

Federal Court



Cour fédérale

**Date: 20160603**

**Docket: IMM-5227-15**

**Citation: 2016 FC 623**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, June 3, 2016**

**PRESENT: THE HONOURABLE MR. JUSTICE HARRINGTON**

**BETWEEN:**

**ABOUBACAR SIDIKI CISSE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Cissé claims to be a citizen of Guinea. He filed a refugee claim because of the attacks he apparently suffered due to his homosexuality. The Refugee Appeal Division (RAD) of the Immigration and Refugee Board confirmed the decision of the Refugee Protection Division (RPD) to the effect that he was not able to establish his identity.

[2] This is a judicial review of the RAD decision.

[3] Section 106 of the *Immigration and Refugee Protection Act*, S.C. 2001, chapter 27 states the following:

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.

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.

[4] Paragraph 178(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, indicates that:

178 (1) An applicant who does not hold a document described in any of paragraphs 50(1)(a) to (h) may submit with their application  
(a) any identity document issued outside Canada before the person's entry into Canada;

178 (1) Le demandeur qui ne détient pas l'un des documents mentionnés aux alinéas 50(1)a) à h) peut joindre à sa demande l'un ou l'autre des documents suivants :  
a) toute pièce d'identité qui a été délivrée hors du Canada avant son entrée au Canada;

[5] The documents referred to in paragraphs 51(a) to (h) of the Regulations are essentially a passport or any other piece of government identification.

[6] Mr. Cissé submitted a number of documents. I only need to consider two of those documents: his national identity card and the copy of a judgment from the trial court of Kindia (Republic of Guinea), which indicates that he was born in Guinea on July 15, 1983.

[7] Those two documents were the subject of an analysis report from the Canada Border Services Agency.

[8] The identity card was deemed authentic, but it had been modified by hand. Mr. Cissé explained that:

... an official at the Commission manually corrected a mistake in his father's name, which matches the information in the documentary evidence.

[9] This explanation was rejected. Under the circumstances, it is not necessary to determine whether this decision was reasonable or not.

[10] Instead, I will focus on the decision of the Kindia Court. In its analysis report, the Canada Border Services Agency found that:

The support for this document does not include any security features that would allow us to authenticate it. Without a comparison specimen, the results of our analysis are inconclusive.

[11] The Agency further notes that:

If it is shown that the subject entered Canada on July 29, 2014, as he claims, then this document does not satisfy the requirement of paragraph 178(1)(a) of the Immigration and Refugee Protection Regulations, as it was issued after its user arrived in Canada.

[12] This reading of the judgment by the Agency, the RPD and the RAD is completely unreasonable.

[13] The judgment is dated July 31, 2014. It is true that Mr. Cissé would have been in Canada on that date. However, the judgment does not indicate that he was personally in Court to bring his motion. The motion indicates that: [TRANSLATION] “IN LIGHT OF the motion dated July 31, 2014, presented by ABOUBACAR SIDIKI CICCE . . .” Take, for example, this judicial review requested by Mr. Cissé. He did not bring his motion to the Court in person. He was represented by his attorney. He therefore did not need to be present at the hearing. It is pure speculation to claim that the situation would be different in Guinea.

[14] The type of security feature sought by the Agency should also be questioned. The judgments of this Court certainly have no features other than the Clerk’s stamps, which is exactly the case for the judgment from Guinea

[15] The RAD confirmed the decision of the RPD, which indicated that the documents, including the judgment, [TRANSLATION] “are not accompanied by photos.” What photos? Our judgments do not include photos either.

[16] Finally, I repeat what I already pointed out in *Masongo v. Canada (Citizenship and Immigration)*, 2008 FC 39:

. . . a document purportedly issued by a foreign authority is presumed to be valid unless there is evidence to the contrary (*Ramalingam v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J No. 10, 77 A.C.W.S. (3d) 156;

*Osipenkov v. Canada (Minister of Citizenship and Immigration)*,  
2003 F.C.J. No. 59, 120 A.C.W.S. (3d) 111 and *Sitoo v. Canada*  
*(Minister of Citizenship and Immigration)*, 2004 FC 1513  
(CanLII), [2004] F.C.J. No. 1850)

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The matter is sent back to the RAD for a new decision.
3. There is no question of general importance to certify.

“Sean Harrington”

---

Judge

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

**DOCKET:** IMM-5227-15

**STYLE OF CAUSE:** ABOUBACAR SIDIKI CISSE v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MAY 26, 2016

**REASONS FOR JUDGMENT  
AND JUDGMENT:** THE HONOURABLE MR. JUSTICE HARRINGTON

**DATED:** JUNE 3, 2016

**APPEARANCES:**

Vincent Desbiens FOR THE APPLICANT

Lynne Lazarof FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Handfield & Associés, Avocats FOR THE APPLICANT  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec