

Federal Court



Cour fédérale

**Date: 20250813**

**Docket: IMM-14384-24**

**Citation: 2025 FC 1372**

**Toronto, Ontario, August 13, 2025**

**PRESENT: Madam Justice Whyte Nowak**

**BETWEEN:**

**ELSIE JELAGAT KIPLIMO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Elsie Jelagat Kiplimo [Applicant], seeks judicial review of a decision [Decision] of the Refugee Appeal Division [RAD] refusing the Applicant's refugee claim on the basis of her fear of persecution and need of protection in Kenya as a lesbian woman. The determinative issue for the RAD was the Applicant's credibility after it was revealed that her

claim mirrored that of her cousin's refugee claim and the Applicant was unable to explain this and other inconsistencies and omissions in her evidence.

[2] The Applicant submits that the Decision is unreasonable as the RAD's credibility finding was arrived at through a fatally flawed analysis and by further reason that the RAD erred in failing to conduct a separate analysis under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[3] For the reasons that follow, I am dismissing this application as I find no reviewable error in the Decision: the RAD's assessment of the Applicant was justified on the record and there was no independent and credible evidence capable of supporting a positive finding under section 97 of the Act.

## II. Facts

### A. *The Applicant's interviews with Canada Border Services Agency*

[4] When the Applicant arrived in Canada, she advised the Canada Border Services Agency [CBSA] officer [Officer] that she intended to study in Canada and would live with her Cousin. She claimed that she would be financially supported by her parents who had sent her Cousin money. The Officer called the Cousin who advised that the Applicant's parents had not yet sent the funds, but would be doing so. When the Officer continued to question the Cousin regarding the sufficiency of the Applicant's funds, the Cousin added that the Applicant is a lesbian and could seek protection in Canada. When the Officer questioned the Applicant again, the

Applicant asked if she could speak to her Cousin. After getting off the phone with her Cousin, the Applicant advised the Officer that she wanted to claim refugee protection in Canada on the basis of her sexual orientation. When asked if her life was in danger or she had received threats due to her sexuality, the Applicant responded, “not really.” She also claimed that her parents were unaware of her situation and denied having any problems with the police.

B. *The Applicant’s Basis of Claim*

[5] The Applicant’s Basis of Claim [BOC] narrative details how she discovered her attraction to girls at the age of 16 when she was boarding at a Christian secondary school. She became sexually intimate with her roommate (referred to as “AB”) and they engaged in a secret relationship that endured their separation after graduation and throughout COVID when they both lived with their parents. When the Applicant was able to visit AB, they were caught in an intimate act by AB’s mother who berated them and beat them both. The mother accused the Applicant of influencing her daughter to become a lesbian. By the time the Applicant returned home, her parents were aware of what had happened and told her they would not assist a “cursed person” in attending college. The Applicant’s uncle [Uncle] took her in and offered to help her find an agency to arrange for her to leave the country as he believed she was in danger.

[6] The Applicant left Kenya on November 19, 2022, and ultimately claimed refugee protection in Canada based on her sexual orientation. The Applicant alleges that her life is at risk in Kenya after being outed as a lesbian.

C. *The Refugee Protection Division Hearing*

[7] The Minister of Citizenship and Immigration [Minister] intervened in writing before the Refugee Protection Division [RPD] on the issues of the Applicant's credibility and program integrity. The Minister's submissions questioned the genuineness of the Applicant's refugee claim on the basis that it mirrored that of her cousin [Cousin].

[8] The RPD described the Cousin's refugee claim as being based on a similar narrative where: the Cousin became romantically involved with a high school roommate; the girls were caught in an intimate act by the other girl's mother who beat them, called them names and accused the Cousin of introducing her child to homosexuality; the Cousin was investigated by Kenyan police; her father who is the Applicant's Uncle, helped her leave the country through an agency to study in Canada at the same school. An oral hearing was held in light of the credibility concerns that were raised by these similarities.

[9] The Applicant's BOC claim did not mention her Cousin or that both her Uncle and her Cousin were being pursued by police in Kenya due to allegations regarding the Cousin's sexuality. The Applicant testified at the hearing that she was unaware of her Cousin's refugee claim or that her Cousin was also a lesbian fleeing persecution in Kenya.

D. *The RPD Decision*

[10] The RPD rejected the Applicant's claim finding that the central tenets of the claim and her basis for claiming protection, were not credible. The RPD accepted the Applicant was

entitled to the presumption of truthfulness but found that the presumption was rebutted even taking into account the Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board [Gender Guidelines], which the RPD noted does not prohibit the drawing of a negative inference from material inconsistencies, contradictions or omissions in a witness' evidence that have no reasonable explanation.

[11] The RPD's negative credibility findings stem from three aspects of the Applicant's claim. First, the RPD considered the Applicant had failed to adequately explain the omissions and inconsistencies in the Applicant's BOC related to her Cousin's similar and related experience. Second, the RPD considered that the Applicant's disclosure for the first time at the hearing that her parents threatened her with death, to be an omission which the Applicant could not justify by saying that she had "generalized" about her parents in her BOC. Finally, the RPD noted the inconsistency in the Applicant's evidence regarding the source of her fear for her life which was different in her BOC, interview answers and oral testimony. The RPD did not consider her explanation that she was confused at the interview to be reasonable even considering the warning in the Gender Guidelines that such disclosure may be difficult for an individual at a port of entry. The RPD considered that the sum of these credibility concerns was sufficient to rebut the presumption of truthfulness.

E. *The RAD Decision*

[12] The RAD independently assessed the evidence and reached the same conclusion as the RPD finding that the Applicant is neither a Convention refugee, nor a person in need of protection. The RAD considered that the presumption of the Applicant's truthfulness was

rebutted by the various inconsistencies and omissions in the Applicant's evidence and the "intersecting facts" between the Applicant's narrative and that of her Cousin. The remainder of the Applicant's evidence was considered and found insufficient to overcome the RAD's credibility concerns.

### III. Issues and Standard of Review

[13] The Applicant has raised the following issues all of which go to the reasonableness of the Decision:

- A. Is the RAD's credibility finding fatally flawed in its reasoning?
- B. Did the RAD err in failing to conduct a separate section 97 analysis?

[14] The applicable standard of review of the merits of a decision of the RAD is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision bears the hallmarks of justification, transparency and intelligibility with the burden resting on the challenging party to show that the decision is unreasonable (*Vavilov* at paras 99-100).

### IV. Preliminary Issue

[15] The Respondent takes issue with the submissions of counsel for the Applicant at the hearing which raised issues not addressed in the Applicant's written argument. I agree with the Respondent that this is a prejudice the Court should not sanction; accordingly, the Court will disregard the submissions related to the psychological report and the Applicant's dating profile

(*Mihalaiche v Canada (Citizenship and Immigration)*, 2025 FC 318 at para 24 and *Martinez Guzman v Canada (Citizenship and Immigration)*, 2024 FC 1688 at para 28).

V. Analysis

A. *The RAD's reasoning is not fatally flawed*

[16] The Applicant submits that the RAD cherry-picked evidence to support a conclusion it had already drawn and then baldly dismissed the remaining evidence for not overcoming its premature credibility finding. The Applicant cites a number of cases that hold that such an approach is unreasonable (citing *Gbemudu v Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451 at paras 78, 80 and *Shi v Canada (Citizenship and Immigration)*, 2024 FC 1432 at para 19).

[17] The Applicant points to the following excerpt from the RAD's Decision to support her position that the RAD overlooked and failed to account for contrary evidence that supported her claim:

The photograph of AB is not particularly probative. There is no way to identify the person in the photo and it merely depicts the [Applicant] smiling with another woman somewhere. In addition, the [Applicant's] limited participation at the 519 Centre and at Pride Toronto are not persuasive. The [Applicant] only engaged in these activities after initiating a refugee claim based on her sexual orientation. Her acquaintance with another woman who claims to be a lesbian, even taken together with the rest of the evidence, is not enough to establish the allegations. I have also reviewed the [Applicant's] testimony from the hearing, but contrary to the [Applicant's] arguments, the testimony – including about the relationship with AB – was not particularly detailed or compelling. The remaining evidence is insufficient to overcome my credibility concerns.

[18] The Applicant emphasizes that she identified the woman in the photo in her testimony and she provided details of their relationship which evidence the RAD was required to address together with the documentary evidence that corroborated it. She submits that the RAD's failure to address this evidence and to also provide justification for its suggestion that her evidence lacked detail, renders the Decision unreasonable (citing the Federal Court of Appeal's decision in *VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FC 25 (FCA) at para 21-22 and *Zarghami v Canada (Minister of Citizenship and Immigration)*, 2006 FC 151 at para 22).

[19] The Applicant's emphasis on this single paragraph in the Decision distorts the RAD's actual analysis. The RAD did not find the Applicant lacked credibility by reason that her narrative lacked corroboration. Rather, the RAD found that the presumption of truthfulness regarding the Applicant's evidence had been rebutted based on: (i) inconsistencies in the Applicant's evidence related to her parents' reaction to her lesbian relationship; (ii) the Applicant's failure to mention her Cousin's "parallel journey" in her BOC and the similarities their narratives; and (iv) the inability of the Applicant to believably explain the similarities, inconsistencies and omissions.

[20] I accept the Applicant's submission that these flaws in the Applicant's evidence are either minor or unrelated to the Applicant's core claim. By way of example, the significance of the inconsistencies in the Applicant's evidence related to her parents' reaction to her sexual orientation was explained by the RAD as follows:

There is a significant difference between the [Applicant's] account in her narrative and what she stated in oral testimony. In one, her family simply refused to fund her college education, and they did not bother to contact her after she left their home. In another, they



threatened to kill her, and this is the primary basis for the [Applicant's] fear of returning to Kenya. I find that these differences in the [Applicant's] story cast doubt on her credibility as a witness.

[21] Having found that the Applicant's evidence was not credible, the RAD then considered whether the evidence separate and apart from the Applicant's testimony, was sufficient in and of itself to make out the Applicant's claim. As the Respondent pointed out, this approach is sound and reasonable since - to paraphrase Justice Harrington in *Gondal v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1512 at paragraph 1 - one may lack credibility and be a refugee both.

[22] The purported corroborating evidence included a photo of AB, letters from the Applicant's Cousin and Uncle, and evidence of her pro-LGBTQ activities since arriving in Canada. The RAD addressed each in turn:

- The RAD gave no weight to the letters of support from the Applicant's Cousin and Uncle dated December 2023 and April 2023 respectively [Letters], by reason of the delayed and suspect timing of their disclosure and given that the RAD considered that the Letters "still left many important questions unanswered" including how the Applicant could have no knowledge of the Cousin's situation when the Applicant was living with her and the Uncle at the very time when the Cousin says the police were searching for her and when the police executed a search warrant at the house after the Cousin's departure.
- The RAD considered the photo of AB to be of little probative value as there is no way to identify the person in the photo and it merely depicts the Applicant smiling with another woman somewhere.
- The RAD considered the timing of the Applicant's pro-LGBTQ activities to be suspect. The Applicant submits that this

reasoning is illogical as she could not engage in these activities in Kenya where LGBTQT relationships are banned. I acknowledge that this is certainly one way to look at the evidence; however, it was equally open to the RAD to question the timing of these activities.

[23] The RAD's findings are reasoned and logical and I find that it was open to the RAD to find that this evidence did not overcome the serious concerns that it had with the Applicant's credibility.

[24] The Applicant suggests that the RAD's finding that the Applicant's testimony lacked detail, itself lacks transparency. In oral submissions, Applicant's counsel gave examples of testimony that he argued were detailed while counsel for the Respondent cited testimony that was lacking in detail. This exercise only serves to underscore that such an assessment is one of impression which this Court is not entitled to substitute for its own (*Vavilov* at para 125).

B. *The RAD was not required to conduct a separate section 97 analysis*

[25] The Federal Court of Appeal has held that where a tribunal makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim without the need to conduct a separate section 97 claim *unless* the claimant can show that there was independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, at para 3).

[26] I agree with the Respondent that the RAD's ultimate conclusion leaves no doubt as to whether any aspect of the Applicant's core claim could support a section 97 analysis:

I do not accept that the [Applicant] is a lesbian, nor that she had a relationship with another woman in Kenya. I do not believe that any same-sex relationship was discovered, or that the [Applicant] had to flee to her uncle's home as a result.

[27] While the Applicant submitted that her pro-LGBTQ activities in Kenya are sufficient to establish a profile upon which a section 97 analysis could be conducted, I agree with the Respondent that the Applicant did not submit evidence that these activities have come to the attention of Kenyan authorities so as to put her at risk of harm should she return to Kenya, nor has she made a *sur place* claim.

[28] There is no independent and credible evidence capable of supporting a positive section 97 finding absent the identification of a reviewable error in the RAD's assessment of the evidence, which the Applicant has not shown.

## VI. Conclusion

[29] The Applicant has not demonstrated a reviewable error in the Decision which undermines its reasonableness; accordingly, this application is dismissed.

**JUDGMENT in IMM-14384-24**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"Allyson Whyte Nowak"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-14384-24

**STYLE OF CAUSE:** ELSIE JELAGAT KIPLIMO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION CANADA

**PLACE OF HEARING:** HELD BY WAY OF ZOOM VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 11, 2025

**JUDGMENT AND REASONS:** WHYTE NOWAK J.

**DATED:** AUGUST 13, 2025

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