

Date: 20080318

Docket: IMM-3585-07

Citation: 2008 FC 362

Ottawa, Ontario, March 18, 2008

Present: The Honourable Mr. Justice de Montigny

BETWEEN:

SAYON CAMARA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 14, 2007, by which the Board concluded that the applicant was not a Convention refugee within the meaning of section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act). The Board also concluded that the applicant was not a person in need of protection within the meaning of paragraphs 97(1)(a) and (b) of the Act.

[2] For the following reasons, I have reached the conclusion that this application for judicial review had to be dismissed.

I. Facts

[3] The applicant was born on October 11, 1967, in the city of Conakry, in the Republic of Guinea. She is the eldest of a family of seven children. Her mother died in 1982, and when her father died in 1991, her uncle took custody of her and her siblings.

[4] The applicant had to abandon her studies in 1988 because of a lack of money. She then did various tasks at home to help pay for the studies of her brothers and sisters. It was only in 2002 that she managed to continue her own studies and pass a secretarial course. She then obtained employment as a secretary with the Guinean ministry of education.

[5] In October 2005, the applicant's uncle announced that it was time she married. He told her that he had decided to give her hand in marriage to one of his friends, Kaba Sandou, a prosperous man 27 years her senior who already had two wives. Because this marriage entailed a financial benefit for her uncle, he threatened to disown the applicant if she refused to marry. As a result of the pressure from her family, the applicant finally consented to this marriage which she did not want, because she feared reprisals from her family if she refused.

[6] Accordingly, the applicant married Mr. Kaba on December 26, 2005. She quickly realized that her new husband was violent and treated his wives like slaves. Mr. Kaba felt humiliated by the fact that the applicant wanted to continue to work and took this as an affront. It was impossible to determine the precise moment when the applicant began to be mistreated, as the accounts varied from the very day of the marriage to a few weeks later.

[7] When the applicant complained about mistreatment by her husband, her uncle said that she had to accept it and stop being stubborn. On July 3, 2006, Mr. Kaba allegedly cut her on the face with a razor blade. One week later, she went to the Hamdallaye police station in order to file a complaint of spousal abuse. The person who was supposed to take her complaint made her wait for some time and came back with her husband half an hour later. The husband brought her home and beat her savagely, pulling some of her hair out.

[8] The day after this incident, while the applicant was dressing to go to work, her husband ordered her to stay at home and burned her chest and abdomen with an iron. He also threatened to kill her if she continued to humiliate him and forbade her to work.

[9] On August 5, 2006, a friend of the applicant, worried because the applicant was no longer coming to work, went to visit her at home. She suggested that the applicant leave the country to escape her violent husband and promised to help her. On August 21, 2006, the applicant went to her friend's home. Her friend gave her a French passport, an airline ticket to Canada and the telephone

number of one of her friends who was available to help the applicant once she arrived in Canada. She therefore left Guinea on August 21, 2006, and claimed refugee protection on August 23.

II. The impugned decision

[10] The Board rejected the applicant's claim for refugee protection because she was found not to be credible, and because of the numerous contradictions, inconsistencies and implausibilities noted. It rendered its decision on the basis of the following evidence:

- The contradictory statements made at the port of entry in her Personal Information Form (PIF) and during the applicant's testimony concerning when the violent episodes allegedly began;
- The failure to mention, at the port of entry and in the PIF, the sexual assault of which she was allegedly a victim. The Board was of the opinion that the applicant's explanations for this omission were insufficient and contradictory;
- In her PIF, the applicant wrote that she had left the house on July 10, 2006, and had been confined only after that date. However, at the hearing before the RPD, she stated that she had been confined by her husband from July 3 to 19, 2006;
- The applicant allegedly gave an unsatisfactory explanation about the fact that she had been paid for the entire month of July even though she had not reported for work since July 2, 2006;
- In spite of the applicant's scars, which are consistent with her story of being slashed with a razor blade and burned with an iron, the Board concluded that, considering

the applicant's total lack of credibility, her scars had not been caused in the alleged circumstances;

- The applicant contradicted herself with regard to her luggage and identity documents;
- There was no explanation as to why the applicant failed to bring along a copy of her marriage certificate and photographs of her wedding when she left Guinea;
- The applicant did not remember the number and names of the witnesses who were present at her wedding;
- The Board found the fact that the mayor had placed two seals on the marriage certificate (Exhibit P-3) to be implausible;
- Because the Board was unable to identify the applicant in the marriage photographs submitted in evidence, it attached no probative value to them.

III. Issues

[11] Considering the written and oral submissions by the parties, the following issues must be decided for the purpose of this application for judicial review:

- (a) Did the Board fail to consider the *Women Refugee Claimants Fearing Gender-Related Persecution* guidelines (Guideline 4)?
- (b) Did the Board err in failing to consider all the evidence on record?
- (c) Did the Board meet the requirements of procedural fairness?

IV. Analysis

[12] When issues of credibility and the assessment of evidence are involved, it is well established that the Court will intervene only if the decision was based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (*Federal Courts Act*, R.S.C. 1985, c. F-7, paragraph 18.1(4)(d)). This high degree of deference to the administrative decision-maker is entirely warranted in this case, given the Board's expertise and the fact that it had the advantage of hearing the applicant.

[13] As far as the issue of procedural fairness is concerned, it is now well established that the Board is not entitled to make a mistake, and it is up to this Court to determine what the requirements of procedural fairness were and whether or not they were met: *Sketchley v. Canada (Attorney General)*, 2005 FCA 404.

[14] As far as Guideline 4 is concerned, the applicant alleged that the Board had not taken it into consideration even though it had specifically mentioned having taken it into consideration in its decision. In the applicant's opinion, the Board should have been more sensitive in its assessment of her testimony, especially concerning the sexual assault she had allegedly suffered. She submitted that she did not mention it during her first interview with an immigration officer and in her PIF because of the shame she felt and the ensuing trauma. This trauma also explained her lack of knowledge of the names and the number of the witnesses to her forced marriage.

[15] It is true that simply writing that Guideline 4 was taken into consideration in assessing a claim for refugee protection is not sufficient when the decision shows a lack of sensitivity on the part of the Board. However, the Board cannot be considered to be lacking sensitivity simply because it found the applicant not to be credible because she failed to mention important facts, not only at the port of entry, but also in her PIF, particularly after having stated at the beginning of the hearing that her PIF was complete.

[16] At her interview with an immigration officer, the applicant stated that her problems had begun two weeks following her forced marriage, when her husband had cut her on the cheek and burned her with an iron. However, in her PIF, she wrote that after a few weeks of marriage she had discovered that her husband was violent. Then, during her testimony, the applicant stated that she had been sexually assaulted on her wedding night and mistreated on a daily basis after that.

[17] The Board confronted the applicant with these contradictory accounts in order to determine the reason why she had failed to mention a fact as important as a rape during her first interview and in her PIF. The applicant first of all explained that she had realized some two weeks following her wedding that her husband also mistreated his other wives and that she could not continue to live with him. When questioned once again by the Board, the applicant explained that she had told the immigration officer that her problems had begun on her wedding day. Then, with regard to her failure to write this in her PIF, she stated that she did not know what the interpreter who had helped her had written and that she had not understood when the Board asked her if the content of her PIF

was true. Finally, she stated that she was ashamed, because rape is something which is not talked about in Guinean society.

[18] The Board concluded that, considering the many contradictory versions, it was possible to seriously doubt the applicant's version. The Board also noted that "[t]he fact that she was allegedly ashamed to record in her narrative that her husband had raped her on her wedding day did not prevent her from pointing out that she had allegedly been beaten and mistreated on that day."

[19] If it were not for the numerous contradictions in the applicant's testimony, shame could have very well explained why the applicant had not mentioned, before the hearing was held, the rape of which she had been a victim on her wedding day. However, it was only after having tried to give other explanations for her forgetfulness that she gave this explanation, which undermines her credibility even more. In addition, it must be taken into account that the applicant was 38 years old at the time of her marriage and that she had had 12 years of schooling. She did not submit a psychological assessment, which could have corroborated the stress responsible for the memory lapses related to her wedding day. In these circumstances, the Board did not lack sensitivity in doubting the truthfulness of her narrative. Accordingly, I cannot accept the applicant's submissions to the effect that the Board did not take Guideline 4 into consideration in dealing with her claim.

[20] Secondly, the applicant submitted that the Board had failed to consider the medical report and the photographs of her scars, her employer's system for dealing with absences, and her marriage certificate.

[21] The applicant submitted a medical report stating that the [TRANSLATION] “examination showed the presence of scars which were consistent with (1) a history of laceration with a razor blade on the left cheek, (2) a history of burns from a hot iron on the left breast and extending to the abdomen under the left breast.” Although it admitted the existence of these scars, the Board concluded that because of the applicant’s total lack of credibility, it did not believe that these scars had been caused in the circumstances alleged by her. Although the violence of the acts that caused her injuries is troubling, I cannot conclude that the Board’s decision is unreasonable, considering the applicant’s total lack of credibility.

[22] The Board also concluded that it was improbable that the applicant would have been paid by her employer for the entire month of July, as shown by her pay slips for that month, although she stated that she had not returned to work since July 2, 2006, and had not provided her employer with a medical report. The applicant alleged that she had simply called in sick without submitting any medical evidence to confirm that. It is true that the Board’s conclusion to the effect that even in an African context it was improbable that an employer would pay a salary to an employee who is absent for an entire month without having any evidence of his or her inability to work was not based on any documentary evidence. However, I am not satisfied that this conclusion reached by the Board was unreasonable.

[23] With regard to the marriage certificate, this is what the Board concluded:

The claimant testified that the mayor, who had performed the civil wedding, had affixed the two seals found in Exhibit 3. The first reads

[Translation] “Mayor, Commune of Matam,” and the second, [Translation] “Chief Registrar of the Conakry Court of Appeal, Court of First Instance of Conakry,” which is irreconcilable, since Mr. Toure, who signed the marriage certificate, identified himself simply as the mayor in the document.

[24] At the hearing, the applicant stated that she did not know the difference between the two seals affixed to her marriage certificate. She stated that she simply signed it and that she had never mentioned that the mayor had placed the two seals on the document. Considering article 2822 of the *Civil Code of Québec*, which provides that “[a]n act purporting to be issued by a competent foreign public officer makes proof of its content against all persons and neither the quality nor the signature of the officer need be proved”, I do not think that the Board could have rejected the marriage certificate submitted by the applicant because it was not authentic without having any other evidence to that effect. But there is more.

[25] The Board also expressed doubts about not only the marriage certificate, but also the birth certificate, the national identity card and the wedding photographs submitted by the applicant because of a contradiction between the applicant’s statements at her initial interview with an immigration officer and her testimony at the hearing. During her testimony, the applicant explained that she had looked for her documents on the morning of her interview with the immigration officer but found only her passport. She later found the rest of her documents, including her marriage certificate, mixed up with her clothing. Because she stated that she had travelled with a single carry-on bag, the Board was of the opinion that it was implausible for her to have lost her documents among her clothes. The applicant then subsequently stated, on the one hand, that she had left for Canada with her marriage papers and, on the other hand, that she had asked her friend to

send them to her at the request of her Canadian lawyer. As a result of these contradictions, the Board drew a negative inference about the origin of these documents.

[26] I do not think that the Board erred in finding the applicant not to be credible, and I am of the view that it properly assessed the evidence before it. Even if one accepts that some of the inconsistencies and contradictions in the applicant's narrative could be explained by the horrible violence she states she suffered, her story is nevertheless difficult to understand, given the different versions alleged and the implausibility of her explanations.

[27] In passing, I note that the applicant's passport, issued on May 16, 2003, states that her civil status is that of a married woman. However, according to the applicant's version, she had married on December 26, 2005. Although this fact had not been noted by the Board, it also tends to confirm the lack of credibility of the applicant's narrative.

[28] Finally, the applicant submitted that she had not been given a fair hearing, because the interpreter was Malian and spoke a different dialect than she did. According to her, this was an infringement of the *audi alteram partem* rule and in itself would warrant intervention by the Court.

[29] Unfortunately for the applicant, I think that this argument must fail. At question 1(j) of her PIF concerning the "language and dialect you now speak most fluently," the applicant answered that it was French. In addition, as appears from the PIF and the applicant's statement made at the

hearing, she did not use an interpreter to complete her PIF because she said that she understood the content of this document.

[30] At the hearing, she did not raise any objection and even confirmed in answer to a question put by the Board that she understood the interpreter very well. She had been asked on several occasions to wait for the translation of the questions before answering. Even though she chose to testify in her language, she nevertheless agreed to listen to the submissions made by her counsel at that time in French.

[31] In these circumstances, it is too late to object to the fact that the interpreter at the Board hearing was Malian. She cannot now raise this argument for the first time in this application for judicial review. Not only did she have to show that the principles of natural justice had been breached, which she did not, but she also had to do so in a timely manner, that is, at the hearing.

[32] For all these reasons, I would dismiss this application for judicial review. Counsel for the parties did not raise any questions for certification, and none will be certified.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed.

“Yves de Montigny”

Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OR RECORD

DOCKET: IMM-3585-07

STYLE OF CAUSE: Sayon Camara
v.
MCI

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**REASONS FOR ORDER
AND ORDER BY:** THE HONOURABLE MR. JUSTICE de MONTIGNY

DATED: March 18, 2008

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