

Federal Court



Cour fédérale

Date: 20250502

Docket: IMM-1240-24

Citation: 2025 FC 803

[ENGLISH TRANSLATION]

Toronto, Ontario, May 2, 2025

PRESENT: Mr. Justice Diner

BETWEEN:

ENOCK ILUNGA NTOTENI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Enock Ilunga Ntoteni (Applicant), seeks judicial review of a decision of the Refugee Appeal Division (RAD) under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). In its decision (Decision), the RAD confirmed the decision of the Refugee Protection Division (RPD) to reject his refugee protection claim. For the

reasons set out below, I am of the view that the RAD reasonably concluded that the Applicant had a viable internal flight alternative (IFA).

I. Background

[2] The Applicant is a citizen of the Democratic Republic of the Congo (DRC) and, as a member of the People's Party for Reconstruction and Democracy (PPRD), he fears persecution at the hands of the Congolese authorities and members of the president's party, the Union for Democracy and Social Progress (UDSP).

[3] The Applicant fled the DRC for Canada on September 1, 2021, and applied for refugee protection upon entering the country. The Refugee Protection Division rejected the refugee protection claim, finding that the Applicant had a safe and reasonable IFA. The RPD did not raise any doubts regarding the Applicant's credibility.

[4] In confirming the decision of the RPD, the RAD concluded that (1) the Applicant had failed to establish that the authorities had the means and the motivation to pursue him in the IFA; and (2) the conditions in the IFA did not pose a danger to the Applicant's life or safety. In fact, the RAD noted that the Applicant had been safe in his aunt's home when he hid there; that the Applicant was just a regular member of the PPRD and accordingly would not be pursued by law enforcement; that the PPRD had a lot of support within the IFA; and that the Applicant was not the target of agents of persecution, but rather that other people close to him were.

[5] The Applicant raises several arguments with regard to the RAD's findings of fact, which can be summarized as follows: (A) the RAD erred in characterizing the Applicant as a regular member of the PPRD, and (B) the RAD erred in determining that the agents of persecution had neither the means nor the motivation to pursue the Applicant in the IFA.

[6] The Respondent argues that the RAD's Decision is reasonable, that it relied on its own analysis of the evidence, and that it explained in detail the reasons that led to its finding regarding the IFA. The Respondent also maintains that the RAD reasonably determined that the Applicant would not be subject to a substantial and personalized risk of persecution under section 97 of the IRPA in the IFA. The conditions in the IFA are such that it would not be objectively unreasonable for the Applicant to relocate here. Finally, the Respondent maintains that the onus is on the Applicant to show that there is no IFA, and the Applicant failed to discharge this burden.

II. Analysis

[7] The only issue in this case is whether the RAD's Decision was reasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Accordingly, the role of this Court is to determine whether the RAD's Decision falls within a range of "acceptable outcomes which are defensible in respect of the facts and law", and whether it meets the requirements of justification, transparency and intelligibility (*Vavilov* at paras 99–100).

[8] To start, the courts have consistently held that a refugee protection claimant must be a refugee from a country, not just a region of a country (*Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) at 710 [*Rasaratnam*]). The two-pronged IFA test is also well established in the case law.

[9] First, it must be found on a balance of probabilities that the Applicant is not at serious risk of being persecuted or personally subjected to a danger within the meaning of section 97 of the IRPA in the IFA.

[10] Second, the RAD must be satisfied that, given the circumstances, including those particular to the Applicant, conditions in the IFA are such that it would not be objectively unreasonable for the Applicant to relocate here (*Owie v Canada (Citizenship and Immigration)*, 2024 FC 1808 at para 5, citing *Rasaratnam* and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA) at 593 and 597).

A. *The RAD did not err in finding that the Applicant was a regular member of the PPRD*

[11] The Applicant argues that the RAD erred in concluding that, as a regular member of the PPRD, he was not the target of agents of persecution. In my view, this is a mischaracterization by the Applicant, not an error on the part of the tribunal. Although the RAD accepted the RPD's characterization of the Applicant as a regular member of the PPRD and interpreted it as a way to distinguish the Applicant from members in leadership roles, the RAD clearly noted and

acknowledged that members in leadership roles and militants of the PPRD are not the only ones to suffer persecution.

[12] However, the RAD rightly noted that its role was to decide whether all the evidence supported the conclusion that the IFA was viable. To this end, the RAD also noted that an understanding of the groups targeted by the agents of persecution was crucial in the assessment of the IFA, but not determinative. In this regard, the RAD wrote the following in paragraph 24 of its Decision:

[TRANSLATION]

To be clear, I admit that political persecution in the DRC is not suffered *exclusively* by highly visible members and militants of the opposition. However, my task consists in determining whether, cumulatively, the evidence shows that the proposed IFA is safe. An understanding of the groups that are usually targeted by the Congolese authorities is highly relevant (even if this is not a determinative factor) when evaluating the safety of the proposed IFA. All in all, the reasons for the IFA align with this framework. [Citations omitted.]

[13] The RAD then considered the letter from the PPRD filed by the Applicant, characterizing him as a [TRANSLATION] “militant”, and noted that this was a broad term that could be used to designate various levels of activism. The RAD gave more weight to the substantive content of the letter than to the term “militant”, which was undefined. The letter indicates that the Applicant was one of the individuals sought by the police following a protest in April 2019, and that the PPRD had advised the Applicant to flee the country. The RAD reasonably concluded that participation in a single protest and the Applicant’s characterization as a militant were not sufficient to set aside the RPD’s decision.

B. *The RAD did not err in finding that the IFA was viable*

[14] The Applicant argues that the RAD erred in finding that the agents of persecution would have neither the motivation nor the means to pursue him in the IFA and that the IFA was viable. To start, the Applicant maintains that the RAD did not rely on any evidence to support its finding that PPRD supporters were safe in the IFA.

[15] I do not agree. Contrary to the Applicant's claims, the RAD cited five different headings from the National Documentation Package on the DRC in support of its finding on this point, and I found no inconsistencies between the Decision and this evidence.

[16] Next, the Applicant claims that it was unreasonable for the RAD to conclude that the agents of persecution would have neither the means nor the motivation to find him in the IFA.

[17] Again, I disagree. After reviewing the evidence in the record, the RAD concluded that the Applicant had not discharged his burden to show that the agents of persecution did in fact have the motivation and the means to find him. The RAD furthermore acknowledged that the Applicant had been the target of agents of persecution following a protest in 2019. The RAD noted that the agents pursued the Applicant's father as well as a friend of the family, but that the evidence showed that the Applicant was no longer the primary target. The RAD concluded that returning to that city would not be safe for the Applicant but noted that the agents did not have the means or the motivation to pursue him to his aunt's home. The RAD wrote the following:

[TRANSLATION]

[33] On the whole, I accept that members of the UDSP in the appellant's community in Kinshasa pursued the appellant following a protest in 2019. In light of the new evidence, I conclude that people in the appellant's community of origin would continue to be hostile to the appellant if he were to return. The cumulative evidence demonstrates that members of the community colluded with sympathetic enforcement officers to target the appellant because of his support for the PPRD.

[34] Nevertheless, the law requires more. Having assessed all the evidence, I must decide whether the alleged agents of harm have the means and the motivation to pursue the appellant in the proposed IFA. Ultimately, I am of the view that the appellant did not discharge this burden.

[35] I note that the appellant was first pursued following a protest in April 2019 and that he remained in the DRC until September 2021. When the appellant stayed with his aunt in another part of Kinshasa for several months, he was not discovered, threatened or injured by the alleged agents of harm (which include police and intelligence officers).

[18] The Applicant alleges that the RPD and the RAD asked him to hide to stay safe, which is contrary to our Court's case law. The RAD addressed this argument directly in paragraph 36 of its Decision:

[TRANSLATION]

The appellant maintains that he was not apprehended in the DRC because he hid. The law is clear: a designated IFA cannot be safe if the refugee protection claimant is forced to hide once he or she settles there. I do not agree with the appellant's interpretation of the RPD's reasons in this regard. The RPD did not conclude that the appellant would be safe as long as he stayed hidden. Rather, it essentially concluded that the agents of harm's inability or unwillingness to seek out the appellant in the city of Kinshasa undermined the argument that they would find him in a designated IFA located some 2,000 km from the appellant's family home. I agree with the RPD's reasoning in this regard.

[19] The RAD disagreed with the Applicant's interpretation of the RPD's findings. It confirmed the RPD's determination that the agents of persecution's lack of motivation or means to apprehend the Applicant at another residence (that of his aunt) located in the same city contradicted the argument that those agents had either the means or the motivation to pursue him in the IFA. Furthermore, the RAD noted that the fact that the agents continued to go to the Applicant's family home to ask his family where he was further demonstrated that they had neither the means nor the motivation to pursue the Applicant in the IFA. The RAD noted the following to that effect:

[TRANSLATION]

Intelligence officers questioned the appellant's mother about the appellant's whereabouts, which means that they did not know that the appellant had been outside the country since 2021. This was the third time in four years that the alleged agents of harm went to the appellant's family home. They never managed to apprehend the appellant.

[20] The RAD further acknowledged that the right to freedom of peaceful assembly and freedom of expression is limited for citizens of the DRC but indicated that it could not conclude that this constituted a risk under section 97 for the Applicant in the IFA, given the person in power and the ongoing domination of the PPRD in that area.

[21] Finally, the Applicant argues that the RAD assumed that he would cease his political activities when he relocated. This is another mischaracterization of the Decision. The RAD reasonably indicated that even if the Applicant continued his political activities in the IFA, the agents of persecution would have neither the means nor the motivation to pursue him there.

III. Conclusion

[22] The RAD's Decision was reasonable. The Applicant has not persuaded me that the Decision did not meet the requirements of justification, transparency and intelligibility. In this case, the Applicant was asking me to make my own factual findings and substitute them for those of the RAD, something that the Court expressly cannot do (*Vavilov* at para 125). Accordingly, the application for judicial review is dismissed.

JUDGMENT

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question was proposed for certification, and the Court agrees.
3. No costs are awarded.

“Alan S. Diner”

Judge

Certified true translation
Vera Roy, Senior Jurilinguist

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1240-24

STYLE OF CAUSE: ENOCK ILUNGA NTOTENI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 1, 2025

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** DINER J.

DATED: MAY 2, 2025

APPEARANCES:

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