

Federal Court



Cour fédérale

Date: 20250106

Docket: IMM-13705-23

Citation: 2025 FC 34

Ottawa, Ontario, January 6, 2025

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MAHAMOU DOUKOURE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Mali who entered Canada on March 26, 2019 on a student visa. Two years later, he applied for refugee protection, claiming he received a threatening phone call from an unidentified person in January 2021 warning him that if he returned to Mali, he would suffer the same fate as his father and brother, who went missing in December 2020.

[2] In his Basis of Claim [BOC] form, the Applicant states that he fears the current political regime in Mali, specifically the military, who he suspects may have been involved in the disappearance of his two family members.

[3] The Refugee Protection Division [RPD] rejected the Applicant's claim. It concluded that while the Applicant's identity as a Malian national had been established, there remained issues relating to his identity. The RPD ultimately found that the Applicant was not credible and that the evidence he filed in support of his allegations failed to establish that there were serious reasons to believe he would be persecuted within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], or that he would be subjected to one of the risks set out in subsection 97(1).

[4] On appeal to the Refugee Appeal Division [RAD], the Applicant submitted that the RPD erred by concluding, on the one hand, that the Applicant had established his identity, and on the other hand, that the Applicant was not credible with respect to his identity. According to the Applicant, the RPD's reasoning was nonsensical.

[5] On appeal, the RAD confirmed the RPD's decision, but on the basis of its own analysis [Decision]. Prior to addressing the merits of the Applicant's appeal, the RAD issued a notice to the parties that it may consider a new issue [Notice], specifically whether the Applicant had established his identity in light of the decision in *Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903 [*Terganus*]. The parties were invited to provide comments that they

deemed useful, in particular with regard to the documentary and testimonial evidence upon which the RPD relied to conclude that the Applicant had established his national identity.

[6] The RAD observed in its Decision that had the RPD not only analyzed the Applicant's identity as a Malian national, but also his identity as a person, it should have concluded that the Applicant had failed to establish his identity. According to the RAD, several pieces of information produced by the Applicant cast doubt on his credibility. The RAD concluded that, since the Applicant's identity had not been established, the RPD was not required to analyze the Applicant's fear of being persecuted or of facing a risk to life or a risk of cruel and unusual treatment or punishment.

[7] The Applicant submits that the RAD erred in reversing the positive identity finding of the RPD. As explained further below, that is not my reading of the Decision. After careful review of the record before the RAD and the submissions provided by both parties, I conclude there are no grounds to intervene. As a result, the application is dismissed.

II. Analysis

[8] The Applicant takes issue with a number of findings made by the RAD.

[9] Since the adverse credibility findings made by the RPD formed the backdrop to the RAD's own analysis, I consider it useful to reproduce portions of those findings in that regard before addressing the Applicant's arguments:

[Translation]

26. The panel is of the view that the claimant hesitated a great deal while answering its questions and that the process for obtaining answers to the Minister's questions was wearisome. It took the panel one third of the three hours scheduled for the hearing on August 23 to clarify issues concerning, for example, the forged passports and the identity of the claimant's parents, whose names according to the refugee protection claim are Maciré DOUKOURE (father) and Domo KEBE (mother), whereas according to the passports in the biometric report results, their names are Bakari SYLLA (father) and Dalla SYLLA (mother). The identity of the person who had been funding his studies in Canada since 2019 is a brother named Amadou SOW, whereas that person is not on the list of siblings declared in his refugee protection claim. Rather, the claimant declared his elder brother Moussa DOUKOURE to be the person who funded his studies. The name varies between the student visa application and the account in the claimant's BOC Form.

27. The Minister also raised the information on the identity of the person funding his studies in the study permit application submitted in June 2020. At the hearing, the claimant confirmed that his brother Moussa Doukoure funded his studies in Canada. The claimant stated that he did not know Amadou Sow—the name on the statement attached to the study permit application. The claimant explained that the Amadou Sow appearing in his study permit application as the guarantor might be the administrator of his brother's company account.

28. The panel concludes that the claimant has not been transparent, since he omitted information about using an alias and having previous United States visa applications refused. The panel notes the omissions and the difficulty in obtaining clear information related to questions asked throughout the process. The panel doubts the truthfulness of most of the information obtained during the hearing. The panel finds that the claimant has raised issues that seriously call into question his credibility.

A. *Personal Identity vs. National Identity*

[10] The Applicant submits that the RAD erred by distinguishing between “personal identity” and “national identity” in the Decision when these issues were never put to him on appeal. This argument has no merit.

[11] The Applicant was put on notice that the new issue being considered by the RAD was whether he had established his identity in light of the decision in *Terganus*. In that decision, the hearing judge upheld the RAD’s decision to accept the applicant’s national identity, while at the same time finding that the applicant did not establish his personal identity. It was in this light that the RAD requested the parties to address the issue of identity.

[12] While the Notice may not have referred to a specific paragraph in *Terganus* or raise a distinction between “personal identity” and “national identity,” on a plain reading of the decision, it is clear that it engages with the broad issue of identity. As stated at para 23 of the case, a claimant’s identity “remains the cornerstone of Canada’s immigration system. Identity establishes the uniqueness of an individual. It is what sets a person apart and differentiates him or her from all others.”

[13] Both section 11 of the IRPA and section 106 of the *Refugee Protection Division Rules*, SOR/2012-256 expressly provide that, to be recognized as a refugee, a claimant must first establish his or her identity on a balance of probabilities.

[14] It is well established that a claimant's identity is a preliminary and fundamental issue to their refugee protection claim. As Justice John Norris wrote in *Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064 at para 8: "[i]t is incontrovertible that proof of identity is a pre-requisite for a person claiming refugee protection"; in the absence of such proof, "there can be no sound basis for testing or verifying the claims of persecution or, indeed for determining the Applicant's true nationality."

[15] Identity necessarily refers to the personal identity of the claimant, such as their name and date of birth, as well as their national identity. This was recently underscored by Justice Norris in *Farah v Canada (Citizenship and Immigration)*, 2023 FC 503 at para 63, where he stated that "at a minimum," a claimant's identity "encompasses their personal identity and their nationality."

[16] In the present case, the RPD considered that the Applicant's identity "as a Malian national" had been established by means of his testimony, passport, birth certificate and certificate regarding his Malian baccalaureate. However, national identity does not establish personal identity and is insufficient by itself to establish a refugee claim: *Habib v Canada (Minister of Citizenship and Immigration)*, 2020 FC 538 at para 18. In the circumstances, the RAD cannot be criticized for taking a fresh look at the evidence and for coming to its own conclusion regarding the Applicant's identity. After all, if a claimant fails to establish both national and personal identity, this will be fatal to their claim for protection.

B. *Assessment of the Evidence*

[17] The Applicant submits that the RAD failed to properly assess the totality of the evidence before it. I am not persuaded by this argument.

[18] The record discloses that the RAD undertook a detailed review of the evidence, including the Applicant's submissions in response to the Notice, and provided clear and cogent reasons for making the findings that it did.

[19] By way of example, the RAD concluded that the Applicant's credibility in terms of establishing his personal identity was undermined by his unsatisfactory answers provided at the hearing regarding a false article the Applicant produced in an attempt to corroborate the information in his BOC form. The Applicant did not challenge the fact that the article is false on judicial review, and I am satisfied that the RAD's credibility finding is amply supported by the evidence.

[20] In another example, the Applicant admitted that he applied twice for a visa to the United States [US] using the name Sylla Mahamou and stating that Bakari Sylla and Dalla Sylla were his parents. The Applicant testified that he was not responsible for the information provided to the US authorities, which he acknowledged is false. To corroborate his story, the Applicant tendered into evidence a letter from an uncle, who admitted that he obtained a fraudulent passport for the Applicant, who was 15-years-old at the time. The Applicant submits that the

RAD was unreasonable by insinuating that the Applicant is not credible due to false information put forth by his uncle without his knowledge. However, that is not what the RAD did.

[21] As the RAD pointed out in its Decision, the Applicant contradicted himself at the hearing. First, he stated that he had called his uncle so that he would write a letter for him, but that the uncle refused to provide testimony because he was afraid. However, the Applicant later testified that he had not been in contact with his uncle since leaving Mali. He instead asked a friend to contact his uncle so that he would testify in the Applicant's favour and was informed that the uncle declined to do so. These are two fundamentally different accounts proffered under oath by the Applicant. The RAD did not fault the Applicant for failing to recall minor or peripheral details, but rather for providing contradictory testimony. In my view, it was reasonably open for the RAD to find that this contradiction undermined the Applicant's credibility.

[22] Beyond this, the RAD found that several pieces of information on the record cast doubt not only on the Applicant's credibility, but also on his personal identity. This included the information identified in the Notice, which is addressed below.

(1) Documents issued by the Lycée Complexe scolaire Soninké

[23] The RAD raised concerns with the educational documents produced by the Applicant, purportedly from the Lycée Complexe scolaire Soninké [Educational Documents], noting that they contained spelling mistakes in French that led it to doubt their authenticity.

[24] The Applicant submits that the RAD did not specifically set out what the errors were, or send follow up correspondence to detail the errors. According to the Applicant, this prevented him from properly responding to the concerns raised by the RAD, amounting to a breach of procedural fairness. I disagree.

[25] First, the Applicant does not deny there are a number of spelling mistakes in the Educational Documents. Second, there is no evidence before me that the Applicant or his counsel were unable to identify the spelling mistakes. Third, there is no indication that the Applicant requested further details regarding the spelling mistakes before providing his submissions in response to the Notice. In the circumstances, no procedural fairness issue arises on the facts.

[26] The Applicant submits that the RAD erred by failing to explain why it considered the spelling errors to be so significant as to doubt the authenticity of the documents. The Applicant maintains that there are numerous spoken and written languages in Mali, even if French is the official language, and this could lead to minor typographical and grammatical errors.

[27] I am mindful that this Court has held that “a handful of spelling, grammar and typographical errors cannot suffice” to find fault with the authenticity of a foreign document: *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paras 22-25. However, I cannot agree with the Applicant that the Educational Documents contain only minor typographical errors. The RAD identified a number of issues with the content of the documents and irregularities that go beyond minor spelling or punctuation mistakes. They are glaring errors that would be apparent to any French reader. I find no reviewable error in how the RAD

approached the analysis of the documents. The Applicant's position amounts to nothing more than a disagreement with the RAD's weighing of the evidence.

[28] The Applicant further claims that the RAD masked its authenticity findings by simply deeming evidence to be of "little probative value," contrary to the case law, citing *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 20. However, this is a mischaracterization of the RAD's finding. It explicitly stated in its reasons that it doubted the Educational Documents' authenticity and provided cogent reasons for coming to this conclusion.

(2) Malian passport #AA0306536

[29] In the Notice, the RAD invited the Applicant to provide any comments regarding the Applicant's brother's signature appearing on the Applicant's passport when the Applicant was no longer a minor. The Applicant responded that he signed the passport, which he claims is evident based on the signature in the passport, when compared to other documents found in the RPD record. The Applicant further submitted that even if the Applicant's brother assisted in the process, it does not signify that it is the brother's signature.

[30] The Applicant submits the RAD did not properly account for his explanation regarding the signature on his Malian passport. I disagree.

[31] The RAD painstakingly reviewed the testimonial and documentary evidence before it and noted that when the Applicant was asked how his brother obtained the passport, he answered that his brother signed it at the place where the passport was made and that his brother later gave him

the passport. The Applicant's written explanation is clearly at odds with his oral testimony at the hearing.

[32] The Applicant claims that the RAD acknowledged at paragraph 89 of the Decision that the signatures in the passport and his BOC and port-of-entry immigration forms "were the same." However, that is not what the RAD stated. The RAD compared the signatures on the passport with the one on the BOC form and simply acknowledged they were "very similar." It added that the signatures "in no way make it possible to identify (the Applicant's) name." In my view, it was reasonably open to the RAD to come to this conclusion given that the "signatures" were nothing more than scribbles.

[33] The Applicant asserts that his identity was sufficiently established on a balance of probabilities because his passport is *prima facie* proof of his identity. However, to the extent that a passport can be *prima facie* evidence of personal identity, it is only one piece of evidence which, together with the other evidence in the record, may fail to establish an applicant's identity on a balance of probabilities: *Nyam v Canada (Minister of Citizenship and Immigration)*, 2024 FC 469 at paras 59-60.

[34] A refugee claimant must meet the burden of proof and establish that they are who they claim to be by providing trustworthy and credible evidence. Given the inconsistent, contradictory and deficient evidence provided by the Applicant, I see no error in the RAD's rejection of the Applicant's explanation for how he came to have two Malian passports issued for persons with entirely different names and dates of birth.

[35] The Applicant is effectively asks the Court to reweigh his evidence regarding how the passport was obtained, which is not the Court's role on judicial review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125.

(3) Birth certificate issued in 2006

[36] In the Notice, the RAD invited any comments regarding the fact that the birth certificate provided by the Applicant does not seem to match the samples included in the objective documentary evidence, Item 3.2 of the National Documentation Package on Mali [NDP].

[37] The Applicant wrote in response that he could not open the attachment for the sample birth certificate at the link provided in Item 3.2. The Applicant proceeded nonetheless to make submissions on the issue of identity. The Applicant now says that it was procedurally unfair for the RAD to rely on the sample. I disagree.

[38] As reflected in the copy of Item 3.2 at Exhibit C of the Applicant's Affidavit (Applicant's Record, p 370), there is an explicit notice on the website of the Immigration and Refugee Board [IRB] that directs users to email the Board to obtain attachments that are not electronically accessible. There is no indication that the Applicant took any steps to obtain the sample referred to in Item 3.2. The Applicant instead elected to make submissions based on a sample he obtained by conducting his own research. Having failed to follow the proper procedure set out by the IRB to obtain the sample in question, I cannot accept the Applicant's argument that the RAD breached procedural fairness by relying on it: *Zerihaymanot v Canada (Minister of Citizenship and Immigration)*, 2022 FC 610 at para 51.

[39] The RAD concluded that the Applicant's copy of the birth certificate excerpt does not match the specimen of an original birth certificate excerpt or that of a copy of a birth certificate excerpt included in the documentary evidence. The RAD also noted that the individual descriptive sheet filed by the Applicant before the RPD states that the birth certificate is false. The RAD is owed deference in its assessment of the birth certificate and the Applicant has failed to show that its misgivings about the document were unreasonable.

(4) The individual descriptive sheet

[40] In the Notice, the RAD invited the parties to provide comments regarding the fact that the individual descriptive sheet provided by the Applicant does not seem to include all the information and security features listed in Item 3.3 of the NDP for a NINA card. The said document is an identification card indicating the cardholder's national identification number [NINA number] that can be used as a voter card but also as an identity card.

[41] The Applicant submits that the RAD erroneously concluded that the individual descriptive sheet he submitted is an NINA card because it contains a national identification number. I disagree. The RAD considered the Applicant's submission, but noted that the sheet includes a national identification number, which suggests that the sheet can be used as an identity card. The RAD found it particularly surprising that the Applicant would refer to his NINA number on the individual sheet and in the passport, without submitting the NINA card itself in evidence. In my view, the RAD had good reason to be preoccupied by the Applicant's failure to produce the very document, which makes it possible to obtain a NINA number, containing the proper security features including a bar code.

C. *Negative Inference from the Applicant's Failure to Call a Witness*

[42] The RAD found the fact that the Applicant's friend did not provide oral testimony before the RPD, when his counsel had requested that he be able to do so, cast doubt on the credibility of the friend's written statement. The Applicant submits that a negative credibility inference should not have been drawn from this fact. I disagree.

[43] There is a presumption of truth that whatever a claimant swears to is true and the truthfulness of a claimant's allegations cannot be rebutted through negative inferences: *Naidu v Canada (Minister of Citizenship and Immigration)*, 2007 FC 527 at para 28. However, in the present case, it was the friend's credibility that was in issue given that he supplied the articles whose authenticity were called into question. The Applicant's counsel stated that he would probably call the friend because he was likely the source of both news articles and the RPD had questions about them, at which point the hearing was recessed. When the hearing resumed, counsel wavered as to whether he would call the friend as a witness. The RPD indicated it was interested in hearing from the friend in relation to the incidents surrounding the disappearance of the Applicant's father and brother and how the news article filed in evidence had been obtained. However, an attempt to call the friend did not work.

[44] The evidence of the Applicant's friend raised questions that could not be answered without his testimony. In my view, the fact that the Applicant's counsel intended to call the friend to testify about crucial aspects of the Applicant's claim, but then wavered about calling him, was a relevant consideration for the RAD.

[45] For the above reasons, I conclude it was open to the RAD to make the adverse credibility finding as it did.

III. Conclusion

[46] The key findings set out in the Decision are well supported by detailed, transparent and intelligible reasons that are responsive to the parties' submissions and justified in light of the relevant facts and the law. There is no reason to intervene here.

[47] This application for judicial review is accordingly dismissed.

[48] Neither party proposed a question for certification and I find there is no question to certify.

JUDGMENT IN IMM-13705-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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