

Federal Court



Cour fédérale

Date: 20150119

Docket: IMM-4181-14

Citation: 2015 FC 71

Calgary, Alberta, January 19, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

ELISA MANGEBELE MABADI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background and facts

[1] This is an application for judicial review of the April 28, 2014 decision (the Decision) of the Refugee Protection Division of the Immigration and Refugee Board (RPD) finding the Applicant to be neither a Convention refugee nor a person in need of protection under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. For the reasons discussed below, I have decided to dismiss this application.

[2] The Applicant, a citizen of the Democratic Republic of Congo (DRC), alleges that, while she was outside her country in 2012, she participated in marches against the current government in the DRC. She alleges that these marches were recorded on video and that those videos are available on YouTube. The Applicant asserts that the DRC government learned of her participation in these marches and targeted her. She alleges that, later in 2012 while she was in Canada, members of her family were attacked in her daughter's home in the DRC by six state agents. The Applicant alleges that the state agents (i) mentioned that they were aware of her political activities; (ii) demanded to know where she was; (iii) raped her daughter and two of her adopted daughters; (iv) killed her father; (v) robbed the family of money and goods; and (vi) kidnapped two of her adopted daughters.

[3] Citing a number of inconsistencies and contradictions, the RPD concluded that the Applicant's allegations were not credible. The Decision refers specifically to inconsistencies between the Applicant's testimony, her Personal Information Form (PIF), and a newspaper article about the incident. The RPD focused on inconsistencies as to who was present at the time of the attack, who was raped; and who lives in the home.

[4] The crux of the Applicant's argument in the present application concerns the quality of the interpretation that was provided during the hearing before the RPD between the English spoken by the RPD and the Tshiluba spoken by the Applicant. Though the Applicant was not able to comment on the quality of the interpretation because she is unfamiliar with English, her cousin (Balex Kabamba) attended the hearing and gave evidence before this Court concerning a series of alleged errors of interpretation.

II. Issue and standard of review

[5] The Applicant alleges that, as a result of these alleged interpretation errors, she was denied procedural fairness at the hearing. The Respondent counters that the Applicant was not denied procedural fairness and that any errors in interpretation were minor.

[6] The parties are agreed that the standard of review on a question of procedural fairness related to the quality of interpretation is correctness. I concur.

III. Analysis

[7] The Affidavit of Balex Kabamba details 22 alleged interpretation errors. The Applicant argues that it is not possible to determine how her responses to questions during the hearing before the RPD might have been different if the interpretation had been proper, and therefore it is likewise not possible to determine whether the RPD's conclusions would have been different. The Applicant also argues that the Court should not speculate in this regard.

[8] The Respondent comments on each of the alleged interpretation errors. The Respondent also argues that the quality of interpretation is not to be judged on a standard of perfection and that even serious errors will not vitiate the RPD's decision unless such errors would have made a difference to the result. The Respondent further argues that the list of 22 alleged interpretation errors should be understood to be exhaustive, such that the remainder of the interpretation should be presumed correct.

[9] Having considered each of the 22 alleged interpretation errors, I find that most do not require discussion here. Using the numbering provided in the Kabamba Affidavit, I find that there is no interpretation error in numbers 8, 12, 19 and 22.

[10] With regard to the following alleged interpretation errors, I find that either there was no apparent misunderstanding in the exchange or any misunderstanding was clarified during the hearing: 1, 2, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15 and 16.

[11] With regard to the following alleged interpretation errors, I find that any misunderstanding was not material to the RPD's conclusion: 17, 20 and 21.

[12] This leaves only the alleged interpretation errors 3 and 18 that require further discussion.

[13] Alleged interpretation error number 3 concerns the following statement by the RPD member (at page 5, line 9 of the transcript): "It's very important that you stop from time to time to allow [the interpreter] to convey what you've said. If the interpreter asks you to stop, please stop so that your words can be interpreted." The evidence is that, in the interpretation of this statement, the Applicant was advised to "[b]e short in your answers, do not elaborate." The Applicant argues strongly that this advice might have caused her to cut short some of her responses and leave out some additional explanations that could have responded to the RPD's concerns about some of the inconsistencies and contradictions. The RPD's conclusions might therefore have been different.

[14] The Respondent argues that the Applicant has not identified any such additional explanations that might have made a difference to the RPD's conclusions. The Respondent argues that the inconsistencies and contradictions that concerned the RPD could not have been addressed by any additional explanations the Applicant might have provided.

[15] I agree with the Respondent. The Applicant has not satisfied me that there is any elaboration that she might have provided that would have addressed the inconsistencies and contradictions that concerned the RPD.

[16] This brings me to alleged interpretation error number 18. This concerns an exchange in which the RPD member seeks an explanation for an apparent inconsistency as to whether the family still lives in the house in which the alleged attack happened. Earlier in the hearing, the Applicant indicated that her daughter and son-in-law were still living in the house (page 11, line 15). Later, the Applicant indicated that her daughter's family left the house because of the attack (page 17, line 33). The Applicant states that she was initially referring to where her daughter lived before the attack. She says her explanation (correctly interpreted) was: "I responded to the question in relation to the incident. This response now is in relation to the current situation." This explanation was translated as: "What I understood first was when you asked me that where were they, then I took it they are living in that place."

[17] The parties are agreed, and I concur, that the exchange is unclear. The Applicant's explanation for the inconsistency was not adequately communicated to the RPD. Moreover, the absence of an explanation was cited in the Decision as part of the basis for the finding of a lack of credibility (see paragraph 20). However, I am not satisfied that this is sufficient to justify setting aside the Decision. Firstly, the Applicant's explanation as quoted in the preceding paragraph remains unclear in my view. Even if the explanation had been properly interpreted, I am not satisfied that the RPD would necessarily have understood it as the Applicant argued before this Court. Secondly, I am not satisfied that that the RPD's finding of lack of credibility would have been different even if the Applicant's clarification has been communicated clearly.

The inconsistency itself was not the result of any interpretation error; it is just the explanation that was poorly communicated.

[18] Finally, even taking into account the cumulative effect of alleged interpretation errors 3 and 18, I am not satisfied that the issues raised by the Applicant are sufficient to constitute a denial of procedural fairness. The Applicant was not entitled to a perfect interpretation but rather an adequate interpretation. The fundamental value is linguistic understanding: *Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161, at para 3, citing *Mohammadian v Canada (Citizenship and Immigration)*, 2001 FCA 191 and *R v Tran*, [1994] 2 SCR 951. I am satisfied that the interpretation, though imperfect, was adequate and that the Applicant was given a fair hearing before the RPD.

IV. Conclusion

[19] In my view, this application should be dismissed.

[20] In oral argument, the Applicant's counsel requested that I certify that this matter involves a serious question of general importance. The proposed question concerns whether an instruction to a refugee claimant not to elaborate in his or her answers during the hearing before the RPD is reason to set aside a decision refusing refugee status. For its part, the Respondent argues that this question is not of sufficient general importance to justify certification. I agree with the Respondent. In my view, the proposed question is too fact-specific to be worthy of certification. Accordingly, I will not certify a question in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.
2. No serious question of general importance is certified.

"George R. Locke"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4181-14

STYLE OF CAUSE: ELISA MANGEBELE MABADI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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