Federal Court Cour fédérale

Date: 20210609

Docket: IMM-1839-20

Citation: 2021 FC 580

Ottawa, Ontario, June 9, 2021

PRESENT: Mr. Justice Annis

BETWEEN:

FANNY MUSENGE EFOSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of the decision from the Refugee Appeal Division (RAD) dated February 14, 2020, which confirmed the refusal of the Applicant's refugee claim as she was found to be neither a Convention refugee nor person in need of protection pursuant to the *Immigration and Refugee Protection Act*, SC 2011, c 27, ss 96–97(1) [*IRPA*].

[2] For the following reasons, this Court grants this application for judicial review.

II. **Background**

[3] The Applicant is a citizen of Cameroon and is claiming refugee protection for risk to life or of serious harm from authorities and society in Cameroon due to her sexual orientation as a lesbian.

[4] The Applicant alleges that she realized she was a lesbian while she was a teenager and that she started her first same-sex relationship in 2010 at the age of 22. She later succumbed to pressure from family to have a relationship with a man and they had a child together in 2013. During which time, it is alleged that the relationship with the first girlfriend continued. In April 2015, the same-sex relationship was outed by the girlfriend's sister and the Applicant was arrested and released six days later on bail with conditions to report. Custody of her daughter was also given to her mother. While in detention, the Applicant says that she was tortured and raped.

[5] She further indicated that, fearful of being jailed, she failed to comply with the conditions on bail and went into hiding with her cousin's family in Yaounde, where she alleges that she had no contact with her daughter until her departure from Cameroon. After departure, the Applicant learned of an outstanding arrest warrant, a copy of which she obtained and entered into evidence. She left the country in September 2015 for Canada subsequent to plans made by her mother and with the assistance of an agent.

[6] In November 2015, the Applicant claimed protection in Canada. The following month, the Minister of Citizenship and Immigration (the minister) provided evidence from the Applicant's Facebook attesting to her activities with her daughter and family, as well as with a large group of well-wishers seeing her off at the Douala airport, during the period it is alleged that she was in hiding. In September 2016, the Applicant married a woman in Canada. She amended her claim for protection on April 12, 2018 and the Refugee Protection Division (RPD) heard the claim later in the month and reconvened in August 2018.

[7] The Applicant's claim for protection was denied by the RPD for lack of credibility based primarily on a conclusion that she had relied on fraudulent bilingual official documents, being the warrant of arrest and a medico-legal certificate. The claimant testified that her mother sent the documents from Cameroon, which included, in addition to the warrant of arrest and the medico-legal certificate, three affidavits and a notarized letter from a lawyer in Cameroon. It is the RAD's conclusion that the arrest warrant was fraudulent and is a core credibility finding that is central to the Court's decision.

[8] The singular issue of the Court's concern is whether the RAD's conclusion that the arrest warrant was fraudulent and is a core credibility finding is reasonable. The Applicant's allegation of skipping bail and the subsequent arrest warrant on grounds of breach of bail terms and homosexuality represent the fundamental evidence supporting her reason to flee, and therefore the refugee claim.

[9] In accordance with the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the framework to determine the standard of review is based on the presumption that an impugned decision is reasonable. The court's role is to review, not to substitute the administrative decision maker, attempt to ascertain a range of possible conclusions or determine the correct conclusion, nor conduct a *de novo* analysis (*ibid* at para 83). Absent exceptional circumstances, the court is not to intervene on factual findings, including findings of fact regarding credibility, as is the principal concern in the present case (*ibid* at paras 125–26).

[10] At the hearing the RPD pointed out a translation error where the word "people" was found in the French version of the document in a prominent location on the form. The RPD also noted that the crest of the form was of poor quality being minuscule and illegible, also detracting from the credibility of the document. The panel added that if the errors had been part of the handwritten portion, which includes omissions, it might have been reasonable to grant the author the benefit of the doubt. The panel concluded on the balance of probabilities that these problems would not be present in a genuine document issued by Cameroonian authorities.

[11] The RPD found a similar error with the term "Finance" instead of "Finances" in the French letterhead of the medico-legal certificate confirming the rape of the Applicant, again concluding on the balance of probabilities that the title of the document would be correctly spelled when issued by public authorities. When questioned on these errors, the Applicant could only say that translation problems occurred often in documents in Cameroon.

[12] The RPD also noted that the documents were similar in quality, both on white paper and completed with red stamps and blue pen lacking security features, and easily reproduced. Based on documentary evidence that fraudulent documents are widespread in Cameroon and corruption is rife in the country the panel concluded that the warrant and the medico-legal certificate were fraudulent. It also concluded that the errors in the pre-printed portions raised credibility concerns that were central to the core of the claim, which caused the panel to doubt the veracity of all the claimant's evidence.

[13] The RAD found—on a correctness review in assessing all the evidence—that the Applicant was not credible and that she had not established her sexual identity.

[14] The RAD concluded that the individual findings of the RPD taken together were sufficient to conclude that the documents were fraudulent. It further observed that the handwritten charges listed on the warrant are not consistent with either the Criminal Procedure Code or the Penal Code. In addition, it pointed out another typographical error in the boilerplate of the medico-legal certificate in the term "thid" instead of the term "this". The further the findings were not considered determinative, because they were not put to the Applicant for explanation, but were found to support the RPD's findings that the warrant and the medico-legal certificate were fraudulent documents. The RAD agreed that the fraudulent documents raised credibility concerns that are central to the core of the claim.

[15] In this matter, the Court agrees that such a finding by both tribunals would go to the core of the case. If concluding that the party will go so far as to attempt to commit a fraud on the

tribunal to succeed in the matter, that finding determines the outer limits of the degree or extent of the willingness to misrepresent, infecting everything that the deponent states, unless significantly corroborated. It is for this very reason that courts and boards should exercise caution and only make findings of fraud based on clear and persuasive evidence in support of that conclusion. Otherwise, it is usually preferable to conclude that the evidence is sufficiently unreliable to the point that the document will be given little or no probative value. With this in mind, the Court concludes that the appellation of "fraudulent" is misapplied in the reasons of both tribunals, but particularly relating to the RAD's decision.

[16] Further, it is a fair proposition that translation errors occur on official documents in a less developed country and should be given greater leeway than other errors on official documents, particularly when the meaning and purpose of the boilerplate form are not substantively incorrect or confusing due to the translation error. The fact is that translation errors, both substantive and typographical in nature occur. They should be expected to occur more often in less developed countries, also where new forms may not be issued as a matter of course if serving no purpose.

[17] The Applicant submitted that the RPD failed to take into consideration in its finding the realities of the Applicant's cultural context in coming to the determination of an expectation of a better quality of official documents in Cameroon. To some extent, the Court agrees with the Applicant's submission. However, the RAD refused to accept as new evidence articles indicating that translation errors often occur in Cameroon official documents. The Court does not find an error in refusing the admissibility of this evidence based on the statutory limitations of accepting new evidence on appeal.

[18] Nevertheless, the RPD and RAD are considered to possess a degree of expertise when regularly encountering and assessing linguistic issues in their hearings. The Court is concerned that there seems to be a bit of a blind eye to the linguistic situation in Cameroon that simple judicial notice demonstrates.

[19] For instance, Wikipedia, "Languages of Cameroon" (4 June 2021), online: www.wikizero.com/en/Languages_of_Cameroon, citing reliable sources describes the very challenging linguistic situation in Cameroon:

> Cameroon is home to at least 250 languages. However, some accounts report around 600 languages. These include 55 Afro-Asiatic languages, two Nilo-Saharan languages, four Ubangian languages, and 169 Niger–Congo languages. This latter group comprises one Senegambian language (Fulfulde), 28 Adamawa languages, and 142 Benue–Congo languages (130 of which are Bantu languages). French and English are official languages, a heritage of Cameroon's colonial past as a colony of both France and the United Kingdom from 1916 to 1960. Eight out of the ten regions of Cameroon are primarily francophone, representing 83% of the country's population, and two are anglophone, representing 17%. …. The nation strives toward bilingualism, but in reality very few (11.6%) Cameroonians are literate in both French and English, and 28.8% are literate in neither. [References omitted.]

[20] These generally challenging linguistic conditions support a conclusion that the standards of bilingualism and documentation can be expected to be considerably inferior to what Canadians might expect, including printing new forms, if the errors are miniscule and do not detract from the purpose of the document.

[21] The warrant of arrest in evidence is a document with very little whitespace between bilingual sets of text, crammed with boilerplate information and in a reduced font size, all to

accommodate the extensive particular information to be filled in by hand – being the most important information on the form. The legibility of the document is made more difficult by using standard and italicized font to distinguish the languages, with no line spaces anywhere on the document. It is doubtful that any similar official bilingual document would exist in Canada with the purpose of conveying so much information on one page.

[22] The RPD found one letter incorrect on the warrant of arrest, that of an “o” instead of a “u” in the word “people” as opposed to the correct French term “peuple”. Although the misplaced “o” in “people” instead of “peuple” is said to be obvious in a title, it is buried in the rest of the document, which is somewhat difficult to read for any purpose.

[23] Similarly, although less relevant, the medico-legal certificate contained two typographical mistakes, one with a missing “s” to describe “des Finance” and, as identified by the RAD, a “d” for an “s” in the English word “thid”. The finding that “the crest at the top of the form is of poor quality”, “minuscule and illegible”, is understandable given that it is squeezed between two bilingual lists in large font describing the country, its motto, the court chamber and file number.

[24] The RPD added that there were no security features and that the documents would be easily reproduced. It is not apparent what security features were absent; none were mentioned. The substantive information was filled in on the document and signed by a prosecutor, with the magistrate’s unsigned stamp overlapping.

[25] There was reference in the National Documentation Package to fraudulent documents being widespread in Cameroon and corruption being rife in the country. However, the referenced documentation did not indicate that official documents were problematic, or fraudulent, and no reference made to the bilingual nature of official documents suggesting a degree of fraudulence. Fraud denotes intention. Mistakes in translation and standards of forms suggest degrees of incompetence without intention, and perhaps not always remedied if the document nevertheless well serves its purpose in the judiciary of a less developed country.

[26] Despite the foregoing, the Court's principal difficulty that it finds in this matter relates to the decision of the RAD. It adopted the RPD's findings, including the conclusion that the fraudulence of the documents went to the core of the decision. The RAD did not agree with the RPD that errors in the handwritten portions "might be reasonable". Being of this opinion, the Court takes up the RAD's analysis of the hand written text on the warrant, but to an opposite effect.

[27] The RAD's additional comments relate to the acronym of "CPC" that it found was inappropriate when referencing Penal Code charge provisions. The Court agrees that the typed acronym "CPC" was clearly used to describe provisions from the Criminal Procedure Code in other areas on the warrant. Going further however, the RAD found the infraction numbering ("193 & 347") inconsistent with the language used to describe the charges ("breach of bail terms, evasion and homosexuality"). The RAD's comments are as follows:

> [22] The warrant of warrants states that the Appellant is "[c]harged with breach of bail terms, evasion and homosexuality [o]ffences contrary to and punishable under sections 193 & 347 CPC" [all hand written]. <u>The charges listed on the warrant are not consistent</u>

> with either of the Criminal Procedure Code or the Penal Code. Sections 193 and 347 of Criminal Procedure Code address rogatory commissions and appearance of the accused.
>
> …
>
> [26] Even assuming that the reference [to the handwritten "CPC"] was meant to be to the Penal Code, I note that the reference to section 193 is not correct as section 193 of the Penal Code addresses "escape from lawful custody". The Appellant's evidence was clear that she was not in custody. "I was detained by the police for six (6) days before my mother engaged the services of a lawyer to secure my release on bail. As a condition for my bail, I was asked to be reporting to the station every two weeks…".. While there is no reference to breach of bail terms in the Penal Code, Sub-Chapter II, sections 224-235 of the Criminal Procedure Code address conditional bail including the effect of non-appearance of the person released on bail. I did not find reference to a charge of "evasion" in either of the Penal Code or the Criminal Procedure Code.
>
> [Footnotes omitted and emphasis added.]

[28] As it turns out, the charges and infraction numbers, including the reference to the "CPC" acronym not only appear to be sufficiently accurate, but actually tend to corroborate the form's authenticity. The acronym appears to serve the purpose arising from the absence of space to refer to the Criminal Procedure Code provisions on the form by being an implicit reference to them for the purpose of completeness of the charges.

[29] The provisions from both Codes, as taken from the documents in the certified tribunal record on the warrant of arrest are as follows, with the Court's emphasis:

> Criminal Procedure Code
>
> Section 230: Where the authority who granted the bail is informed by a surety that the person on bail is trying to evade his obligation to appear before the court, such authority shall order his arrest and remand him in custody unless he provides another surety.

> Section 231: Ally (sic) person who is on bail shall be considered as being in lawful custody having regard to be provisions of section 193 of the Penal Code.
>
> Penal Code
>
> SECTION 193: Escape
>
> > (1) Whoever escapes from lawful custody. or who being permitted to work out of the prison leaves his place of work without permission shall be punished with imprisonment for from 1 (one) year to 3 (three) years.
>
> …
>
> SECTION 347-1: Homosexuality
>
> > Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for from 6 (six) months to 5 (five) years and a fine of from CFAF 20 000 (twenty thousand) to CFAF 200 000 (two hundred thousand).

[30] The hand-written charges "breach of bail terms" and "evasion" are consistent with the infraction provisions and reference to the "CPC" acronym, section "193". The sense of evasion is similar to that in section 230 of the Criminal Procedure Code, i.e. "the person on bail is trying to evade his obligation to appear before the court" [emphasis added].

[31] In addition, section 231 of the Criminal Procedure Code specifically deems a person on bail to be in lawful custody for the purpose of section 193 of the Penal Code, which describes someone who "escapes from lawful custody" applying to one skipping bail. Finally, the homosexuality charge is appropriately framed by section 347 in reference to "sexual relations with a person of the same sex".

[32] Perhaps most significantly, the Court concludes that the handwritten “CPC” acronym found in the infractions line does indeed refer to the Criminal Procedure Code, but not mistakenly as found by the RAD. It would appear to be a shorthand nexus linking sections 230 and 231 of the Criminal Procedure Code deeming a person skipping on bail as one that “evade[s] his obligation to appear before the court” being at large for the purpose of an “escap[e] from lawful custody” in section 193 of the Penal Code.

[33] Recourse to this acronym suggests that an experienced prosecutor likely filled in the limited space on the form in a shorthand manner that would generally be understood by magistrates, lawyers and police forces required to act on the warrant as implicitly incorporating the Criminal Procedure Code provisions 230 and 231 to enable section 193 of the Penal Code. Without administrative “insider” knowledge, “CPC” in relation to criminal infractions, would normally be interpreted, as in this matter by the RAD, as a significant error that no prosecutor or magistrate would make.

[34] If the arrest warrant is recognized as a valid document, it would similarly be recognized as positive evidence supporting the Applicant’s credibility as her being at risk due to her homosexuality, instead of its opposite, as proof of fraudulence as a core determinate factor.

[35] In such circumstances, the Court concludes that the RAD made a reviewable error in its apparent misapprehension of the arrest warrant as a fraudulent document based on the “CPC” acronym relating to charges under the Penal Code that was a core finding of the Applicant’s lack of credibility.

III. **Conclusion**

[36] For the above-mentioned reasons, the Court grants this application for judicial review, setting aside the decision, and referring the matter back for reconsideration by another member of the RAD. No questions were proposed for certification of an appeal, and none will be certified.

JUDGMENT in IMM-1839-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review be granted, the RAD decision set aside and the matter referred back for reconsideration by another member of the Board.
2. No questions are certified for appeal.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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