Federal Court  Cour fédérale

Date: 20181219

Docket: IMM-2018-18

Citation: 2018 FC 1287

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, December 19, 2018

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MARIE CHRISTINE KAYIRANGWA
FAIDA SHIMA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], of a decision rendered by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, dismissing an appeal from a

decision of the Refugee Protection Division. The applicants are asking the Court to set aside the decision and to refer the matter back to the RAD for redetermination by another member.

[2] The application is allowed for the reasons set out below. The RAD's finding, that the applicants are not credible, is not reasonable. The file shall be returned to the RAD for redetermination by another member.

II. **Context**

[3] The applicants are citizens of Rwanda. The principal applicant, Marie Christine Kayirangwa (hereinafter referred to as the applicant), is a business woman. Her minor daughter, Faida Shima, is her fourth child, her youngest child and her only daughter. The principal applicant's three sons live in Canada, the United States and Rwanda. Her husband works in Mali.

[4] The applicant and her daughter obtained Canadian visas in December 2016 and landed in Canada on December 22, 2016. On January 31, 2017, they claimed refugee protection.

[5] In her refugee protection claim, the applicant alleges that she is a member of the Front patriotique rwandais (FPR) and that she had respected the party bylaws and regulations until the party proposed amending the constitution in order to allow President Kagame to be re-elected after his second term. According to the applicant, such an amendment would be contrary to the principles of democracy and political change. For this reason, she decided not to sign a list of support for the amendment during training in March 2015.

[6] The applicant alleges that she received threats from the chairman of the FPR in the District of Nyamagabe and that she was informed by a military officer in the region that she was named in a list of enemies of the FPR. The applicant alleges that, further to a discussion with her husband, she left Nyamagabe and moved to Kigali in July 2015, where it would be more difficult to find her and where she had an inn to manage. In December 2015, the applicant allegedly decided not to vote in the referendum on the constitutional change.

[7] After the referendum, the applicant alleges that she was summoned to report to the national police, where she was interrogated. The applicant alleges that after this visit, patrols along her street increased and she was watched very closely. She was allegedly threatened after another interrogation on April 22, 2016, and, on June 4, 2016, her home was searched by police and soldiers between 4 a.m. and 5 a.m.

[8] After these events, the applicant allegedly decided to leave Rwanda and considered travelling to Canada. She obtained visas from the Canadian Embassy in Dar es Salaam in December 2016. In her application for temporary resident status, she indicated that she had never been a member of or affiliated with a political party that advocated violence or crime. She also indicated that she was travelling to Ottawa in order to visit her son who was studying at the University of Ottawa. Once the visas were issued, the applicant allegedly bought airline tickets for herself and her daughter to travel on the next available flight, which left on December 21, 2016.

[9] The applicant alleges that on January 3, while in Canada, she received an email from a friend, who was managing her home, advising her that the authorities were looking for her and that her residence was under surveillance day and night. According to the applicant, this meant that she was considered to be a dissident member of the FPR and that she would be hanged or strangled. It was on this basis that she sought refugee protection in Canada.

[10] The applicant appeared before the Refugee Protection Division (RPD) on July 4, 2017. On August 7, 2017, the RPD denied her claim. The RPD determined that the applicant's account concerning her fears of political persecution was not credible and that she had therefore failed to establish a serious possibility of persecution.

[11] The applicant appealed the decision rendered by the RPD on August 23, 2017. The Refugee Appeal Division reviewed the appeal on April 5, 2018. The RAD dismissed the appeal and confirmed the RPD's decision.

[12] The RAD confirmed that the applicant was not credible and deemed that the central issue in the case was her membership in the FPR. The RAD criticized the applicant for failing to produce an FPR membership card. The RAD noted that in her visa application, the applicant answered "no" to the question "Are you, or have you ever been a member or associated with any political party, or other group or organization which has engaged in or advocated violence as a means to achieving a political or religious objective, or which has been associated with criminal activity at any time?"

[13] The RAD also noted that on the one hand, the applicant had indicated that she had left Nyamagabe, but that on the other hand, she had stated that she worked in Nyamagabe just before her departure for Canada. The RAD found that the evidence submitted, namely, two photos and a voter card, was not sufficient to lead to the conclusion that she is a member of the FPR, and that if she is a member, she is just a regular member.

[14] Considering the objective evidence concerning Rwanda, the RAD noted that it is "visible opponents, such as journalists, members of the clergy, human rights defenders and members of the opposition" who are targeted by the government. Since the applicant describes herself as a regular member, a claim which the RAD did not believe, the applicant would not have any reason to fear for her life.

[15] Lastly, the RAD, like the RPD, noted that the applicant was able to obtain a copy of her police record with the help of local authorities, and was also able to leave the country with her own passport, two facts which seem at odds with the applicant's claim that she was being targeted and persecuted.

III. **Issue**

[16] After considering the parties' submissions, it is my opinion that the only issue to be determined is the following:

A. Is the RAD's decision reasonable?

IV. **Analysis**

A. *Standard of review*

[17] The Federal Court reviews decisions of the RAD regarding the RAD's process and the review of RPD decisions on a standard of reasonableness: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35, [2016] 4 FCR 157.

[18] The RAD must review the file before the RPD and determine whether the RPD erred. For questions of law and findings of fact or findings of mixed fact and law which do not raise the issue of the credibility of oral testimony, the RAD applies the standard of correctness: *Huruglica*, *supra*, paras 37, 103. When a finding concerns an issue of credibility, the RAD must proceed on a "case-by-case" basis in order to determine the level of deference necessary in the circumstances, considering whether the RPD had a meaningful advantage: *Huruglica*, *supra*, para 70.

[19] The Federal Court recently concluded that regardless of the level of deference, the RAD cannot simply analyze credibility findings on a standard of reasonableness: *Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145, para 135. Justice Diner held that the RPD would only have a meaningful advantage in relatively rare cases, particularly when the decision is based on certain factors which cannot be reproduced in the file before the RAD. In most cases, the file before the RAD should include all the information that served as the basis for the RPD's decision in order to allow the RAD to review the decision on a standard of correctness.

B. *Is the decision reasonable?*

[20] The RAD's decision is not reasonable. The reasons for the RAD's finding that the applicant is not credible do not enable the Court to verify whether the decision falls within a range of possible acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New-Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 SCR 190.

[21] The RAD refused to review most of the applicant's comments because the RAD deemed that the applicant was not credible. By refusing to review the file in its entirety, the RAD failed to consider the applicant's full circumstances.

[22] First, the RAD notes, in paragraph 27 of its decision, that the applicant only produced two photos, her voter card and an untranslated certificate in order to prove that she is a member of the FPR. However, in his testimony before the RPD, counsel for the applicant noted that it had not been possible to produce a translation before the hearing, but that the certificate and a corresponding translation would be sent to the RPD after the hearing.

[23] The certificate together with a translated copy thereof were included in the RPD file forwarded to the RAD. The RAD did not analyze the certificate and never explained why it failed to do so. Since it is impossible to know why the RAD rejected the certificate, its finding that the applicant is not credible because she is not a member of the FPR cannot be considered to be reasonable.

[24] The applicant is also right in pointing out that the RAD's focus on the fact that she responded "no" to the question whether she had been a member of or affiliated with a political party in her application for temporary resident visa form is not reasonable. In her memorandum for the RAD, the applicant explained, at length, that the question did not concern all political parties, only political parties that engage in or advocate violence.

[25] However, the RAD used this response to attack the applicant's credibility without explaining why it rejected the explanation offered. Based on a reading of the entire question, it seems clear that it does not concern all political parties. If the RAD believes that the FPR engaged in or advocated violence, it should have mentioned this in its reasons. Without this explanation, the RAD seems to fault the applicant for denying her membership in a political party without addressing the rest of the question.

[26] It was also not reasonable for the RAD to attack the applicant's credibility based on her answers concerning her business interests and her residence in Schedule A. In paragraphs 29 and 30 of its decision, the RAD noted than in her schedule, the applicant indicated that she had worked in Nyamagabe until her departure, suggesting that she had never moved to Kigali. The RAD indicates that even in her testimony, the applicant allegedly changed her story, first indicating that she managed her business interests in Nyamagabe before changing her story to say that she managed everything remotely.

[27] However, when the applicant stated at the hearing that she managed her business interests in Nyamagabe, she never indicated that she did so on site after her move. Indeed, it was only

after more specific questions about her move that she mentioned managing her business interests remotely and clarified that she had never returned to Nyamagabe. The RAD drew an unreasonable conclusion given the context of the hearing, where the applicant responded to questions as they were asked, not in chronological order, and through an interpreter.

[28] Moreover, the RAD did not explain why it had to conclude that the applicant had never moved. The schedule indicated that she had business interests in Nyamagabe and in Nairobi until January 2017, the date on which the form was signed. It is clear that after arriving in Canada in December 2016, the applicant no longer managed her business interests in Rwanda. The RAD did not address this period of time or explain why it believed that the applicant had worked in Nyamagabe, but not in Kigali, the other city mentioned. This finding is not reasonable without more information.

V. **Conclusions**

[29] For the reasons set out above, I am satisfied that the reasons provided by the RAD do not enable this Court to verify whether the decision falls within a range of possible acceptable outcomes. Therefore, the decision is not reasonable and is set aside. A new member of the RAD must reconsider the file and if the member comes to a different conclusion concerning credibility, the member must examine the other points raised by the applicant.

[30] The parties did not ask the Court to certify that the case raises a serious question of general importance as provided in paragraph 74(d) of the *Immigration and Refugee Protection Act*.

JUDGMENT IN IMM-2018-18

THE COURT ORDERS AND ADJUDGES that the application is allowed and that the decision be referred back to the Refugee Appeal Division for redetermination by a different panel member. No question is certified.

"Richard G. Mosley"
Judge

Certified true translation
This 8th day of January 2019.

Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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