

Federal Court



Cour fédérale

**Date: 20180320**

**Docket: IMM-3002-17**

**Citation: 2018 FC 318**

**Ottawa, Ontario, March 20, 2018**

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

**BETWEEN:**

**SABRIN HUSSEIN ABDULKADIR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD or the Board], dated June 8, 2017 [Decision], which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under ss 96 and 97 of the Act.

## II. BACKGROUND

[2] The Applicant entered Canada from the United States as an unaccompanied minor on January 23, 2017. There is no dispute that she was born in Saudi Arabia in 2000. Her parents, however, are not Saudi Arabian citizens, and she is not entitled to Saudi Arabian citizenship. She says that her family still lives in Saudi Arabia, but that they fear that the Saudi government's "Saudization" policy could result in her father losing his job. The Applicant says that her temporary residence status in Saudi Arabia is based on the sponsorship of her father's employer.

[3] The Applicant alleges that her parents are citizens of Eritrea who have lived for years with fraudulently obtained Ethiopian passports. She claims that the Ethiopian passport she entered Canada with was similarly obtained through fraud, that she has no legal right to Ethiopian citizenship, and that her actual citizenship is Eritrean.

[4] Despite this, the Applicant claims that in 2015 her father decided that the Applicant, her mother and her younger brother should attempt to live in Ethiopia to see if it was possible to live there in case the family was deported by Saudi Arabia. She claims that in Ethiopia her family did not feel safe as their neighbours knew that her family was Eritrean. She says that she was not allowed to attend public school in Ethiopia and that her mother could not get an identity card that would allow her to access services there. As a result of these experiences and escalating violence in Ethiopia, the Applicant returned to Saudi Arabia in the summer of 2016 along with her mother and brother.

[5] The Applicant fears return to Ethiopia because her alleged Eritrean citizenship will leave her subject to deportation to Eritrea. She says that in Eritrea she will be subject to potential mandatory indefinite military/national service that she equates to slavery. She also fears that even if she were to be allowed to remain in Ethiopia, she will be subject to persecution there because of her Eritrean heritage.

### III. DECISION UNDER REVIEW

[6] The RPD determined that there is insufficient credible evidence to establish that the Applicant is an Eritrean citizen. The RPD finds that the Applicant is an Ethiopian citizen and is not a Convention refugee or person in need of protection.

[7] The RPD notes that, even though the Applicant's uncle had been appointed as her Designated Representative for the purposes of the refugee hearing, the Applicant is an unaccompanied minor and special consideration had to be given to Guideline 3 – Child Refugee Claimants: Procedural and Evidentiary Issues and Guideline 4 – Women Refugee Claimants Fearing Gender-Related Persecution [Chairperson's Guidelines]. Consequently, the RPD declines to draw any negative inference from inconsistencies between the Applicant's Generic Application Form and Schedule A relating to her Ethiopian citizenship and her mother's birthplace. The Applicant's age, experience, gender and cultural background were also considered when assessing the weight given to her testimony.

[8] The RPD also notes that the Respondent intervened in the claim and presented evidence that the Applicant's parents had submitted an application for Canadian permanent residence as

overseas refugees. The information provided in that refugee application and in the Applicant's mother's interview with Canadian officials contradicts some of the information provided in the Applicant's evidence.

[9] After discussing the difficulties of the Applicant's claim, the RPD accepts that the Applicant's family members are of Eritrean origin but finds that the Applicant and her parents are citizens of Ethiopia. Since the Applicant's father arrived in Saudi Arabia in 1990, before the Eritrean independence referendum, and her mother arrived in 1998, the RPD finds that the Applicant's parents arrived in Saudi Arabia as Ethiopian citizens and never forfeited their Ethiopian citizenship.

[10] The RPD agrees that the Applicant cannot be a citizen of both Ethiopia and Eritrea. The Applicant claims that, as her parents possess Eritrean national identity cards, they could not avail themselves of the 2004 Ethiopian directive that determined the residency status of Ethiopians of Eritrean origin living in Ethiopia. But the RPD finds inconsistencies in the evidence establishing the Applicant's parents' identities and does not accept that they possess genuine Eritrean identity cards. The RPD notes that the Applicant and her parents appear to hold genuine Ethiopian passports that they have used to return to Ethiopia multiple times and presented themselves as Ethiopian when in Saudi Arabia. The RPD therefore finds that it is more likely that they are ethnic Eritreans who retained their Ethiopian nationality. This retention of Ethiopian citizenship allowed the Applicant and her parents to obtain Ethiopian passports and travel to Ethiopia.

[11] The RPD examines inconsistencies in the evidence regarding the Applicant's mother's Eritrean national identity card and finds that unexplained discrepancies limit the weight that can be placed on the card. The identity card lists the Applicant's mother's date of birth as May 23, 1985. On the Applicant's mother's Ethiopian passport, her date of birth is listed as January 1, 1972. The Applicant's Saudi Arabian birth certificate lists her mother's date of birth as 1975. The Applicant initially testified that she believed her mother was born in 1985 but, when asked about the discrepancies in the documents, she stated that her mother had told her that she had falsified the date of birth on her Eritrean identity card to avoid paying taxes by appearing to be younger. The Applicant said that her mother's true date of birth was the one on her mother's Ethiopian passport. The RPD notes that this explanation is different from the one the Applicant's mother gave in an interview with a Canadian immigration official in which she stated that her true date of birth is 1985 and her passport reflects an older date of birth to gain entry to Saudi Arabia.

[12] The RPD also has concerns about the Applicant's and her Designated Representative's inability to explain how the Applicant's mother's Eritrean identity card was obtained. The RPD points to documentary evidence indicating that to obtain an Eritrean identity card overseas, an applicant must register as an Eritrean living abroad and pay fees and taxes. There was no evidence that the Applicant's mother had completed these steps and the RPD finds that it is unclear how she obtained the card in 2011.

[13] The RPD also examines inconsistencies in the evidence regarding the Applicant's father's Eritrean national identity card and finds that little weight can be placed on his card

because of these discrepancies. The date of birth listed on the father's identity card is May 9, 1971. Yet the date of birth listed on the Applicant's father's Ethiopian passport is January 1, 1960 and his Saudi Arabian resident card states that his date of birth is January 1, 1964. The Applicant's Saudi Arabian birth certificate also lists her father's date of birth as 1964. And the Applicant testified that she believed her father's date of birth was May 28, 1971. The RPD notes that neither the Applicant nor her Designated Representative could explain how the Applicant's father managed to update his Saudi residence permit when his Ethiopian passport lists a different date of birth. A letter from the Applicant's father also fails to address the issue.

[14] The RPD finds that it must assign very strong weight to the Applicant's Ethiopian passport based on her ability to use it to successfully travel to Ethiopia on multiple occasions and the lack of evidence on how her father was able to fraudulently obtain Ethiopian passports. Since an original passport is strong evidence of an individual's nationality, the onus was on the Applicant to adduce evidence undermining the validity of her and her parents' passports. Expert reports from Dr. John Campbell submitted by the Applicant indicate that it was possible to obtain an Ethiopian passport through bribery in the 1990s, but the RPD notes that the reports also indicate that passport issuance has been more restricted in recent years. And after 2006, Ethiopian consulates and embassies required individuals seeking an Ethiopian passport to prove entitlement based on a certified birth certificate issued in Ethiopia. The Applicant's claim that her father obtained Ethiopian passports through bribery is not addressed in the letter from her father and the RPD finds that it has no information on the specific arrangements he used to obtain Ethiopian passports over the years. The RPD also notes that the Applicant's current

passport was issued on December 28, 2015, when the Applicant was residing in Ethiopia while her father remained in Saudi Arabia, and the Applicant used this passport to travel back to Saudi Arabia three days after it was issued. While the RPD does not fault the Applicant for her own lack of knowledge regarding how her father obtained the passports, the RPD draws a negative inference from the failure to provide further evidence on this issue after it was raised at the first hearing by providing a new letter from her father or calling him as a witness via teleconference.

[15] The RPD accepts that other documents submitted by the Applicant are strong evidence that her extended family is Eritrean or of Eritrean origin. But the Applicant's father arrived in Saudi Arabia before Eritrean independence and the Applicant's mother stated to Canadian immigration officials that she has family members residing in Ethiopia. The RPD finds that it is possible for the Applicant's extended family to hold Eritrean citizenship while her parents do not, since it is possible that they chose not to forfeit their Ethiopian citizenship while in Saudi Arabia.

[16] Weighing the evidence of a valid and genuine Ethiopian passport against the Applicant's parents' Eritrean national identity cards, the RPD finds that neither the Applicant nor her parents lost their Ethiopian nationality as a result of changes to Ethiopian nationality law. The Board does not accept the claim in the Applicant's father's letter that he lost his Ethiopian citizenship by voting in the Eritrean independence referendum. And the RPD finds that use of a fraudulent Eritrean identity card is not implausible because the documentary evidence shows that fraudulent documents are available and prevalent outside of Eritrea. The RPD therefore finds that the

Applicant's Ethiopian passport carries greater weight than her parents' Eritrean identity cards, and that it is more likely than not that she is a citizen of Ethiopia.

[17] Since the RPD does find that the Applicant's family is of Eritrean origin, it also examines whether the Applicant would face persecution in Ethiopia. The RPD notes the lack of direct evidence from the Applicant's mother about her experience in Ethiopia. The issue of whether Ethiopians of Eritrean origin who did not forfeit their Ethiopian citizenship experience trouble accessing public services is not directly addressed in the expert reports of Dr. Campbell. And the documentary evidence cited by the Applicant only refers to the situation of persons of Eritrean descent who were not expelled from Ethiopia but did forfeit their Ethiopian citizenship. The RPD finds that there is insufficient evidence establishing that the Applicant's Eritrean origin would leave her unable to access public services in Ethiopia.

[18] The RPD is also unable to find that the Applicant would face a serious possibility of persecution in Ethiopia as an individual with Eritrean family origins. The documentary evidence indicates that most human rights issues relate to the period of the border conflict between Eritrea and Ethiopia from 1998 to 2000. The RPD finds that the Applicant may face some limited degree of discrimination but that the treatment she might experience does not amount to persecution and that she is not a Convention refugee or person in need of protection.

#### IV. ISSUES

[19] The Applicant submits that the following issues arise in this application:

1. Is the RPD's rejection of the genuineness of the Applicant's parents' Eritrean identity cards unreasonable?
2. Does the RPD unreasonably misread or misapply the documentary evidence?
3. Is the RPD's application of the Chairperson's Guidelines when making its factual findings unreasonable?

V. STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be completed in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[21] The RPD's factual findings, including those regarding the genuineness of documents used to establish a claimant's identity and its interpretation of the documentary evidence, are reviewable under the reasonableness standard. See *Thopke v Canada (Citizenship and Immigration)*, 2017 FC 532 at para 28. In this application, the Applicant does not allege that the RPD misapplied the Chairperson's Guidelines by failing to grant appropriate procedural accommodations during the hearings. Rather, the Applicant argues that the RPD failed to

consider the Chairperson’s Guidelines when making its factual findings. Reasonableness is still the standard of review when reviewing the RPD’s application of the Chairperson’s Guidelines in making factual findings. See *Manege v Canada (Citizenship and Immigration)*, 2014 FC 374 at paras 12-13 [*Manege*]; *Aissa v Canada (Citizenship and Immigration)*, 2014 FC 1156 at para 56.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## VI. STATUTORY PROVISIONS

[23] The following provisions of the Act are relevant in this application:

### **Convention refugee**

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their

### **Définition de réfugié**

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

### **Person in need of protection**

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### **Personne à protéger**

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

## VII. ARGUMENT

### A. *Applicant*

#### (1) Identity Cards

[24] The Applicant submits that the Decision fails to explain why the RPD is willing to overlook inconsistencies in the her family's Ethiopian passports and her birth certificate, but simultaneously give little weight her parents' Eritrean identity cards based on similar inconsistencies. The Applicant notes that the RPD accepts that the Ethiopian passports are genuine and does not express doubt regarding her Saudi Arabian birth certificate. The RPD does question how the Applicant's father could renew his Saudi Arabian residency permit given that his Ethiopian passport contains a different date of birth, but does not otherwise indicate doubt over the genuineness of the residency permit. The Applicant says that the RPD's rejection of the Eritrean identity cards because they contain inconsistent birth dates, similar to the above documents, is therefore illogical and inconsistent. The Applicant submits that it is equally logical

to conclude that inconsistencies in the above documents indicate that the Ethiopian passports were obtained through fraudulent means.

[25] The Applicant submits that her age, her parents' personal histories, and the cultural context that she grew up in makes it plausible that she does not know her parents' true dates of birth. Considering that her parents were born during a period of civil war between Ethiopia and Eritrean liberation forces, it is also plausible that they do not know their own birth dates. The RPD "should not be quick to apply... North American logic and reasoning to the claimant's behaviour": *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 12. This care extends to plausibility findings. See *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. The Applicant submits that inconsistent dates of birth are not evidence that foreign documents are entirely unreliable and that such inconsistencies do not impugn the reliability of her parents' Eritrean identity cards. She says that without further evidence that the identity cards are fraudulent, the RPD's dismissal of them as very strong evidence of her Eritrean nationality amounts to an implausibility finding and is unreasonable.

[26] The Applicant also says that the RPD cannot disguise this implausibility finding by framing it as finding that the identity cards could be fraudulent despite containing all the expected security features. The effect of the RPD's finding was that the identity cards were treated as fraudulent, regardless of the language used to express that finding.

(2) Misconstruction of Documentary Evidence

[27] The Applicant submits that the RPD unreasonably relied on a selective reading of one piece of documentary evidence to speculate that her parents' Eritrean identity cards might be fraudulent.

[28] The document in question is Response to Information Request [RIR] ERI104939.E, dated September 5, 2014, and titled "Eritrea: Prevalence of fraudulent identity documents, including national identity cards (2012-August 2014)". The Applicant notes that the RIR itself states that "[i]nformation about the prevalence of fraudulent identity documents, including national identity cards, was scarce," and says that such a disclaimer is not a standard feature of other RIRs and should have encouraged the RPD to proceed cautiously.

[29] The Applicant points to three statements from the RIR on which the Decision relies. First, the United States' Department of State reports that Eritrean identity cards are "easily alterable." But the Applicant notes that the RPD does not find that the cards were altered. Second, the observation by a researcher with Human Rights Watch that he "believes that there is an 'underground market' for fraudulent Eritrean ID cards in refugee communities abroad" does not disclose how the researcher came to this conclusion or the evidence the belief is based upon. And third, a Pennsylvania State University professor stated that "fake and fraudulent Eritrean identity documents are prevalent outside Eritrea," but the quote in the RIR only discusses the situation in Khartoum and does not indicate that the professor was speaking about the situation more broadly.

[30] In *Wang v Canada (Citizenship and Immigration)*, 2011 FC 969 at para 49, this Court warned that

... a finding that one document is (or some documents are) fraudulent does not necessarily mean that all documents are fraudulent even in a situation where fraudulent documents are readily available. The RPD must make some effort to ascertain the authenticity of documents that appear to be genuine.

The Applicant says that her parents' identity cards bear all the security features and hallmarks mentioned in a May 4, 2015 RIR on Eritrean national identity cards (ERI105158.E) and that there is no indication that the RPD attempted to verify the authenticity of the original cards the Applicant provided. In the absence of taking these steps, the Applicant submits that the RPD's speculation that the identity cards could be fraudulent is unreasonable.

[31] The Applicant also submits that the RPD misconstrues the expert reports of Dr. Campbell. The Decision refers to a portion of Dr. Campbell's report indicating increased restrictions on issuing new Ethiopian passports in more recent years to support the finding that the passports are strong evidence of the Applicant's Ethiopian nationality. But the Applicant says that the passage actually supports the opposite conclusion. The Decision paraphrases Dr. Campbell's observation that

Ethiopian immigration officials exercised their discretion in 2004 to refuse to renew some Ethiopian passports for individuals born in Asmara... [and] after 2006, Ethiopian consulates and embassies required individuals to provide evidence of entitlement based on a certified birth certificate issued in Ethiopia.

The Applicant notes that her father was born in Asmara, and her birth certificate was issued in Saudi Arabia. Therefore, increased scrutiny by Ethiopian officials means that it is more rather than less likely that the passports were obtained by fraud.

(3) Chairperson's Guidelines

[32] The Applicant submits that the RPD turns the Chairperson's Guidelines on their head by unreasonably dismissing her sworn testimony because she did not know her parents' birth dates or how her father obtained the family's Ethiopian passports.

[33] Guideline 3 gives guidance on assessing the evidence of child refugee claimants. It states that when encountering gaps in the evidence, "the panel should consider whether it is able to infer the details of the claim from the evidence presented." Guideline 4 states that "spouses, daughters or mothers may find themselves in a difficult situation when questioned about the experiences of their male relatives." This Court has observed that "the Gender Guidelines exist, in part, to ensure that social, cultural, traditional and religious norms do not interfere with the proper assessment of an applicant's credibility": *Diallo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1450 at para 33, quoted in *Manege*, above, at para 32. For the Chairperson's Guidelines to be meaningful, the RPD must assess a claimant's testimony in a manner alert and sensitive to gender and the social, cultural, economic and religious norms of the claimant's community. See *Bennis v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 968 at para 14; *Odia v Canada (Citizenship and Immigration)*, 2014 FC 663 at para 9. The Applicant says that the proper approach goes beyond mere procedural accommodation and that

the Chairperson's Guidelines expressly contemplate gaps in evidence and the reasons they may exist.

[34] The Applicant says that considering her age, gender and cultural background, it is unsurprising that she has little knowledge of her parents' birth dates or how her father obtained Ethiopian passports. For the RPD to then conclude that her testimony that the passports were obtained by fraud is insufficient to establish that fact defeats the purpose of the Chairperson's Guidelines. The Applicant says that another example of this approach can be seen where the RPD discounts her testimony on the problems her mother had accessing services in Ethiopia. This testimony corroborates the claim that Ethiopian authorities would not recognize her family as Ethiopian citizens and its rejection by the RPD is unreasonable. She says that the Board should have considered the reasons for her lack of knowledge and should have started from the position that sworn testimony on what she did know is presumed to be true. The Applicant submits that absent a negative credibility finding, given the totality of the documents submitted, the Decision is therefore unreasonable as the absence of corroborating documents does not justify denial of a refugee claim. See *Durrani v Canada (Citizenship and Immigration)*, 2014 FC 167 at para 6.

B. *Respondent*

[35] The Respondent submits that the RPD reasonably performed its adjudicative function when confronted with compelling evidence of the Applicant's Ethiopian citizenship and some evidence of her Eritrean citizenship that suffered from formal issues. The Applicant has a recently issued Ethiopian passport that she has used for travel and only a theoretical claim that

she lost her Ethiopian citizenship. Her claim that her Ethiopian passport is fraudulent is not based on direct evidence and her father, who could have provided direct evidence on how the Ethiopian passports were obtained, was not called on to testify.

[36] The Respondent says that the RPD's finding that the Applicant and her family would not have lost their Ethiopian nationality is supported by The Eritrean Nationality Proclamation No 21/1992.

[37] The Respondent also says that the Applicant provided no explanation as to how or why her parents were issued Eritrean identity cards. The Decision properly notes that RIR ERI104939.E indicates that fraudulent identity cards are an issue. The Respondent points out that there was no confirmation that the Applicant's parents followed the process for Eritrean identity card issuance described in the documentary evidence.

[38] The Respondent submits that placing considerable weight on the existence of the Applicant's apparently genuine Ethiopian passport is consistent with the approach set out in the United Nations High Commissioner for Refugees' *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, (December 2011) at para 93 [UNHCR Handbook]. The UNHCR Handbook provides that "a passport creates a *prima facie* presumption that the holder is a national of the country of issue" and that "[a] person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country's nationality, must substantiate his claim" (at para 93). This Court has held that a "passport is

evidence of citizenship unless its validity is contested. The onus is then on the applicant to prove that the applicant is of a different citizenship than that indicated in the passport”: *Adar v Canada (Minister of Citizenship & Immigration)* (1997), 132 FTR 35 at para 14 (TD) [*Adar*]. See also *Mathews v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387 at para 11 [*Mathews*]. And claiming that the passport was issued for purposes of travel convenience is insufficient to rebut the presumption of nationality. See *Yah Abedalaziz v Canada (Citizenship and Immigration)*, 2011 FC 1066 at para 42 [*Yah Abedalaziz*].

[39] The Respondent accepts that the Applicant did contest that her Ethiopian passport was evidence of nationality, but says that the RPD reasonably determined that the presumption was not rebutted. The RPD reasonably weighs its findings that the Applicant’s parents’ Eritrean identity cards are unreliable, that the Applicant’s family did not lose Ethiopian citizenship because they left Ethiopia before Eritrean independence, and that the Eritrean nationality of the Applicant’s extended family members is not compelling evidence of the Applicant’s nationality. The Respondent says that the RPD reasonably finds that documentary proof supplied by the Applicant is unsatisfactory and that the RPD is entitled to choose the evidence that it prefers when confronted by conflicting evidence. See *Wijekoon v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 758 at para 49. The Applicant’s ability to point to some evidence which supports an alternate conclusion does not render the Decision unreasonable. See *Matte v Canada (Citizenship and Immigration)*, 2012 FC 761 at para 115.

[40] The Respondent also submits that, despite the Applicant acknowledging that the Decision is reviewable under a reasonableness standard, the Applicant’s arguments amount to inviting the

Court to apply a correctness standard. The Respondent says the Applicant is merely disputing and arguing the RPD's assessment and weighing of the evidence and is paying lip service to the standard of review by asking the Court to reweigh that evidence.

(1) Identity Cards

[41] The Respondent submits that the RPD conducts a more global assessment of the evidence than the Applicant acknowledges. The RPD assesses the totality of the evidence when concluding that the Applicant is an Ethiopian citizen. The Decision examines whether the Applicant's parents' Eritrean identity cards are genuine but reasonably concludes that the Ethiopian passports are the best evidence of the Applicant's citizenship.

[42] The Respondent says that the RPD is aware that the passports contain inconsistencies similar to the identity cards. But the RPD notes that the passports were renewed multiple times, were reissued and used recently, and that the evidence that they were fraudulently obtained was not supported by direct evidence from the Applicant's father. The Respondent submits that the Applicant is essentially arguing that the RPD should have accepted her view because the validity of both passports and the identity cards could be questioned. This amounts to a correctness review that is inconsistent with the approach outlined in the UNHCR Handbook and the jurisprudence of this Court.

[43] The Respondent also says that the Applicant's argument that the RPD made an unreasonable implausibility finding is irrelevant because the RPD did not make any implausibility finding.

(2) Misconstruction of Documentary Evidence

[44] The Respondent submits that the RPD reasonably relies on the documentary evidence to find that the Applicant's parents' Eritrean identity cards could be fraudulent. Considering the lack of evidence on how the identity cards were obtained, the RPD declines from making any definitive finding on this point and there is no reviewable error in the RPD's finding that the cards could be fraudulent. This finding is simply part of the RPD's weighing exercise when comparing the identity cards to the passports.

[45] The Respondent notes that the Applicant is before the Board and this Court insisting that her passport is fraudulent but simultaneously asking the Court to rebuke the RPD for finding that the identity cards could be fraudulent.

[46] The Respondent says that Dr. Campbell's reports provide support both for and against the authenticity of Ethiopian passports. The Respondent says that the RPD is entitled to construe the evidence submitted. The RPD's reliance on the portions that do not favour the Applicant's position is not a reviewable error. The best evidence on how the passports and other identity documents were procured would have been testimony from the Applicant's parents given by teleconference. The Respondent submits that this evidence was not provided by the Applicant for tactical reasons and the result is that the validity of her passport has not been rebutted.

(3) Chairperson's Guidelines

[47] The Respondent says that the RPD applied the Chairperson's Guidelines by not holding the Applicant's inconsistent testimony against her and relaxing rules on the admission of evidence. But application of the Chairperson's Guidelines does not eliminate the responsibility of the Applicant's Designated Representative and counsel to produce needed evidence. In submissions before the Board, the Applicant had argued that given her age and gender she should not be punished for a lack of knowledge of information beyond her control. The Respondent says that the RPD acquiesced to this request by relying primarily on the documentary evidence. The Respondent submits that the Applicant was not a good witness, and that the RPD's decision not to focus on inconsistencies in her oral testimony is evidence that the Chairperson's Guidelines were followed.

[48] The Respondent also submits that having acquiesced to the Applicant's request, the RPD cannot now be held to have been unreasonable when placing little weight on the Applicant's testimony. The Respondent says that the Applicant is seeking to have it both ways when arguing that in the absence of an adverse credibility finding, the RPD should have accepted the probative value of her testimony. The Chairperson's Guidelines do not remedy the insufficiency of evidence to support the Applicant's claim of Eritrean nationality and cannot be used to decline to produce witnesses and evidence.

[49] The Respondent notes that the only evidence introduced to rebut the presumption that the Ethiopian passports are valid is that the Applicant's father paid a bribe for them. The Respondent

points out that a person forced to pay a bribe to a corrupt official to obtain a passport can still be a citizen of that country. And as the RPD does not make an adverse finding arising from the Applicant's oral testimony, the case law cited by the Applicant regarding unreasonable credibility findings made against minor claimants is not on point.

[50] The Respondent also says that the RPD does not violate the Chairperson's Guidelines in discounting the Applicant's testimony concerning access to social services in Ethiopia. The Applicant insists that she is a citizen of Eritrea, and addressed her submissions to the risk of persecution in Eritrea. The Respondent submits that it would be "very odd" for the Applicant to obtain judicial review based on a risk in Ethiopia when she insists that she is a citizen of Eritrea and submitted to the RPD that Ethiopia is not a country of nationality for the purposes of ss 96 and 97. Regardless, the Respondent also submits that the RPD gives reasons for finding that the Applicant would not be at risk in Ethiopia and that this finding is reasonable.

## VIII. ANALYSIS

### A. *Introduction*

[51] At the heart of this Decision are the following findings and observations:

[12] The claimant presented a very difficult case. She claims that she is a citizen of Eritrea only but that she has never resided in Eritrea, nor has she ever possessed an Eritrean passport or any Eritrean identity documents. Rather, she was born in Saudi Arabia and lived her entire life as if she were a citizen of Ethiopia. She, along with her parents and brother, all possessed Ethiopian passports and presented themselves as Ethiopian citizens to the Saudi government. The claimant alleges that in fact her parents obtained their Ethiopian passports and renewed their passports

through corruption and bribery in order to avoid being deported to Eritrea in the event that they lost their status in Saudi Arabia.

[13] Although I accept that the claimant's family members are of Eritrean origin, I find that the claimant and her parents are citizens of Ethiopia, on a balance of probabilities. The claimant's father arrived in Saudi Arabia in 1990, prior to the referendum on Eritrean independence. The claimant's mother arrived in Saudi Arabia in 1998, according to the evidence in her overseas refugee application. I find that it is more likely than not that both of the claimant's parents arrived in Saudi Arabia as Ethiopian citizens and that they chose not to forfeit their Ethiopian citizenship. I find that it is more probable than not that they have therefore maintained their Ethiopian nationality throughout their many years in Saudi Arabia.

...

[22] The difficulty, however, is that the evidence around the identity of the claimant's parents was fraught with inconsistencies and irregularities, which were not adequately explained by the claimant even though she was given ample opportunity to provide evidence on these matters. Ultimately, I am unable to accept, on a balance of probabilities, that the claimant's parents are in possession of genuine Eritrean national identity cards. This distinguishes the facts of this case from the facts set out in the other Refugee Protection Division decisions upon which counsel relies, as well as the expert opinions provided by Dr. John Campbell in Exhibit 7.

[23] Although this is a difficult matter to decide, the panel is ultimately faced with the fact that the claimant and her parents hold Ethiopian passports that would otherwise appear to be genuine; that they presented themselves as Ethiopian citizens for many years in Saudi Arabia; and returned to Ethiopia using those passports multiple times. When this is weighed against evidence about the identity of the claimant's parents that suffers from unexplained discrepancies, I am unable to find that the evidence of the claimant's Eritrean nationality is such that it can be determined on a balance of probabilities that the claimant's Ethiopian passport is fraudulent and that she is a citizen of Eritrea only.

[24] I find that it is more probable than not that the claimant and her parents fall into the second category of individuals set out above, namely, of ethnic Eritreans who never forfeited their Ethiopian nationality, who did not choose to avail themselves of Eritrean citizenship. Such individuals would have been able to

maintain their citizenship as Ethiopian nationals and I find that this would be supported by the claimant and her parents' ability to obtain Ethiopian passports and travel to Ethiopia without difficulty on multiple occasions.

...

[49] The panel is ultimately faced with the claimant's otherwise valid and genuine Ethiopian passport and the fact that she and her parents possessed multiple previous Ethiopian passports and presented themselves as Ethiopian citizens throughout many years in Saudi Arabia. On the other hand, I have been presented with some evidence of Eritrean nationality on the part of the claimant's parents and her extended family. The evidence about the identity of the claimant's parents suffers from numerous discrepancies and even though these discrepancies were brought to the claimant's attention and even though explanations could conceivably have been elicited from her parents, they remain unresolved to this day. The panel also has insufficient information about how the claimant's father managed to obtain multiple Ethiopian passports for each of his family members over the years.

[50] Therefore, I place only little weight on the parents' Eritrean national Identity cards and I have ultimately placed far greater weight on the claimant's Ethiopian passport as evidence of her nationality. I find that it is more likely than not that the claimant and her parents have been able to successfully obtain Ethiopian passports over many years because Ethiopian immigration authorities recognize them as citizens of Ethiopia.

[51] In my view, based on the evidence before me, neither the claimant nor her parents lost their Ethiopian nationality as a result of changes to the Ethiopian nationality law. Rather, it is more likely than not that they never availed themselves of Eritrean nationality in the first place and thus never lost their Ethiopian citizenship by acquiring another nationality. Although the claimant's father states in his letter that he voted in the referendum on Eritrean independence and that he is an Eritrean citizen, I find that when I weigh the entirety of the evidence, I am unable to accept these facts on a balance of probabilities.

[Footnotes omitted.]

[52] In my view, the Decision is careful, fair and reasonable. The Applicant's attempts to assert reviewable errors are unconvincing.

B. *Identity Cards*

[53] The Applicant says that the RPD unreasonably rejected her parents' identity cards.

[54] The RPD's assessment of the identity cards is as follows:

*Mother's Eritrean National Identity Card and Identity*

[25] Although the claimant provided original copies of her parents' Eritrean national identity cards, there were issues around their identities and particularly so with respect to the claimant's mother's identity that cause me to place little weight on the parents' Eritrean national identity cards.

[26] I will first address the claimant's mother's Eritrean national identity card. The mother's card was allegedly issued in Asmara in 2011 and indicates that the claimant's mother was born on 23 May 1985.

[27] The first issue is with respect to the date of birth on the card. The difficulty is that the claimant's mother would appear to have multiple different dates of birth. In contrast with the Eritrean national identity card, the mother's Ethiopian passport contains a date of birth of 01 January 1972. A third date of birth is set out in the claimant's birth certificate, which indicates that her mother was born in 1975.

[28] The claimant was questioned about her mother's date of birth. She at first testified that she believed that her mother was born in 1985. However, the claimant very quickly contradicted herself, stating that the date of birth in her mother's Eritrean national identity card was false and that she learned through conversations with her mother that her mother had given a younger age to the Eritrean authorities in order to avoid paying taxes and fees. The claimant testified that in fact her mother's true date of birth is the one contained in her Ethiopian passport, which would be in 1972.

[29] The explanation provided by the claimant's mother in her interview with a Canadian Immigration Officer in Riyadh contradicts the above account. The claimant's mother stated that in fact her true date of birth is 23 May 1985 and that she received a passport with an older date of birth in order to gain entry into Saudi Arabia. The claimant did not have knowledge of this interview and eventually denied having any knowledge of her own mother's date of birth.

[30] The second issue with respect to the card relates to how it was obtained. Neither the claimant nor her Designated Representative had any knowledge as to how her mother obtained the Eritrean national identity card in 2011, what she did to obtain it, or why she applied for it. The claimant's Designated Representative speculated that the claimant's mother would not have had to go to Asmara in order to obtain the card, as the card would likely have been issued in Eritrea and sent to the Eritrean embassy or consulate in Saudi Arabia where it was given to the claimant's mother.

[31] The claimant's inability to explain the provenance of this card is of great concern. Item 3.6 of Exhibit 4 indicates that indeed one can apply for an Eritrean national identity card through an Eritrean embassy or consulate abroad, however the applicant must pay fees and other taxes. There is no indication or evidence that the claimant's mother was registered as an Eritrean living abroad, or that she had paid the two-percent tax required of Eritreans residing abroad. It remains unclear as to how the claimant's mother obtained the card in 2011.

[32] Although I recognize that the claimant is an unaccompanied minor, it is her Designated Representative's duty to assist her in obtaining evidence. The claimant was also represented by highly competent counsel. Even more than a month after the initial sitting of this claim, the claimant had failed to provide any evidence from her mother about how she had come to obtain her Eritrean national identity card. The issue remains that the claimant's mother's national identity card suffers from unexplained discrepancies. I find that the unexplained discrepancies with the mother's Eritrean national identity card significantly undermine the weight that can [be] placed upon it.

*Father's Eritrean National Identity Card and Identity*

[33] The claimant also provided the original copy of her father's Eritrean national identity card. However, there were again issues

with respect to her father's identity and the content of his national Identity card.

[34] It is problematic that at least three dates of birth appear for the claimant's father across the identity evidence submitted for him. The father's Eritrean Identity card contains a date of birth of 09 May 1971. By contrast, his Ethiopian passport indicates that he was born on 01 January 1960. His Saudi resident card gives a date of birth of 01 January 1964. Finally, the claimant's birth certificate indicates that her father was born in 1964. When first asked about her father's date of birth, the claimant believed that it was on 28 May 1971.

[35] The claimant believed that the date of birth in her father's passport was incorrect but did not know why an incorrect date of birth was used. She did not know why there were different dates of birth across each of the documents noted above. The claimant's Designated Representative was equally unable to explain these inconsistent dates of birth but speculated that perhaps the immigration official... who provided the Ethiopian passport to the claimant's father chose whatever date they preferred. There was no explanation as to how the claimant's father managed to update his Saudi residence permit in view of the fact that his Ethiopian passport and Saudi resident permit had different dates of birth.

[36] Again, the claimant might have benefited from evidence from her father to explain these discrepancies. However, the letter provided from the claimant's father does not address this issue and no further evidence on this issue was submitted. In view of the discrepancies with regard to the claimant's father's identity and date of birth, I only give little weight to the Eritrean national Identity card that appears in the father's name.

[Footnotes omitted.]

[55] The gravamen of the Applicant's challenge to this analysis is as follows:

41. However, the decision entirely fails to explain or address why the Board was willing to overlook certain inconsistencies between documents (for example, between the Ethiopian passports and the Applicant's birth certificate) but gave little weight to the Eritrean ID cards on this basis. In this way, the decision does not meet the standard of "justification, transparency and intelligibility".

42. The decision concludes that the family's Ethiopian passports are genuine, and there is nothing in the decision that casts doubt on the Applicant's Saudi Arabian birth certificate. Although the Board questions how the Applicant's father could have renewed his Saudi residence permit given that his Ethiopian passport contains a different date of birth, the decision in no way indicates that the Board had doubts about the genuine nature of the Applicant's father's Saudi residence permit. There is no evidence or logical reason to question the validity of the Applicant's father's Saudi residence permit, and the decision reaches no such conclusion.

43. It was therefore illogical and inconsistent for the Board to question and ultimately reject the genuine nature of the Applicant's parents' Eritrean ID cards based on these inconsistencies, in the face of other genuine documents which also contain similar inconsistencies.

44. It is equally logical to conclude that these inconsistencies support the Applicant's claim that the Ethiopian passports were obtained through fraudulent means, and this conclusion would be consistent with the totality of the evidence that the Applicant presented.

[Footnote omitted.]

[56] In my view, this amounts to little more than a request by the Applicant that the Court reweigh the evidence before the RPD and reach a conclusion that supports her position. This is not the role of the Court. See *Khosa*, above, at para 61. The RPD identified, discussed, and weighed the evidence before it and reached a reasonable conclusion. For reasons given, the RPD concluded that, notwithstanding the Applicant's evidence with regard to the identity cards, the passports were the best evidence of citizenship. Where there is competing evidence of nationality, the RPD is required to assess and weigh evidence and reach a conclusion.

[57] In examining the mother's identity card, the RPD does point out some discrepancies, but the principal concern appears to be the lack of evidence concerning the provenance of the card:

[31] The claimant's inability to explain the provenance of this card is of great concern. Item 3.6 of Exhibit 4 indicates that indeed one can apply for an Eritrean national identity card through an Eritrean embassy or consulate abroad, however the applicant must pay fees and other taxes. There is no indication or evidence that the claimant's mother was registered as an Eritrean living abroad, or that she had paid the two-percent tax required of Eritreans residing abroad. It remains unclear as to how the claimant's mother obtained the card in 2011.

[Footnote omitted.]

[58] With regards to the father's identity card, the concerns of the RPD are set out as follows:

[35] The claimant believed that the date of birth in her father's passport was incorrect but did not know why an incorrect date of birth was used. She did not know why there were different dates of birth across each of the documents noted above. The claimant's Designated Representative was equally unable to explain these inconsistent dates of birth but speculated that perhaps the immigration official... who provided the Ethiopian passport to the claimant's father chose whatever date they preferred. There was no explanation as to how the claimant's father managed to update his Saudi residence permit in view of the fact that his Ethiopian passport and Saudi resident permit had different dates of birth.

[36] Again, the claimant might have benefited from evidence from her father to explain these discrepancies. However, the letter provided from the claimant's father does not address this issue and no further evidence on this issue was submitted. In view of the discrepancies with regard to the claimant's father's identity and date of birth, I only give little weight to the Eritrean national Identity card that appears in the father's name.

[59] It is noteworthy that there is no finding here that either card is fraudulent or that anything can be said with certainty. As the RPD makes clear, it is all a matter of weight and conclusions are based upon a balance of probabilities. In the mother's case, the concerns raised by the RPD "significantly undermine the weight that can be placed upon" her identity card and, in the father's case, the concerns lead the RPD to give "little weight to the Eritrean national Identity

card that appears in the father's name." So, in my view, the reasoning is clear: the problems with the identity cards mean that, in the overall weighing process, they cannot carry the weight that the Applicant thinks they should. The uncertainties could have been addressed with direct evidence from the Applicant's parents but, for no apparent reason, the Applicant and her counsel failed to provide such evidence.

[60] The RPD thinks that more weight has to be given to the passports for the reasons given. The Applicant points out that there were some discrepancies with the passports as well. And while direct evidence for the provenance of the passports is equally lacking, the Board does provide clear reasons as to why they should be given more weight than the identity cards:

[37] Generally-speaking, an original passport is strong evidence of an individual's nationality. In this instance, the claimant traveled to Canada on a valid Ethiopian passport, issued in her name with apparently the correct date of birth and biographical information.

[38] The evidence would suggest that the claimant held at least two Ethiopian passports, one which was issued in or around March 2011 and the other which was issued in December 2015. The evidence, including the claimant's testimony, indicates that the claimant traveled to Ethiopia using these Ethiopian passports on at least three occasions: in 2012, 2015 and 2016. The claimant testified that in 2012, she traveled to Ethiopia with her mother in order to attend her aunt's wedding. In September 2015, according to her Basis of Claim form, the claimant along with her mother and brother, traveled to Ethiopia in order to relocate and try to live there in case they would be deported there later on. The claimant returned to Saudi Arabia from Ethiopia on 31 December 2015 to 12 January 2016 according to stamps in her passport. She then returned to Ethiopia in January 2016 and completed an entire school year in Ethiopia before returning to Saudi Arabia in September 2016. Moreover, as the claimant testified, her mother was not present in Ethiopia for the full time that she lived there but had to make additional trips back to Saudi Arabia at times.

[39] Despite this information, the claimant insists that her own Ethiopian passport as well as the Ethiopian passports of her parents

are documents obtained through fraud and that none of them are actually Ethiopian citizens. There were no reports from the claimant regarding any difficulties for herself or any of her family members in entering Ethiopia using their allegedly fraudulent passports.

[Footnotes omitted.]

[61] The RPD summarizes the weighing process as follows:

[49] The panel is ultimately faced with the claimant's otherwise valid and genuine Ethiopian passport and the fact that she and her parents possessed multiple previous Ethiopian passports and presented themselves as Ethiopian citizens throughout many years in Saudi Arabia. On the other hand, I have been presented with some evidence of Eritrean nationality on the part of the claimant's parents and her extended family. The evidence about the identity of the claimant's parents suffers from numerous discrepancies and even though these discrepancies were brought to the claimant's attention and even though explanations could conceivably have been elicited from her parents, they remain unresolved to this day. The panel also has insufficient information about how the claimant's father managed to obtain multiple Ethiopian passports for each of his family members over the years.

[62] I don't think it can be reasonably argued at this stage that the RPD overlooked any discrepancies related to the passports and would have reached a different conclusion in the weighing process if it had taken them into account. As the Respondent points out, paragraph 93 of the UNHCR Handbook states that a national passport "creates a *prima facie* presumption that the holder is a national of the country of issue, unless the passport itself states otherwise," and this presumption has been acknowledged by this Court. See *Adar*, above, at para 14; *Mathews*, above, at para 11; *Yah Abedalaziz*, above, at para 42. The real problem in this case, as the RPD points out, is that the Applicant really had no direct evidence to give on this central issue. She was born in Saudi Arabia and has spent her life there. She knows nothing about how her parents obtained passports or identity cards. Instead of providing the RPD with direct evidence on point

from the parents, the Applicant's Designated Representative and her counsel left the RPD to weigh the documentary evidence. As the RPD points out, the "claimant presented a very difficult case" because of the dearth of direct evidence on the crucial issue of citizenship. Having created this problem for the RPD, the Applicant now complains that the RPD should have concluded that the identity cards trump the passports. The RPD explains, however, why it cannot accept the Applicant's position.

[63] This was pretty well an inevitable conclusion to reach given that the passports had been renewed multiple times, including recent reissuance and use, and given that the Applicant, for some reason that she refuses to explain, failed to provide any evidence from her mother or father as to how the identity cards had been obtained or evidence from her father as to how he had been able to arrange for false passports that had been renewed multiple times. The Applicant cannot have it both ways. She cannot decline to call direct evidence on point and then complain about the RPD's weighing of the evidence that was adduced. Even if the validity of the passports could be questioned in some ways, they still remained the best and most convincing evidence of citizenship before the RPD. This must have been obvious to the Applicant's counsel before the RPD, yet no attempt was made to call the Applicant's father or mother to explain how the passports and identity cards were obtained. Given that decision by the Applicant and her counsel, the RPD was left to weigh and assess the totality of the evidence that was before it. In my view, the RPD's conclusions on this issue were reasonable given the nature of that evidence. The Applicant, essentially, asked the RPD to accept that the passports were fraudulent and the identity cards were genuine, but she could not explain how they had been obtained and she

declined, without explanation, to call her father as a witness to provide an explanation that would support her position. As the RPD explains, she left the RPD with no real choice:

[41] In the panel's view, if the claimant wishes to undermine the validity of the passports issued to her and her parents, the onus rests with her to adduce evidence to explain this matter, since the passports are documents upon which the panel would otherwise place great weight in establishing nationality. Although her Basis of Claim form states that her father obtained the Ethiopian passports through bribery, the letter submitted by the claimant's father fails to address this important issue. The panel has no information or evidence about what specific arrangements the claimant's father made in order to have these Ethiopian passports issued throughout the years; what was paid in order to obtain these passports; or what documents or process had to be followed for him to have the passports issued.

[42] Moreover, it is notable that the claimant's most recent passport was issued on 28 December 2015, when she was residing in Ethiopia without her father. The claimant used the passport to travel to Saudi Arabia from Ethiopia just three days after the passport was issued. However, the claimant testified that while she was living in Ethiopia, her father had never visited her. It remained most unclear as to how the claimant then managed to obtain an Ethiopian passport while she was residing in Ethiopia, whereas her father, who allegedly made the arrangements and paid the bribes for the family's fraudulent passports, was apparently residing in Saudi Arabia without her.

[43] Understandably, the claimant had little knowledge about these matters. The Designated Representative also had little information about this matter. However, even after this issue was clearly raised at the first sitting of this claim, the claimant and her Designated Representative inexplicably failed to provide any further evidence on this issue. They did not provide any further letters from the claimant's father, nor was the father called as a witness by teleconference. In short, the claimant has had ample time to provide further evidence on this issue but for reasons that remain unclear, neither she nor her Designated Representative have provided further evidence for the panel to determine with any confidence that her Ethiopian passport was improperly-obtained.

[44] In the absence of clear evidence from the claimant's father about how the family's Ethiopian passports were obtained over the years, I must assign very strong weight to the claimant's Ethiopian passport as evidence that she is a national of Ethiopia.

[Footnote omitted.]

C. *Misreading and Misapplying Evidence*

[64] The Applicant argues that the RPD misread and misapplied the evidence before it.

(1) Availability of Fraudulent Eritrean Documents

[65] The gravamen of the Applicant's complaint on this point is as follows:

58. The Federal Court has repeatedly cautioned against concluding that an Applicant's documents are fraudulent on the basis that fraudulent documents are available, without further evidence. This principle was cited by Justice Russell in *Wang*,

As Justice Carolyn Layden-Stevenson pointed out in *Lin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 84 (CanLII), at paragraph 12, a finding that one document is (or some documents are) fraudulent does not necessarily mean that all documents are fraudulent even in a situation where fraudulent documents are readily available. The RPD must make some effort to ascertain the authenticity of documents that appear to be genuine.

59. As the Applicant's counsel at the RPD pointed out in written submissions, the cards bear all the security features and hallmarks of authenticity mentioned in the documentary evidence. There is no indication that the Board made any effort to verify the authenticity of the cards. The Board's speculation that the cards *could* be fraudulent, and subsequent rejection of the cards as evidence of the Applicant's parents' Eritrean Nationality, is therefore unreasonable.

[Emphasis in original; footnotes omitted.]

[66] The RPD's discussion of this issue is as follows:

[52] The use of fraudulent Eritrean national identification cards is not an implausible scenario. I note that item 3.3 of Exhibit 4 indicates through multiple different sources that fraudulent Eritrean identity documents are prevalent. According to the United States Department of State's Country Reciprocity Schedule, Eritrean national Identity cards are "easily alterable, making proof of Eritrean citizenship difficult to determine". A researcher with Human Rights Watch also gave the opinion that there is an underground market for fraudulent Eritrean Identity cards in refugee communities abroad and that such markets were likely to exist in other countries, including Ethiopia. A professor of African studies and political science at Pennsylvania State University also stated that fake and fraudulent Eritrean identity documents are prevalent outside Eritrea.

[53] Based on the evidence before me, I find, on a balance of probabilities, that the claimant is a citizen of Ethiopia and that the claimant's Ethiopian passport carries much greater weight than her parents' Eritrean national Identity cards.

[67] This discussion reveals that the Applicant is mischaracterizing the RPD's Decision. The RPD does not find that the identity cards are fraudulent. The RPD consistently makes clear throughout the Decision that it is weighing the entirety of the evidence and it eventually comes to the conclusion that "the claimant's Ethiopian passport carries much greater weight than her parents' Eritrean national Identity cards." One of the factors that has to be taken into account and weighed is whether fraudulent identity cards are available. The Applicant has not explained how fraudulent passports can be obtained and renewed but fraudulent identity cards cannot be obtained. And the Applicant had every opportunity to adduce evidence to demonstrate how fraudulent passports were obtained and renewed by her father. But she chose not to avail herself of this obvious way to prove her case. Having chosen not to adduce evidence to demonstrate how false passports were obtained, she now accuses the RPD of misreading and misapplying evidence on the availability of false identity cards. But the Decision is not based upon a finding that the identity cards were fraudulent. It is based upon a global assessment of all of the evidence that

acknowledges that the “use of fraudulent Eritrean national identification cards is not an implausible scenario” so that, given the facts of this case, which include the Applicant’s failure to call obvious evidence to support her case, her assertions that the passports are fraudulent but the identity cards are not cannot be accepted at face value.

(2) The Campbell Reports

[68] The Applicant’s complaint on this aspect of the Decision is as follows:

60. The decision cites the expert reports of Dr. John Campbell that the Applicant submitted as evidence to the Board, and states,

The reports also speak to the restrictions for the issuances of passports in more recent years. Dr. John Campbell indicates that Ethiopian immigration officials exercised their discretion in 2004 to refuse to renew some Ethiopian passports for individuals born in Asmara and that he had no reason to believe that the practice had changed. Dr. Campbell also states that after 2006, Ethiopian consulates and embassies required individuals to provide evidence of entitlement based on a certified birth certificate issued in Ethiopia by a *kebele* or the Ministry of Health.

61. However, rather than supporting the Board’s conclusion that the Applicant is a legitimate Ethiopian citizen, this expert evidence from Dr. Campbell further supports the Applicant’s testimony that her family’s Ethiopian passports were obtained through fraudulent means. The claimant’s birth certificate was issued in Saudi Arabia, and her father was born in Asmara. Furthermore, she testified that her mother was unable to acquire an Ethiopian ID card from the *kebele*.

62. The fact that the Ethiopian authorities have increased their scrutiny in issuing documents to individuals with Eritrean origins is consistent with the Applicant’s testimony that her family had to obtain their Ethiopian passports through fraudulent means. The Board misread or misapplied this evidence, rendering its conclusions in this regard unreasonable.

[Footnotes omitted.]

[69] The excerpt relied upon by the Applicant is found in paragraph 40 of the Decision which is part of a much wider discussion of the evidence before the RPD on the validity of the passports:

[37] Generally-speaking, an original passport is strong evidence of an individual's nationality. In this instance, the claimant traveled to Canada on a valid Ethiopian passport, issued in her name with apparently the correct date of birth and biographical information.

[38] The evidence would suggest that the claimant held at least two Ethiopian passports, one which was issued in or around March 2011 and the other which was issued in December 2015. The evidence, including the claimant's testimony, indicates that the claimant traveled to Ethiopia using these Ethiopian passports on at least three occasions: in 2012, 2015 and 2016. The claimant testified that in 2012, she traveled to Ethiopia with her mother in order to attend her aunt's wedding. In September 2015, according to her Basis of Claim form, the claimant along with her mother and brother, traveled to Ethiopia in order to relocate and try to live there in case they would be deported there later on. The claimant returned to Saudi Arabia from Ethiopia on 31 December 2015 to 12 January 2016 according to stamps in her passport. She then returned to Ethiopia in January 2016 and completed an entire school year in Ethiopia before returning to Saudi Arabia in September 2016. Moreover, as the claimant testified, her mother was not present in Ethiopia for the full time that she lived there but had to make additional trips back to Saudi Arabia at times.

[39] Despite this information, the claimant insists that her own Ethiopian passport as well as the Ethiopian passports of her parents are documents obtained through fraud and that none of them are actually Ethiopian citizens. There were no reports from the claimant regarding any difficulties for herself or any of her family members in entering Ethiopia using their allegedly fraudulent passports.

[40] Although the claimant's expert reports from Dr. John Campbell indicate that Ethiopian consulates in the Gulf region experienced serious internal disputes and quite possibly corruption in the 1990's and that it was quite possible that a bribe could be

paid to acquire a passport, the reports also speak to the restrictions for the issuance of passports in more recent years. Dr. John Campbell indicates that Ethiopian immigration officials exercised their discretion in 2004 to refuse to renew some Ethiopian passports for individuals born in Asmara and that he had no reason to believe that the practice had changed. Dr. Campbell also states that after 2006, Ethiopian consulates and embassies required individuals to provide evidence of entitlement based on a certified birth certificate issued in Ethiopia by a *kebele* or the Ministry of Health.

[41] In the panel's view, if the claimant wishes to undermine the validity of the passports issued to her and her parents, the onus rests with her to adduce evidence to explain this matter, since the passports are documents upon which the panel would otherwise place great weight in establishing nationality. Although her Basis of Claim form states that her father obtained the Ethiopian passports through bribery, the letter submitted by the claimant's father fails to address this important issue. The panel has no information or evidence about what specific arrangements the claimant's father made in order to have these Ethiopian passports issued throughout the years; what was paid in order to obtain these passports; or what documents or process had to be followed for him to have the passports issued.

[42] Moreover, it is notable that the claimant's most recent passport was issued on 28 December 2015, when she was residing in Ethiopia without her father. The claimant used the passport to travel to Saudi Arabia from Ethiopia just three days after the passport was issued. However, the claimant testified that while she was living in Ethiopia, her father had never visited her. It remained most unclear as to how the claimant then managed to obtain an Ethiopian passport while she was residing in Ethiopia, whereas her father, who allegedly made the arrangements and paid the bribes for the family's fraudulent passports, was apparently residing in Saudi Arabia without her.

[43] Understandably, the claimant had little knowledge about these matters. The Designated Representative also had little information about this matter. However, even after this issue was clearly raised at the first sitting of this claim, the claimant and her Designated Representative inexplicably failed to provide any further evidence on this issue. They did not provide any further letters from the claimant's father, nor was the father called as a witness by teleconference. In short, the claimant has had ample time to provide further evidence on this issue but for reasons that remain unclear, neither she nor her Designated Representative

have provided further evidence for the panel to determine with any confidence that her Ethiopian passport was improperly-obtained.

[44] In the absence of clear evidence from the claimant's father about how the family's Ethiopian passports were obtained over the years, I must assign very strong weight to the claimant's Ethiopian passport as evidence that she is a national of Ethiopia.

[Footnotes omitted.]

[70] The references to Dr. Campbell's evidence appear to be intended to point out that Ethiopian officials are now much more careful about the issuance of passports, so that the Applicant's assertions, in conjunction with the other evidence referred to, are not sufficient to establish, on a balance of probabilities, that the passports were obtained fraudulently. The fact that the Applicant can now point out that Dr. Campbell's evidence could also support her position in some ways, does not mean that the evidence was misread or misapplied. The RPD's finding is not that the Applicant's position that the passports are fraudulent is totally without support. The RPD concedes that the "claimant presented a very difficult case" for it to assess, and that as regards the passports, there is no specific evidence to support the Applicant's assertions:

[41] In the panel's view, if the claimant wishes to undermine the validity of the passports issued to her and her parents, the onus rests with her to adduce evidence to explain this matter, since the passports are documents upon which the panel would otherwise place great weight in establishing nationality. Although her Basis of Claim form states that her father obtained the Ethiopian passports through bribery, the letter submitted by the claimant's father fails to address this important issue. The panel has no information or evidence about what specific arrangements the claimant's father made in order to have these Ethiopian passports issued throughout the years; what was paid in order to obtain these passports; or what documents or process had to be followed for him to have the passports issued.

[Footnote omitted.]

[71] In other words, the RPD's point is that, given what is required to obtain a passport from the Ethiopian authorities, the Applicant has simply failed to show how her father was able to obtain and renew fraudulent passports in this case. The RPD doesn't say that it is not possible to obtain fraudulent passports; the Applicant simply fails to demonstrate how they were obtained in this case, given the other factors at play.

[72] The Applicant argues that the increased scrutiny of Ethiopian authorities supports her case that the passports were obtained by fraud. The Applicant's argument is premised on her argument that her family is not entitled to Ethiopian citizenship. If that premise is accepted, increased scrutiny of individuals of Eritrean origin means that her father could only have obtained Ethiopian passports through fraud. But the evidence is also consistent with the possibility that Ethiopian officials consider the Applicant's family to be Ethiopian and, despite increased scrutiny, issued passports on that basis. In my view, increased scrutiny makes fraud less likely, not more. But whatever else can be read into this evidence, the RPD's use of it was not unreasonable.

D. *Failure to Apply Chairperson's Guidelines*

[73] The Applicant's principal arguments on this issue are formulated in her written submissions as follows:

63. The Board appears to have concluded that without further evidence from the Applicant's parents, it could not accept her sworn testimony regarding her and her parents' nationality and the fact that their Ethiopian passports were fraudulently obtained. As the Board states in the decision,

In the absence of clear evidence from the claimant's father about how the family's Ethiopian passports

were obtained over the years, I must assign very strong weight to the claimant's Ethiopian passport as evidence that she is a national of Ethiopia.

64. Despite the blanket statement that the Board "gave special consideration to the *Chairperson's Guidelines* on child refugee claimants and gender (*Chairperson's Guidelines* 3 and 4)," it appears from the substance of the decision and the conclusions reached that the Board did not have proper regard for the Guidelines.

65. The Guidelines provide guidance to the Board in assessing certain types of claims. In this case, since the Applicant is a female child (16 years old at the first hearing), both guidelines apply, and should be read in conjunction with one another.

...

73. Considering her age, gender, and the cultural milieu in which she was raised, it should come as no surprise that the Applicant had little knowledge of these matters. Saudi Arabia is a conservative country where women have little autonomy or control over their own lives, and there is no reason to think that in these circumstances, the Applicant would have been involved in obtaining fraudulent documents, or that her father would have shared the details of how this was done with her.

74. The Board also discounted the Applicant's testimony about her mother's difficulties accessing services in Ethiopia, stating,

Although the claimant alleges that her mother had difficulty in this respect, given that the claimant is a minor and has little personal or direct knowledge about her mother's various attempts, I do not have a reliable basis upon which to find that the claimant would have difficulty accessing social services in Ethiopia.

75. The Board has practically turned the Guidelines on their head, concluding that because of her age and circumstances, the Applicant's testimony is insufficient to establish certain facts.

76. The proper approach would have been for the Board to consider the reasons for the Applicant's lack of knowledge about certain matters, which are that she is a female child from a highly conservative culture and milieu. Nevertheless, she gave sworn testimony regarding what she did know, including that her passport was fraudulently obtained, and that her parents have valid Eritrean

National Identity cards. This testimony is presumed to be true, as with any other claimant before the Board.

[Footnotes omitted.]

[74] As the Applicant points out, she was a female child at the time of the hearing before the RPD. However, she was assisted and represented by a Designated Representative and experienced counsel.

[75] The RPD is extremely careful to acknowledge and follow the Chairperson's Guidelines and to make allowances for the Applicant's position:

[5] It should be noted that the claimant is an unaccompanied minor. Her parents and minor brother all reside in Saudi Arabia. As such, the claimant's aunt, Anisa Abdelkader, was initially appointed as the claimant's Designated Representative.

[6] However, on 09 March 2017, the claimant's counsel requested that Ms. Abdelkader's designation be terminated, as she felt nervous about her responsibilities and her own ability to speak at the hearing. Counsel requested that the claimant's uncle, Hassen Abdulkadir Bashir, be designated instead. Although Mr. Bashir resides in Regina, Saskatchewan, he agreed to act as the claimant's Designated Representative.

[7] Given the late designation of her uncle as the Designated Representative, the panel questioned Mr. Bashir about his suitability at the outset of the proceedings. Mr. Bashir confirmed that he understood his responsibilities as Designated Representative. He confirmed that he had met with the claimant's counsel and understood the case that needed to be met. He confirmed that he had read the claimant's Basis of Claim form and considered what evidence she required for her case. He provided no reason to believe that he would be unable to fulfill his duties toward the claimant. To Mr. Bashir's credit, despite the distance between Toronto and Regina, he traveled to Toronto on two different occasions in order to participate in the claimant's hearings.

[8] The panel was especially concerned about the obstacles that the claimant could face as an unaccompanied minor and gave special consideration to the *Chairperson's Guidelines* on child refugee claimants and gender (*Chairperson's Guidelines* 3 and 4). Given some of the evidentiary challenges in this claim, the panel exercised its discretion on multiple occasions to admit late evidence.

[9] Although the claimant was only 16 years old at the time of her first hearing, she presented as a mature, confident and capable young woman. Neither the claimant's counsel nor her Designated Representative objected to her ability to testify. The claimant gave testimony on a variety of issues and her testimony has been given the appropriate weight, in consideration of her age, experience, gender and cultural background. In particular, given her young age, I have not drawn any negative inferences in relation to the inconsistent evidence provided in the claimant's Generic Application Form (IMM 0008) and Schedule A (IMM 5669) form in relation to her citizenship as an Ethiopian and her mother's place of birth.

[76] The Applicant is now claiming that, notwithstanding these words, the RPD "practically turned the Guidelines on their head." She says that the RPD should have considered the reasons for her lack of knowledge about certain matters and that she gave sworn testimony that should have been presumed to be true, particularly with regard to the fraudulent passports issue.

[77] A reading of the Decision makes it very clear why the presumption of truthfulness could not be relied upon in this case, why adverse inferences against the Applicant were not made and why, in the end, the Applicant's own testimony was not sufficient to establish her case.

[78] Given that the Applicant was a female minor, and has no personal knowledge of how the passports and identity cards were obtained, the RPD was left to assess the case on the basis of all of the other evidence. In doing so, it assessed what little evidence the Applicant could provide

against the whole record and in accordance with the Chairperson's Guidelines. As the Decision makes clear, the RPD did much more than simply pay lip service to the Chairperson's Guidelines.

[79] The RPD explains that it could not accept that the Applicant's parents were in possession of genuine Eritrean national identity cards because the evidence around their identity "was fraught with inconsistencies and irregularities, which were not adequately explained by the claimant even though she was given ample opportunity to provide evidence on these matters." As the RPD makes clear, this did not mean that the RPD expected the Applicant to personally rectify the evidentiary problems:

[32] Although I recognize that the claimant is an unaccompanied minor, it is her Designated Representative's duty to assist her in obtaining evidence. The claimant was also represented by highly competent counsel. Even more than a month after the initial sitting of this claim, the claimant had failed to provide any evidence from her mother about how she had come to obtain her Eritrean national identity card. The issue remains that the claimant's mother's national identity card suffers from unexplained discrepancies. I find that the unexplained discrepancies with the mother's Eritrean national identity card significantly undermine the weight that can [be] placed upon it.

...

[36] Again, the claimant might have benefited from evidence from her father to explain these discrepancies. However, the letter provided from the claimant's father does not address this issue and no further evidence on this issue was submitted. In view of the discrepancies with regard to the claimant's father's identity and date of birth, I only give little weight to the Eritrean national Identity card that appears in the father's name.

...

[43] Understandably, the claimant had little knowledge about these matters. The Designated Representative also had little information about this matter. However, even after this issue was

clearly raised at the first sitting of this claim, the claimant and her Designated Representative inexplicably failed to provide any further evidence on this issue. They did not provide any further letters from the claimant's father, nor was the father called as a witness by teleconference. In short, the claimant has had ample time to provide further evidence on this issue but for reasons that remain unclear, neither she nor her Designated Representative have provided further evidence for the panel to determine with any confidence that her Ethiopian passport was improperly-obtained.

...

[58] In my view, there is insufficient evidence to establish that the claimant would be unable to access public services due to her Eritrean origin. Despite the fact that it was the claimant's mother who personally underwent the process of applying for a *kebele* card and presumably also register the claimant and her brother in school, the claimant's mother did not provide any evidence about her various attempts. The panel had no direct information from the claimant's mother as to what happened in Ethiopia, what attempts she made to obtain a *kebele* card and access public services and what responses she received from public officials about these matters. It is possible that she was unable to access public services for reasons that are unrelated to the claimant's ethnic origin. When questioned about this matter, the Designated Representative stated that he did not know that the mother should be a witness. Neither the claimant, her Designated Representative, nor her counsel made any request to have the mother called as a witness by teleconference or for additional time to submit evidence in this regard. The panel was therefore unable to examine any reliable evidence to determine whether the refusal of Ethiopian identity documents was based on the family's Eritrean origin.

[80] It seems inconsistent to me that the Applicant, or those who represent her, can assert and base her case upon fraudulent documentation obtained by her family while, at the same time, insisting that the presumption of truthfulness should apply and the RPD should not have assessed the evidence generally to determine if this assertion could be supported. The Applicant has no personal knowledge of how the passports and identity documents were acquired. She was fully aware, through her Designated Representative and legal counsel, that the RPD had concerns

about her unsupported assertions. Yet her Designated Representative and legal counsel chose not to address those concerns in the most obvious way, and now insist, in effect, that the RPD was obliged to accept the Applicant's unsupported testimony in the face of other evidence that was "fraught with inconsistencies and irregularities, which were not adequately explained...."

[81] At the hearing of this application before me, the Applicant raised an issue based upon the RPD's finding that the Applicant and her parents fall into "the secondary category" under the 2004 Directive of the Ethiopian government referred to in the Decision. Respondent's counsel correctly pointed out that this issue had not been raised in written submissions, he was not in a position to deal with it, and the Court should not consider it at this stage. In reply, Applicant's counsel did not take issue with the Respondent's position. The jurisprudence of this Court is that, unless the situation is exceptional, new arguments not presented in a party's Memorandum of Fact and Law should not be entertained as to do so would prejudice the opposing party and could leave the Court unable to fully assess the merits of the new argument. See *Del Mundo v Canada (Citizenship and Immigration)*, 2017 FC 754 at paras 12-14 [*Del Mundo*]; *Mishak v Canada (Minister of Citizenship and Immigration)* (1999), 173 FTR 144 (TD). Here the Applicant has made extensive arguments about the reasonableness of the RPD's findings related to her parents' identity cards, the interpretation of Dr. Campbell's reports, and the application of the Chairperson's Guidelines. The argument that she and her parents do not fall into the "secondary category" under the 2004 Directive is not simply a more "fleshed out" version of these arguments and would not justify the exception allowed in *Del Mundo*. The Respondent would be prejudiced by the Court entertaining the Applicant's new argument at this late stage and the Court therefore declines to consider this line of argument.

E. *Conclusions*

[82] After careful review, I can find no reviewable errors in the Decision and so I must dismiss the application.

IX. Certification

[83] The parties agree there is no question for certification and the Court concurs.

**JUDGMENT IN IMM-3002-17**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

---

Judge

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

**DOCKET:** IMM-3002-17

**STYLE OF CAUSE:** SABRIN HUSSEIN ABDULKADIR v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 31, 2018

**JUDGMENT AND REASONS:** RUSSELL J.

**DATED:** MARCH 20, 2018

**APPEARANCES:**

Esther Lexchin

FOR THE APPLICANT

Lorne McCleneghan

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Jared Will & Associates  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT