

Federal Court



Cour fédérale

Date: 20191007

Docket: IMM-1420-19

Citation: 2019 FC 1266

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 7, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

HAMID AHMAT HOURRA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Hamid Ahmat Hourra, a 23-year-old citizen of Chad, is seeking judicial review of a decision rendered on February 1, 2019, by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. In its decision, the RAD confirmed the decision of the Refugee Protection Division (RPD) that the applicant is neither a Convention refugee under

section 96 nor a person in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

II. Factual background

[2] The applicant made her refugee protection claim in Canada based on the following allegations. While in Chad, her father forced her to marry General Abba Ali Sayir, a 65-year-old presidential guard. According to the applicant, the general was already married to three women.

[3] In July 2016, the applicant's father informed her that he had decided to give her in marriage in exchange for a sum of money. According to Chadian customs, the wedding took place in two stages: on August 16, 2016, the celebration of the Fatiha at the mosque, and on October 15, 2016, the wedding day and date on which the applicant was to move into her husband's house.

[4] On October 2, 2016, the General reportedly came to the applicant's home where she was alone. The applicant alleges that he violently struck and injured her. The applicant's mother allegedly suffered a heart attack in intervening. She died in hospital two days later, on October 4, 2016.

[5] On October 15, 2016, the applicant was reportedly taken by force to her husband's home. According to her, the general unsuccessfully tried to rape her several times.

[6] With the help of her cousin, Yassine Youssouf Yassine, the applicant obtained a visa and fled the country to the United States on November 28, 2016.

[7] On December 11, 2016, the applicant arrived in Canada and claimed refugee protection status at the border. She alleges a fear of her father and the general if she were to return to her country.

A. *RPD decision*

[8] On December 4, 2017, the RPD rejected the applicant's claim for refugee protection on the grounds that she lacked credibility. Moreover, the RPD raised numerous contradictions between the applicant's testimony and the documentary evidence submitted in support of her claim, in particular with respect to the date of her marriage, the date on which she left Chad, her husband's identity and his marital status.

[9] At the hearing, the RPD interviewed the applicant about a sheet of paper containing handwritten information in block letters found in her luggage and seized by border officials when she arrived in Canada. The RPD noted that the information on this sheet contradicted the applicant's story in all respects, which undermined her credibility.

[10] The RPD concluded that the applicant lacked credibility and rejected her claim.

B. *RAD decision*

[11] The RAD confirmed the RPD's decision and dismissed the appeal. It concluded that the confusion surrounding the applicant's marriage, an event that is central to her refugee protection claim, tainted her credibility. It pointed out that the applicant's testimony as to the date of her marriage contradicted the documentary evidence on the record, namely, the marriage certificate filed into evidence. The applicant testified that she did not know the contents of this document or the witnesses who signed it and could not provide a clear explanation as to the inconsistency between the date of marriage in her account and that indicated in the marriage certificate.

[12] As for the handwritten note, the RAD noted that the information was consistent with "a version of an account the appellant submitted concerning a man, a marriage date and the date of her mother's death, which are contrary to the information in the BOC Form" (RAD decision, at para 27). According to the RAD, the applicant's convoluted testimony about the origin of this sheet further undermined her credibility.

III. Issues

[13] This application for judicial review raises one primary question: was the RAD's decision unreasonable? The second issue raises a question of natural justice and procedural fairness.

IV. Standard of review

[14] The first question is a question of mixed fact and law. The standard of review applicable to the review of RAD findings and of the RAD's credibility assessments is that of reasonableness (*Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93, at para 35). The RAD's findings of fact and credibility assessments are owed considerable deference. The Court will only intervene if the decision under review lacks justification, transparency and intelligibility, and falls outside 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). These criteria are met if the reasons "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 16).

[15] The second issue raises a question of natural justice and procedural fairness. It is trite law that the standard of correctness applies to such questions (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 43).

V. Analysis and decision

A. *Did the RAD err in its assessment of the applicant's credibility?*

[16] The applicant submits that the RAD's decision was unreasonable since it did not take into consideration the testimony of the applicant, her evidence, the objective evidence and the

guidelines of the Immigration and Refugee Board of Canada (IRB). The applicant challenges the RAD's factual findings and its assessment of the evidence, which was made without producing an even partial transcript of her testimony before the RPD or a copy of the guidelines or national documentation packages on which she relied.

[17] The RAD found that the applicant was not credible because of inconsistencies and contradictions in her evidence. This was a conclusion that the RAD was perfectly entitled to draw from the record before it.

[18] For example, the applicant testified that she had lived with her husband for one month and one week after being forcibly taken to his home on October 15, 2016. However, the date of her departure from the country according to the information in her passport was October 29, 2016, and not November 28, 2016, as she had written in her account.

[19] In addition, the applicant maintained in her testimony that the date of her marriage was August 16, 2016, and not October 15, 2016, the date reflected in the marriage certificate she herself produced in support of her claim.

[20] The applicant accuses the RAD of ignoring the fact that the concept of marriage is different in Chadian culture and that both dates, August 16 and October 15, are part of the concept of marriage. The RAD did, however, consider this argument. In paragraph 23 of its decision, the RAD stated that even if one conceded that there are two steps in a marriage in Chad, the applicant contradicted herself about the dates of the events.

[21] This is not a case where the RAD failed to assess the evidence. Here the evidence was assessed, but when the concerns about the documentary evidence were considered in the context of the applicant's overall refugee protection claim, the credibility concerns could not be overcome.

B. *Did the RAD err in concluding that the RPD did not violate the applicant's right to procedural fairness?*

[22] The applicant claims that procedural fairness was breached before the RPD because the court refused her request for a postponement. She submitted that a postponement had been required so that she could read the sheet of paper [TRANSLATION] "and potentially respond to it with independent evidence".

[23] It is not a trivial matter for a party to fail to file a document pursuant to IRB guidelines. Rule 3.3 of Guideline 7 provides that documents that have not been disclosed according to the RPD Rules cannot be used at the hearing.

[24] Denial of an adjournment request may, in some cases, be interpreted as a violation of the right to be heard, as a breach of procedural fairness, or as a violation of the principles of natural justice.

[25] The RAD acknowledges in its decision that the sheet of paper had not been returned to the applicant, that the applicant did not know that this document had been filed as evidence, and that the RPD refused to grant an adjournment. It noted, however, that the RPD granted the

applicant a half-hour adjournment to review the document with her counsel. The member also allowed her to present her explanations concerning the document at the hearing.

[26] The applicant did not request to present new evidence before the RAD. Moreover, her affidavit in support of this application does not provide any details with respect to the circumstances surrounding the alleged breach before the RPD, or with respect to the impact of the refusal.

[27] The RPD's decision, confirmed by the RAD, to admit the sheet of paper into evidence seems reasonable to me considering the relevance and probative value of the document. It cannot be disregarded that the document in question was found in the applicant's luggage. Moreover, the latter was aware of the existence of the document and its contents, as the applicant confirmed when she testified that someone had provided her with this information but that she had not used it.

[28] In short, I find that the RAD did not err in concluding that the RPD was correct in analyzing the document and, implicitly, that the requirements of procedural fairness were respected.

[29] The applicant finally criticizes the RAD for being inconsistent by recognizing in paragraph 26 of its decision that the applicant provided "satisfactory" explanations to the RPD. This is disingenuous. A reading of the decision as a whole reveals that this was clearly a typing error.

[30] For these reasons, the application for judicial review is dismissed.

JUDGMENT in IMM-1420-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Roger R. Lafrenière”

Judge

Certified true translation
This 15th day of October 2019

Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1420-19

STYLE OF CAUSE: HAMID AHMAT HOURRA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 2, 2019

JUDGMENT AND REASONS: LAFRENIÈRE J.

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