

Federal Court



Cour fédérale

Date: 20091217

Docket: IMM-2354-09

Citation: 2009 FC 1284

Ottawa, Ontario, December 17, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

MARIAMA DJELO BAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated April 20, 2009, rejecting the applicant's refugee protection claim based on her homosexuality. After having carefully examined the record submitted by the applicant as well as the transcript of the hearing before the RPD, I am of the view that the RPD was entitled to reject her claim on the basis of her lack of credibility.

I. Facts

[2] The applicant is a citizen of the Republic of Guinea and is of the Muslim faith. She alleges having always been more attracted to women than to men since childhood. She nonetheless hid her sexual orientation from her family and friends because homosexuality is taboo and very much frowned upon in her country. The applicant subsequently married a man who held a high-ranking position in the Guinean civil service so as to not attract attention to herself, and had four children with him (three of whom have Canadian citizenship because the applicant came to Ottawa to give birth). She claims the marriage left her with a great deal of freedom, due to the fact that her husband had another wife and travelled frequently.

[3] The applicant, who is now 51 years old, states that she was about 10 years old when she had her first sexual touching experience with another girl, and that her half-sister had walked in on them. Following her parents' divorce, she apparently went to live with an aunt, where she allegedly once again met another girl her own age (named Mamie) who had the same sexual orientation. This girl, with whom she stated that she had regular sexual relations, apparently stayed with her, working as a housekeeper for her husband until she left for Canada. She claimed to have confided in her half-sister, telling her about her relationship with Mamie.

[4] The applicant states that she left Guinea in March 2006 for China to look after her children, who were then living with their father, who was ambassador to China and who had just been recalled to Guinea. She apparently stayed in China until June 2006 to allow her children to complete their school year.

[5] While the applicant was in China, her half-sister purportedly revealed her sexual orientation to one of her uncles. This was done out of revenge, after the applicant refused to pay for the half-sister's trip so that she could accompany her to China.

[6] The applicant alleges that, in June 2006, one of her brothers told her over the telephone that there was a rumour going around about her homosexuality. The applicant apparently denied everything.

[7] In July 2006, the applicant's uncle purportedly revealed the applicant's homosexuality to his friend, who was the minister of transportation. It would appear that the minister, who was the applicant's employer, immediately relieved her of her duties as coordinator of a joint Guinean-Norwegian maritime transportation company. The uncle is also said to have told the applicant's father about the rumours about his daughter. It would appear that the father, upon hearing this news, suffered a heart attack and died a few weeks later in August 2006.

[8] In November 2006, the applicant returned to Guinea. During this stay, another of her uncles, who was the imam of a mosque and a devout Muslim, apparently invited her to a family gathering, ostensibly to offer her his condolences following her father's death. However, the applicant supposedly learned from her brother that the true purpose for the gathering was to confront her about the rumours that were circulating about her and to attack her. Since she had not shown up at

that gathering, her uncles allegedly made an arrangement with the police commissioner to have him send her a notice ordering her to report to the police station.

[9] Upon learning about this notice, the applicant made arrangements to leave Guinea on November 30, 2006. She arrived in Montréal on December 3, after a stopover in Paris, and claimed refugee protection in March 2007.

II. Impugned decision

[10] The RPD relied on several implausibilities and contradictions in the applicant's narrative in determining that her claim should be rejected. First, the panel did not find it very credible that the applicant's uncle would have revealed her sexual orientation to the minister of transportation but said nothing to her husband, who had also been appointed as a minister after he returned from China in 2008. In a society where homosexuality is repressed and is a source of shame, the RPD considered the applicant's explanation that it would have been far more humiliating to reveal her homosexuality to her husband and family rather than to her employer, who is, moreover, a well-known public figure, to be highly implausible. The applicant explained that the purpose of revealing this to the minister of transportation was to have her dismissed from her duties and thus force her to return to Guinea; the RPD did not find this story to be credible either.

[11] The RPD also confronted the applicant about certain parts of her narrative. In particular, the applicant stated that she had returned to Guinea in November 2006 in spite of her fear about the rumours that were circulating about her. Furthermore, in spite of the fact that she claimed to have

suddenly fled her country after having been invited to a family gathering the consequences of which she feared, it took her more than three months before claiming refugee protection in Canada. The explanations provided by the applicant did not satisfy the RPD, which stated that the applicant's behaviour was inconsistent with the fear of someone who claims to be persecuted or threatened.

[12] In fact, the applicant maintained that she had returned to Guinea in November 2006 to receive condolences upon the death of her father, as well as to help with the transition of her successor at the transportation company where she had worked. The applicant also claimed that she had not known the extent of the problem caused by her half-sister's revelations until the time of the invitation to the family gathering. When asked about the delay in claiming refugee protection after arriving in Canada, she responded that she had preferred to wait, in the hope that her uncles might leave her alone and that the situation might improve. She finally decided to claim refugee status when her brother confirmed to her over the telephone that the situation was not improving. The RPD did not find these explanations credible.

[13] The RPD also faulted the applicant for certain contradictions in her story. As such, the applicant stated that she lived with her husband, her half-sister, some of her husband's nieces and Mamie, with whom she was having a relationship that was kept hidden from the others. In her testimony, the applicant changed her version regarding what she had revealed to her half-sister about the relationship. She had initially stated that her half-sister had walked in on her and Mamie, then she stated that she had only been caught in a compromising position with her childhood friend and never with Mamie. She also stated that she had only given her half-sister the broad strokes of

her relationship with Mamie without going into too much detail; yet she later explained having revealed, to her half-sister, the nature and frequency of her sexual relations with Mamie.

[14] The RPD is also surprised that the applicant never tried to seek asylum in one of the many Convention signatory countries she stayed in on several occasions, in spite of the alleged longstanding problems with her husband because of her homosexuality.

[15] The RPD found another contradiction in the applicant's testimony, relating to the moment when the situation worsened. During her interview with an immigration officer in April 2007, she stated that she found out about her half-sister's revelations in August 2006. Yet, she testified that she had been informed by her brother in early June 2006 about what her half-sister had said. Asked to explain this contradiction, the applicant explained that things started to get really tense in August 2006; people had apparently started to accuse her of killing her father. The RPD noted that this information was nowhere to be found in her statements made at the port of entry, or later, in her Personal Information Form. The RPD also wondered why she would have returned to Guinea in November, given the serious accusation that had been levelled against her.

[16] Finally, the RPD did not believe that the applicant was homosexual and questioned her sincerity, given that she had filed an application for permanent residence in Canada on humanitarian and compassionate grounds at the same time. The panel speculated about whether the applicant may have lost her job for reasons other than those given (perhaps because of her long absence from the country, for example), and that she might have been looking to divorce her husband.

[17] In the final analysis, the RPD found the applicant's testimony not to be credible, and concluded that the applicant had failed to discharge her burden of proving that there was a serious possibility of persecution on one of the Convention grounds. It also found that the applicant had failed to show, on a balance of probabilities, that she would be personally subjected to a risk of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment were she to return to Guinea.

III. Issue

[18] The only issue in this case is whether the RPD erred in finding that the applicant lacked credibility.

IV. Analysis

[19] It is settled law that the findings as to an applicant's credibility are deemed to be questions of fact, and should therefore be accorded great deference upon judicial review. Consequently, the question this Court must ask itself is not whether it would have reached the same conclusions, but rather whether the RPD's finding is reasonable. To quote the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, "In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (paragraph 47).

[20] The applicant first claimed that the RPD was unduly influenced by the parallel application for permanent residence on humanitarian and compassionate grounds that she had filed a few days after claiming refugee protection in Canada. According to the applicant, the existence of this application would have weighed heavily in the balance and led the RPD to unfairly doubt her credibility.

[21] This first argument strikes me as being completely without merit. Far from making it a ground for its decision, the RPD referred to this parallel application only at the very end of its reasons, after it had pointed out several contradictions and implausibilities in the applicant's narrative. In fact, the member wrote, in the paragraph immediately preceding this reference to the application for residence on humanitarian grounds:

[34] The claimant's story lost all credibility because of this major contradiction on a central point of this claim for refugee protection—the moment she supposedly learned that her homosexuality had been exposed—combined with an omission that has a direct impact on her alleged story. The fact that the claimant's testimony is devoid of all credibility means that the panel does not believe that she is homosexual either.

[22] It appears that from that point on the panel made its findings with regard to the applicant's credibility, before even considering her application for permanent residence. The paragraph that follows, in which the member refers to this application and speculates on the applicant's true motives for claiming refugee protection, is quite unnecessary. Since it adds nothing to the decision and is based on conjecture, it would have perhaps been better advised and more prudent not to have included it in the decision. That being said, this would not be sufficient to vitiate the decision. The

RPD's conclusion that the applicant was not credible is not based on the fact that there was a parallel application for permanent residence.

[23] The applicant cited the decision of the Federal Court of Appeal in *Orelien v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 592 (C.A.), [1991] F.C.J. No. 1158, in support of her argument that her credibility could not be doubted simply based on the fact that she sought to immigrate to Canada. That matter, however, has nothing to do with this case. Unlike the case at bar, there was, in *Orelien*, much evidence whose credibility was not in doubt.

[24] The applicant also alleged in her memorandum that the RPD had applied an inappropriate standard of proof to the question of credibility when it considered the possibility rather than the probability of a piece of evidence relating to credibility. At the hearing, counsel for the applicant admitted that this was an error on his part, given that probability is more exacting than mere possibility. To the extent that the RPD might have applied the standard of possibility (which had not been established in any way), it could only have benefited the applicant.

[25] Lastly, the applicant claimed that the panel's decision was based more on implausibilities than on contradictions, and that the inferences drawn by the RPD were unreasonable. Yet, a careful analysis of the decision shows that the panel did not believe the applicant for a number of reasons. As mentioned earlier, one omission and several contradictions and implausibilities had been found. The applicant's behaviour was also found to be inconsistent with a subjective fear of persecution.

[26] It is well established that the panel may consider contradictions in the evidence to cast doubt on an applicant's credibility. The case law also recognizes that a panel could find that a claimant lacked credibility by relying on the implausibility of his or her narrative, provided that the inferences drawn were reasonable.

[27] In this case, the RPD carefully considered the explanations given by the applicant when she was confronted with the contradictions and implausibilities in her narrative. The panel also took into account the specific context of Guinea as well as the scorn and rejection homosexuals are subjected to in that country. In light of all the evidence submitted, the RPD found that the applicant's story was not credible. This was a "possible acceptable outcome" with regard to the facts that were brought to its attention.

[28] This is not to say that this Court would have reached the same conclusions. As such, some of the contradictions identified by the RPD were perhaps not contradictions in the full sense of the word, in light of the applicant's explanations. However, the decision is founded on an accumulation of real contradictions and implausibilities, as well as a long delay in claiming refugee protection. When considered as a whole, the RPD's decision does not strike me as unreasonable and is certainly defensible with respect to the evidence. Furthermore, the challenges raised by the applicant are not sufficient to set aside the decision.

[29] For all of the foregoing reasons, this application for judicial review must be dismissed. The parties did not propose any question for certification and this application does not give rise to any.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Yves de Montigny”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR ORDER
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