

Federal Court



Cour fédérale

Date: 20161223

Docket: IMM-1445-16

Citation: 2016 FC 1411

Ottawa, Ontario, December 23, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SYLVIA JILL SABIITI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada dated March 22, 2016, in which the RPD determined that the Applicant is not a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor a person in need of protection pursuant to

section 97 of IRPA. The Applicant, Ms. Sylvia Jill Sabiiti, a citizen of Uganda, claimed protection against domestic violence by her husband and his second wife.

[2] This application is allowed. The RPD concluded that Ms. Sabiiti was not credible or trustworthy and that her claim had no credible basis. These conclusions were influenced significantly by the RPD's analysis of the evidence surrounding Ms. Sabiiti's marriage certificate and her application in December 2014 for a Canadian Temporary Resident Visa [TRV]. For the reasons explained in greater detail below, I find the RPD's analysis of that evidence, and therefore its decision rejecting Ms. Sabiiti's claim, to be unreasonable.

II. Background

[3] Ms. Sabiiti states that she and Mr. Emmanuel Kwihangana were married in a traditional ceremony on February 16, 2008, with a church wedding following on November 15, 2008. Ms. Sabiiti alleges that, toward the end of their first year of marriage, Mr. Kwihangana's behaviour became violent and controlling, and that he was physically and sexually abusive towards her, raping her on several occasions and causing injuries which required medical attention.

[4] According to Ms. Sabiiti, Mr. Kwihangana brought home another woman in October 2013 and told Ms. Sabiiti that the woman was to be her co-wife. She alleges that the abusive treatment towards her continued, from both her husband and his second wife.

[5] Ms. Sabiiti alleges that she repeatedly sought assistance from the local police and other authorities but did not receive any help. In September 2015, Ms. Sabiiti was helped by family

and friends to purchase a ticket to Canada while her husband and his second wife were away. She came to Canada and claimed refugee protection soon thereafter. Her refugee claim was heard on February 29, 2016, and a negative decision was issued by the RPD on March 10, 2016. The determinative issue for the RPD was credibility, resulting in the RPD finding under section 107(2) of IRPA that there was no credible basis for her claim.

III. Analysis

[6] While Ms. Sabiiti raised a number of issues in this application for judicial review, my decision turns on the RPD's assessment of the evidence in reaching certain of its principal credibility findings. It is well-established that findings based on the assessment of evidence and determinations of credibility are reviewed on the standard of reasonableness (see *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, at para 46; *Dunsmuir v New Brunswick*, 1 SCR 190, at para 47; *Jin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 595, at para 4; *Mukamuganga v Canada (Minister of Citizenship and Immigration)*, 2013 FC 566, at para 35; *Pepaj v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 938, at para 13).

[7] At the outset, I note that I concur with Ms. Sabiiti's characterization of the RPD's overall decision as having been influenced significantly by its findings that she was not a credible witness and that her evidence was not trustworthy. The evidence before the RPD included documents purporting to be from the Uganda police, municipal authorities, hospitals in Uganda, a shelter in Toronto, family members, and a neighbour, which Ms. Sabiiti argued corroborated her allegations of threats and incidents of domestic violence. The RPD considered this evidence

but gave none of it any evidentiary weight, in part because it did not overcome the credibility concerns that arose in Ms. Sabiiti's own evidence. Those credibility concerns are therefore are critical to the RPD's overall decision.

[8] Both the decision and the transcript of the RPD's questioning of Ms. Sabiiti at the hearing demonstrate a significant focus on the evidence surrounding her marriage certificate. The documentary evidence included two copies of a document bearing the title "Marriage Certificate" under the heading "St. Francis Chapel Makerere University", which purported to reflect Ms. Sabiiti's marriage to Mr. Kwihangana on November 15, 2008. One of these copies bore the stamp of the Assistant Registrar of Marriages, dated September 15, 2015, indicating the document to be a certified true copy.

[9] The RPD concluded that neither copy of the marriage certificate was a reliable or trustworthy document and that there was therefore no reliable or trustworthy evidence originating from proper government sources to establish a record of Ms. Sabiiti ever having been married. The RPD therefore found that Ms. Sabiiti's credibility was undermined and that she was not a credible witness.

[10] The conclusion that the copies of the marriage certificate were not reliable was based on the RPD's consideration of documentary evidence with respect to the issuance of marriage certificates in Uganda. The RPD noted that this evidence indicated that marriage records are issued by the government of Uganda and that there was no evidence to establish that either official marriage certificates or certified copies of marriage certificates were issued by churches

in Uganda. The RPD also observed that Ms. Sabiiti testified that the certified copy of her marriage certificate was issued by the church where she was married.

[11] In reaching its conclusion on this issue, the RPD appears to have misconstrued the evidence before it. First, I note that there is no reference in the decision to the fact that the certified copy of the marriage certificate was issued by the “Asst. Register of Marriages”. Also, the RPD does not refer to Ms. Sabiiti’s testimony at the hearing as to how she obtained the certified copy. She explained that she went to the office of the registrar to have her marriage certificate certified. The registrar checked their records and determined that her marriage had not been registered there. She was then instructed to obtain a letter from the church confirming her marriage. She obtained that letter, a copy of which was in evidence before the RPD, and submitted that letter to the registrar’s office, which then certified the marriage certificate.

[12] The RPD’s decision does not address this evidence at all. It appears to rely solely on an exchange with Ms. Sabiiti at the conclusion of her testimony, in which Ms. Sabiiti confirmed that she did not ever have a certificate for her customary marriage and that both copies of the marriage certificate were from the church where she was married, with Ms. Sabiiti referring to the certified copy as just having a stamp on the side. The Applicant has raised a credible argument that the evidence demonstrates that, notwithstanding the marriage certificate itself was prepared by the church, the certification was performed by a government official, the Assistant Registrar of Marriages. I acknowledge that Ms. Sabiiti’s explanation of the process by which she obtained the certified copy was somewhat confusing and that there is no clear evidence of the official status of Assistant Registrar of Marriages. However, I find it a reviewable error for the

RPD to have failed to consider Ms. Sabiiti's evidence of the certification process and the fact that the certification was purportedly performed by an office called the Assistant Registrar of Marriages. Without such consideration, it was unreasonable for the RPD to conclude that the marriage certificate was not reliable or trustworthy and to conclude based thereon that Ms. Sabiiti was not a reliable witness.

[13] I have a similar concern related to the RPD's treatment of Ms. Sabiiti's December 2014 application for a TRV. The RPD noted that, in her application, Ms. Sabiiti stated she was single, and that she acknowledged she had knowingly submitted fraudulent information to Canadian Embassy officials. The RPD found that Ms. Sabiiti's actions demonstrated that she was not a reliable or trustworthy witness, was therefore not credible, and that her word cannot be trusted, as she had admitted to knowingly lying to Canadian officials.

[14] The RPD also found that Ms. Sabiiti had not provided a reasonable explanation for stating she was single in her 2014 TRV application. It noted that, in an earlier TRV application Ms. Sabiiti submitted in March 2013, she stated that she was married and was never asked to submit a letter from her husband. The RPD also observed that there was no evidence to show that married TRV applicants are required to submit letters from their spouses. However, the transcript of the hearing demonstrates that Ms. Sabiiti provided the RPD with a more extensive explanation than is reflected in the decision. She testified that, when she submitted the first Canadian TRV application, stating that she was married, her application was refused. Based on conversations with other visa applicants, she thought her visa may have been denied because she indicated she was married and did not submit a supporting letter from her spouse. She also explained that,

between the two Canadian TRV applications, she submitted an application for a United States visa, indicating that she was single, and that this visa was granted. Therefore, when she submitted her second Canadian TRV application, she also indicated that she was single.

[15] Ms. Sabiiti relies on jurisprudence establishing that refugees are often forced to flee their countries of origin using false documentation, and lie to officials upon arrival, and that caution should be exercised in drawing negative credibility inferences from such circumstances (see, e.g. *Koffi v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 4, at paras 41-44). This authority is not perfectly on point, as Ms. Sabiiti was not travelling on false documentation. However, I consider the reasoning underlying this jurisprudence to be applicable, and that a refugee's overall trustworthiness should not necessarily be judged too harshly for making false statements in order to escape persecution. It was of course available to the RPD to disbelieve Ms. Sabiiti's explanation for providing false information to Canadian Embassy officials on her marital status. However, taking into account the necessity to exercise caution in drawing negative credibility inferences in such circumstances, it was certainly incumbent upon the RPD to consider Ms. Sabiiti's full explanation for her actions. As the decision does not demonstrate such consideration, I find the adverse credibility conclusions derived from the provision of false information to Canadian officials to be unreasonable.

[16] As noted above, the decision demonstrates that the RPD's negative findings on Ms. Sabiiti's credibility influenced its consideration of other evidence she submitted. As I have found those credibility findings to be unreasonable, the decision will be set aside and Ms. Sabiiti's claim returned to the RPD for consideration by another member.

[17] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is referred to another member of the Refugee Protection Division for re-determination. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1445-16

STYLE OF CAUSE: SYLVIA JILL SABIITI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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DATE OF HEARING: DECEMBER 7, 2016

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