

Federal Court



Cour fédérale

**Date: 20230406**

**Docket: IMM-3865-22**

**Citation: 2023 FC 498**

**Toronto, Ontario, April 6, 2023**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**Rose ONTIRI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ms. Rose Ontiri, is a citizen of Kenya. She came to Canada in September 2019 and made a claim for refugee protection on the basis that she fears persecution from Sungu Sungu, a militia group who wants to perform Female Genital Mutilation [FGM] on her daughter.

[2] The Applicant claims that Sungu Sungu threatened her after she refused to let her daughter be subject to FGM. The Applicant states that she reported these threats to the police, and sought help from local non-governmental organizations and the Area Chief to no avail. The Applicant claims that she took things into her own hands and began advocating against FGM.

[3] The Applicant alleges that due to her advocacy, her husband was threatened by Sungu Sungu that they would kill the Applicant if she did not stop her activities in the village and did not allow their daughter to undergo FGM. The Applicant claims that she left Keroka in February 2019 and stayed with friends elsewhere, but continued to receive threats against her life from Sungu Sungu, before coming to Canada.

[4] The Refugee Protection Division [RPD] rejected her claim in September 2021 on credibility grounds. In a decision dated April 1, 2022, the Refugee Appeal Division [RAD] rejected the Applicant's appeal of the RPD decision and confirmed that she is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Decision].

[5] The Applicant seeks judicial review of the Decision. I dismiss the application as I find the Decision reasonable.

## II. Issues and Standard of Review

[6] The Applicant submits that the RAD committed several errors in:

- A. not recognizing that the Applicant's mental health conditions adversely affected her ability to provide evidence;
- B. assessing the Applicant's corroborative evidence;
- C. drawing overall negative credibility inferences regarding the Applicant's advocacy against FGM; and
- D. finding that the Applicant produced insufficient evidence to establish her allegations.

[7] The parties agree that these issues are reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] 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 that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[9] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

### III. Analysis

A. *The RAD did not err in its analysis of the Psychotherapist's Letter*

[10] The Applicant submitted a letter from a psychotherapist which confirms that the Applicant was diagnosed with anxiety and depression, and states that she was suffering from memory issues and struggling to follow instructions and proceedings [Psychotherapist's Letter].

[11] The RPD found that the difficulties outlined in the Psychotherapist's Letter do not overcome or reasonably explain the credibility concerns it found. On appeal to the RAD, the Applicant relied on her mental conditions to claim that her ability to present her case to the RPD was negatively impacted, as she struggled to explain the inconsistencies in the evidence.

[12] The RAD agreed with the RPD's analysis of the Psychotherapist's Letter, taking issue with the lack of a letterhead, date, or details such as the method of assessment and contents of the treatment plan. The RAD found insufficient evidence to conclude that mental health factors persist to account for the discrepancies or omissions in the Applicant's evidence. The RAD upheld the RPD's decision to afford the Psychotherapist's Letter little weight.

[13] Before this Court, the Applicant argues that the RAD erred by giving little weight to the Psychotherapist's Letter and consequently affording little weight to the Applicant's mental condition as an explanation for other alleged inconsistencies.

[14] First, the Applicant submits that by criticizing the letter for missing a date or letterhead, the RAD overlooked details the letter did contain, such as the psychotherapist's signature, phone

and fax number, and a stamp showing their registration number. The Applicant relies on *Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 [*Paxi*], where the Court found that it was a reviewable error for the board to impugn the validity of a document central to the Applicant's situation without making any inquiries despite contact information being available: at para 52.

[15] Second, the Applicant submits that the RAD erred by overemphasizing the brevity and omission of peripheral details in the letter, such as the fact that it does not state when the Applicant was referred, how the assessment was conducted, and what the treatment plan is. The Applicant argues that the RAD should have considered the letter for what it contains, including the referring doctor's name, rather than what it does not: *Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 729 (FC) at para 11 [*Mahmud*].

[16] I am not persuaded by the Applicant's arguments. I note, first of all, that the facts in *Paxi* are distinguishable. The letter in question in *Paxi* was written by a church pastor on a letterhead, dated and signed. The Court rejected the RPD's finding that the letter must be notarized or that identification documents were required. It was in this context that Justice Russell observed with disapproval that the RPD did "not take the opportunity to use the contact information provided by the letterhead before demanding notarized and other objective identification documents": at para 52.

[17] Moreover, I agree with the Respondent that the RAD's findings concerning the Psychotherapist's Letter was one of weight and probative value rather than authenticity. As such, I find the case cited by the Respondent to be on point: *Gao v Canada (Citizenship and*

*Immigration*), 2021 FC 271 [*Gao*]. In *Gao*, the Court concluded that RAD “did not find that the Applicant’s support letter ‘could have been written by anyone’”, but rather concluded that the “letter was not reliable and of little probative value” due to a lack of detail: at para 36. A similar conclusion can be drawn here.

[18] By the same token, I also do not find *Mahmud* applicable given the RAD’s focus on the sufficiency of the information in the Psychotherapist’s Letter, as opposed to its authenticity.

[19] The Applicant also cites *Kashyap v Canada (Citizenship and Immigration)*, 2022 FC 961 [*Kashyap*], a case dealing with a Humanitarian and Compassionate application, for the proposition that it was unreasonable to apply an “arbitrary threshold” for assigning probative weight to the letter without “justifying why a particular detail was important or necessary and should have been included”: at paras 35-36.

[20] Unlike in *Kashyap*, the RAD in this case did provide reasons as to why the missing details were necessary, when it noted:

[21] The [Applicant] indicates on appeal that her anxiety, depression, and memory issues affected her ability to present her case to the RPD and she frequently struggled to provide explanations for alleged inconsistencies between her testimony and her documentary evidence. However, according to her evidence she saw this psychotherapist for three weeks, approximately a year and a half prior to her refugee claim. Like the RPD, I find that the letter fails to identify how any mental health condition or symptom experienced by the claimant at one time, might have affected the Appellant’s ability to present her case.

[21] In conclusion, I do not find any reviewable error with respect to the RAD's treatment of the Psychotherapist's Letter. I also reject the Applicant's assertion that the RAD impugned the Applicant's credibility based on poor performance in a memory test. For the reasons set out further below, I find that the RAD's credibility findings were reasonably based on its assessment of the inconsistencies contained in the Applicant's claims.

B. *The RAD's assessment of the Applicant's corroborative evidence was reasonable*

[22] The Applicant argues that the RAD erred by giving little weight to the following pieces of corroborative evidence, and that the negative credibility inferences drawn resulted in the RAD's subsequent failure to engage with evidence supporting the credibility of these documents:

- a. Medical report issued by the Keroka District Hospital [Medical Report];
- b. Police Report to establish her claims of persecution by Sungu Sungu [Police Report]; and
- c. Affidavits from her husband, mother and two friends in Kenya [Affidavits].

[23] Regarding the Medical Report, the discrepancies noted by the RPD and RAD arose from the date of the Medical Report, which contradicted the Applicant's narrative of when she fled Keroka, and when and how the Medical Report was obtained and re-issued. The Applicant also changed her testimony between the first and second sitting of the RDP hearing about the discrepancy in the date of the Medical Report.

[24] With respect to the Police Report, the noted discrepancies included, among other things, where the Applicant was when she received a threatening phone call from Sungu Sungu, and what she was threatened with. While the Police Report states that the Applicant was threatened

that her house would be burned, she testified before the RPD that she was threatened that her head would be cut off.

[25] Finally, concerning the Affidavits, the Applicant submitted original versions dated February 11, 2020 before the first sitting of the RPD hearing, and then provided what she purported to be amended versions during the second sitting, which were unsigned and were also dated February 11, 2020.

[26] The Applicant asserts before the Court that the RAD speculated about what should be expected from a medical report and police report issued in Kenya, failed to meet the rigorous standards for making implausibility findings, and failed to consider her explanations about the authenticity of the Affidavits.

[27] I agree with the Respondent that the Applicant has not raised any reviewable error with respect to the RAD's assessment of the corroborative evidence. The RAD did, in each instance, consider the Applicant's explanations for the discrepancies and provided reasons for rejecting them. The RAD conducted its own independent assessment of each of the documents and stated why it confirmed the RPD's findings.

[28] In my view, the Applicant has failed to establish that the RAD's line of reasoning did not reveal a rational chain of analysis, in light of the evidence before them.



[29] At the hearing, the Applicant conceded that there were inconsistencies, but argued that only inconsistencies that could not be reasonably explained can ground a negative credibility finding. In this case, the Applicant relies on the Psychotherapist's Letter, which, if accepted, would have led the RAD to assess her testimony in a different light.

[30] Once again, I reject the Applicant's argument. As noted above, I find that it was open to the RAD to find that the Applicant's mental health issues, as insufficiently documented as they were, did not explain away the various inconsistencies. In the absence of any evidence, I also reject the Applicant's bald assertion that her mental health issues must have persisted after receiving three weeks of treatment in 2020, since she was not on any medication at the time of the RPD hearing.

[31] The onus was on the Applicant to present her case, and to submit sufficient evidence with respect to any difficulties she may have had in presenting her case. The RAD did not question the authenticity of the Psychotherapist's Letter. It noted the missing evidentiary link between the mental health conditions experienced by the Applicant in the past, and its effect on her ability to present her case. I see no basis to interfere with the RAD's finding in this regard.

[32] The Applicant makes two additional arguments in writing, but did not pursue these arguments at the hearing. I will nevertheless address them below.

C. *The RAD did not err in drawing overall negative credibility inferences regarding the Applicant's advocacy against FGM*

[33] At the RPD hearing, the Applicant was asked what she did as an advocate after her daughter was targeted for FGM. The Applicant explained that in November 2018, she spoke out against FGM at a school assembly with students and parents. The Applicant testified she did not mention this event in her Basis of Claim [BOC] narrative because she did not wish to “come back to it” and knew it was in a police report.

[34] The RPD drew a negative inference from the omission of the Applicant’s first instance of anti-FGM advocacy, and on appeal the Applicant argued that the RPD’s finding was unsupported by the evidence. The RAD upheld the RPD’s credibility findings, noting that they were also based on the discrepancies in the other evidence, including the Applicant’s evolving testimony related to the corroborative evidence outlined above. The RAD found that the omission was material as it involved an event that led to the threats against her.

[35] The Applicant argues that the RAD erred by drawing a negative credibility inference against the Applicant’s claims of her advocacy against FGM simply due to the omission of one advocacy event. The Applicant asserts that the RAD’s focus on this advocacy event as her “first act” was informed by Western standards or subjective opinion of activism being associated with speaking publicly. The Applicant asserts that her activism also involved personal resistance.

[36] I find the Applicant’s argument lacks merit. The Applicant was asked at the first sitting of the RPD hearing why she did not mention speaking out against FGM at a school assembly. The Applicant replied that she thought it would be in a police report. The Applicant was asked this question again at the second sitting, and gave a different explanation:

Okay, you know I didn't take it as being, okay, as activist I was just doing my obligation as a teacher, you know, as a teacher sometimes when you teach you can bring something in and advise children so it was just an obligation as a teacher, I didn't know it was, they could take it as being an activist at school, it was just my obligation as a teacher.

[37] In confirming the RPD's finding that the omission was material, the RAD noted that according to the Applicant's narrative, she was targeted by the Sungu Sungu and the village elders not only because she refused to let her daughter undergo FGM, but also because she advocated in the community against the practice. It was in this context that the RAD found that the Applicant's "first act of speaking out against the practice in front of large audience of 45 students and their parents... is not a peripheral matter."

[38] The Applicant attempts to characterize the RAD's finding as equating the first act of speaking out as the first act of activism. I see nothing in the Decision to indicate that this was the case. Instead, the RAD was assessing the materiality of the omitted act in question, in light of the Applicant's claim of persecution on the basis that she was an anti-FGM advocate.

[39] Given that the Applicant's advocacy against FGM formed a central aspect her claim, I also reject the Applicant's argument that the omission of this event from her BOC narrative and the resulting discrepancy with her testimony is peripheral to her overall credibility.

D. *The RAD's finding that the Applicant produced insufficient evidence to establish her allegations was reasonable*

[40] The Applicant submitted a handwritten letter from the Area Chief, which reminded the Applicant about the protest against FGM in their village in December 2018 [Area Chief's letter]. The Area Chief's letter also advised the Applicant to stay in Canada because the community is bitter about the protest. The Applicant argues that the RAD erred by failing to independently consider the Area Chief's letter which, the Applicant contends, is highly probative of her allegations and should have been afforded full weight.

[41] With respect, contrary to the Applicant's assertion, the RAD did independently consider the Area Chief's letter and explicitly found "that it is insufficient to overcome the credibility concerns that exist in this case."

[42] I agree with the Respondent that it was open for the RAD to conclude that the Applicant's remaining evidence was insufficient to establish the Applicant's claims of persecution by the Sungu Sungu due to her anti-FGM activism. The Applicant's argument amounts to asking the Court to reweigh the evidence.

#### IV. Conclusion

[43] The application for judicial review is dismissed.

[44] There is no question for certification.

**JUDGMENT in IMM-3865-22**

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

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

"Avvy Yao-Yao Go"

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Judge

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

**DOCKET:** IMM-3865-22

**STYLE OF CAUSE:** ROSE ONTIRI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 20, 2023

**JUDGMENT AND REASONS:** GO J.

**DATED:** APRIL 6, 2023

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