

Federal Court



Cour fédérale

Date: 20250116

Docket: IMM-12789-23

Citation: 2025 FC 92

Toronto, Ontario, January 16, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

KIMANUKA KENNY NKUSI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Kimanuka Kenny Nkusi, is a citizen of Rwanda. He arrived in Canada in 2018 on a study permit, and in December 2021 he claimed refugee status.

[2] Prior to his arrival in Canada, the Applicant had been required to attend the “ingando” program in Rwanda, a training mandated by the government for all high school graduates focused on promoting patriotism and training youth to defend the country. The Applicant says

that his parents called him two months after his arrival in Canada to inform him that Rwandan authorities were verifying that all ingando participants were still in the country. He alleges that the authorities continued to check his house in Rwanda to confirm that he was still in the country.

[3] According to the Applicant, on December 27, 2020, Rwandan authorities attended his home and took his parents in for questioning. Two days later, the Applicant states that his father called him advising him not to return to Rwanda for fear that he would be interrogated, harassed and detained by authorities. He claims that authorities returned to his parents' house in June 2021 to see if the Applicant had returned to Rwanda. His father told the authorities that he was still studying in Canada.

[4] In December 2021, the Applicant filed a claim for refugee protection based on his fear of being persecuted by the Rwandan government for being a traitor or enemy of the state for failing to return to Rwanda for mandatory military service. The Refugee Protection Division [RPD] dismissed the Applicant's claim on the basis of credibility. In particular, the RPD found that the documents the Applicant relied on to establish the core of his claim were fraudulent.

[5] The Applicant appealed to the RAD, which upheld the RPD's findings regarding the genuineness of the documents he had adduced. The RAD found that the Applicant's reliance on fraudulent documents undermined his credibility. The RAD also found that the Applicant failed to explain the delay in making his refugee claim, noting that his evidence about the delay was contradictory or evolving. Although the RAD accepted the Applicant's evidence about his

attendance at the ingando camp, it found that this did not establish a forward-facing risk of persecution, relying on the country condition evidence. Based on this analysis, the RAD rejected his claim for protection.

[6] The Applicant seeks judicial review of this decision. He raises three issues: (i) that the RAD erred in its treatment of the allegedly fraudulent documents; (ii) that it unreasonably drew a negative inference based on his delay in claiming refugee protection; and (iii) that it erred by finding that the remaining documentary evidence was insufficient to establish his claim.

[7] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[8] (i) *The fraudulent documents*: The Applicant submitted a Search Report, three Summons and a Search Warrant in support of his claim. The RAD found these documents were significant because they were the foundation for the Applicant's claim that he faced persecution in Rwanda. The RAD's examination of the documents revealed a number of concerns: the Summons and second Search Report included meaningless strings of letters ("FSJDA") in the header before the country's name, which suggested they had been prepared concurrently and were not authentic; the Search Report included an incorrect date format (27/12/12/2020), and the unconventional and inconsistent capitalization of letters used in spelling the name of the Officer who allegedly completed the documents. The RAD found that the Applicant failed to provide a satisfactory explanation for these discrepancies.

[9] Having found these issues, the RAD went on to note additional inconsistencies in the documents including the use of a different font in one portion of the Search Warrant, the fact that identical stamps and signature were placed on documents that were purportedly prepared at different times, and that the search warrant was incomplete. The RAD held that while none of these elements were determinative of the authenticity of the documents, when combined with the more significant discrepancies noted above, they supported the conclusion that the documents were likely not genuine.

[10] The Applicant argues that the RAD's analysis is unreasonable, because it failed to take account of the context in which the documents were prepared, or to consider the fact that the documents were translated from another language. He submits that the RAD unreasonably drew a negative inference from the additional letters that appear on some of the documents, because these letters must mean something, even if it is not clear to the RAD.

[11] The Applicant says that the fact that the signature on the documents is identical is not a reason to question the validity of the documents, because signatures are meant to be as repetitive and similar as possible. As for the similarity of the stamps on the documents, the Applicant points out that the RAD was examining scans of documents because the originals were not available to him, and it was therefore unreasonable to draw any conclusion from the way the stamps looked on the scanned page.

[12] In regard to the irregular capitalization of the name, the Applicant argues that the RAD did not provide an adequate explanation of its finding. He says that the way the name is written

is consistent across all of the documents, which suggests that this is, in fact, the conventional way of writing names in Rwanda. In addition, the RAD's finding about the different font cannot stand because it was comparing two different documents and it was entirely understandable why they might be prepared using different fonts.

[13] I cannot accept the Applicant's arguments on this issue. The RAD clearly explained its reasons for questioning the authenticity of the documents, and its assessment is based on the documents in the record. The Applicant does not allege that the RAD ignored any crucial piece of evidence, but rather he challenges the specific findings made by the RAD. It is not the role of a reviewing Court to re-weigh the evidence, and there are no exceptional circumstances that would justify interfering with the RAD's factual findings (*Vavilov* at para 125).

[14] I am not persuaded that the RAD failed to take account of the context within which the documents were prepared, nor do I accept the argument that the discrepancies only appear in the translated versions. For example, the inconsistent spelling of the name on the documents appears in the original language versions rather than the translated versions.

[15] It is not the role of a reviewing Court to re-weigh the evidence, and the fact that the Applicant disagrees with the RAD's assessment of this evidence does not make its findings unreasonable. I am satisfied that the RAD examined the evidence with care, and it explained its reasons for questioning the authenticity of the documents. The Applicant has not demonstrated that any of these conclusions were based on a fundamental misapprehension of the evidence or that the RAD ignored crucial evidence.

[16] (ii) *The delay in making the refugee claim:* The RAD noted that the Applicant left Rwanda and came to Canada on a student visa and began his studies in early 2019. He did not submit his refugee claim until late 2021. The RAD found that the Applicant's failure to explain the delay in making his claim was an additional factor that diminished his credibility. The RAD rejected the Applicant's argument that his claim was based on a number of incidents up to June 2021, noting that the Applicant had testified that his fear had crystallized in 2019. The RAD also found that the Applicant's explanation for the delay was contradictory and evolving.

[17] The Applicant argues that the RAD unreasonably failed to consider his explanation for the delay, including that he had learned that the refugee process was faster if he claimed in Montreal but he did not move there until February 2020. There were further delays associated with the COVID-19 pandemic and the closure of government offices. He says that these were legitimate explanations for the delay and the RAD's failure to accept them was unreasonable.

[18] The Applicant argues that his claim was based on the cumulative effect of several events, including the visits to his parents' home by Rwandan security officials in December 2020 and June 2021. This demonstrates that he did not delay in filing his refugee claim, and therefore the RAD's negative credibility finding is unfounded.

[19] I am unable to find that the RAD's treatment of the Applicant's delay in filing his refugee claim was unreasonable. Delay is a factor that can reasonably be considered in assessing a claimant's subjective fear, but each case will turn on its particular facts. The RAD was required to consider the Applicant's explanation for his delay in filing his claim, and it did so. The RAD

explained its reasoning in finding that although the Applicant included subsequent incidents in his narrative, he had indicated that his fears had crystallized as of 2019. The RAD's finding is based in the evidence and clearly explained. That is all that was required under the framework for reasonableness review.

[20] *(iii) The RAD's assessment of the other documents:* Like the RPD, the RAD accepted the documents showing that the Applicant had attended the ingando camp, but it found that the country condition evidence did not establish that Rwandan authorities treated individuals who left the country to study abroad as traitors. The RAD found that the evidence did not demonstrate that the Applicant's past participation in the ingando camp put him at risk of persecution on his return to Rwanda.

[21] The RAD gave no weight to the letter from the Applicant's brother, because it relied on the summonses that were previously found to be not authentic, and otherwise simply repeated the Applicant's narrative.

[22] The Applicant submits that the RAD misunderstood the purpose of the evidence about the ingando camp. He says it was not to establish forward-facing risk but rather to corroborate his testimony about having attended the ingando camp. The Applicant says the RAD therefore erred in its assessment of this evidence. As for his brother's letter, the Applicant argues that the RAD's findings about the authenticity of the summons was unreasonable, and therefore its rejection of his brother's letter must also fall.

[23] I am not persuaded by either argument. The RAD accepted that the Applicant had attended the ingando camp, but found that this did not establish a prospective risk. That was a reasonable finding based on the RAD's assessment of the country condition evidence. The RAD's evaluation of the brother's letter was also reasonable. I have already found that the RAD's findings about the summons and other documents were reasonable, and consequently I can find no basis to question its evaluation of the credibility of the brother's letter.

[24] For all of the reasons set out above, this application for judicial review is dismissed.

[25] There is no question of general importance for certification.

JUDGMENT in IMM-12789-23

THIS COURT'S JUDGMENT is that:

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

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12789-23

STYLE OF CAUSE: KIMANUKA KENNY NKUSI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: ZOOM VIDEOCONFERENCE

DATE OF HEARING: JANUARY 14, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: JANUARY 16, 2025

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