

CANADA / JUDGMENT

MB9-09308

COURT

Refugee Appeal Division

DECIDED

4 September 2020

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RAD File No. / No de dossier de la SAR : MB9-09308 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Person who is the subject of the appeal XXXX XXXX XXXX Personne en cause Appel considered / heard at Ottawa, Ontario Appel instruit / entendu à Date of decision September 4, 2020 Date de la décision Panel Me Murielle Henri Tribunal Counsel for the person who is the subject of the appeal Sokhna Khadidiatou Ndiaye Conseil de la personne en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] The appellant, XXXX XXXX XXXX, is a citizen of the Democratic Republic of the Congo (DRC) and alleges a fear for her life if she were to return to the DRC, because of her parents' political affiliation.
- [2] The appellant's parents are members of the Union pour la démocratie et le progrès social (UDPS) [Union for Democracy and Social Progress]. Sometime in 2011, the family home was set on fire, and her parents decided to send the appellant and her siblings to stay with a family friend. The parents went to live elsewhere to protect their children. In XXXX 2016, the appellant and her friends were arrested during a demonstration held near the university. Following her arrest, the appellant decided to leave the DRC. She arrived in Canada in XXXX 2016 and lost contact with her family members sometime in XXXX 2016. She claimed refugee protection on July 5, 2017.
- [3] The Refugee Protection Division (RPD) rejected the refugee protection claim because the appellant was not credible.

DETERMINATION

- [4] The appeal is dismissed. The appellant did not demonstrate, on a balance of probabilities, that she would be in danger if she were to return to the DRC. NEW EVIDENCE
- [5] Under the Immigration and Refugee Protection Act,¹ I can only accept evidence
- i. that arose after the RPD rendered its decision; or ii. that was not reasonably available at the time of the decision; or iii. that the person could not reasonably have been expected in the circumstances to have presented to the RPD before the decision was rendered.

- [6] If the evidence meets one or more of these requirements, I must decide whether the evidence is new, credible and relevant, before accepting it.² Letter from XXXX XXXX, a friend of the appellant's father, signed on XXXX XXXX XXXX2019, in Kinshasa
- [7] This letter was written after the RPD rendered its decision. However, the events reported in them occurred before the RPD rendered its decision, and several events were included in a letter written by Mr. XXXX that was filed in evidence before the RPD. Moreover, this letter was reasonably available at the time of the decision and the appellant could reasonably have been expected to present it to the RPD. Lastly, the appellant did not provide any explanation to demonstrate that this document meets the requirements of subsection 110(4) of the Immigration and Refugee Protection Act (IRPA). Consequently, I do not accept this letter as new evidence. Account statement from the XXXX XXXX XXXX XXXX XXXX for the XXXX 2017 term, issued on XXXX XXXX, 2017
- [8] The account statement had already been presented to the RPD. Moreover, the appellant did not provide any explanation to demonstrate that this document meets the requirements of subsection 110(4) of the IRPA. Consequently, I do not accept this account statement as new evidence. NEW ORAL HEARING
- [9] As the evidence was found to be inadmissible, there is no reason to hold an oral hearing.

ANALYSIS

- [10] My role is to examine all of the evidence and establish whether the RPD's decision is correct.³ Length of detention
- [11] In its decision, the RPD drew a negative inference from a contradiction about how long the appellant was in custody. Her Basis of Claim Form (BOC Form) states that she was released the same day. However, during the hearing, the appellant testified that she spent the night in prison and was released the following evening.⁴ When she was confronted with this contradiction, the appellant answered that she was confused and stressed. In her memorandum, the appellant alleges that the RPD erred in its interpretation of her story. She maintains that there is very little difference between spending one day or one night in prison, and the event had traumatized her so much that she was unable to remember the exact length of her detention.
- [12] Unlike the appellant, I am of the opinion that her arrest is a key element that contributed to her fear of the country's authorities. It is following her arrest that she decided to leave the DRC. Like the RPD, I am of the opinion that the appellant should have been able to recall whether she spent a night, or only a few hours, in a prison cell. In my opinion, stress does not explain this contradiction about how long she was detained.
- [13] Consequently, the RPD did not err in drawing a negative inference from this contradiction. Documentary evidence

- [14] In its decision, the RPD drew a negative inference from the fact that the appellant was able to submit evidence from the DRC, whereas she had stated that she was no longer in contact with individuals from the DRC. In her memorandum, the appellant alleges that she was unable to answer one question correctly because of her stress level at the time of the hearing, and this difficulty should not have led the RPD to doubt the authenticity of the evidence she submitted.
- [15] When asked by the RPD whether she was in contact with other family members or friends in the DRC, the appellant answered that she was in contact with a friend.⁵ When asked again by the RPD whether she has been in contact with someone else from the DRC since her arrival in Canada, the appellant answered no.⁶ It is only when confronted with the fact that she had received documents from the DRC after her arrival in Canada that the appellant stated that they came from her father's friend, and she thought that the question was whether she had been in contact with individuals her age.⁷
- [16] Like the RPD, I do not accept the appellant's explanation. The appellant's exchange with the RPD before it had asked her whether she had been in contact with individuals from the DRC could not have made the appellant believe that the RPD was talking about her being in contact with individuals her age. The RPD's question was clear and unequivocal.
- [17] Consequently, I am of the opinion that the appellant's answer undermines her credibility. Her parents' address
- [18] In its decision, the RPD drew a negative inference from the fact that the appellant wrote her parents' address in her forms, whereas she stated that she did not know where they were. In her memorandum, the appellant claims that she did not take steps on her own, and she was wholly justified in indicating her parents' address on her immigration forms in order to prevent any confusion in terms of administration.
- [19] I do not agree with this explanation.
- [20] When asked by the RPD why her parents' address and hers were the same on her documents, the appellant replied that she did not want to mention her situation everywhere, and that if she had written another address for her parents, it would have weighed against her for the visa application.⁸ When asked by the RPD why the same address was on her father's bank account, the appellant answered that she was unable to explain that.⁹
- [21] I have verified the documents filed by the appellant and also noted that XXXX XXXX XXXX XXXX was the address on all of the documents. In addition, I noted that the attestation of family composition issued in XXXX 2012 states that the appellant's father lives at XXXX XXXX XXXX XXXX in the XXXX neighbourhood;¹⁰ the same is true for the document entitled "prise en charge" [responsibility taken for] dated XXXX XXXX XXXX 2016.¹¹

- [22] Consequently, on a balance of probabilities, I conclude that the appellant lived with her parents when she left the DRC and her explanation cannot offset this conclusion, because several documents from 2012 to 2016, besides visa documents, show that the parents' and the appellant's addresses are the same.
- [23] Therefore, the RPD did not err in concluding that the appellant's credibility was undermined.
- [24] In addition, I also found another contradiction in the appellant's testimony. During the hearing, the RPD asked her whether she had considered obtaining evidence corroborating that she had been arrested from her friend XXXX, who had been arrested and jailed with her and thanks to whom she had been released. The appellant replied that she had not thought of it.¹² However, when her counsel asked her whether she had asked XXXX to write a letter to confirm what had happened, the appellant replied that she had asked her, but XXXX was afraid because she was still in the DRC.¹³
- [25] In light of the foregoing, I conclude that the contradictions are central because they are at the basis of her refugee protection claim, and the appellant did not establish, on a balance of probabilities, that she had been arrested, detained, and has not heard from her parents or her siblings.
- [26] To sum up, I find that the appellant is not credible with respect to her allegations of fear in the DRC. Residual profile
- [27] In her BOC Form, the appellant alleges that she lost contact with her parents, and, if she were to enter the DRC, she would not have her parents' protection, and, as a young woman without protection, she would be in even greater danger. During the hearing, the appellant testified that if her parents, who are members of a political party, are in danger, there is no guarantee for her safety as a young woman who is alone.¹⁴
- [28] Having concluded that the appellant did not establish that she is no longer in contact with her parents and she is not credible with respect to her fear in the DRC, I conclude that, on a balance of probabilities, she would be able to live with her parents and siblings if she were to return to the DRC. Therefore, she would not be alone if she were to return to the DRC.
- [29] Consequently, I conclude that the appellant did not establish that there is a serious possibility of persecution in the DRC, nor, on a balance of probabilities, that she would be personally subjected to a danger of torture, to a risk to her life or a risk of cruel and unusual treatment or punishment in the DRC.

CONCLUSION

- [30] I confirm the RPD's determination that the appellant is neither a Convention refugee nor a person in need of protection.

[31] The appeal is dismissed. (signed) Murielle Henri Murielle Henri August 4, 2020 Date IRB translation Original language: French 1 Subsection 110(4) of the Immigration and Refugee Protection Act. 2 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385. 3 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 4 Audio recording of the hearing before the Refugee Protection Division (RPD) on November 26, 2018, between 00:28:39 and 00:30:00. 5 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 00:18:23. 6 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 00:18:38. 7 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 00:21:00. 8 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 1:05:00. 9 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 1:07:00. 10 SPR-1, RPD record, at p. 111. 11 SPR-1, RPD record, at p. 119. 12 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 00:36:00. 13 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 1:13:47. 14 Audio recording of the hearing before the RPD on November 26, 2018, at approximately 00:07:00.

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