as the sole determinative issue, preventing her from addressing existing doubts, and thus breached the principle of natural justice and procedural fairness. Lastly, Ms. Nzouankeu argued that the RPD

had erred in its application of the burden of proof required by section 96 of the Immigration Act in order for a claimant to be granted Convention refugee status.

[11] As we noted above, the RAD dismissed the appeal and confirmed the RPD's decision.

[12] The RAD concluded that the determinative issues were credibility, prospective risk and procedural fairness.

[13] With respect to the RPD's findings, which Ms. Nzouankeu did not challenge before it, the RAD concluded that they were correct. Those findings relate to (1) the absence of problems in Yaoundé in the seven months preceding her departure; (2) her failure to establish that the assault on her husband was in any way connected to her claim for refugee protection; and (3) the fact that she had not established a serious possibility of persecution on the basis of her membership in the social group of women.

III. Analysis

[14] Before the Court, Ms. Nzouankeu alleges that the RAD had erred (1) in its assessment of the application of Chairperson's Guidelines 4 and 8; (2) in its analysis of the alleged grounds of persecution, more specifically in its analysis of the intersectional nature of those grounds; (3) in conducting a selective analysis of the objective documentary evidence; and (4) in refusing to acknowledge that credibility was not explicitly a determinative issue before the RPD.

[15] The Minister has responded that the RAD had not erred (1) in its assessment of the application of Guidelines 4 and 8; (2) in its analysis of the grounds of persecution alleged by the applicant, more specifically in its analysis of their intersectional nature; (3) in conducting a selective and fragmentary analysis of the objective documentary evidence in support of the refugee protection claim; and (4) in refusing to acknowledge that credibility was not explicitly a determinative issue before the RPD.

A. *Standard of review*

[16] It is not in dispute that the applicable standard of review is that of reasonableness. Thus, since *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the framework for judicial review of the merits of an administrative decision now starts with a presumption that reasonableness is the applicable standard in all such cases (*Vavilov* at para 16). None of the parties disputes that this standard of reasonableness applies in this case, particularly with regard to the admissibility of new evidence before the RAD pursuant to subsection 110(4) of the IRPA.

[17] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). A reviewing court must consider the “outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). The reviewing court must therefore ask itself “whether the decision bears

the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

B. *Chairperson’s Guidelines 4 and 8*

[18] With respect to Guideline 8, the RAD clarified that the Guideline to which Ms. Nzouankeu referred in her appeal was Guideline 4 and not the Chairperson’s Guideline 8: (Procedures with Respect to Vulnerable Persons Appearing Before the IRB). The RAD pointed out that Ms. Nzouankeu was never identified as a vulnerable person and therefore Guideline 8 did not apply in this case. I note that there is no indication that such a request was made to the RPD, although Ms. Nzouankeu was represented by counsel, that the RPD should have acted on its own initiative or that an application for judicial review should necessarily be allowed because the RPD allegedly failed to consider the Guidelines. Ms. Nzouankeu has not shown that the RAD erred in this regard.

[19] In connection with Guideline 4 (Chairperson’s Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, effective date: November 13, 1996, Certified Tribunal Record at 83–94), the RAD noted that these Guidelines apply with respect to “vulnerable persons” and that the RPD is required to be sensitive to the fact that women from certain cultures where men do not share details of their political activities with their spouses, mothers or daughters may find themselves in a difficult position when questioned about the experiences of their male relatives. Here, however, the RAD noted that Ms. Nzouankeu had never claimed that

she was unable to explain her son's political activities because of the cultural context or for any other reason. On the contrary, she was categorical in asserting that he had never been involved in politics.

[20] The RAD considered Guideline 4 in its analysis, but Ms. Nzouankeu's testimony simply does not support the argument that the RAD should have considered that [TRANSLATION] "it was highly likely that she had never been made aware of the potential political activities of the men in her family because of her status as a woman". Lastly, with respect to Ms. Nzouankeu's inability to provide the exact date and length of her son's second detention, the RAD noted that the RPD had drawn no negative inference with respect to that portion of the evidence.

[21] The arguments put forward by Ms. Nzouankeu are not well-founded and do not warrant the Court's intervention.

C. *Analysis of the intersectional nature of the alleged grounds of persecution*

[22] On appeal, the RAD took note of the fact that the applicant had not disputed the RPD's finding on this point. Indeed, it is well established that it is not the RAD's role to supplement the weaknesses of an appeal before it (*Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at para 30). Under paragraph 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257, a refugee protection claimant's appeal memorandum must identify the RPD's errors that are the grounds of the appeal and where those errors are located (*Dhillon v MCI*, 2015 FC 321 at paras 18–20).

[23] Moreover, this Court has established that “[i]t is in fact well settled that a point which was not raised before an administrative tribunal cannot be considered in the judicial review of that decision. The reason for this is, first and foremost, because it is of the very essence of judicial review to rule on the questions put before the administrative authority and only on the reasons given in support of the decision rendered” (*Kaur v MCI*, 2006 FC 1066 at para 17. See also *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR at para 147; *Kajangwe v Canada (Citizenship and Immigration)*, 2022 FC 823 at para 21).

[24] This argument must therefore be rejected.

D. *Selective analysis of objective documentary evidence*

[25] Ms. Nzouankeu is of the opinion that the RAD erred in failing to consider the information contained in tab 2.7 of the NDP. She criticizes the RAD for failing to mention a passage that would corroborate her claim that the Bamileke are sometimes subjected to targeted persecution on the basis of their ethnic origin, notably because they are considered to be opponents of the government in power.

[26] The RAD considered this documentation in paragraph 19 of its decision, but found it to be of little relevance given the situation referred to therein and Ms. Nzouankeu’s situation. Indeed, the RAD noted that “the appellant’s [business] was in Bamenda, in the northwestern part of the country, in a region that is more than a six-hour drive from the regions mentioned in this document, and there is no reason to suspect support for government forces. Furthermore, she and her family subsequently settled in Yaoundé, in Centre Region, an Anglophone separatist region.”

The RAD did not indicate that the Bamileke might not be subject to persecution elsewhere in the country.

[27] Ms. Nzouankeu disagrees with the RAD's conclusion, but this does not justify the Court's intervention on judicial review. The Court's role is not to reweigh the evidence to arrive at a different outcome. The Court cannot substitute its own assessment of the evidence for that of the RAD in this case, even if it could have reached different conclusions (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at paras 3–5; *Mondragon v MCI*, 2015 FC 603 at para 18).

[28] Lastly, the arguments raised by Ms. Nzouankeu regarding the reasons for the fire at her business and the identity of the perpetrators do not point out any error on the part of the RAD.

E. *Credibility not explicitly a determinative issue before the RPD*

[29] As the Minister notes, credibility is always at stake in refugee protection claim hearings. No special notice needs to be given to the claimant. It is open to the decision maker to conclude that a claimant is not credible provided it provides reasons to support its conclusion. The RPD may decide at the hearing that credibility is an issue, even if the issue has not been raised before (*Ayimadu-Antwi v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1116 (TD) (QL), at paras 6–7; *Bains v Canada (Minister of Citizenship and Immigration)*; [1995] FCJ No 1146 (TD) (QL) at paras 11, 15; *Paranawithana v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1513 (TD) (QL) at para 5).

[30] In this case, there is nothing to indicate that the RPD identified prospective risk as the sole determinative issue. On the contrary, the RAD noted that the RPD had identified prospective risk and an internal flight alternative (IFA) as determinative issues at the outset of the hearing, but that at around 1:29 m of the hearing recording, the RPD notified counsel that the IFA would no longer be a determinative issue, but that it was adding a new issue, that of credibility. The RAD further noted that counsel addressed certain credibility issues in his ensuing questions and submissions. The RAD thus concluded that Ms. Nzouankeu had every opportunity to be heard on the credibility issues and that there was no breach of the principles of natural justice and procedural fairness. That argument is also without merit.

[31] Lastly, Ms. Nzouankeu also failed to establish that the RAD erred in referring to the burden of proof on a balance of probabilities to establish the factual basis. Rather, the RAD noted the RPD's conclusion that the applicant's evidence was insufficient to establish a serious possibility of persecution on the basis of her ethnic origin.

IV. Conclusion

[32] Ms. Nzouankeu has not demonstrated that the RAD's decision lacks the attributes of transparency, justification and intelligibility or that it was made in reviewable error. According to the reasonableness standard, the RAD's decision must be based on an internally coherent and rational analysis, and it must be justified in light of the legal and factual constraints that bear on the administrative decision maker. Such is the case here.

JUDGMENT in IMM-2763-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.
3. There is no award as to costs.

“Martine St-Louis”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

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