

Federal Court



Cour fédérale

Date: 20250825

Docket: IMM-14618-24

Citation: 2025 FC 1414

Toronto, Ontario, August 25, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

PETER PRINCE KAYANZA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Peter Prince Kayanza is a national of Tanzania who sought refugee protection in Canada on the basis of his fear of persecution as a gay man. His refugee claim was refused by a Member of the Refugee Protection Division [RPD] who disbelieved his evidence regarding his sexual orientation. The Refugee Appeal Division [RAD] upheld the RPD's refusal and Mr. Kayanza now seeks judicial review of the RAD Member's decision. Although most of the issues raised for review lack merit, there are two findings made by the RAD Member that are unreasonable and that justify an order granting the application: the RAD Member's treatment of some letters

adduced by Mr. Kayanza to corroborate his sexual orientation and the RAD Member's analysis of his delay in making a claim. The decision will therefore be set aside and the appeal remitted to the RAD for redetermination.

I. BACKGROUND

[2] Mr. Kayanza was born in Tanzania and first entered Canada on a study permit in 2016, when he was still a minor. He claimed refugee protection seven years later, in 2023, after an application to renew his study permit was rejected.

A. *Refugee claim*

[3] Mr. Kayanza's refugee claim was heard by a Member of the RPD on December 22, 2023. As observed by the RAD Member, the hearing was clearly a very difficult one. Mr. Kayanza appeared unprepared for, even taken aback by, the Member's questioning and his responses were sometimes quite confrontational. He often failed to respond directly to questions from the Member, deflected questions back to the Member, and demanded elaboration or clarification of questions that on their face appear quite clear and straightforward. Mr. Kayanza frequently pushed back against questions, insisting he had already provided an answer even when that was not the case, asking the Member about her own background, and even making allegations about the Member's background that were not supported by any evidence and that were inappropriate in the context of the hearing.

[4] The Member appears to have maintained her composure despite the difficult circumstances and provided multiple explanations of her questions and opportunities to Mr. Kayanza to add testimony through open-ended questions. As is common, when the Member finished questioning Mr. Kayanza she gave him an opportunity to add any testimony he wanted, to ensure he had a full opportunity to make his case. Mr. Kayanza responded by asking the Member to be more specific, objecting that the question was “very vague.” The Member explained that she was giving Mr. Kayanza a chance to add anything that would confirm his “credibility of being a gay man seeking protection in Canada,” noting that he did not need to go through country conditions evidence because “It is quite clear in the NDP about SOGIESC -- or individuals who identify as gay, that it is criminalized.” Mr. Kayanza’s counsel then conducted a brief redirect followed by very brief legal submissions. At no point did Mr. Kayanza or his counsel raise an apprehension of bias or ask the Member to recuse herself.

[5] By decision dated March 6, 2024, the Member refused Mr. Kayanza’s claim on credibility grounds. The Member highlighted what she perceived as an inconsistency in how Mr. Kayanza identified himself in his Basis of Claim narrative (where he identified as bisexual) and at the outset of the hearing (where he identified as gay), along with his vague testimony about his past relationships with other men, to find:

Overall, the panel finds the claimant would switch his identity from bisexual to gay depending on what was being asked versus his basis of claim. The panel further finds details regarding his relationships with other men to be vague and speculative. The panel finds there is insufficient evidence to support his claim as a gay man seeking protection. Therefore, the panel draws a negative credibility finding.

[6] The RPD determined that Mr. Kayanza's testimony about his involvement in LGBTQ advocacy had been vague as well and found that whatever involvement he might have had was undertaken only to bolster his claim. The Member rejected his explanation for not claiming refugee protection earlier as not credible. In all, the RPD made approximately 19 "negative credibility findings" regarding Mr. Kayanza's testimony. The panel found more generally:

[9] The panel is aware that it is supposed to consider the claimant's sworn testimony as true unless reason is given otherwise. However, the panel had concerns with the claimant's responses to questions from being vague, unforthcoming in providing details, to being implausible at times and scarcity of providing information, leading to a negative credibility finding in his overall testimony, thus making it unreliable. The panel finds on a balance of probabilities, the claimant's testimony to not be credible and reliable.

[7] Mr. Kayanza appealed the refusal to the Refugee Appeal Division. His counsel provided lengthy submissions setting out an array of arguments regarding the RPD decision, including that the decision maker had been biased and had made unreasonable credibility findings against Mr. Kayanza. By Notice dated June 27, 2024, the RAD advised Mr. Kayanza that it would be "considering a new issue on appeal with respect to the credibility of the Appellant's documents" and invited submissions on the following:

The RAD has identified that the three supporting letters submitted into evidence contain multiple paragraphs that are identical in wording. Please provide an explanation as to why the letters contain the same paragraphs.

[8] Mr. Kayanza's counsel responded with brief submissions asserting that the witnesses had "inadvertently used similar language in their letters, reflecting a unified understanding of his dilemma and their shared discussions of [Mr. Kayanza's] experiences and fears." In support of

this submission counsel adduced a letter from Mr. Kayanza as well as new letters from the three witnesses, and offered further written clarification or oral testimony from the witnesses.

B. *Decision under review*

[9] By decision dated July 9, 2024, a Member of the RAD refused Mr. Kayanza's appeal. The RAD Member rejected the new letters on the basis that they did not meet the "newness criteria under Singh/Raza." The RAD Member rejected Mr. Kayanza's bias allegation, found that the appeal memorandum filed by Mr. Kayanza's counsel did not accurately reflect the RPD findings, and agreed with the RPD that the Mr. Kayanza had not credibly established his sexual orientation.

[10] The RAD Member found that the RPD had erred in drawing a negative inference from Mr. Kayanza's self-identification as gay or as bisexual at different points and by finding generally that there were inconsistencies in his evidence without making clear findings about what those inconsistencies were. The RAD Member also rejected the RPD's implausibility finding regarding the letter provided by Mr. Kayanza's friend and former partner Karen. However, the RAD Member determined that the similarities between the letters provided by the three witnesses had not been adequately explained, and they were thus unreliable. The RAD Member observed that the new letters appeared to be an inappropriate attempt to correct a deficient record on appeal. Notwithstanding that finding, the RAD Member faulted Mr. Kayanza for failing to adduce additional documentary evidence to establish his claim, "including a letter from his mother, or documents pertaining to the LGBT groups he has allegedly joined, which should be relatively easy to obtain." Observing that some of these documents "could be readily

available” the RAD Member found that “the lack of documentation raises additional credibility concerns.”

[11] In addition to confirming the RPD’s findings that Mr. Kayanza’s answers during the hearing had been “vague, evasive, and often non-responsive” and that there were significant omissions in his Basis of Claim, the RAD Member pointed to several issues with counsel’s appeal submissions and determined that internal inconsistency within those submissions “raises additional credibility concerns.” Finally, the RAD Member determined that the Applicant’s delay in claiming refugee protection further undermined his credibility:

[35] While delay in claiming is not determinative, in this case I find the delay in claiming further undermines the Appellant’s credibility with respect to his subjective fear. I agree with the RPD that the Appellant’s failure to claim until his study permit was denied in May 2023, four years after his arrival in Canada, undermines his claim in this case and that he has not provided a reasonable explanation for the delay.

[12] The RAD Member concluded:

[36] While any one of these findings would not on its own be sufficient to find the Appellant not credible, when viewed cumulatively, the inconsistencies in the Appellant’s memorandum, BOC omissions, his vague and evolving testimony and his lack of corroborative evidence lead to the conclusion that the Appellant has not credibly established his sexual orientation. The RPD was correct in its conclusion. The Appellant has not established that he would face a serious possibility of persecution or on a balance of probabilities, a personal risk to life or risk of cruel and unusual treatment or punishment or risk of torture in Tanzania.

II. ISSUES

[13] Mr. Kayanza challenges the RAD Member’s findings with respect to his allegation of bias; his credibility; the treatment of documentary evidence; and the delay in claiming protection.

[14] The issues raised by Mr. Kayanza are reviewable on the standard of reasonableness: the central question to be addressed by the Court is whether the decision of the RAD Member was reasonable. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law bearing upon it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

[15] The hallmarks of reasonableness are justification, intelligibility and transparency (*Vavilov* at paras 15, 100), and the principle at the heart of this standard is “responsive justification” (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 10, 76). As the Supreme Court of Canada explained in *Vavilov*, “Where the impact of a decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes” (*Vavilov* at para 133). When it comes to RAD decisions, the stakes are very high (*Shanmugam v Canada (Citizenship and Immigration)*, 2025 FC 911 at para 14).

III. ANALYSIS

A. *Allegation that the RPD Member was biased*

[16] Mr. Kayanza did not bring a motion for recusal at the RPD and indeed made no allegation of bias to the RPD member. He claims that his counsel at the time could and should have brought a motion for bias during the hearing, but he does not assert ineffective assistance of counsel and has not given notice to previous counsel of his allegation or followed the steps set out in the *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*, paras. 46-63. Instead, his present counsel asserts that the RPD Member

should have recognized from Mr. Kayanza's responses to her questions that Mr. Kayanza believed "that the RPD was biased or lack [sic] partiality." According to counsel, "the RPD had a duty to make an interim ruling on whether there was merit to the allegations [sic] and whether the RPD should recues[sic] itself." Counsel asserts that the RPD's failure to do so was procedurally unfair and argues that the RAD Member "made a crucial error" when it agreed with the RPD's "decision to continue with the hearing."

[17] This allegation has no merit.

[18] To begin with, counsel's argument before this Court is contradictory: having conceded that no allegation of bias was made before the RPD, the member cannot be faulted for not making a ruling on "whether there was merit to the allegations."

[19] Beyond that obvious contradiction, as the Respondent correctly points out, Mr. Kayanza's counsel has made no attempt to ground his bias claim in the controlling jurisprudence. The legal test to be applied in bias cases was established in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 at 394, and reaffirmed by the Supreme Court of Canada in *Wewaykum Indian Band v. Canada*, 2003 SCC 45 [*Wewaykum*]:

[60] In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board*, *supra*, at p. 394, is the reasonable apprehension of bias:

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the

matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

[20] Although the standards for reasonable apprehension of bias vary, like other aspects of procedural fairness, according to "the context and the type of function performed by the administrative decision-maker involved" (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 47), bias allegations must be based on serious grounds (*Wewaykum* at para 76) and must be raised clearly and at the earliest practical opportunity (*International Relief Fund for the Afflicted and Needy (Canada) v. Canada (National Revenue)*, 2013 FCA 178 at para 19; *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 320 at paras 46-47). None of these requirements have been met in the case before me.

[21] I am unable to accept counsel's claim that the Member should have gleaned from Mr. Kayanza's responses to her questions that Mr. Kayanza believed she was biased against him, and that the Member should on that basis have taken it upon herself to pause the hearing and render a determination of whether that purported belief was well-founded.

[22] Nor has counsel been able to convince me that a well-informed member of the community would perceive bias when reviewing the record. I find no basis upon which to fault the Member for the way she conducted the hearing. While I agree that Mr. Kayanza made numerous attempts to rely on what he apparently believed to be true about the Member's background to explain the reasonableness of his own actions, these attempts to draw parallels or distinctions do not indicate that he thought the Member was biased against him, much less give

rise to a duty on the part of the Member to step back on her own motion to assess whether the legal test was made and she should recuse herself.

[23] Although I find Mr. Kayanza's counsel's bias allegation to be groundless, I do not rule out the possibility that in some circumstances procedural fairness might require that a decision maker act on their own to assess whether something has occurred during the hearing that could give rise to a reasonable apprehension that they are biased. Decision makers must always remain alive to the possibility that they are not impartial or may no longer appear impartial in respect of the particular litigants or issues before them and take steps to recuse themselves when that is the case. However, Mr. Kayanza has failed to demonstrate that such circumstances arise in the case before me.

[24] It follows that it was entirely reasonable for the RAD Member to reject Mr. Kayanza's argument that the RPD had breached procedural fairness by failing to address a non-existent bias allegation, and Mr. Kayanza's counsel has failed to demonstrate any flaw in the RAD Member's reasoning that might warrant judicial intervention.

B. *Credibility assessment*

[25] Mr. Kayanza's counsel claims that the RPD's questions during the hearing were vague and that it was unreasonable for both the RPD and the RAD to find Mr. Kayanza's responses to be vague or evasive when the fault lay with the RPD Member. The RAD Member rejected this

argument as unsupported by the transcript, and I agree. Mr. Kayanza's counsel has failed to demonstrate anything unreasonable about the RAD Member's disposition of that argument.

[26] Mr. Kayanza also alleges that the RAD Member failed to apply *Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics* [SOGIESC Guideline]. I note that while not determinative, the RAD Member did in fact explicitly determine that the RPD had followed the SOGIESC Guideline and explained why on the facts of the case the guideline did not overcome the credibility concerns. In any event, Mr. Kayanza's counsel was unable to demonstrate that the RAD Member's reasons failed to properly account for this guidance or to particularize his concern. The argument has no merit.

[27] I agree with Mr. Kayanza, however, that the RAD Member's finding that "the Appellant's memorandum is internally inconsistent, which raises additional credibility concerns" was unreasonable. The memorandum before the RAD Member was signed by Mr. Kayanza's counsel at the time, not by Mr. Kayanza. Counsel's arguments do not constitute evidence. While it was certainly open to the RAD Member to dismiss arguments made by counsel on the basis that the arguments were internally inconsistent or otherwise flawed, it was entirely unreasonable to draw negative findings about Mr. Kayanza's credibility on the basis of his counsel's arguments.

C. *Treatment of the corroborating evidence*

[28] Mr. Kayanza asserts that the RAD Member erred in its treatment of letters from three friends who confirm his sexual orientation. While it was well within the RAD Member's

purview to raise concerns about the fact that most of the text in the letters was identical, I agree that the RAD Member's treatment of the Applicant's response to those concerns and their disposition of the issue was unreasonable.

[29] To begin with, all three letters were signed, included addresses and phone numbers of the authors, and were accompanied by copies of valid Canadian ID documents. All three letters included explanations of how the authors know Mr. Kayanza. In response to the RAD Member's notice seeking explanation for the similarities between the letters, Mr. Kayanza explained that he has known the authors for several years, that they often spend time together, and that he had emphasized to them the importance of including consistent messages to support his appeal. He advised, as did his counsel, that all three witnesses were willing to testify to clarify their statements. In addition, he provided new letters from each of the authors explaining their knowledge of Mr. Kayanza in their own words.

[30] The RAD Member's rejected Mr. Kayanza's explanation:

[29] I find this explanation insufficient to overcome the credibility concerns of the letters. It is not that the letters contain similar messaging or content, as may be the case where several individuals with the same level of knowledge of an appellant might express similar ideas. The issue is that there are several paragraphs in each letter that are repeated entirely verbatim.

[30] The letters are therefore unreliable, as they do not reflect a unique or personal account of the writer's viewpoint. They are instead recitations of identical paragraphs and it is not clear who wrote these paragraphs. What is clear is that the Appellant has been directing the letter writers about what to say in support of his claim. The letters themselves lack credibility and are insufficient to overcome the multiple credibility concerns identified above.

[31] Nowhere does the Member grapple with the fact that the letters are signed, included full contact details, and were accompanied by copies of the authors' ID, which at the very least suggests that even if the words were not the authors' own they were willing to stand by them, a fact further supported by their offer to testify. While it was open to the RAD Member to refuse to hold a hearing to obtain their testimony, the failure to engage with some relevant markers of authenticity before dismissing the letters as "lacking credibility" solely on grounds of repeated wording was unreasonable. Nor did the Member justify the rejection of Mr. Kayanza's explanation of how the letters came to share common wording – an explanation that on its face appears quite reasonable.

[32] Finally, there is a contradiction between the RAD Member's rejection of the three new letters submitted in direct response to the RAD Member's request for submissions – on the grounds that the evidence was not "new" pursuant to the test in *Singh/Raza* – and its finding that Mr. Kayanza's failure to submit "any further documentary evidence to establish his claim, including a letter from his mother, or documents pertaining to the LGBT groups he has allegedly joined, which should be relatively easy to obtain" raises "additional credibility concerns." The issues are twofold: (1) the Member knows that Mr. Kayanza did in fact attempt to file further evidence but rejected it as not new; and (2) the basis for finding that the letters were not new under the *Singh/Raza* test would very likely apply equally to new letters from Mr. Kayanza's mother and from the LGBTQ organizations with which he had testified he was associated. The RAD Member's credibility finding regarding the failure to adduce additional evidence was therefore unreasonable.

D. *Delay*

[33] The RAD Member confirmed the RPD's determination that Mr. Kayanza's "failure to claim until his study permit was denied in May 2023, four years after his arrival in Canada, undermines his claim in this case and that he has not provided a reasonable explanation for the delay." In making this finding the RAD Member failed entirely to address the appeal submissions that had been made by Mr. Kayanza's counsel. Counsel had argued that the RPD Member failed to account for Mr. Kayanza's young age on arrival, the difficult "coming out" process especially given his socio-cultural and familial background, his lack of awareness of the legal process in Canada, and the fact that Mr. Kayanza only came to understand how vulnerable he was to being returned to persecution in Tanzania when he lost his legal status in Canada upon the refusal of his application to renew his study permit.

[34] The Respondent argues that the RAD Member's reasoning with regard to delay was brief but that it was not determinative. It is true that the RAD Member stated that delay alone was not determinative; however, I cannot accept the submission that the RAD Member merely provided a "brief" analysis. In fact, the RAD Member provided no analysis of the evidence or the submissions of counsel, only a conclusion. This clearly falls short of the requirement of responsive justification and is unreasonable.

IV. CONCLUSION

[35] I find that, cumulatively, the RAD Member's unreasonable evaluation of the supporting evidence and of Mr. Kayanza's delay in claiming refugee protection, combined with the RAD

Member's reliance on inconsistencies within counsel's written submissions to support a negative credibility finding, justifies judicial intervention. The decision of the RAD is unreasonable and must be set aside.

[36] Although I reject Mr. Kayanza's arguments regarding bias and the alleged ineffectiveness of the RPD Member's questioning, this should not be interpreted as a finding that the way the hearing proceeded was therefore fair. As I have already observed, judging by the transcript Mr. Kayanza appeared to be entirely unprepared for the questions put to him by the RPD Member, despite those questions being well within the range of what a reasonably informed and prepared claimant might expect. Mr. Kayanza appeared to have little understanding, moreover, of the role the Member had at the hearing and the specific issues she was required to consider. Nor did he appear to have any inkling that a narrative that failed to account for events prior to arrival in Canada would raise questions, that multiple support letters with verbatim passages would raise credibility concerns, or that corroboration of his alleged involvement in LGBTQ+ community organizations might be expected by the Member.

[37] There is no evidence before me that might explain this apparent lack of preparedness or understanding of the proceedings. It may be that Mr. Kayanza received excellent legal advice and assistance while preparing his claim but chose not to heed it; it may equally be that he was poorly advised or that circumstances beyond his control impeded his ability to understand or follow his counsel's advice. I cannot make any findings on this issue based on the evidence and arguments before me. However, Mr. Kayanza will have an opportunity to raise any such concerns, if he has them, before the RAD upon redetermination of his appeal.

[38] No serious question of general importance has been proposed by the parties and I agree that none arises. Nor have the parties sought costs.

JUDGMENT in IMM-14618-24

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The Decision of the Refugee Appeal Division dated July 9, 2024, is set aside and the matter is remitted to the Refugee Appeal Division for redetermination by a different panel in accordance with these reasons.
3. No question is certified.

"Andrew J. Brouwer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-14618-24

STYLE OF CAUSE: PETER PRINCE KAYANZA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 25, 2025

JUDGMENT AND REASONS: BROUWER J.

DATED: AUGUST 25, 2025

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