

Federal Court



Cour fédérale

Date: 20230726

Docket: IMM-476-22

Citation: 2023 FC 1020

[ENGLISH TRANSLATION]

Toronto, Ontario, July 26, 2023

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

LUKANU TEKASSALA ANDRÉ SAMUEL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Lukanu Tekassala André Samuel, is an Angolan citizen. He is seeking judicial review of a decision dated November 26, 2021 [Decision] of the Refugee Protection Division [RPD] determining that he 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 [IRPA]. The RPD rejected Mr. Samuel's refugee protection claim because of his lack of credibility and the manifestly unfounded nature of his claim.

[2] Mr. Samuel argues that the RPD erred in assessing his credibility and in concluding that his refugee protection claim was manifestly unfounded. He also argues that the RPD breached procedural fairness by constantly interrupting him during his testimony.

[3] For the reasons set out below, I will dismiss Mr. Samuel's application. Having reviewed the RPD's reasons and conclusions, the evidence before it and the applicable law, I see no reason to quash the Decision. The inadequacies in the evidence submitted by Mr. Samuel and the contradictions in his testimony reasonably support the RPD's adverse findings about his credibility, and the RPD's reasons have the qualities that make its reasoning logical and coherent, having regard to relevant legal and factual constraints. The same is true of the RPD's conclusions on the manifestly unfounded nature of Mr. Samuel's refugee protection claim. Finally, the RPD followed all applicable principles of procedural fairness. There is therefore no reason for the Court to intervene.

II. Background

A. *Facts*

[4] From 2005 to 2013, Mr. Samuel was living in the Democratic Republic of the Congo (DRC) with his family as a refugee.

[5] In 2014, Mr. Samuel returned to live with his uncle in Angola, his country of citizenship. His uncle then introduced him to the Light of the World Seventh Day Adventist

Church [Church], led by the prophet José Julino Kalupeteca. Mr. Samuel joined the Church that the same year.

[6] On April 16, 2015, Angolan authorities attempted to arrest Prophet Kalupeteca at a church gathering in Monté Sumé, in the city of Caála, Huambo. A clash broke out between church members and the authorities, resulting in several deaths and injuries. Mr. Samuel alleges that he was present at this gathering but maintains that he fled to the province of Luanda to hide, since the authorities were looking for the members of the Church.

[7] Mr. Samuel then fled to Angola again and returned to the DRC to continue taking refuge there.

[8] However, Mr. Samuel returned to Angola in August 2015, following the death of his uncle, and then returned to the DRC in December 2015.

[9] Motivated by a rallying speech by the Angolan president, Mr. Samuel returned to Angola again in January 2016. However, he decided to return to the DRC in June 2016 when he learned that the authorities were still hunting for the Church's followers.

[10] On July 16, 2016, Mr. Samuel again went to Angola, this time to register as a voter in the upcoming elections.

[11] In June 2018, Mr. Samuel left Angola for the United States. He arrived in Canada on August 4, 2018, via Roxham Road.

B. *Decision of the Refugee Protection Division*

[12] In its Decision, the RPD identified some inconsistencies and implausibilities between Mr. Samuel's testimony and the documentary evidence. First, with respect to the clash between members of the Church and the Angolan authorities at Monté Sumé, Mr. Samuel allegedly suffered a head injury when he fled. Noting from the evidence that the assault by the authorities took place early in the day, that Monté Sumé is in an area not easily accessible outside of Caála, Huambo, and that the authorities had blocked all possible exits, the RPD asked Mr. Samuel how he escaped. Faced with this evidence, Mr. Samuel explained that he left very early in the morning to go to the nearest city for supplies. This is when he fell off his motorcycle and injured his head. He then fled to the city of Luanda, more than 600 kilometres from the scene of the assault.

[13] The RPD noted from Mr. Samuel's testimony that he not only had difficulty explaining how he was able to travel more than 600 kilometres despite close monitoring by government authorities, but that he was not with the members of the Church during the assault and that his injury did not stem from the violent acts committed by the authorities, contrary to what he had originally implied in his Basis of Claim Form.

[14] The RPD also did not believe that Mr. Samuel is a person of interest to the Angolan government. Relying on the passport issued to him by his country on May 21, 2015—approximately one month after the assault by the authorities on Monté Sumé—the RPD noted that Mr. Samuel had no problem obtaining this official document. In addition, Mr. Samuel was able to use his passport several times to return to the DRC without incident. Moreover, the

entries in his passport and the many exits from the country demonstrate that he has been subject to checks by the Angolan authorities but was never arrested.

[15] The RPD also noted that Mr. Samuel's allegations that he is fleeing the Angolan authorities cannot be accepted because he returned to Angola on several occasions for [TRANSLATION] "implausible and far-fetched" reasons. Thus, the RPD was of the view that Mr. Samuel's testimony is not credible and concluded that he failed to provide [TRANSLATION] "sufficient credible or trustworthy evidence to warrant international protection in Canada." The RPD therefore concluded that Mr. Samuel's refugee protection claim was [TRANSLATION] "manifestly unfounded".

C. *Relevant statutory provisions*

[16] The relevant statutory provisions are found in sections 107, 107.1 and 110 of the IRPA. Subsection 107(2) deals with claims for refugee protection that have "no credible basis" while section 107.1 deals with claims for refugee protection that are "manifestly unfounded". Subsection 110(2) sets out the restriction on appeals resulting from such RPD determinations. These provisions read as follows:

Decision

107(1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.

No credible basis

Décision

107 (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.

Preuve

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

Manifestly unfounded

Demande manifestement infondée

107.1 If the Refugee Protection Division rejects a claim for refugee protection, it must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent.

107.1 La Section de la protection des réfugiés fait état dans sa décision du fait que la demande est manifestement infondée si elle estime que celle-ci est clairement frauduleuse.

...

...

Restriction on appeals

Restriction

110 (2) No appeal may be made in respect of any of the following:

110 (2) Ne sont pas susceptibles d'appel :

...

...

(c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;

c) la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

D. Standard of review

[17] Both Mr. Samuel and the Minister are of the view that the reasonableness standard applies in this case with respect to credibility findings and the lack of a credible basis for the refugee protection claim. I agree (*Regala v Canada (Citizenship and Immigration)*, 2020 FC 192 [Regala] at para 5; *Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142 [Janvier] at para 17; *Yuan v Canada (Citizenship and Immigration)*, 2018 FC 755 in para 13; *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 [Warsame] at para 25).

[18] The reasonableness review is presumed to apply whenever a court must decide an application for judicial review. There are two exceptions to this presumption: where the legislature has indicated that it intends a different standard or where the rule of law so requires that the standard of correctness be applied (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 17). Neither exception applies here.

[19] The focus of the reasonableness review is on the decision made by the decision maker, including both the reasoning process and the outcome (*Vavilov* at paras 83, 87). A reasonable decision is one that is justified by transparency and intelligibility based on an internally coherent reasoning (*Vavilov* at para 86, 99).

[20] Reasonableness review must include a rigorous assessment of administrative decisions. However, a reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt a posture of restraint and intervene only “where it is truly

necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). Reasonableness review finds its starting point in the principle of judicial restraint and deference and requires that a reviewing court demonstrate respect for the legislative choice to entrust a decision to administrative actors rather than to the courts (*Vavilov* at paras 13, 46, 75).

[21] The party seeking judicial review bears the burden of showing that the decision was unreasonable. A decision cannot be set aside on the basis of merely superficial or peripheral shortcomings. There must be sufficiently serious shortcomings in the decision, such as a failure of rationality internal to the reasoning process (*Vavilov* at paras 100–01).

[22] However, with respect to the questions of procedural fairness, the Federal Court of Appeal has repeatedly concluded that procedural fairness does not require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] at para 54). Rather, it is a legal question that must be assessed having regard to the circumstances to determine whether the decision maker respected the standards of fairness and natural justice (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). An applicant is entitled to know the case against him or her and to be provided a full and fair opportunity to respond.

III. Analysis

[23] In this application for judicial review, Mr. Samuel is challenging the RPD's decision for the following three reasons: (1) its credibility finding; (2) the conclusion that his claim was manifestly unfounded; and (3) its breach of the principles of procedural fairness.

A. *Mr. Samuel's credibility*

[24] Mr. Samuel argues that the RPD could not conclude that there was a lack of credibility and no credible basis, as he provided evidence that established the accuracy of his written account. In his view, since the RPD did not question the occurrence of the events that led to his persecution, the fact that it invoked a lack of evidence constitutes a miscarriage of justice. Mr. Samuel also argues that the RPD erred in its analysis of the circumstances surrounding his passport application and registration on the voters list, since it did not inquire into whether these events really allow the Angolan authorities to track him easily.

[25] The Minister argues that the determinative issue is Mr. Samuel's credibility, which is sufficient to dismiss his application. The Minister is of the view that the RPD explained in detail, considering Mr. Samuel's demeanour and the documentary evidence, the evidence on which it relied to conclude that Mr. Samuel is not credible and is not a person of interest to the Angolan authorities.

[26] I share the Minister's view on the RPD's credibility findings.

[27] While refugee protection claimants are presumed to tell the truth, a claimant's lack of credibility may suffice to rebut this presumption, including "where the RPD is unsatisfied with

the [claimant's] explanation for [his or her] inconsistencies" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 21, citing *Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at para 19). It is well known that the RPD is usually in a better position to assess a claimant's credibility, since it has the benefit of hearing his or her testimony (*Lawani* at para 22, citing *Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at para 10). Moreover, the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim can support a negative conclusion about a claimant's credibility (*Lawani* at para 22). Finally, a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Lawani* at para 24).

[28] Considering these principles, I am of the view that the RPD's findings on Mr. Samuel's lack of credibility are entirely reasonable. Mr. Samuel's written account has several inconsistencies that undermine his credibility. Among other things, Mr. Samuel was not able to identify when he left Monté Sumé to purchase supplies from the nearest city or how he then managed to get to the city of Luanda despite monitoring by the authorities. These facts are key elements in Mr. Samuel's explanation of his escape from the Angolan authorities.

[29] Furthermore, the RPD can legitimately have regard to the applicant's demeanour when assessing the credibility of his written account (*Cambara v Canada (Citizenship and Immigration)*, 2017 FC 1019 at para 26). This is what it did when it concluded that Mr. Samuel's many returns to Angola between 2014 and 2017 were inconsistent with his alleged fear of the Angolan authorities. The RPD considered the documentary evidence and Mr. Samuel's explanations but found that there were sufficient.

[30] Mr. Samuel's return trips to Angola, given the explanations he provided, demonstrate that he did not really fear the Angolan authorities. "[A] lack of overall credibility is determinative of a claim for refugee protection" *Towolawi v Canada (Citizenship and Immigration)*, 2020 FC 245 at para 28), because without credible testimony, a claimant will not be able to establish subjective fear. However, to establish a fear of persecution, Mr. Samuel must meet both requirements of the bipartite test; a subjective and objective fear of persecution (*Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 15). The burden is on Mr. Samuel to prove the elements of his claim for refugee protection (*Janvier* at para 32). In this case, Mr. Samuel did not meet that burden.

[31] The inconsistencies raised by the RPD regarding the pivotal event of the assault at Monté Sumé and the contradictory demeanour of Mr. Samuel when confronted with his many return trips to the country despite his fear of the Angolan authorities are sufficient to undermine his credibility (*Regala* at para 18). The RPD concluded that this adverse finding on Mr. Samuel's credibility also undermined the credibility of the documentary evidence presented, which it is authorized to do. Thus, the RPD could reasonably conclude that there was no credible or trustworthy evidence in Mr. Samuel's case.

B. *Claim manifestly unfounded*

[32] Mr. Samuel then argues that the RPD confused the "manifestly unfounded" claim, which prevents a claimant from appealing a negative decision to the Refugee Appeal Division [RAD], with an adverse credibility finding. He is of the opinion that the reasons for the Decision do not contain sufficient explanations to establish how the RPD concluded that his claim was "manifestly unfounded". The Minister responded that the conclusion of no credible basis was

justified because the finding of lack of credibility pertains to the central elements of Mr. Samuel's refugee protection claim, and the RPD has clearly explained why it reached that conclusion.

[33] Again, I am not persuaded by Mr. Samuel's arguments.

[34] First of all, I acknowledge that in its Decision, the RPD does not refer to "no credible basis" within the meaning of subsection 107(2) of the IRPA; instead, it finds that the refugee protection claim is "manifestly unfounded," the term Parliament uses in section 107.1. Moreover, the RPD does not specifically refer to any section of the IRPA in its Decision, nor does it refer to subsection 107(2) or section 107.1. There is a distinction between the two. The RPD can only make a finding that there was no credible basis "where there was no credible or trustworthy evidence on which it could have made a decision to grant refugee protection status to the claimant" (*Aboubeck v Canada (Citizenship and Immigration)*, 2019 FC 370 at para 15). In contrast, a manifestly unfounded claim is a claim that is "clearly fraudulent" under section 107.1 of the IRPA. Justice Roy, in *Warsame* at paragraph 30, stated the following:

For a claim to be fraudulent, it would be required that a situation be represented of being of a certain character when it is not. But not any misstatement or falsehood would make a refugee claim fraudulent. It must be that the dishonest representations, the deceit, the falsehood, go to an important part of the refugee claim for the claim to be fraudulent, such that the determination of the claim would be influenced in a material way. It seems to me that a claim cannot be fraudulent if the dishonesty is not material concerning the determination of the claim.

[35] However, the consequence of either finding is the same, meaning that regardless of whether the RPD concludes that a claim has no credible basis or is manifestly unfounded, the

claimant is deprived of the right to appeal to the RAD in either case. This is expressly provided for in paragraph 110(2)(c) of the IRPA (see also *Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at para 26; *Wu v Canada (Citizenship and Immigration)*, 2016 FC 516 at para 12).

[36] I note in passing that, in the standard Notice of Decision letter sent to Mr. Samuel with the Decision, the RPD refers to [TRANSLATION] “[s]ubsection 107(2) or section 107.1 of the [IRPA]”, making no distinction between the two provisions in its heading. At the hearing before the Court, both counsel for Mr. Samuel and the Minister expressed the view that the consequences, for a refugee protection claimant, of a conclusion under either of these two provisions were the same.

[37] In this case, and as stated above, the RPD’s findings regarding Mr. Samuel’s credibility reasonably led it to conclude that there was no credible evidence to support his refugee protection claim. On the basis of this analysis, the RPD then concluded at paragraph 40 of the Decision that Mr. Samuel [TRANSLATION] “did not provide sufficient credible or trustworthy evidence to warrant international protection by Canada.” The absence of [TRANSLATION] “credible or trustworthy evidence” is, almost word for word, consistent with the language of subsection 107(2) of the IRPA regarding claims with “no credible basis”. The RPD then concluded, at paragraph 44 of the Decision, that Mr. Samuel’s refugee protection claim was “manifestly unfounded”.

[38] I acknowledge that in its reasons, the RPD appears to have confused subsection 107(2) and section 107.1 by equating a claim with no credible basis with a claim that is manifestly unfounded. Admittedly, it would have been desirable for the RPD to be more precise in its statements and to distinguish between the two realities, especially since Parliament took the

trouble to adopt two separate sections to refer to these two cases. However, I am not persuaded that this confusion in the RPD's reasons is fatal to the Decision and makes it unreasonable.

[39] Rather, I am of the view that, when read as a whole, the RPD's reasons for its Decision demonstrate that it clearly understood the difference between, on the one hand, a claim that is manifestly unfounded and a claim with no credible basis and, on the other hand, a decision based on adverse credibility findings. It is also clear that at no time did the RPD's factual findings suggest that Mr. Samuel's claim was as fraudulent in nature as is usually associated with claims that are "manifestly unfounded". But the reasons do highlight the inconsistencies in Mr. Samuel's testimony, which are sufficient to support the adverse findings about Mr. Samuel's credibility and the lack of credible or trustworthy evidence.

[40] I am satisfied that, despite the confusion expressed by the RPD between a claim with no credible basis and a claim that is manifestly unfounded, I can understand and follow the RPD's reasoning and see that the RPD's conclusion was indeed drawn "from the analysis undertaken" (*Vavilov* at para 103). An adverse finding regarding a claimant's credibility may result in the lack of credible evidence to support the claim, and such an outcome may be sufficient for the RPD to determine that there is no credible basis (*Nezerali v Canada (Citizenship and Immigration)*, 2016 FC 1375 at paras 26–29).

[41] The written reasons given by an administrative body must not be assessed against a "standard of perfection" (*Vavilov* at para 91). I would like to point out that the equation of no credible basis with a claim that is manifestly unfounded is completely inconsequential in Mr. Samuel's case, and that this is clearly a minor error in relation to the content of the Decision. In other words, I am not persuaded that this flaw or shortcoming alleged by Mr. Samuel is

“sufficiently central or significant to render [the Decision] unreasonable” (*Vavilov* at para 100).

This is not an error that causes me to lose confidence in the RPD’s reasoning or justifies this Court’s intervention on judicial review. In sum, there are no serious shortcomings in the Decision that would impede the analysis and undermine the requirements of justification, intelligibility and transparency.

C. *Compliance with rules of procedural fairness*

[42] Finally, Mr. Samuel argues that the RPD, by interrupting him on several occasions, prevented him from giving full testimony. According to Mr. Samuel, this error led the RPD to base its conclusions on erroneous assumptions, including the circumstances surrounding his escape to the city of Luanda. Therefore, the RPD allegedly deprived him of his right to be heard.

[43] I disagree. As the Minister has correctly argued, this allegation by Mr. Samuel does not stand up to analysis and is not supported by the evidence or excerpts from the hearing. On the contrary, listening to the recording of the hearing before the RPD shows that Mr. Samuel was able to testify, that he had many opportunities to intervene, and that the RPD asked him if he had any new elements to add to his testimony before concluding the hearing.

[44] In fact, Mr. Samuel essentially alleges that he was interrupted and interviewed in a restrictive manner by the RPD. Respectfully, this is not a breach of the rules of procedural fairness. A hearing before an administrative decision maker such as the RPD is not an invitation to come and have tea with the panel. On the contrary, it is a judicial process in which the RPD’s role is inquisitorial, meaning that it must be actively involved in the hearings before it to make its inquiry process work properly. (*Aloulou v Canada (Citizenship and Immigration)*, 2014 FC 1236

at para 27). It was therefore open to the RPD to interrupt Mr. Samuel during his testimony to ask him the appropriate questions and verify the truthfulness of his statements. Nevertheless, the RPD ensured that Mr. Samuel had the opportunity to give adequate testimony by giving him the chance to clarify or add certain arguments before concluding its process. If Mr. Samuel wanted to clarify certain elements, including his escape to the city of Luanda after the assault by the Angolan authorities at Monté Sumé, he had the opportunity to do so. Therefore, in my view, there is absolutely nothing to suggest that the RPD failed in its duty of procedural fairness in this case.

[45] Moreover, the case law cited by Mr. Samuel in support of his argument does not help in any way to support the conclusion he is seeking. In *Ahmad v Canada (Citizenship and Immigration)*, 2019 FC 11 at paragraph 28, the Court, while recognizing the improper speculation of the RPD, concluded that the errors made in the circumstances of that case did not render the decision unreasonable. In *Canada (Minister of Citizenship and Immigration) v Dhaliwal-Williams*, 1997 CanLII 6074 (FC) [*Dhaliwal-Williams*], the Court concluded there had been a violation of the principles of natural justice because the Immigration Appeal Division simply did not hear certain witnesses, which prevented the applicant from fully developing her argument. In this case, Mr. Samuel had the opportunity to testify and complete his arguments before the end of the hearing, which makes his situation very different from that in *Dhaliwal-Williams*. Finally, in *Mohamed Mahdoon v Canada (Citizenship and Immigration)*, 2011 FC 284, cited by Mr. Samuel, the Court concluded that the applicant had ample opportunity to explain the irregularities in the evidence.

IV. Conclusion

[46] For the above reasons, Mr. Samuel's application for judicial review is dismissed. I do not consider the RPD's decision-making process or its conclusions to be irrational. Rather, I am of the opinion that the RPD's analysis of Mr. Samuel's lack of credibility has all the required qualities of transparency, justification and intelligibility, and that the Decision is not tainted by any reviewable errors. I come to the same conclusion regarding the manifestly unfounded nature of his refugee protection claim. According to the reasonableness standard, it is sufficient that the Decision be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker. This is the case here. Furthermore, the RPD did not breach any rules of procedural fairness in its handling of Mr. Samuel's case.

[47] None of the parties proposed any questions of general importance to be certified, and I agree that there are none.

JUDGMENT in IMM-476-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed without costs.
2. No question of general importance is certified.

“Denis Gascon”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-476-22

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