

CANADA / JUDGMENT

MB9-28758

COURT

Refugee Appeal Division

DECIDED

21 December 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File No. / No de dossier de la SAR : MB9-28758

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Person who is the subject of the appeal

XXXX XXXX

Personne en cause

Appeal considered / heard at

Montréal, Quebec

Appel instruit / entendu à

Date of decision

December 21, 2020

Date de la décision

Panel

Me Agnès Connat

Tribunal

Counsel for the person who is the subject of the appeal

Jamal Addine Fraygui

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] XXXX XXXX (the appellant) alleges that he is a citizen of the Democratic Republic of the Congo (DRC).
- [2] The appellant fears persecution due to his membership in the Union pour la démocratie et le progrès social (UDPS) [Union for Democracy and Social Progress]. He states that he has two minor children, who are not included in the claim.
- [3] The Refugee Protection Division (RPD) concluded that the appellant had not established his identity given the scientific analyses and the contradictions or inconsistencies in his testimony.
- [4] The appellant alleges that the RPD erred in its analysis of the documents he submitted to establish his identity and that it did not take into account the quality standards and norms that are not the same in Canada and the DRC. He contends that the RPD should evaluate all the documents obtained, which it did not do, and that it did not take into account either his explanations or the reasonable efforts he made to submit hard-to-obtain documents.
- [5] The Minister intervened before the RPD, but not in this appeal.
- [6] The determinative issue for the Refugee Appeal Division (RAD) is whether the RPD erred in its analysis of the appellant's identity.

DETERMINATION

- [7] I dismiss the appeal. The RPD was right to determine that the appellant is neither a refugee within the meaning of the United Nations Convention Relating to the Status of Refugees (the Convention) nor a person in need of protection.

The new evidence presented by the appellant is admitted

- [8] The appellant submitted three new pieces of evidence: a supplemental judgment (the judgment) and the passports of his two minor children. He contends that he could not produce this evidence earlier because he could not have predicted that the RPD would reject the other evidence and his testimony. He adds that he had already submitted his certificate of nationality, birth certificate and family composition and that it was only after the hearing that he noted that the RPD still had concerns about his identity.

- [9] I may allow new evidence if that evidence arose after the rejection of the claim or was not reasonably available before the RPD rendered its decision, or if it was, then if the person could not reasonably have been expected in the circumstances to have presented it, at the time of the rejection.¹ If the evidence meets at least one of these requirements, the appellant must also establish that the new evidence meets the three criteria of credibility, newness, and relevance.²

The supplemental judgment is admitted

- [10] The judgment does not meet the first criterion because it is dated XXXX XXXX XXXX 2018, and did not arise after rejection of the claim on November 5, 2019. It does not meet the second criterion because this evidence was available before the RPD rendered its decision, even if, as he explains in his memorandum, he never saw the judgment before, because his mother had obtained it for him and she had to submit it to the birth register to obtain his birth certificate and had not kept a copy. However, it is true that the appellant submitted several documents relating to his identity and that he could not have expected the RPD to still have concerns about his identity.
- [11] The judgment meets the jurisprudential tests. It is credible at first glance, because it was issued by an official authority of the DRC, is presumed to be authentic, and contains stamps and signatures from the authorities. It is relevant because it addresses the issue of the appellant's identity, and it is new because, although the RPD discussed this document at the hearing, it was not part of the RPD record.
- [12] The supplemental judgment meets the third criterion in subsection 110(4) and satisfies the jurisprudential tests. It is admitted.

The children's passports are admitted

- [13] The appellant submitted before the RAD the original passports of his two minor children (the passports). They meet the first criterion. The passports are dated XXXX XXXX XXXX 2019. According to the documentary evidence, the time it takes to obtain a passport varies from a week to a month, depending on where the applicant is physically located.³ The identity and nationality of the children described in these passports and the request to obtain them "arose" after the claim was rejected on XXXX XXXX XXXX 2019.
- [14] The passports are credible at first glance, because they are issued by an official DRC authority and are presumed to be authentic. This evidence is relevant because, according to the appellant, it is meant to help establish his identity. It is new, because it is not part of the RPD record.
- [15] The passports meet the first criterion in subsection 110(4) and satisfy the jurisprudential tests. They are admitted.

The Refugee Appeal Division denies the request for an oral hearing

- [16] The appellant is asking that the RAD hold an oral hearing. He contends that holding an oral hearing would help inform the RAD and address its concerns.⁴
- [17] I may hear an appellant if new evidence raises a serious issue with respect to his credibility, is central to the decision with respect to the refugee protection claim, and would justify allowing the refugee protection claim.
- [18] The judgment might enable the appellant to establish that the complete copy of his birth certificate (P-3) is an authentic document and acceptable for proving his identity, but it would not, on its own, justify allowing his refugee protection claim.
- [19] The passports might enable the appellant to establish that the birth certificates of the children are authentic documents, but they would not, on their own, justify allowing the refugee protection claim.
- [20] As the requirements of subsection 110(6) of the Immigration and Refugee Protection Act (IRPA) are not met, I deny the request for an oral hearing.

ANALYSIS

- [21] My role is to consider all of the evidence and establish whether the RPD's decision is correct.⁵
- [22] To make these grounds easier to understand, here is a summary of what is known about the appellant's identity. The appellant entered Canada with a false passport that he was unable to present. He was detained and met with the Canada Border Services Agency (CBSA) seven times. During that period, he submitted various identity documents. At his first CBSA interview on XXXX XXXX XXXX 2017, he explained that his passport would arrive at a later time. He submitted a driver's licence. On XXXX XXXX XXXX 2017, the CBSA received a report indicating that the driver's licence was not authentic. On XXXX XXXX XXXX 2017, the CBSA received a report indicating that the passport was not authentic. On XXXX XXXX XXXX 2018, the appellant submitted the individual records of his children, and an individual record in his own name. In XXXX 2018, a report indicated that his daughter's record was altered and his son's was authentic. The appellant also submitted to the CBSA school documents and a UDPS card. On XXXX XXXX XXXX 2019, the appellant submitted to the CBSA a certificate of citizenship dated XXXX XXXX XXXX 2018, and an attestation of family composition dated XXXX XXXX XXXX 2018. On XXXX XXXX XXXX 2019, he submitted a complete copy of a birth certificate in his name dated XXXX XXXX XXXX 2019. Before the RAD, he submitted a supplemental judgment dated XXXX XXXX XXXX 2018.
- [23] The appellant contends that although some of the documents submitted contain errors, the RPD should have considered the certificate of nationality, the birth certificate, and the attestation of family composition and should not have focused on the documents for which the authenticity is in doubt. He cites Kabongo⁶ to support his argument. He argues that the

fact that false documents are in circulation in the DRC does not automatically make the documents submitted (certificate of nationality, birth certificate, individual records of the children) false documents. He argues that, in order to be able to reject an official document, the RPD must have evidence supporting the conclusion that they are falsified. He adds that the RPD must have and list the evidence that supports the claim that said document is false.

- [24] The RPD's conclusion is correct; the appellant has not established his identity. Identity is the cornerstone of the Canadian immigration system. Findings regarding the identity and credibility of a refugee protection claimant are owed considerable deference by the Division, and the burden is on the appellant to establish his identity, on a balance of probabilities, by producing acceptable and credible documents.⁷ Unlike Kabongo, the RPD did not fail to consider certain evidence submitted by the appellant; rather, it based its conclusion on the many errors and inconsistencies in the appellant's documents, in addition to his contradictory testimony on a number of issues, which led it to question his true identity. The RPD mentioned and analyzed all the documents presented by the appellant. It did not rely on the fact that false documents circulate widely in the DRC, but rather on a precise, detailed analysis of each piece of evidence submitted by the appellant. The fact that it is easy to procure false documents in the DRC only adds to the various issues identified by the RPD. Furthermore, when the RPD rejected the passport and driver's licence, it had before it scientific analyses as evidence that these documents were false.

The appellant's Democratic Republic of the Congo passport was altered

- [25] The RPD noted that the appellant's passport was seized when he was detained and that this passport was analyzed by the CBSA, revealing that the passport is probably authentic but altered in several places. The appellant told the RPD that he could not explain these alterations, and then explained the steps he had taken to obtain it. The RPD was of the opinion that these explanations do not explain the scientific findings of the analysis and that his credibility is significantly undermined.
- [26] The appellant contends that he gave an explanation as to the reason why he held a passport, that he himself recovered that passport from the competent authorities, and that he has described all the steps he took to obtain it.
- [27] The RPD's conclusion is correct. The passport does not establish the appellant's identity.
- [28] A passport is a primary document for establishing a person's identity and nationality. The CBSA analyzed the DRC passport submitted by the appellant. In her report,⁸ the document analyst concludes that the passport booklet is authentic because it contains generally assigned security features and matches the samples and information in her possession. She adds that the passport was altered, specifically that [translation] "The biographical data page was separated from its backing and replaced with an entirely counterfeit page, and the personal data on page 31 was added." This is not just any page that was altered, but the biographical data page that lists the name, date of birth, place of birth and nationality, that

is, the appellant's personal data. The appellant's identity and nationality cannot be determined from the passport with the altered biographical data pages.

- [29] The appellant adds that with respect to his passport and driver's licence, as he is not an expert in document analysis, he cannot explain the alterations that were discovered during the inspection and that they surprised him. He contends that the DRC's resources are limited, that the quality standards and norms are not the same as in Canada, that mistakes occur due to lack of rigour, and that the correction of these errors may occur under conditions that give results like those in his case.
- [30] The appellant states that he obtained the passport from the competent authorities and that the mistakes are due to different quality standards in his country. Quality and control standards may differ in the DRC in certain respects. In this case, I trust the opinion of the expert whose report establishes that the passport is not reliable. Furthermore, a passport is an official document, internationally accepted by countries to establish the identity and nationality of a person, which demands rigour from the DRC authorities when they issue such passports. The passport has no weight to establish the appellant's identity and is not an acceptable document. The fact that it is falsified undermines the appellant's credibility.

The driver's licence is neither authentic nor reliable

- [31] The RPD noted that the driver's licence submitted by the appellant bears his alleged name and that, based on scientific analysis, the CBSA concluded that it was counterfeit. When asked to explain, the appellant stated that he had obtained it through the proper channels and described the steps taken to do so. The RPD was of the opinion that this did not explain the counterfeiting of the document and added that a driver's licence cannot establish an individual's citizenship.
- [32] The appellant contends that he explained the steps required to obtain his driver's licence, namely that he took a driving class, paid fees, and filed a licence application with the authorities of the general secretariat of the ministry of transport. As with the passport, he contends that he is not an expert, that the country's resources are limited, and that the quality standards are different.
- [33] The RPD's conclusion is correct. The appellant's identity cannot be established from the driver's licence. A driver's licence is a secondary document for establishing a person's identity. In her report, the document analyst concludes that the driver's licence is probably counterfeit, because it does not have the features of an authentic document, after comparing it to reference materials. She observed that the printing technique for the biographical data and the reaction under infrared light differ from the information in her possession. As with the passport, the biographical data was altered. Even if I consider that quality and control standards may be different in the DRC, I trust the opinion of the expert, whose report establishes that the driver's licence is not reliable and therefore has no weight for establishing the appellant's identity.

[34] The driver's licence, a secondary document, is neither authentic nor reliable. This is not an acceptable document to conclusively establish the appellant's identity.

The documents attesting to the appellant's birth

[35] The appellant submitted three documents related to his birth:

1- In 2017, he submitted an individual civil status record (record - before the RPD), dated XXXX XXXX XXXX 2014, issued by the civil status officer in the commune of Kalamu (Kinshasa), which states that XXXX XXXX is the son of XXXX XXXX XXXX XXXX XXXX XXXXandXXXX XXXX XXXX XXXX XXXX XXXX and was born on XXXX XXXX XXXX XXXX XXXX in the commune of Kalamu, city of Kinshasa.

2- In 2019, he submitted a complete copy of a birth certificate (certificate - before the RPD), dated XXXX XXXX XXXX 2018, issued by the civil status officer in the commune of Gombe (Kinshasa), which states that XXXX XXXX was born on XXXX XXXX XXXX XXXX, in Kinshasa and is the son of XXXX XXXX XXXX XXXX XXXX XXXXand XXXX. The document specifies that the declarant presented a copy of a supplemental judgment in lieu of a birth certificate on XXXX XXXX XXXX 2018, issued by the peace court of Kinshasa/Gombe.

3- In 2020, he submitted a supplemental judgment in lieu of a birth certificate (judgment - before the RAD) dated XXXX XXXX XXXX 2018, issued by the peace court of Kinshasa/Gombe at the request of Mr. DM, residing in Kinshasa, commune of La Gombe, cousin to XXXX XXXX XXXX stating that he was born on XXXX XXXX XXXX XXXX, from the union of XXXXandXXXX XXXX XXXX XXXX XXXX XXXX - same family name as XXXX) on the grounds that [translation] "his birth was not declared to the competent civil status officer by the statutory deadline due to ignorance of the law in effect," and "that due to ignorance of the law, this birth was never declared to the competent civil status officer as required by law."

[36] The appellant indicates in his Basis of Claim Form (BOC Form), signed in XXXX 2017, that he was born on XXXX XXXX XXXX XXXX, that his father is named XXXX and his mother is named XXXX XXXX

[37] The RPD concluded that it cannot give probative value to the individual birth certificate or record, or to the complete copy of the birth certificate.

[38] Birth certificates are primary documents for establishing a person's identity. The appellant did not submitted a birth certificate, but rather a complete copy of a birth certificate, an individual civil status record, and a supplemental judgment in lieu of a birth certificate. I nonetheless analyzed these documents as primary documents because the copy of the birth certificate and the supplemental judgment were submitted instead of a birth certificate.

The individual civil status record contradicts the information in the Basis of Claim Form

- [39] The RPD noted that in the individual civil status record dated 2014, the name of the appellant's mother is XXXX and his father's name is XXXX XXXX whereas in his BOC Form he writes that his mother is named XXXX and his father is XXXX. It did not accept the appellant's explanation that his mother goes by the name XXXX rather than XXXX XXXX. It was of the opinion that if his mother had another given name, it would have been reasonable to expect the appellant to indicate it in his BOC Form.
- [40] The appellant maintains that his mother is indeed XXXX and that she does not use the name XXXX.
- [41] The RPD's conclusion is correct. The record does not establish the appellant's identity. That record contradicts the information contained in the appellant's BOC Form regarding his mother's given name and the identity of his father, and this contradiction is significant.
- [42] The given name of the appellant's mother on the record is different from the name declared in his BOC Form. The appellant explained that her preferred first name is XXXX and her birth name is XXXX XXXX. Although this explanation is plausible in principle, given the circumstances, I do not accept it. The fact that his mother may have a preferred name does not explain why the appellant indicated XXXX in his BOC Form as his mother's given name rather than XXXX XXXX thereby contradicting the first birth document, the record he submitted in support of his claim. Considering how important it is for him to establish his identity, the RPD would have expected the appellant to enter his mother's name in his BOC Form as it appears on the document he was submitting to establish that identity. The appellant could not have been unaware of the importance of identity in a refugee protection claim, because at the time he filled out his claim, he was receiving the services of legal counsel. If the name of the appellant's mother was different from the one indicated in the record, he should have indicated this in his BOC Form or at least written both given names. This contradiction adds to the appellant's credibility issues.
- [43] As for his father, the RPD did not accept his explanation that he had discovered the name of his biological father XXXX in 2015 but had grown up in the home of his mother's husband, his adoptive father, XXXX. It noted that in another document submitted by the appellant, a complete copy of a birth certificate, his father's name is the same as on his BOC Form. The appellant then explained that this birth certificate was prepared based on a supplemental judgment, which he did not have at the hearing. The RPD was of the opinion that the response claiming that the name appearing on the individual civil status record from 2014 is in fact that of his stepfather is an adjustment in order to smooth over an inconsistency that had become obvious and was not reasonably explained.

- [44] The appellant contends that XXXX is his biological father whom he did not know until 2015 and that his adoptive father, whom he had always considered his real and only father before 2015, is XXXX.⁹ He states that his family had to request a supplemental judgment to update the DRC birth registry and be able to issue the birth certificate that he submitted on the RPD record. He submitted as new evidence the supplemental judgment that he did not present before the RPD.
- [45] In addition to the contradiction regarding the given name of the appellant's mother, the record shows a contradiction as to his father's name. In his XXXX XXXX XXXX 2018, interview with the Agency,¹⁰ and then at the hearing, he stated that he is in fact the biological son of XXXX, and that his mother's husband is XXXX. He stated that he has known his biological father for just three years. This does not explain why, when he signed his BOC Form in XXXX 2017, he chose to indicate his father's name as that of his biological father XXXX, when he claims that he has always considered XXXX his father. If the appellant indicated his biological father XXXX on his BOC Form, this tells me that this filiation is important to him, because he chose it rather than writing the name of the father appearing in the official documents he had at the time he signed his BOC Form. However, before the CBSA, at the hearing, and in his memorandum, he stated that he always considered XXXX as his father. By writing XXXX on his BOC Form, he ran the risk that a major contradiction as to his identity would be raised. Furthermore, although his filiation with XXXX, his biological father, was so important that he indicated it on his BOC Form, he did not explain why he never took steps to have his filiation amended before his departure, but rather only when he arrived in Canada. The RPD expected him to indicate in his BOC Form the identity of the father appearing on the record he submitted to establish his identity, especially considering that the issue of identity is determinative for a refugee protection claim and that he was assisted by legal counsel when he filled out his BOC Form.
- [46] The contradiction as to the identities of the appellant's parents is significant, because identity is central to a refugee protection claim. When refugee protection claimants complete their BOC Forms, they must indicate everything that is important for their claim, as is clearly stated on the form, in capital letters. There is a risk to not disclosing, in the initial written account, all of the facts and details important to a refugee protection claim, and the appellant must provide a convincing explanation as to why that is, which he did not do. I give no weight to the individual civil status record to establish the appellant's identity, and the contradictions as to the names of the parents undermine his general credibility.

Inconsistency between the supplemental judgment and the complete copy of the birth certificate

- [47] The RPD noted that in the copy of the certificate submitted by the appellant, the father's name is different from the one on the record and the same as the one in his BOC Form. It pointed out that the certificate indicates that the director of civil records had consulted the registries and identified in them the name of the appellant's father, which he indicated on

the certificate. It added that when it asked him why, if the registries of his birth were meant to bear the name of his mother's husband (XXXX), the certificate bears the name of his adoptive father whom he only met in 2015, the appellant responded that this was because he had a supplemental judgment, which he was not able to present to the RPD. The RPD was of the opinion that the supplemental judgment is the only explanation as to why in 2019, when the complete copy of the birth certificate was issued, it bore the name of a father who did not exist before 2015. For the RPD, the birth certificate is an adjustment in order to smooth over an inconsistency that had become obvious and was not reasonably explained. It therefore does not give any probative value to the complete copy of the birth certificate submitted in evidence.

- [48] Magonza provides a "conceptual toolkit" that I have used for my analysis of the evidence with respect to the certificate and the judgment.
- [49] In the context of a refugee protection claim, three concepts should be used to analyze evidence: the credibility of the evidence, its probative value, and the weight to be given to it. The credibility of the evidence depends on its authenticity, its reliability and whether it is trustworthy.
- [50] Credibility relates only to honesty concerns, whereas reliability refers to factors affecting a witness's ability to recount the facts with accuracy.¹¹ The onus is on the appellant to establish that the evidence is authentic and reliable. If the evidence is not reliable, neither the RPD nor the RAD can assign it any weight.
- [51] Probative value is the capacity of the evidence to establish the fact of which it is offered in proof, and is an answer to the question, "to what degree is this information useful in answering the question I have to address?" In many cases, we need to rely on inferences from known facts, and probative value is the measure of the strength of those inferences.¹² In certain contexts, probative value is defined in a manner that includes credibility. In refugee law, the concept of the weight of evidence is a preferable manner of combining credibility and probative value¹³ and of separating weight from probative value. In addition, a decision-maker cannot reach a conclusion regarding weight without having previously assessed credibility or probative value or both.¹⁴
- [52] The weight of evidence is its persuasiveness. Weight is a function of credibility and probative value or, if one likes to see this in the form of an equation, $\text{weight} = (\text{credibility}) \times (\text{probative value})$.
- [53] Lastly, it is also important to evaluate the sufficiency of the evidence, and where the evidence is indirect or circumstantial, the fact-finder must rely on inferences, weigh each piece of evidence and decide whether the cumulative weight of all the evidence is sufficient; in particular, evidence that stands alone may not be sufficient.¹⁵ Should this be the case, findings of insufficiency must be explained in the reasons.

[54] The RPD's conclusion is correct. The judgment is not credible due to contradictions in relation to the circumstances under which it was obtained. The birth certificate was prepared based on a supplemental judgment. According to the documentary evidence, a supplemental judgment in lieu of a birth certificate is issued for a child whose parents did not declare the birth within 90 days.¹⁶ This is also mentioned in the judgment presented by the appellant:

[Translation]

He was in fact born in Kinshasa on XXXX XXXX XXXX XXXX, from the union of XXXX and XXXX, but his birth was not declared to the competent civil status officer by the statutory deadline due to ignorance of the law in effect. With respect to the foregoing, please remedy this legal shortcoming by issuing a supplemental judgment in lieu of a birth certificate ordering the civil status officer in the Commune of Gombe to draft a valid certificate for my cousin XXXX XXXX. [emphasis added]

However, according to the appellant, this judgment was not obtained to correct the absence of a father, but rather to change the name of his registered father, replacing his mother's husband XXXX with the name of his adoptive father, and also to amend his mother's given name.

[55] The judgment in no way indicates that the appellant's birth was already declared and that it concerns a change of father, but rather states that the appellant's birth was never declared, which contradicts both the appellant's testimony and the record that he submitted in evidence. According to that record, the civil status officer had already noted the declaration of birth of one XXXX XXXX in the commune of Kalamu (Kinshasa), whose parents were XXXXandXXXX XXXX. It is unlikely that a court of justice would make such an error and indicate that the judgment is meant to correct the absence of a father, rather than indicate that it is to replace one father with another and amend the mother's given name. According to the documentary evidence, a supplemental judgment is intended to rectify the absence of a child's filiation. The appellant did not give any explanation or submit any evidence with regard to whether it is possible in the DRC to replace one father with another and amend a mother's given name on an official civil status document in such a manner. This inconsistency undermines the credibility of the judgment. I give it no weight to establish the appellant's identity.

[56] The certificate must be read in conjunction with the judgment because it was allegedly issued based on said judgment. The certificate mentions the judgment. That document was apparently issued after the supplemental judgment. Consequently, given the reliability issues of the judgment, even if that certificate is consistent with the BOC Form, I do not consider it a reliable document either. I give it no weight to establish the appellant's identity.

- [57] The RPD noted in its reasons that the supplemental judgment is the only explanation as to why in 2019, when the complete copy of the birth certificate was issued, it bore the name of a father who did not exist before 2015. The appellant submitted that supplemental judgment on appeal, which poses a reliability issue. Even if standards are different in the DRC compared to Canada, I do not believe that one father would be replaced with another in official DRC civil status documents without it being mentioned in the judgment.
- [58] I agree with the RPD that the birth certificate dated XXXX XXXX XXXX 2019, is a way for the appellant to explain the contradiction raised between his civil status record dated 2014 and the names of his parents on his BOC Form in 2017 (the name of the appellant's father and the given name of his mother) without this having been reasonably explained. I do not believe that the appellant chose to sign his BOC Form in XXXX 2017, entering as his father's name that of his biological father, while submitting a civil status record bearing the name of his "adoptive" father, the one whom he claims he always considered his father, without having ever taken steps to have his filiation amended before his departure. The issue of identity is determinative for a refugee protection claim and he was assisted by legal counsel in filling out his BOC Form. The RPD therefore expected the appellant to understand the importance of the issue of identity and to indicate the correct information in his BOC Form.
- [59] The contradiction as to the identities of the appellant's parents in the supplemental judgment is significant, because identity is central to a refugee protection claim. I give no weight to the supplemental judgment or the complete copy of the birth certificate to establish the appellant's identity. The credibility issues that this raises are in addition to the other credibility issues.

The certificate of nationality does not establish the appellant's identity

- [60] The RPD considered that the certificate of nationality (the certificate of nationality) does not include a photograph to connect it to the appellant. It added that given the ease with which the appellant procured the secondary, or even tertiary, documents and given all the problems pointed out or raised by the documentary evidence, it did not give the any probative value to the certificate of nationality to establish the appellant's identity.
- [61] The appellant stated that he made reasonable efforts to submit other hard-to-obtain documents and that he explained at the hearing the steps taken by his family to obtain the certificate of nationality.
- [62] The certificate of nationality is as much an identity document as the passport, according to the documentary evidence,¹⁷ and is considered proof of nationality by the Congolese authorities.¹⁸ For this reason, I consider it to be primary evidence, like a birth certificate.
- [63] The RPD's conclusion is correct. The certificate of nationality does not establish the appellant's identity. The certificate of nationality is dated XXXX XXXX XXXX 2018. The appellant explained how he obtained that document. He testified that his mother and uncle submitted a form, as well as a copy of the attestation of family composition (the attestation)

to obtain it. A document intended to be issued by a foreign authority is presumed valid, unless there is evidence to the contrary. Although a certificate of nationality can attest to the identity of a person without a photograph, under the circumstances, the fact that it does not contain a photograph means that I cannot verify that the document does in fact relate to the appellant, especially when his credibility has been significantly undermined. At best, the certificate of nationality can establish that one XXXX XXXX is Congolese, but not that the appellant is in fact the XXXX XXXX whom he claims to be.

- [64] Consequently, even if I were to accept the certificate of nationality as an acceptable document for establishing the identity of a person, considering the appellant's credibility issues, it is not sufficient to establish his identity and I give it no weight.

The children's documents are not acceptable documents

- [65] The appellant submitted before the RAD a civil status record for his daughter, XXXX XXXX, and one for his son, XXXX, as well as their original passports.
- [66] The RPD noted that XXXX record is authentic but altered, according to the scientific analysis report, and that XXXX is authentic. The RPD did not accept the appellant's explanations that his daughter's record was corrected by the civil status officer when the appellant's mother pointed it out to him. In the RPD's view, the record was issued by the government and it does not accept that a government would overwrite this sort of official document. Considering this, and the fact that such a tertiary document cannot connect the document to the individual seeking to establish their identity, the RPD gave no probative value to the record to establish the appellant's identity. The RPD concluded that the son's record has no probative value to establish the appellant's identity, taking into consideration as well the problems and contradictions arising from the appellant's testimony.
- [67] The children's documents are other documents intended to establish the appellant's identity given that he has submitted no other acceptable primary or secondary documents. The appellant argues that even if the individual record for his daughter and the birth certificate for his son are only tertiary documents, they still indicate his name as the father. He adds that this corroborates some of his statements and that he reasonably and plausibly explained the circumstances under which the corrections to his daughter's record were made. He states that the RPD should have considered the DRC's limited resources with regard to public administration and should not have assessed the situation from a North American perspective, and that it should have considered the socio-cultural context that would explain why a commune official might correct the typographical error from "Mme" [Ms.] to "Mlle" [Miss] as in his daughter's record. He submits that he also obtained his children's passports to corroborate the information already in his record and that this is related to his identity. He adds that he is aware that the children's passports cannot confirm his own identity.

[68] The RPD's conclusion is correct. The children's passports seem authentic at first glance. The children's individual records contain the name of XXXX XXXX as their father and the dates of birth that appear on them are the same as the ones on their passports. However, neither the children's individual records nor their passports can establish the appellant's identity. Even if I accept the appellant's explanations related to the correction of his daughter's record by the civil status officer, the records establish that one XXXX XXXX is the father of these children, but nothing allows me to connect the appellant specifically to these children. The passports should be that connection, but they do not allow me to connect them to the appellant, and most importantly are not sufficient to overcome the fact that his credibility is deeply undermined by an altered passport, an individual civil status record that contradicts his BOC Form, a supplemental judgment in lieu of a birth certificate and a complete copy of a birth certificate that have consistency issues, and an altered driver's licence. The fact that the appellant has these passports in hand is not sufficient on its own to establish his identity, especially since the appellant did not explain why the children's passports are in Canada, and not the children. In this particular context, the children's documents are not acceptable documents.

The UDPS card and letter are not acceptable documents

- [69] The RPD concluded that there are no acceptable government documents to establish the appellant's identity, and the UDPS documents are not acceptable documents under the IRPA.
- [70] The appellant argues that the UDPS card and letter are not identity documents but that they show the identity he claims as his own.
- [71] The RPD's conclusion is correct. Rule 11 of the Refugee Protection Division Rules (RPD Rules) and section 106 of the IRPA clearly state that it is the claimant's responsibility to take the necessary steps to obtain acceptable documents that establish his identity. What constitutes "acceptable documentation establishing identity" is not defined in the IRPA or the RPD Rules. The RPD must determine it on a case-by-case basis. The UDPS documents are meant to establish the appellant's identity in the absence of acceptable primary or secondary government documentation. The fact that these documents bear the identity that the appellant claims as his own is not sufficient to overcome the appellant's credibility issues caused by submitting an altered passport and driver's licence. The RPD is correct; a letter and card from a political party are not acceptable documents and do not establish the appellant's identity.

The school documents are not acceptable documents

- [72] The RPD noted that the appellant submitted school documents. It did not draw any conclusion about those documents.
- [73] I examined the appellant's school documents. These are report cards that contain the school marks of a student named XXXX XXXX. Even if these documents are authentic, they do not contain any photograph that could connect them to the appellant. The appellant submitted

them in the absence of acceptable government documents, and they are not sufficient to overcome the fact that he submitted an altered passport, an individual civil status record that contradicts his BOC Form, a supplemental judgment in lieu of a birth certificate and a complete copy of a birth certificate that have reliability issues, and an altered driver's licence. All of these documents have seriously undermined the appellant's credibility.

- [74] The appellant submitted primary documents, an altered passport, an individual civil status record that contradicts his BOC Form, a supplemental judgment in lieu of a birth certificate and a complete copy of a birth certificate that have reliability issues-all of which undermine his credibility. He also submitted a certificate of citizenship and an attestation of family composition that cannot be connected to him. He submitted an altered secondary document, a driver's licence. The tertiary documents, that is the children's documents and the UDPS documents, are not sufficient to establish his identity, name, or nationality since they cannot be connected to the appellant and, most importantly, are not sufficient to overcome the lack of reliable, authentic and acceptable government primary documents. The RPD's conclusion is correct. No acceptable document conclusively establishes the appellant's identity.

The appellant has not established the route he took to Canada

- [75] On his IMM008 form, the appellant states that he left Brazzaville on XXXX XXXX XXXX 2017, and arrived in Canada on XXXX XXXX XXXX 2017. At his first interview with the CBSA, he gave the same dates and stated that he had a stopover in Addis-Abeba and travelled on Ethiopian Airlines. He states that he arrived with a Canadian passport in the name of XXXX XXXX. At his second interview, he explained that he travelled with one "XXXX XXXX" a Canadian citizen. In his BOC Form, the appellant claims that he travelled with a Canadian passport in the name of XXXX XXXX XXXX born XXXX XXXX XXXX XXXX XXXX and arrived on those same dates. He states that when he left the airport, the said XXXX XXXX XXXX reclaimed his passport.
- [76] The RPD noted that, although the appellant gave the name, date of birth, and nationality of the passport he used to enter Canada, the CBSA did not identify any traveller by that name arriving in Montréal. It also did not find any Ethiopian Airlines flight. It did not accept the appellant's explanation that the flight on which he arrived could have been from another airline, operating on an agreement with the Ethiopian carrier. It added that the CBSA did not find any XXXX XXXX arriving in Montréal. It stated that the CBSA also did not find any person with the name of the smuggler whom the appellant allegedly travelled with and returned the passport to. The CBSA performed multiple checks with Passport Canada related to the alleged identity of the appellant and his smuggler, and no individual was issued a passport by Passport Canada or actually entered Canada on the alleged date.
- [77] The appellant maintained that he left Brazzaville aboard an Ethiopian Airlines plane to "Adissababa," then London, and that he changed planes for the flight to Montréal. He stated that the plane change might have been that of another airline that deals with Ethiopian

Airlines. He maintained that he arrived on "XXXX XXXX XXXX 2017," accompanied by the smuggler, that he used a Canadian passport bearing the name XXXX XXXX XXXX, and that he returned it to the smuggler once they arrived in Montréal. He stated that he made it through customs without any problems using the false passport.

- [78] The RPD's conclusion is correct. The concerns raised as to the route taken by the appellant to Canada have not been cleared up, and the appellant's responses are not reasonable, thereby undermining the credibility of his allegations. The appellant repeated the same allegations as he did before the RPD and the CBSA, and in his BOC Form.
- [79] At the hearing, he explained that he had never flown before and that he was unsettled by the voyage. I understand that this may have misled him into believing that he arrived on an Ethiopian Airlines flight, the same airline that flew him from Brazzaville to London.
- [80] He was unable to provide the Canadian passport he allegedly travelled with and returned to the smuggler upon his arrival, but he was very clear about the name he used, XXXX XXXX. The fact that he may have been mistaken about his flight and that he returned the passport to the smuggler does not explain why the CBSA did not identify any individual who entered Canada on XXXX XXXX XXXX 2017, with the name he clearly established having used as his identity.
- [81] The fact that the passport was false could explain why the CBSA did not find a passport in the same name from Passport Canada, but it does not explain why the CBSA did not find anyone by that name who arrived in Canada on or around that date. The CBSA also did not find, despite multiple searches, any entry by an individual with the name that the appellant gave as the smuggler's, nor any passport application for that name.
- [82] The appellant did not submit any other documents related to his route, such as a boarding pass. However, he would have obtained at least three based on the trip that he claim he made (Brazzaville/Addis-Abeba, Addis-Abeba/London, London/Montréal). The appellant has not established the route he took to arrive in Canada, and the fact that the CBSA's searches contradict him undermines his credibility.

The appellant has not established his identity

- [83] The appellant argues that he followed the requirements of rule 11 of the RPD Rules by providing documents to establish his identity and that he has demonstrated good faith by making the necessary efforts to produce a copy of the supplemental judgment, which the family submitted to the birth registry authorities without having kept a copy and without having informed him. He adds that the RPD did not opine on whether the efforts he made are reasonable. He believes that the RPD erred by setting aside the certificate of nationality, the individual record, the birth certificate and the family composition because they are proof of identity and the criteria set out in Tenzin19 apply, and that the RPD should have assessed his explanations rather than the inconsistencies.

- [84] The RPD assessed the appellant's explanations as well as all the documents submitted before it. I do not find any reviewable errors in the RPD's determination.
- [85] Neither the IRPA nor the RPD Rules define the term "acceptable documentation establishing identity". However, the Federal Court has identified categories of evidence relating to identity: 20 1) primary documents, such as passports, resident identity cards, and birth certificates; 2) secondary documents, such as drivers' licences; and 3) other evidence, including viva voce testimony from witnesses.
- [86] In this case, the appellant first submitted a driver's licence, a secondary document. It proved not to be authentic and the biographical information had been altered. He then had a passport sent from the DRC that proved to be altered. He maintained that he had obtained it through legal channels. A passport is a primary document, and essential for establishing a person's identity and nationality. I therefore place great importance on the fact that he submitted a passport with altered biographical information. He submitted an individual civil status record before the CBSA, which that agency, then the RPD, noted contradicted the names of his parents as indicated in his BOC Form. Later, several months before the hearing, to explain this contradiction, he submitted a complete copy of a birth certificate dated XXXX XXXX XXXX 2019. He alleged that this certificate was written after a supplemental judgment. However, both documents have significant inconsistencies with respect to the legal basis on which the judgment was issued. Neither the birth certificate nor the supplemental judgment based on which it was allegedly issued are acceptable documents. The appellant submitted other government documents, a certificate of nationality and an attestation of family composition, which I cannot connect to the appellant and which are not sufficient to overcome his credibility issues. The other tertiary documents are not sufficient to overcome the appellant's credibility issues. Furthermore, the appellant has not established the route he took to Canada. The appellant has not submitted any acceptable documents, and his credibility is undermined by numerous inconsistencies and contradictions. The fact that, in the DRC, there are "a lot" of fraudulent identity, administrative, and legal documents only strengthens my conclusion.²¹
- [87] The RPD's decision is correct. The appellant is not credible. He has not submitted any acceptable documents and has not established his identity on a balance of probabilities.

CONCLUSION

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

(signed)

Agnès Connat

Me Agnès Connat

December 21, 2020

Date

IRB translation

Original language: French

1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, subs. 110(4).

2 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Raza v. Canada (Citizenship and Immigration), 2007 FC 385.

3 SAR-1, National Documentation Package (NDP) on Congo, Democratic Republic of the, May 11, 2020, Tab 3.5: The biometric passport, including its appearance and security features; requirements and procedure for obtaining a biometric passport from inside and outside the country (2016-July 2018). Immigration and Refugee Board of Canada (IRB). July 4, 2018. COD106122.FE.

4 P-2, Appellant's record, Appellant's memorandum, at paragraph 87.

5 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145.

6 Kabongo v. Canada (Citizenship and Immigration), 2013 FC 1086.

7 Konate v. Canada (Citizenship and Immigration), 2019 FC 170.

8 SPR-1, Refugee Protection Division (RPD) record, page 148.

9 P-2, Appellant's record, Appellant's affidavit, at paragraphs 25 to 27.

10 SPR-1, RPD record, page 160 et seq.

11 Magonza v. Canada (Citizenship and Immigration), 2019 FC 14 [Magonza], at para. 18.

12 Ibid., at para. 21.

13 Ibid., at para. 24.

14 Ibid., at para. 29, "In the immigration context, however, it is preferable to distinguish probative value and weight. Doing so reveals what are credibility concerns. Thus, weight is a function of credibility and probative value or, if one likes to see this in the form of an equation, $\text{weight} = (\text{credibility}) \times (\text{probative value})$. It follows that weight can only be assessed as a function of credibility and probative value. In other words, a decision-maker cannot reach a conclusion regarding weight without having previously assessed credibility or probative value or both."

15 Ibid., at para. 32 et seq.

16 SAR-1, NDP on Congo, Democratic Republic of the, May 11, 2020, Tab 3.6: Democratic Republic of Congo. U.S. Visa: Reciprocity and Civil Documents by Country. United States. Department of State, p. 12/28.

17 SAR-1, NDP on Congo, Democratic Republic of the, July 31, 2019, updated May 11, 2020, Tab 3.1: Loi n° 04/024 du 12 novembre 2004 relative à la nationalité congolaise [Law No. 04/024 of November 12, 2004, regarding the Congolese nationality]. Democratic Republic of the Congo, 2004, p. 3/9.

18 Ibid., 3.1, article 42 of Loi n 04/024 du 12 novembre 2004 relative à la nationalité congolaise, p. 20/23.

19 Tenzin v. Canada (Citizenship and Immigration), 2019 FC 1010.

20 Su v. Canada (Citizenship and Immigration), 2012 FC 743, at paragraph 7.

21 SAR-1, NDP on Congo, Democratic Republic of the, May 11, 2020, Tab 3.12: Prevalence and availability of fraudulent identity, administrative and legal documents (2011-February 2014). IRB. April 10, 2014. COD104763.FE.

RAD File No. / No de dossier de la SAR : MB9-28758

RAD.25.02 (January 2020)

Disponible en français

22

Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (January 2020)

Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/identity-refugee-appeal-division-2020--6a40c3b24cf2c72690fb2162>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 26 October 2026 · Esheria