

Federal Court



Cour fédérale

**Date: 20160915**

**Docket: IMM-1215-16**

**Citation: 2016 FC 1042**

**Ottawa, Ontario, September 15, 2016**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**MOUHAMED SOULEYMANE TAMBADOU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a decision by the Refugee Appeal Division (RAD) dated March 1, 2016, upholding a decision by the Refugee Protection Division (RPD) rejecting the Applicant's refugee protection claim.

[2] The Applicant argues that the RAD committed a reviewable error by upholding the RPD's decision rejecting the Applicant's claim on the basis that he had not established his identity on a balance of probabilities.

[3] A review of the RAD's decision reveals no error and, as such, the application is dismissed.

I. Background

[4] The Applicant alleges that he is a sixteen-year old boy raised in Mali by his single mother.

[5] The Applicant's claim is based on a well-founded fear of persecution by reason of his sexual orientation. He claims he has been attracted to men since childhood and has suffered bullying and violence at school and home. In light of this continued persecution, his mother made arrangements for him to leave the country. He testified that he was unaware of these arrangements.

[6] The Applicant left Mali for Morocco on April 9, 2015. He then left Morocco and arrived in Canada on April 11, 2015 claiming asylum at the alleged age of fifteen-years. He testified that he chose to come to Canada by conducting an internet search after his mother asked him to which country he wished to go.

[7] Upon arrival, the Applicant had no documents for identification. He admitted to travelling with a fraudulent Malian passport and was detained in order to ascertain his identity. The “Direction de la protection de la jeunesse” refused to take charge of him as they were unable to establish that he was, in fact, a minor. The Applicant faced three detention review hearings before the Immigration Division. On April 15, 2015 the Applicant was not released as his identity remained inconclusive. On April 22, 2015, while the Applicant was cooperative in trying to contact his family, he remained unable to establish his identity and was forced to remain in detention. Finally, on May 6, 2015, he was released with conditions as the date of his hearing before the RPD had been set.

## II. The RPD Decision

[8] While this is a judicial review of a decision by the RAD, it is worth briefly summarizing the RPD decision reviewed by the RAD. As previously stated, the Applicant claimed protection under sections 96 and 97 of the Act. The RPD rejected his claim solely on the basis that he was unable to establish his identity on a balance of probabilities as required by section 106 of the Act and article 11 of the RPD’s rules. The basis of the refugee claim itself was not addressed.

[9] The RPD presumed that the Applicant was a vulnerable person as an unaccompanied minor with only four years of schooling, but it noted that this does not relieve the Applicant of the burden of establishing his identity under section 106. While the RPD acknowledged the presumption that foreign identity documents are valid and authentic when emitted by a competent authority, it also highlighted *Umba v Canada (Citizenship and Immigration)*, 2004 FC

25 in which Justice Martineau held that where identity documents contain unexplained errors it is reasonable to conclude that they have no probative value.

[10] After a systematic review, the RPD found that the documents presented by the Applicant to establish his identity lacked any probative value. The Applicant presented the following documents at the RPD hearing: his alleged birth certificate, his father's death certificate and his parents' alleged marriage licence. The Applicant also presented a copy of a document with a photo identified as being the Applicant's mother's identity card as well as a typed and signed letter alleged to have been written by his mother.

[11] The Minister's representative presented expert opinion on the above documents. The expert found that all the documents submitted by the Applicant were apocryphal, bearing characteristics generally associated with fraud and being incapable of authentication. The RPD found that this reversed the presumption of authenticity and that, as the Applicant had failed to explain these errors and inconsistencies, these documents were void of any probative value.

[12] The RPD also found that his testimony was not credible in establishing his identity in the absence of reliable documentation. This was primarily based on the implausibility of the Applicant's testimony.

[13] While the Applicant had used the name Mohamed Soleyman Tambadou upon arrival, upon receiving the birth certificate bearing the name Mouhamed Souleymane Tambadou, he

utilized this name for the rest of his hearings. The Applicant freely admitted to changing the name he used upon receipt of the birth certificate.

[14] The RPD noted that he appeared more mature than his alleged age and that his testimony was clear and well thought out. The Applicant had testified that, prior to his exit from Mali, his mother had asked him to which country he wished to go and, that after conducting an internet search, he decided on Canada. On the basis of these facts and its own assessment of the Applicant's maturity, the RPD concluded that it was implausible that the Applicant would be so uninformed of both his "real" name and of the steps taken to secure his safe passage out of Mali. For these reasons, the RPD did not find his testimony to be credible in establishing his identity in the absence of reliable documentation.

### III. The RAD Decision

[15] The subject of this judicial review is the RAD's decision to dismiss the appeal and confirm the RPD's decision.

[16] First, the Applicant argued that the RPD drew adverse conclusions with regards to the Applicant's mental capacity from his appearance, demeanor and ability to conduct an internet search without applying *Chairperson's Guideline 3* with respect to child refugee claimants and without considering the psychological evaluation submitted. In exaggerating his maturity, the RPD was argued to have reached incorrect conclusions based on the Applicant's lack of

awareness of identity documents, the multiple ways of spelling his name and his capacity to search the internet.

[17] While admitting that the RPD never specifically mentioned the psychological evaluation, the RAD found that the RPD did not contradict any of its specific recommendations or conclusions. Further, the RPD did consider the Applicant's status as a minor, and as a vulnerable person with little schooling. The RAD found that in weighing this status with the Applicant's thoughtful testimony, the RPD was "sensitive to the Applicant's situation" and that it committed no reviewable error.

[18] Second, the Applicant argued that the RPD conducted an "overzealous assessment" of the Applicant's identity. Notably it was argued that it was not unreasonable for the Applicant to have changed the spelling of his name upon receipt of his birth certificate. It was further argued that this document should not have been rejected as being apocryphal as it was not found to be fraudulent. The RAD agreed that it was possible for a person, regardless of their maturity or level of education to be unaware of the spelling of their name on their birth certificate. However, it concluded that, in the absence of evidence countering the expert's finding that the identity documents were apocryphal, the RPD's conclusion was reasonable.

[19] Third, the Applicant argued that the RPD should have given some weight to the letter from the Applicant's mother. The RAD found it was impossible to give this letter any weight when the accompanying identity card's authenticity cannot be evaluated and all other identity documents were found to be apocryphal.

IV. Legislative Framework

[20] The following provisions of the Act are applicable in these proceedings:

**Immigration and Refugee Protection Act, SC 2001, c 27, art 106.**

*Credibility*

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

**Refugee Protection Division Rules, SOR/2012-256, art 11.**

*Documents*

11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

**Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27, art 106.**

*Crédibilité*

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

**Règles de la Section de la protection des réfugiés, DORS/2012-256, art 11.**

*Documents*

11 Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

V. Issues

[21] The following issue arises in this application:

1. Was it unreasonable for the RAD to uphold the RPD's identity finding?

VI. Standard of Review

[22] The parties agree that the applicable standard of review is reasonableness. In fact, this Court has already established that findings of credibility and the assessment of proof of identity submitted by an applicant are reviewable on this standard (*Lin v Canada (Citizenship and Immigration)*, 2011 FC 1235 at para 25).

[23] The reasonableness standard focuses on “the existence of justification, transparency and intelligibility within the decision-making process” and considers “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir* at para 47).

[24] With respect to questions of credibility, the jurisprudence has generally established that the RAD may or should defer to the RPD because the RPD has heard the witnesses directly, has had an opportunity to probe their testimony or has had some advantage not enjoyed by the RAD; see, for example, *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2014 FC 799 at para 55; *Akuffo v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1063 at para 39; *Nahal v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1208 at para 25.



VII. Analysis

[25] First, the Applicant submits that the RPD drew conclusions about the Applicant's abilities and maturity without having regard for the psychological report and the *Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues (Child Guidelines)*. The RAD did not address how the RPD's adverse credibility findings may have been influenced by these ill-founded conclusions regarding the Applicant's abilities and maturity.

[26] The Applicant submits that the RAD did not address the RPD's conclusion that as the Applicant was mature and able to conduct an internet search, he should have known about his travel arrangements. The *Child Guidelines* state that children may not know the circumstances that lead to their departure from their country of origin. Further, the psychological evaluation stating that the Applicant has limited intellectual capacity should also have been taken into consideration in making this finding.

[27] The Court does not find any merit in these submissions. The RPD's finding of "maturity" is not contrary to the findings in the psychological evaluation. Rather, the RPD took into account the Applicant's lack of formal education. The RAD also considered the *Child Guidelines* argument. It concluded that the RPD was sensitive to the Applicant's status as a minor.

[28] In any event, the RPD is not required to accept an expert report with respect to matters that are within its own expertise. When satisfied by personal observation and questioning that the Applicant possesses reasonable communication skills and intellectual capacity to participate in

the proceedings, this is a finding that the RPD is mandated to make as a fundamental aspect of its jurisdiction and the essence of much of the deference owed its decisions on factual findings.

[29] If the Applicant wishes to argue otherwise, it must provide examples from the hearing demonstrating that the Applicant could not understand or properly participate in the proceedings because of an inability to communicate or that he was lacking the intellectual capacity that witnesses normally appearing before the RPD would possess. None were forthcoming despite the fact that the RAD noted the Applicant was represented by competent counsel and supported by a Designated Representative.

[30] Second, the Applicant submits that the RAD's adverse plausibility finding regarding the Applicant's internet search was unreasonable. The RAD mischaracterized the internet search as a complex analysis that someone with limited schooling would not be able to do quickly. Citing *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paragraph 7, the Applicant reminds the Court that plausibility findings should only be made in the clearest of cases. Here, it is not outside the realm of what could reasonably be expected, that a young person would do a simple search to identify a safe country he could move to.

[31] The Court disagrees with the Applicant's interpretation of the requirements of a plausibility finding, that it requires anything more than the proof of a factual conclusion on the balance of probabilities that follows "logically and reasonably to a sufficient degree of probability from accepted facts by the application of an inductive reasoning process that utilizes the uniformity of prior human experience as its benchmark": *K.K. v. Canada (Citizenship and*

*Immigration*), 2014 FC 78 at para 61. The Court finds no reviewable error in the RAD's factual finding that "it is not plausible that a person with very limited schooling, who could barely read or write, would be able to quickly do a search of the world on the millions of possible at sites and consider the advantages and disadvantages and settle on the advantages of going to Canada."

[32] The Court also takes no issue with the RAD's reassessment of the case after disagreeing with the RPD's finding that it was unreasonable for the Applicant to have wanted to change the spelling of his name once the identification document arrived. Nonetheless, the RAD carried out its own assessment of all the evidence, as it was required to do and concluded that despite this disagreement "the RAD finds that there is still no evidence on the file that counters the Minister's expert evaluation of the birth certificate that concludes it is apocryphal for several reasons". The RAD notes that counsel for the Applicant failed to address this discrepancy. The Court can find no reviewable error in this conclusion.

[33] Finally, the Applicant argues that the RAD should have accepted the Applicant's birth certificate as proof of his identity. He cites *Sitoo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1513 [*Sitoo*] to argue that the finding that the birth certificate is "apocryphal" does not indicate that the document is fraudulent and that the presumption of validity of foreign documents should continue to apply. *Sitoo* is distinguishable on its facts by its reference to a single discrepancy in the identification document. Several reasons were advanced in this matter, including that several supporting documents were also apocryphal. This is sufficient to reverse the presumption of validity of foreign documents. The Applicant provided no evidence to counter the Minister's evidence that the submitted documents were apocryphal.

VIII. Conclusion

[34] Accordingly, the application is dismissed and no question is certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT** is that the application is dismissed and no question is certified for appeal.

"Peter Annis"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1215-16

**STYLE OF CAUSE:** MOUHAMED SOULEYMANE TAMBADOU v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** SEPTEMBER 12, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** SEPTEMBER 15, 2016

**APPEARANCES:**

Jessica Lipes

FOR THE APPLICANT

Simone Truong

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Jessica Lipes  
Barrister & Solicitor  
Montreal, Quebec

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of  
Canada  
Montreal, Quebec

FOR THE RESPONDENT