

Federal Court



Cour fédérale

Date: 20160916

Docket: IMM-5832-15

Citation: 2016 FC 1049

Ottawa, Ontario, September 16, 2016

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

GIFT DANIEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Upon arrival in Canada in February 2015, Ms. Daniel made a claim for refugee protection on the basis of her treatment in Nigeria. She claims to have been forced to undergo female genital mutilation and claims to have been sold to an older man who confined her in his house under the surveillance of bodyguards. She claims to have suffered sexual, physical, and psychological abuse. She sought the assistance of the police to no avail. In February 2015, she

escaped the house, and fled Nigeria with the assistance of a smuggler. She arrived in Canada using a false passport and false identity documents.

[2] In April 2015, Ms. Daniel attended a refugee hearing and the Refugee Protection Division [RPD] found her to be a credible witness and accepted her personal identity. She was accepted as a convention refugee.

[3] The Respondent appealed the RPD decision to the Refugee Appeal Division [RAD], arguing that the Applicant had not established her identity and that refugee status had been conferred on an unknown person.

[4] The RAD denied her refugee claim. It concluded that she had not established her identification.

[5] In this judicial review application, Ms. Daniel argues that the RAD's assessment of her identity was unreasonable. She argues that the RAD should have deferred to the RPD findings on the issues of identity and credibility which, she argues, are so interconnected that one cannot be considered without the other.

[6] For the reasons that follow, I have concluded that the decision of the RAD is reasonable and this judicial review is dismissed.

II. Issues

[7] The following issues arise in this case:

A. In this case, does the RAD owe deference to the RPD findings?

- B. Is the RAD's finding on identity reasonable?
- C. Was the RAD required to consider the Applicant's credibility?
- D. Are there questions for certification?

III. Analysis

- A. *In this case, does the RAD owe deference to the RPD findings?*

[8] Ms. Daniel had a positive determination by the RPD on the issues of identity and credibility. She argues that the RAD is required to defer to the RPD finding on her identity because the RAD did not conduct a full rehearing of all of the substantive evidence that was considered by the RPD.

[9] The RAD considered both the evidence placed before it and the evidence before the RPD on the issue of identity. The RAD held a hearing and heard oral evidence directly from Ms. Daniel. The RAD also relied on the documents and evidence of Ms. Daniel and it did not consider the documents tendered by the Respondent. Ms. Daniel's evidence included her oral testimony in the RPD and at the RAD, her Basis of Claim (BOC) form and refugee claim documents, and the personal documentary evidence tendered.

[10] The RAD concluded that Ms. Daniel had not established her identity and since identity was determinative of her refugee claim, it was not necessary for the RAD to consider the issue of credibility.

[11] The Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 confirms that in a case like this, the RAD is under no obligation to show deference

to the findings of the RPD on the issue of identification. The RAD was entitled to independently assess the evidence and come to its own conclusion. In such circumstances, the RPD had no particular advantage over the RAD.

[12] Therefore, I find that because the RAD conducted an independent assessment on the issue of the Applicant's identification, it was not obligated to defer to the RPD's finding.

B. *Is the RAD's finding on identity reasonable?*

[13] The finding of the RAD on the issue of identity is reviewed on the standard of reasonableness (*Liu v Canada (Citizenship and Immigration)*, 2012 FC 377; *Wang v Canada (Citizenship and Immigration)*, 2011 FC 969). In other words, it must be determined if the decision is one where there is "justification, transparency and intelligibility in the decision-making process" and if it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, at para 47).

[14] Here, the RAD held an oral hearing and it noted that the determinative issue was whether the Applicant had established her identity on a balance of probabilities.

[15] The RAD independently assessed the evidence and arrived at its own determination on this issue. In doing so, the RAD relied on the documents and evidence of the Applicant and not the documents offered by the Respondent. The Applicant's evidence included her oral testimony in the RPD and RAD hearings, her Basis of Claim (BOC) form and refugee claim documents, and the personal documentary evidence tendered, as follows:

- an expired driver's licence, a current temporary driver's licence, and a copy of her current permanent driver's licence;

- two Attestations of Birth from the Nigerian Government;
- notarised affidavit from her mother;
- a letter from her brother;
- copies of email correspondence between her brother and the Applicant's counsel;
- and
- an affidavit from a Board certified interpreter.

[16] The RAD had concerns with respect to the genuineness of all three of the Applicant's driver's licences. The RAD questioned the Applicant as to why the expired and temporary driver's licences bear different signatures. She explained that she forgot to sign the form when she first obtained it. Her friend, who works at the licensing office, forged her signature on her behalf. The RAD found that this forged document was obtained improperly and could not be considered a reliable document to establish the Applicant's identity.

[17] In addition, the RAD found that the Applicant's testimony, regarding how she applied for her subsequent driver's licence, was not credible. The evidence of the Applicant was that her friend once again assisted her. However, the objective documentary evidence indicated that, at the material time, applying for driver's licences in Nigeria required the Applicant to provide her biometric data in person, including her portrait, fingerprints, and signature. The RAD did not accept the evidence that the Applicant's friend once again assisted her in the driver's licence office and bypassed these requirements. Even if this friend had assisted her, the RAD found that the licence was obtained improperly and therefore, was not reliable evidence of identity.

[18] The RAD also noted that there were inconsistencies between the temporary and permanent versions of the licence. The permanent version had muted colours and its security features were extremely faded, and in some instances barely visible. The placement of the signatures on the respective licences was also different. The Applicant was unable to provide an explanation for these discrepancies.

[19] The RAD noted that the documentary evidence indicates that there is widespread fraud in Nigeria, and fraudulent documents from Nigeria are available in and outside of the country. Any printed document can be forged, and genuine official documents can be obtained, including driver's licences. The RAD found that the Applicant, who traveled to Canada in possession of a false passport and other false identity documents, has demonstrated that she has the ability to obtain and the willingness to use fraudulent documents.

[20] Thus, the RAD concluded that the driver's licences could not be relied upon as evidence of the Applicant's identity. The RAD found the Applicant's evidence on how she obtained these licences to not be credible. The RAD found that the driver's licences were likely not genuine, which generally undermined the Applicant's credibility.

[21] Given this finding, the RAD found that the other documents submitted by the Applicant were of insufficient probative value to overcome her lack of credibility.

[22] The Applicant initially tendered an Attestation of Birth from the Nigerian Government, which indicated that her name is Gife Daniel, rather than Gift Daniel. When this was raised with the Applicant, she tendered a corrected version of the Attestation of Birth together with an affidavit from her mother. The RAD found the corrected Attestation of Birth could not serve as

an explanation of why the first Attestation of Birth contained an incorrect spelling of the Applicant's purported name. In addition, the RAD noted that the documentary evidence established that such documents are easily obtainable. Given the other credibility issues of the Applicant and the prevalence of fraudulent documents in Nigeria, the RAD found that little weight could be given to the Attestations of Birth and the mother's affidavit.

[23] The RAD also considered the letter from the Applicant's brother and the correspondence between her brother and counsel. The RAD found that there is no means to determine that the author of the letter or the person in correspondence with the Applicant's counsel is in fact her brother. This evidence adds very little weight to the identity of the Applicant. Moreover, this evidence could not overcome the credibility issues surrounding the tendering of non-genuine driver's licences.

[24] Finally, the Applicant provided an affidavit from a Board certified interpreter, who believed the Applicant was either born in Nigeria or had lived there for a long time, based on her linguistic capabilities and the appearance of tribal marks on her face. The RAD accepted this evidence, but found that it did not establish the Applicant's personal identity or provide evidence of her current citizenship.

[25] As a result, the RAD found that the Applicant had failed to provide sufficient reliable and credible evidence to establish her identity. Accordingly, the RAD set aside the determination of the RPD and substituted its own determination that the Applicant is neither a Convention refugee, nor a person in need of protection.

[26] This Court will not reweigh the evidence of identification before the RAD. On judicial review, the Applicant must demonstrate that the RAD made a reviewable error in the assessment of this evidence. In my view, the Applicant has failed to do so. The RAD was not unreasonable in rejecting the Applicant's evidence and explanations for the irregular manner in which she obtained the licences. Therefore, the RAD was not unreasonable in concluding that the Applicant's identity had not been established.

C. *Was the RAD required to consider the Applicants credibility?*

[27] The Applicant argues that identity and credibility are so interwoven in this case that the RAD made an error by not considering her credibility in conjunction with her identification.

[28] Identity is a determinative preliminary issue and no further analysis of the merits of a claim is required if a claimant's identity is not proven: *Diarra v Canada (Citizenship and Immigration)*, 2014 FC 123 at paras 22 and 32.

[29] In *Hodanu v. Canada (Citizenship and Immigration)*, 2011 FC 474 the Court reiterated that the onus is on the Applicant to provide reliable documents to establish identity and if identity is not established the analysis ends. The court states:

[17] The onus is on the applicant, pursuant to section 106 of the *IRPA*, to establish his or her identity by producing acceptable documentation. If he or she cannot do so, the Board must consider whether the applicant has reasonably explained the lack of documentation or taken reasonable steps to obtain documentation: see *Qiu v Canada (Citizenship and Immigration)*, 2009 FC 259 at para 6; *Zheng v Canada (Citizenship and Immigration)* 2008 FC 877 at para 14. Where identity is not established it is unnecessary to further analyze the evidence and the claim: *Qiu* at para 14; *Zheng* at para 15.

[30] Here, once the RAD concluded that the Applicants identity had not been established it had no obligation to consider the claim any further.

D. *Are there questions for certification?*

[31] The Applicant has requested the following question be certified:

In the context of a claimant's identity, is section 111(2)(b) of the *IRPA* to be interpreted such that the RAD cannot set aside a decision of the RPD and substitute its own decision without hearing all of the evidence that was heard by the RPD including the substantive evidence?

[32] The Applicant relies upon the case of *R.K. v. Canada (Citizenship and Immigration)*, 2015 FC 1304 for authority that the RAD cannot conduct a partial *de novo* hearing.

[33] The Respondent opposes this question for certification and argues that the question posed does not “transcend the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application” as explained in *Varela v. Canada (Citizenship and Immigration)*, 2009 FCA 145 and *Kunkel v. Canada (Citizenship and Immigration)*, 2009 FCA 347.

[34] The *R.K.* case is distinguishable from this case. On the issue of identity the RAD considered all of the evidence including the evidence that was before the RPD. Therefore there was no partial hearing on the issue of identity. The RAD did not have to consider the issue of credibility as the Applicant did not get over the threshold issue of identification.

[35] I am satisfied that the RAD fulfilled its role as contemplated by s. 111 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and in keeping with the direction provided in *Huruglica*, above. I therefore decline to certify any questions as the issue raised by the Applicant is specific to her case only.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed; and
2. There is no question of general importance certified.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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