

Federal Court



Cour fédérale

Date: 20251009

Docket: IMM-20-25

Citation: 2025 FC 1670

Toronto, Ontario, October 9, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

SERGE ZAGABE BYADUNIA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant sought refugee protection in Canada under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], claiming to be a citizen of the Democratic Republic of Congo [DRC]. The Refugee Protection Division [RPD] rejected the Applicant's refugee claim, finding that he had failed to establish his personal and national identity. On appeal, the Refugee Appeal Division [RAD] upheld this determination.

[2] The Applicant seeks judicial review of the RAD's decision on two grounds. First, he argues that the RAD erred in finding that the new evidence submitted on appeal was inadmissible under subsection 110(4) of the *IRPA*. Second, the Applicant asserts that the RAD erred in determining that he had failed to establish his identity. I am dismissing the judicial review application on both grounds.

A. *The RAD reasonably rejected the Applicant's new evidence*

[3] The Applicant sought to introduce six new pieces of evidence before the RAD. On judicial review, the role of the Court is not to revisit whether the new evidence should have been accepted but rather whether the RAD's admissibility determination is reasonable: *Stuart v Canada (Citizenship and Immigration)*, 2024 FC 1741 at para 11; *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 at para 28. I find that the RAD reasonably concluded that the new evidence did not meet the legal test for admissibility.

[4] New evidence must satisfy one of the following requirements to be admissible before the RAD: (i) it arose after the rejection of the refugee claim; (ii) it was not reasonably available at the time of the rejection; or (iii) it was reasonably available, but the person could not have reasonably been expected in the circumstances to have presented it at the time of the rejection: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 34.

[5] The first document the Applicant sought to adduce was an affidavit of a law clerk. While the affidavit post-dates the RPD decision, the RAD explained that it is not necessary to introduce new evidence on appeal by way of an affidavit and determined that the affidavit did not meet the

relevance criterion: Refugee Appeal Division Reasons and Decision dated December 13, 2024 at para 9 [RAD Decision], Certified Tribunal Record [CTR] at 5–6.

[6] With respect to the remaining five documents, the RAD held that the Applicant had failed to reasonably explain why these documents could not have been submitted prior to the RPD rendering its decision: RAD Decision at paras 10, 13, CTR at 6–7. Significantly, because the RPD had expressed concerns with the Applicant’s identity, it gave him an opportunity to submit additional identity documents after the hearing. The Applicant failed to do so: RAD Decision at para 11, CTR at 6; Refugee Protection Division Reasons and Decision dated August 19, 2024 at para 40 [RPD Decision], CTR at 125.

[7] A RAD appeal is not a second chance to submit evidence in response to weaknesses identified by the RPD: *Teclebrhan v Canada (Citizenship and Immigration)*, 2025 FC 228 at para 23; *Kumar v Canada (Citizenship and Immigration)*, 2022 FC 1440 at para 16; *Eshetie v Canada (Citizenship and Immigration)*, 2019 FC 1036 at para 33.

B. *The RAD reasonably concluded that the Applicant had failed to establish his identity*

[8] In its comprehensive reasons, the RAD explained in a justified, transparent, and intelligible manner why the evidence submitted before the RPD did not establish the Applicant’s identity: RAD Decision at paras 15–43, CTR at 7–14. The RAD reasonably rejected the Applicant’s argument that it is common knowledge that genuine documents issued by DRC authorities can be inconsistent concerning whether given names are used as surnames, and that the order of names

may vary because there was no objective evidence to corroborate this assertion: RAD Decision at para 18, CTR at 8.

[9] The RAD reasonably doubted the genuineness of the Applicant's DRC birth certificate issued in 2011. The Applicant testified that he obtained this birth certificate over the phone while in South Africa. The RAD, however, noted that this account was inconsistent with the country condition evidence stating that an individual must provide documentary proof, including a copy of their nationality and identification documents in order to obtain a copy of their DRC birth certificate: RAD Decision at para 28, CTR at 11; RPD Decision at paras 21–22, CTR at 120–121. Further, the RAD found it implausible, even considering “cultural factors”, that an official at the DRC Embassy would issue a birth certificate based on a telephone conversation: RAD Decision at para 29, CTR at 11.

[10] Implausibility findings should only be made in the “clearest cases”: *Zhu v Canada (Citizenship and Immigration)*, 2021 FC 745 at para 26; *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 14; *Huang v Canada (Citizenship and Immigration)*, 2019 FC 358 at para 18. In my view, this is one of those cases. It was reasonable for the RAD to find it implausible that the Applicant could have obtained a birth certificate over the phone with no supporting documentation, especially given the contrary objective evidence.

[11] This determination was the foundation for the RAD's subsequent finding that the Applicant's DRC passport was not genuine as the Applicant testified that he had used his 2011 DRC birth certificate to obtain his 2019 DRC passport: RAD Decision at paras 35–36, CTR at 12.

The RAD's analysis is wholly reasonable in the circumstances. As Justice Walker (then of this Court) held, where identity documents used to obtain passports are found unreliable, this "directly and logically affects the utility of the passports in establishing identity": *Digaf v Canada (Citizenship and Immigration)*, 2019 FC 1255 at para 45.

[12] The RAD further rejected the Applicant's South African identity documents submitted before the RPD (a driver's licence issued in August 2021 and an Asylum Seeker Temporary Visa dated January 2020) as not being genuine. The RAD explained that the Applicant had failed to produce any DRC identification other than the DRC birth certificate and DRC passport, which were found non-genuine, and a DRC voter card which the Applicant admitted was fraudulent. In my view, it was reasonable for the RAD to thus conclude that, in the absence of evidence of further documentation, these South African documents were likely obtained based on the non-genuine DRC passport or DRC birth certificate: RAD Decision at para 38, CTR at 13. Indeed, the Applicant testified that he had obtained his South African driver's licence using his 2019 DRC passport: Transcript of the Refugee Protection Division hearing [RPD Transcript], CTR at 485.

[13] The Applicant argued that his South African temporary visa was originally issued in 2009, before he obtained his DRC birth certificate and DRC passport. While that may be the case, the 2009 temporary visa in question was not before the RPD nor the RAD as the Applicant testified that he had "lost that one": RPD Transcript, CTR at 486. In any event, the RPD noted that when the visa was issued in 2009, the only identity document the Applicant had was the non-genuine DRC voter's card: RPD Decision at para 41, CTR at 125.

[14] For these reasons, the Applicant has failed to establish any reviewable errors in the RAD's decision. The application for judicial review is dismissed. The parties did not raise a question for certification, and I agree that none arises in this case.

JUDGMENT in IMM-20-25

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no certified question.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-20-25

STYLE OF CAUSE: SERGE ZAGABE BYADUNIA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 8, 2025

JUDGMENT AND REASONS: TURLEY J.

DATED: OCTOBER 9, 2025

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