

CANADA / JUDGMENT

Maina v. Canada (Citizenship and Immigration)

2026 FC 204

COURT

Federal Court

DECIDED

11 February 2026

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Maina v. Canada (Citizenship and Immigration)

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IMM-24770-24

Decision Content

Date: 20260211

Docket: IMM-24770-24

Citation: 2026 FC 204

Ottawa, Ontario, February 11, 2026

PRESENT: Madam Justice Conroy

BETWEEN:

LUCY WAMBUI MAINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] The Applicant, Lucy Wambui Maina seeks judicial review of a decision by the Refugee Appeal Division [RAD]. The RAD upheld a decision of the Refugee Protection Division [RPD] which concluded that she had not established her claim with sufficient credible evidence.
- [2] The Applicant based her claim for refugee protection on her fear of persecution in Kenya due to her diverse Sexual Orientation and Gender Identity and Expression, and Sex Characteristics [SOGIESC] profile. The RPD found that the Applicant was not a credible witness, and both the RPD and the RAD found that there was insufficient credible evidence to establish that she is a bisexual woman or a lesbian.
- [3] The Applicant has failed to identify a reviewable error with the impugned decision and the judicial review is dismissed.

I. BACKGROUND A. Material Facts and Events Leading to this Application [4] The Applicant is a 44-year-old citizen of Kenya. In her Basis of Claim form [BOC] she states that she identifies as a bisexual woman, although she refers to herself as a lesbian in some places in her BOC narrative.

- [5] Her BOC states that she started feeling an attraction to girls in primary school and describes being particularly close to a primary school classmate, MM. In secondary school, she met RM, a fellow student. Her BOC states that she developed a romantic relationship with RM that would persist through high school until they graduated and went to different universities.
- [6] Her BOC further states that she became romantically involved with a woman named DK in university.
- [7] In February 2022, the Applicant alleges that she was lured by a woman claiming to be a lesbian, which resulted in her being blackmailed by three men. With the help of RM and DK, the Applicant paid the amount demanded, but the men demanded more and eventually contacted her employer. She says that thereafter her employer dismissed her due to her “lesbian behaviour.” The Applicant alleges that on her way home following being dismissed from her employment, two strangers assaulted her.
- [8] The Applicant states that when she later moved to another city to reside with her father, the same extortionists found her and extorted her again. Since she did not pay, the extortionists told her father about her sexual orientation. Her father rejected her, and she stayed with DK until she left for Canada on July 21, 2023.
- [9] The Applicant claims that she is currently in a same-sex relationship with a woman named CW in Canada.

B. RPD Determination [10] On August 30, 2024, the RPD refused the Applicant's refugee claim.

[11] At the outset, the RPD observed that the Applicant was not an unsophisticated claimant, having completed a university degree and travelled abroad for employment.

[12] The determinative issue was credibility. The RPD found "significant omissions, discrepancies and/or inconsistencies" in her evidence that were not reasonably explained. It also concluded that she provided "evolving testimony, indicative of a witness who is spontaneously manufacturing a story in response to questions asked and/or to reconcile inconsistencies and irregularities in her evidence, resulting in evidence that is unreasonable, inconsistent, and not credible – undermining her credibility and the claim overall."

[13] The RPD identified the most significant credibility concerns as follows:

- a) The Applicant provided inconsistent evidence with respect to her sexual orientation;
- b) She provided inconsistent evidence with respect to her relationship with MM;
- c) Her evidence that she was in a relationship with RM was not credible;
- d) She provided insufficient credible evidence that she was in a relationship with DK; and
- e) She provided insufficient credible evidence that she is currently in a same-sex relationship with CW.

[14] Overall, the RPD found that the claimant was not a credible witness, and that the presumption of truthfulness was rebutted. It concluded there was insufficient credible evidence to establish that she is a bisexual woman or a lesbian.

[15] The Applicant appealed the RPD's decision.

C. RAD Determination - Decision Under Review [16] On December 16, 2024, the RAD dismissed the appeal and found the Applicant's claim had not been established with sufficient credible evidence. It concluded:

The Appellant has not established that she was in same-sex relationships in Kenya, nor that the alleged events transpired, nor that she has been in Canada. She has not established that she is a lesbian or bisexual woman, nor that she would be perceived as such if she returned to Kenya.

[17] First, the RAD found the Applicant's self-identification inherently contradictory and inconsistent with the statements in her BOC.

[18] The Applicant identifies herself as bisexual at the beginning and the end of her BOC and refers to herself as lesbian in several other instances in the BOC. The Applicant identified as lesbian during her testimony to the RPD and said that she identified as a lesbian in Kenya.

[19] When asked about this discrepancy by the RPD, she testified that when she was younger she thought she may "have men in her life."

[20] The RAD also rejected her arguments that she had a gradual change in her self-identification between the completion of the BOC and the RPD hearing, or that the term “shoga” in Swahili or Kiswahili to mean both a lesbian and bisexual had any impact on her evidence. The reasons provide as follows:

I have also carefully considered the fluidity of sexual identity and preferences. I completely understand that one’s self-identification can change overtime. I am also mindful of the cultural and linguistic differences in self-identification, particularly in countries where same-sex relationships are prohibited.

...

I accept that the Appellant could choose to use one term rather than the other since the time when her BOC was signed. I could also understand it if her understanding of the words “lesbian” and “bisexual” was different while she was living in Kenya. The difficulty is that this is not what her evidence provides, and it is not for me to speculate or invent explanations for her.

I do not agree with Appellant’s counsel that [SOGIESC] Guideline 9 stating that fluidity can be a reason for the change in self-identification is a sufficient basis to accept her testimony irrespective of her own explanations regarding the inconsistency. Rather, her statements are inherently contradictory and do not fit with the statements in her BOC.

[21] The RAD further observed that both the psychotherapist report she provided and the letter from her alleged long-time partner DK state that the Applicant identifies as bisexual.

[22] The RAD found that her explanation did not fit with her evidence, observing that she clearly identified herself as a lesbian throughout her explanations of events in Kenya. It did not explain why she identified as a bisexual in her BOC. The RAD stated “that she has more likely than not provided insincere testimony” and agreed with the RPD that this was a material concern impacting her credibility.

[23] Second, the RAD found inconsistencies in the Applicant’s description of her relationships in Kenya.

[24] In her testimony before the RPD the Applicant confused the details of her relationships with MM and RM. The RAD found her explanation for the mix-up unreasonable, noting that the relationships were very distinct – one taking place in primary school and the other in high school. The RAD noted that she only corrected herself when questioned about it by the RPD. The RAD found this inconsistency material to her core allegation of her relationships in Kenya.

[25] The Applicant provided a support letter from RM, along with a copy of RM’s identification. Before the RPD, the Applicant testified that RM was born in 1987. The RPD then asked her to explain why RM’s identification showed a birth year of 1977. The RAD found the Applicant’s testimony about RM’s age both internally inconsistent and inconsistent with the record. The RAD found the Applicant’s evolving responses in her testimony about this subject to be a

core credibility concern because the Applicant alleged being connected with RM for over 25 years and that RM is one of the two serious and long same-sex relationships she says she had in Kenya. The RAD further found that the psychotherapist's report provided to the RPD did not explain away these fundamental issues with her testimony.

- [26] The RAD further found that the letter from RM was insufficient to overcome its concerns. It noted that: (1) the letter from RM erroneously showed that RM had the same surname as the Applicant; and (2) the Applicant provided evolving testimony when asked why RM was not put forth as a witness by phone at the RPD hearing.
- [27] The RAD found further inconsistencies between the Applicant's testimony and the documentary evidence about DK's birthdate and place of birth.
- [28] Finally, the RAD found that the remaining evidence did not overcome the credibility concerns.
- [29] It found CW's letter about her alleged current relationship with the Applicant in Canada carried little weight and rejected the Applicant's explanations for why CW did not appear as a witness in the RPD hearing.
- [30] The RAD found the letter from a Canadian advocacy organization assisting LGBTQ+ refugees and the Applicant's photographs of participating in certain activities "insufficient to establish the genuineness and sincerity of the Appellant's self-identification and activities with the organization."

II. ISSUES AND STANDARD OF REVIEW [31] The Applicant argues that the Decision is unreasonable because the RAD erred in its analysis of the Applicant's credibility.

- [32] The parties agree, as do I, that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16–17, 23–25. It is trite law that credibility findings made by the RPD and the RAD command a high degree of judicial deference: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [Lawani] at paras 15–16.

III. ANALYSIS A. Applicant's self-identification [33] The Applicant argues that the RAD erred in conducting a microscopic examination of the evidence in taking issue with her self-identification as "lesbian" in some instances and "bisexual" in other instances, citing *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (FCA) at para 10; *Mohacsi v Canada (Minister of Citizenship and Immigration)*, [2003] 4 FC 772 at para 20.

- [34] She submits that "everyone who deals with Kenyan claimants know that there's one word in Swahili to describe gay/bisexual and that's 'Shoga'."

- [35] The Applicant further submits that the RAD erred in their understanding of the Immigration and Refugee Board's SOGIESC Guidelines by focusing on the inconsistencies between the two terms (bisexual and lesbian) rather than acknowledging that the Applicant consistently demonstrates her attraction to the same sex, which is the basis of her claim. She notes that SOGIESC identities may be fluid: *Ojie v Canada (Citizenship and Immigration)*, 2018 FC 342; *Contreras Hernandez v Canada (Citizenship and Immigration)*, 2007 FC 1297.
- [36] All of the above arguments were included in the Applicant's submissions to the RAD. The RAD's reasons expressly reference each of these arguments and explain why they do not overcome the credibility concerns. While the Applicant may disagree with the conclusions reached, she has failed to point to any reviewable error in the RAD's analysis.
- [37] I cannot agree with the Applicant's characterization of the reasons as a microscopic examination of the evidence. As articulated by Justice Gascon at paragraph 41 of *Nijjar v Canada (Citizenship and Immigration)*, 2024 FC 1501:

... an administrative decision maker's approach cannot be called "microscopic" (and result in a reviewing court's intervention) unless it clings to issues that are irrelevant or peripheral to the claim of the refugee claimant.... Moreover, an analysis does not become "microscopic" or overzealous because it happens to be exhaustive, focused, and comprehensive. Quite the contrary, such an approach reflects the rigour that applicants (and the courts) have the right to expect from an administrative decision maker's analysis. I would add that a decision maker must in fact demonstrate such rigour in order to satisfy the requirement for a "justified" decision established in *Vavilov*. An administrative decision maker's analysis only veers towards being "microscopic" when it delves into peripheral issues and examines contradictions that are insignificant or irrelevant to the purpose of the refugee claim.

- [38] I find the RAD's reasons to be carefully drafted and responsive to the arguments raised. Indeed, this is what *Vavilov* demands of administrative decision-makers. It was reasonable for the RAD to consider the Applicant's self-identification central to her claim for protection and to carefully assess the discrepancies in her evidence.

B. RAD's other findings [39] The Applicant raises several additional concerns about the RAD's findings. The bulk of what is argued amount to the Applicant's explanations for inconsistencies identified by the decision-makers below. These alternative explanations were argued before the RAD and, as is apparent from its reasons, were assessed and rejected by the RAD. The Applicant's disagreement appears to rest solely on a preference for a different outcome rather than on any misapprehension of the evidence or other reviewable error.

- [40] It is not the role of the Court on judicial review to reassess and re-weigh the evidence: *Vavilov* at para 125.

- [41] Below, I consider only those arguments which, if made out, could conceivably result in an error justifying the Court's intervention.

- [42] First, the Applicant submits that the RAD failed to acknowledge a psychotherapist report dated April 8, 2024. This report, as characterized by the Applicant, contains a diagnosis of panic disorder and summary of self-reported tests suggesting that she has anxiety and depression. The Applicant argues that it is reasonable to expect that these conditions would affect the Applicant's memory and ability to testify.
- [43] There is no merit to the argument that the RAD failed to acknowledge the psychological report. The RAD's reasons expressly reference the report, stating that it "did not explain away the fundamental issues with her testimony." This conclusion was reasonable in light of the evidence before the RAD.
- [44] Second, the Applicant argues that the RAD erred in drawing a negative credibility inference from CW's failure to appear as a witness based on assumptions rather than evidence: *Richards v Canada (Citizenship and Immigration)*, 2011 FC 1391 at paras 17-19. As the Respondent points out, the RAD did not draw a negative credibility finding based on CW's failure to appear but rather attributed little weight to her letter because of her failure to appear. At paragraph 45 the RAD states:
- I agree with the RPD that without the ability to properly assess CW's evidence, whilst considering the other significant concerns in the Appellant's own evidence in this claim, her letter carries little weight.
- [45] Third, the Applicant argues that even if the RAD disbelieves some of the Applicant's claim, this does not mean other parts of her claim are not real: *Zhuravel v Canada (Citizenship and Immigration)*, 2011 FC 870 at para 1; *Joseph v Canada (Citizenship and Immigration)*, 2011 FC 548 at para 11.
- [46] In the present case, the RAD's credibility concerns go to the very core of the Applicant's claim for protection; as such, the cases cited by the Applicant are of no assistance to her.
- [47] It is apparent from the reasons that the RAD's negative credibility assessment was based on an accumulation of contradictions and inconsistencies in the Applicant's evidence on elements central to her refugee claim. It is well established that this may legitimately serve as a basis for a negative credibility finding: *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 at para 1, and the cases cited therein; *Lawani* at para 22.
- [48] The RAD provided detailed reasons outlining the various inconsistencies and contradictions in the evidence that led to its conclusion that the Applicant lacked credibility. Quite apart from the deference owed on credibility assessments, the RAD's decision is sound. The Applicant has failed to identify any basis for the Court to intervene. The judicial review is dismissed.

JUDGMENT in IMM-24770-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

There is no question for certification.

"Meaghan M. Conroy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:

LUCY WAMBUI MAINA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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CONROY J.

DATED:

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