Federal Court  Cour fédérale

Date: 20230523

Docket: IMM-3840-22

Citation: 2023 FC 698

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 23, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

NARCISSE DITOMÈNE

Applicant

and

MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant is challenging a decision of the Refugee Protection Division [RPD] rendered on April 10, 2022, determining that he failed to establish his identity from the Democratic Republic of the Congo [DRC] and is therefore not a Convention refugee or a person

in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Immigration Act].

[2] The RPD also found that the applicant's refugee protection claim had no credible basis under subsection 107(2) of the immigration Act.

[3] For the reasons that follow, the application for judicial review is allowed. In short, on February 22, 2022, the applicant filed in evidence before the RPD what he presented as a certificate of Congolese nationality. The RPD stated in its decision that the applicant had "never had proof of Congolese nationality", and it did not deal with the certificate. The Court finds that this omission is a fatal error in the circumstances of this case and will therefore allow the application for judicial review.

II. Discussion

[4] The RPD's findings on the applicant's identity are reviewable on the standard of reasonableness. According to *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], the Court may intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[5] Where the applicable standard of review is reasonableness, the Court's role 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). The 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 ask “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).

[6] Before the Court, the applicant first submits that the RPD erred in making unreasonable findings of fact that are contradicted by the evidence before it or in failing to consider several critical elements that directly contradict its findings of fact. He submits that (1) the RPD's failure to address the applicant's nationality certificate is fatal; (2) the amount of evidence not mentioned in the decision and the lack of an analysis based on objective documentary evidence (an individual civil status record, a suppletory judgment and an original birth certificate, school report cards and a student card, a duplicate voter card, an original letter from the applicant’s mother, and several tertiary documents) irreparably vitiates the decision; and (3) the RPD erred when it stated that the applicant had Brazilian residence, despite the common understanding of the parties before it being that his status was that of a refugee protection claimant in Brazil.

[7] The applicant also submits that the RPD can only conclude that there is no credible basis if there is no credible evidence for it to recognize refugee protection status, and he adds that this is not the case here.

[8] One of the applicant’s arguments makes it possible to make a decision on this application since the RPD's failure to address the nationality certificate that the applicant filed in evidence is fatal in this case.

[9] It is not disputed that on February 22, 2022, the applicant filed in evidence before the RPD a certificate of Congolese nationality as well as a note from the DRC diplomatic mission stating that the applicant submitted an application for a DRC passport on February 9, 2022.

[10] It is also not disputed that, according to the Minister's representative’s submissions before the RPD, the applicant stated that he had included this certificate of Congolese nationality among the documents submitted in support of his application for a Congolese passport.

[11] The RPD noted the documents that the applicant filed in support of the said Congolese passport application, but it did not mention this certificate of Congolese nationality. The RPD then cited a document on the website of the DRC Embassy in Ottawa that lists the documents that applicants must submit in support of an application for a DRC passport. The RPD reproduced this list in its decision (paragraph 22), remarking that every applicant must first submit proof of Congolese nationality, in particular, a “certificate of nationality issued by the DRC Ministry of Justice and Human Rights”.

[12] The RPD noted that the applicant had never had proof of Congolese nationality as listed on the document list.

[13] The Minister acknowledges that the applicant did file in evidence a certificate of Congolese nationality that was allegedly issued in May 2019 (Certified Tribunal Record at pages 190 and 191). He adds that this document, like many others, did not come into the possession of the applicant until after his arrival in Canada and that even the applicant agrees that a person can get all the documents they want in the DRC (RPD reasons at paragraphs 27 and 28; Applicant's Record at page 178). The Minister adds that, as in the case of other documents requested from friends or acquaintances in the DRC, it is not clear what steps the applicant tookt o obtain this nationality certificate.

[14] I am sympathetic to these comments, but note that the RPD did not itself make or mention them. On the contrary, the RPD stated unequivocally that the applicant never had proof of Congolese nationality and consequently did not analyze the weight to be given to the said certificate.

[15] As the Court was in *Malungu v Canada (Citizenship and Immigration)*, 2021 FC 1400, I am aware that "[q]uestions of identity of a claimant are within the RAD's expertise and the Court should give it significant deference. The Court will only interfere if the decision under review lacks justification, transparency or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law (Dunsmuir v New Brunswick, 2008 SCC 9 at para 47)" (see also *Kagere v Canada (Citizenship*

and Immigration), 2019 FC 910 at para 11; see also *Woldemichael v Canada (Citizenship and Immigration)*, 2021 FC 1059 at para 25). However, I am satisfied that this is the case here and that the matter should be referred back to the RPD for redetermination.

[16] In this case, the Minister is asking the Court to reweigh a piece of evidence on the record and to interfere in the decision-maker's findings of fact in order to substitute its own, which the Court cannot do on judicial review (*Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67at para 61 [*Canada Post Corp.*]; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Thus, as I am unable to assess the weight to be given to this nationality certificate, and considering that it is a critical document for the purpose of establishing the applicant's identity, I must conclude that the RPD's error is fatal in the circumstances. Even a holistic reading of the decision does not lead to another conclusion. The RPD's decision does not demonstrate "an internally coherent . . . chain of analysis" given the evidence in the record.

III. Conclusion

[17] I therefore allow this application for judicial review.

JUDGMENT in IMM-3840-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed;
2. The Refugee Protection Division decision is set aside.
3. The matter is sent back to the Refugee Protection Division for redetermination.
4. There are no questions to certify.
5. No costs.

"Martine St-Louis"
Judge

Certified true translation
Janna Balkwill

FEDERAL COURT

SOLICITORS OF RECORD

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