

Federal Court



Cour fédérale

**Date: 20211203**

**Docket: IMM-5596-20**

**Citation: 2021 FC 1354**

**Ottawa, Ontario, December 3, 2021**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**DAVID MABIRIZI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The only issue raised in this judicial review is whether the Refugee Appeal Division's [RAD] assessment of the Applicant's identity was reasonable. The RAD confirmed the decision of the Refugee Protection Division [RPD] in finding that it too was not satisfied that the Applicant had established his identity as David Mabirizi. The merits of the Applicant's refugee claim were not assessed by either the RPD or the RAD. The only issue before both tribunals was

whether the Applicant had established on a balance of probabilities that he was the person who he claimed to be — David Mabirizi, a citizen of Uganda born on December 25, 1999.

[2] For the reasons that follow, I agree with the Applicant that the RAD's assessment of his key corroborative documents that supported his identity as David Mabirizi, namely his birth certificate and passport, was not transparent or intelligible and therefore was unreasonable.

[3] The application for judicial review is granted, and the Applicant's appeal is remitted to the RAD for redetermination.

## II. Background Facts

[4] The Applicant entered Canada on a Ugandan passport with the name of David Mabirizi. A few months later, the Applicant made a claim for refugee protection under this same name.

[5] On his refugee claim forms, the Applicant indicated that his father had made a Canadian study visa application in 2012 on his behalf using a false identity (Anthony Kasujja). The Applicant later used that same identity to apply for Canada and US study visa applications in 2016 and 2017. No immigration applications were approved under this name and the Applicant asserted that he never travelled using this passport or name. The biometric information that was provided by the Minister to the RPD confirmed that the Applicant's fingerprints returned a match to the name Anthony Kasujja, an individual who had applied for a US visa that was denied in 2016.

[6] Overall, after evaluating the corroborative documents and the testimony, the RPD concluded that the Applicant had not met his onus of establishing on a balance of probabilities that he was in fact David Mabirizi, a citizen of Uganda. The Applicant appealed the decision to the RAD. The RAD agreed with the RPD's overall determination but their reasoning differed with respect to the evaluation of some of the corroborative identity documents.

### III. Issues and Standard of Review

[7] The only issue raised in this judicial review was whether the RAD reasonably reviewed the corroborative documents purporting to establish the Applicant's identity as David Mabirizi.

[8] In reviewing the decision of the RAD, I will apply a reasonableness standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], the Supreme Court of Canada confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

### IV. Analysis

[9] Proof of a claimant's identity is a core issue in every refugee claim. As explained by Justice Barnes in *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126, proof of identity of a refugee claimant is necessary because without it, there can "be no sound basis for testing or verifying the claims of persecution, or indeed for determining the Applicant's true nationality" (at para 26; see also *Edobor v Canada (Minister of Citizenship and Immigration)*,

2019 FC 1064 at para 8 [*Edobor*]). If a claimant has not established their identity, this is fatal to their refugee claim; there is no need to assess the merits of the claim where identity has failed to be established. The onus is on the claimant to take reasonable steps to prove their identity with acceptable documentation (Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256; section 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]; *Edobor* at para 11).

[10] In this case, the RPD and the RAD had concerns about the validity of the identity the Applicant was asserting in his refugee claim because he had previously used a passport bearing a different name (Anthony Kasujja) to make other immigration applications.

[11] The Applicant testified before the RPD that he was David Mabirizi. The Applicant also provided numerous documents in support of establishing his identity as David Mabirizi. The Applicant challenges the RAD's evaluation of a number of these corroborative documents. In my view, the RAD's treatment of the Applicant's birth certificate and passport in the name of David Mabirizi is determinative of this application.

A. *Birth certificate in name of David Mabirizi*

[12] The RAD's reasoning in coming to its determination on the weight to be given to the Applicant's birth certificate does not follow a rational chain of analysis. Despite finding that the birth certificate document is probative and that they are "not prepared to make a finding that the document is fraudulent", the RAD assigns it "a small amount of weight." The RAD's conclusion

on weight does not flow from the RAD's own analysis of the probative value and the authenticity of the document.

[13] Documents issued by a foreign government are presumed to be valid (*Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 10 at para 5; *Liu v Canada (Minister of Citizenship and Immigration)*, 2020 FC 576 at para 85). This is a rebuttable presumption.

[14] The RPD found this presumption of the validity of the birth certificate was rebutted because the word "registration" was incorrectly spelled as "registeration" on a mass produced document. Based on this concern, the RPD concluded the birth certificate was fraudulent and should be given no weight.

[15] The RAD did not accept the RPD's finding. The RAD noted that this "anomaly noted by the RPD" is "a concern" but that "it is not entirely beyond the realm of possibility that in a third-world country such as Uganda, and even given that the official language of the country is English, text on a pre-printed form could be mis-spelled." The RAD also noted that there was evidence of the "ready availability of fraudulent documents in Uganda" but ultimately found "it is not entirely implausible that a genuine Ugandan birth certificate would have a flaw in it, I am not prepared to make a finding that this document is fraudulent."

[16] The RAD then stated, "in the circumstances outlined above, I find I can only give this document a small amount of weight." There is no other explanation for the decision to give the

document low weight. The RAD gave the document low weight because of the concerns it had with the misspelling of the word “registration” on a pre-printed form.

[17] On its face, the birth certificate is a document with high probative value. The RAD agreed with the RPD that this was a central document to establishing the identity of the claimant. The only concern raised was that there was a misspelling, which goes to credibility and trustworthiness of the document itself, not its probative value. Yet, the RAD also clearly indicated that it was not willing to find that the document was fraudulent based on this misspelling issue.

[18] The RAD’s reasoning on this point is not coherent or intelligible. A fact-finder cannot be “sort of” concerned but not enough to find a document fraudulent and then use its concerns about the authenticity of the document to lower the overall weight given to the document. This problem was described by Justice Mactavish: “Decision-makers should not cast aspersions on the authenticity of a document, and then endeavour to hedge their bets by giving the document ‘little weight’” (*Sitnikova v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1082 at para 20).

[19] This Court has noted a number of times that decision-makers must make clear determinations about the authenticity of a document: it is either authentic or not; it cannot be “in between.” As noted by Justice Ahmed in *Oranye v Canada (Minister of Citizenship and Immigration)*, 2018 FC 390, “Fact finders must have the courage to find facts” (at para 27; see

also *Osikoya v Canada (Minister of Citizenship and Immigration)*, 2018 FC 720 at para 53 [*Osikoya*]).

[20] The RAD's finding on the weight to be given to the birth certificate does not "add up" (*Vavilov* at para 104). As the weight assigned to evidence is a function of the credibility of the evidence and its probative value (*Magonza v Canada (Minister of Citizenship and Immigration)*, 2019 FC 14 at para 29 [*Magonza*]), a highly probative document which is genuine must be given significant weight (*Magonza* at para 31; *Osikoya* at para 51). Given its determination that the birth certificate was probative to establishing the identity of the Applicant and its determination that the RPD erred in finding the document was fraudulent, the RAD's determination on weight is incoherent. The RAD's reasoning is hard to follow because on the one hand, the RAD found the document was not fraudulent, but on the other, the RAD continued to rely on its concerns about the trustworthiness of the document to diminish its weight. The RAD failed to clearly resolve its concerns about the authenticity of the document leading to what Justice Norris described in *Osikoya* as the "incoherence that can result from equivocal findings of fact" (at para 53).

B. *Passport in the name of David Mbirizi*

[21] The errors in the weight assessment of the birth certificate extended to the RAD's evaluation of the passport in the name of David Mbirizi. The RAD reasoned that since the Applicant used the birth certificate to obtain the passport, and since the RAD had already found that the birth certificate was to be given little weight, then the passport too could only be given little weight.

[22] The incoherence of the RAD's evaluation of the birth certificate, as set out above, also infected the RAD's analysis of the passport.

V. Conclusion

[23] The RAD's evaluation of key corroborative documents that went to supporting the Applicant's identity as David Mbirizi was neither transparent or intelligible. The unreasonableness of its evaluation of this evidence calls into question the RAD's overall identity analysis.

[24] Accordingly, the application for judicial review is allowed and sent back to a different decision-maker for redetermination.

[25] The parties did not propose a question for certification and I agree that none arises.



**JUDGMENT IN IMM-5596-20**

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

1. The application is granted;
2. The matter is referred back to a different decision-maker for redetermination;
3. There is no question for certification.

**"Lobat Sadrehashemi"**

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Judge

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

**DOCKETS:** IMM-5596-20

**STYLE OF CAUSE:** DAVID MABIRIZI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 14, 2021

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** DECEMBER 3, 2021

**APPEARANCES:**

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