

Federal Court



Cour fédérale

Date: 20141209

Docket: IMM-2149-14

Citation: 2014 FC 1189

Ottawa, Ontario, December 9, 2014

PRESENT: The Honourable Mr. Justice S. Noël

BETWEEN:

ROUGUIATOU TOURE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for leave to commence an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of Renée Bourque of the Refugee Protection Division [RPD] dated February 27, 2014, which held that the Applicant was neither a Convention Refugee nor a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

II. Facts

[2] The Applicant grew up in a Muslim and polygamous family with numerous brothers and sisters in Guinea. While she was in university, her father's attitude began to change. He frequently went to Mali, let his beard grow and attended the Mosque.

[3] One day, the Applicant's father told her that he had planned an arranged marriage for her, with a 60 year old man. The Applicant told her father that she was not ready for marriage and her father replied by slapping her.

[4] Her wedding was celebrated on July 15, 2012. Her husband already had three wives and about fifteen children. He beat her on the first night of their marriage because she refused to sleep with him. She was treated like a maid by the other wives and was beaten by them on one occasion.

[5] The Applicant explained the situation to her father, who replied that her situation was normal.

[6] The Applicant decided to leave Guinea in order save her life. She left on October 26, 2012 and arrived in Canada on October 27, 2012, with a man named Edouard. Edouard brought a French passport for the Applicant for her entrance to Canada.

[7] She claimed asylum on November 6, 2012.

III. Contested Decision

[8] Based on the documentary evidence provided, the RPD concluded that the Applicant was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of IRPA.

[9] The RPD is not satisfied of the Applicant's identity.

[10] The RPD first addresses the Applicant's travel to Canada. The Applicant claims to have entered Canada with a smuggler, who had a French passport under the name Cecilia with a photo of another woman, who appeared to be in her thirties. The Applicant claims not to know the full name written on the passport. The RPD concludes that it was not reasonable for the Applicant not to know the full name of the woman on the passport as she had numerous occasions to hear the name mentioned as she travelled from Conakry to Rabat and from Rabat to Montreal. The RPD is of the opinion that the Applicant refused to identify the name on the passport, either because she entered Canada on a different date than October 27, 2012 or because she was trying to protect the identity of the person who provided her with the passport. Either way, the Applicant did not provide evidence of her entry in Canada, which undermines her credibility with regards to her subjective fear. Consequently, the RPD is not to be able to assess the actual duration of her stay in Canada, prior to her refugee claim on November 6, 2012. She also does not have a copy of her plane ticket, her boarding pass or her luggage tickets.

[11] The RPD then questions the Applicant on other identity documents.

[12] The RPD does not give any value to the passport submitted by the Applicant because, among other things, she did not provide any other identification cards to confirm her identity on the passport and because the picture in the passport dates back to 2006, when she was 20 years old, but the picture has the features of an older woman.

[13] The RPD believes the Applicant's explanation with regards to her national identity card as to why her card was only issued on November 4, 2010. However, because a national identity card can only be issued based on a birth certificate, the RPD questions the Applicant on the two birth certificates she submitted.

[14] With regards to her birth certificate, the RPD compares the photocopy of the birth certificate the Applicant submitted with the original birth certificate submitted as the original one and notes that they are different. The former was emitted in 2004 and the later in 2005. The content of the birth certificates also differ. The Applicant was unable to explain why those two birth certificates were different. The RPD therefore does not grant any probative value to those documents.

[15] The RPD notes that a birth certificate is necessary to obtain a national identity card, and, subsequently, a national identity card is necessary to obtain a passport. Therefore, if the Applicant has false birth certificates, the documents subsequently emitted would constitute "genuine false identity documents".

[16] With regards to the Applicant's school documents, such as her four student cards, the RPD notes irregularities, since the signature 2007-2008 on the student card differs from the 2008-2009 student card. The Applicant was also unable to explain the written content on those cards. The RPD does not give any probative value to the student cards and draws a negative inference with regards to the Applicant's other two student cards.

[17] The RPD then questions the Applicant regarding an internship she claims to have completed between July 2010 and August 2011, as written in the Personal Information Form [PIF]. The RPD notes that her internship attestation states that the internship started August 16, 2010 and ended September 16, 2010. The RPD rejects the Applicant's explanation as to the difference in the dates between the PIF and her internship attestation. This undermines the Applicant's credibility, and consequently her identity.

[18] The RPD also notes that the two diplomas the Applicant claims to have received from the University of Kofi Annan were both obtain in 2010, one of them being a "License" and the other a "Master", which appears to be incoherent. The RPD does not give any value to those documents.

[19] In its decision, the RPD also took into account the evidence demonstrating how easy it is to obtain false documents in Guinea.

[20] Based on the above, the RPD finds that the Applicant has not established her identity. The RPD therefore does not address the other aspects of the Applicant's asylum claim.

IV. Parties' Submissions

[21] With regards to her birth certificates, the Applicant submits that contrary to the RPD's conclusion, the one issued in 2005 and presented to the RPD was an original and not a copy. The documentary evidence referred to as the National Documentation Package of Guinea [National Documentation] states that authentic documents may contain flagrant anomalies. The Applicant's testimony on this issue was therefore credible. The Respondent replies that the RPD correctly concluded that no probative value could be given to the birth certificates issued in 2004 and in 2005 because the information they each contained was not identical.

[22] With regards to the Applicant's application for the renewal of her passport, the Applicant explained to the RPD that she dropped off her passport at the Ministry's office, which already had all her other documents, such as, her national identity card and birth certificate. The fact that the Ministry already had her information does not render her passport unreliable. In reply, the Respondent highlights that the photo on the Applicant's passport issued in 2006, when the Applicant was twenty years old, appears to show a much older woman. Since the RPD saw the Applicant at the hearing and was able to compare her to the picture in the passport, the RPD's finding on this issue must be subject to judicial deference.

[23] The Applicant also argues that the RPD did not refer to any evidence to support that it has a specialized knowledge on foreign government issued documents and that evidence of prevalent forgery in a country is not enough to reject foreign documents as forgeries. The Respondent replies that the appearance of authenticity of a document carries a refutable

presumption of validity and the truthfulness of documents from a foreign country can be challenged. It was therefore reasonable for the RPD to decide that the identity documents provided by the Applicant were indicative of fabrication rather than authenticity.

[24] The Applicant then submits that the RPD erred in not giving any probative value to the Applicant's student identification cards because she testified that the signatures on her cards were not hers, but that of the university's administrator. The cards clearly state at the bottom "Partie réservée à l'administration".

[25] With regards to the RPD's decision not to give any probative value to the Applicant's diplomas, the Applicant argues her Bachelor's degree states that she completed her program on July 19, 2009. Her diploma was issued on November 16, 2009. The certified true copy of this diploma was issued on January 27, 2010, and not the diploma. It is therefore plausible that the Applicant completed her Master's degree in 2009-2010. The Respondent replies that there were numerous inconsistencies between the school documents the Applicant provided and her narrative and PIF. It was therefore reasonable for the RPD to decide not to give probative value to those documents.

V. Issues

[26] The Applicant states the following issue:

1. Did the RPD err when it rejected several Government issued identity documents and concluded that it was not satisfied with the Applicant's identity?

[27] The Respondent states the following issue:

1. Did the RPD err in concluding that the Applicant lacked credibility as to her identity?

[28] After reviewing the parties' submissions and the issues presented by the parties, I frame the issue as follow:

1. Did the RPD err in concluding that the Applicant had not established her identity?

VI. Standard of Review

[29] The assessment of the proofs of identity of the Applicant is a question of fact. The reasonableness standard therefore applies (*Matingou-Testie v Canada (Minister of Citizenship and Immigration)*, 2012 FC 389, [2012] FCJ No 401 at para 18 [*Matingou*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paras 45-46; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 53 [*Dunsmuir*]). The RPD's decision will be deemed reasonable if there is justification, transparency and intelligibility within the decision-making process (*Dunsmuir, supra* at para 47). This Court shall only intervene if it concludes that the decision is unreasonable, where it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Ibid*).

VII. Analysis

[30] I have read the Applicant's record and her testimony before the RPD and I am satisfied of the RPD's finding that the Applicant did not meet her burden of proof to establish her identity. The RPD examined and questioned the Applicant as to her passport, her national identity card,

her two birth certificates, her four school identity cards, her university diploma, her Master's certificate and her marriage certificate (the latter was discussed at the hearing, but not mentioned in the RPD's decision). The RPD reasonably concluded that none of those documents could establish the Applicant's identity.

[31] The Applicant claiming refugee status must first establish her identity before the RPD (Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 and section 106 of IRPA). The Applicant has a high onus to produce acceptable documentation establishing her identity (*Su v Canada (Minister of Citizenship and Immigration)*, 2012 FC 743, [2012] FCJ No 902 at para 4 [Su]). When making identity findings, the RPD must take into account the totality of the evidence related to the identity of the refugee claimant (*Yang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 681, [2009] FCJ No 848 at para 6 [Yang]). If the Applicant does not establish her identity, the RPD can then draw a negative conclusion as to her credibility (*Matingou, supra* at para 2).

[32] It is also well established that the issue of identity is at the very core of the RPD's expertise and this Court should be cautious about intervening on such decisions (*Barry v Canada (Minister of Citizenship and Immigration)*, 2014 FC 8, [2014] FCJ No 10 at para 19 [Barry]). Justice Gleason further states in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, [2012] FCJ No 369 at para 48 [Rahal]:

[...] In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly suspicious) and provided there is no glaring inconsistencies between the Board's decision and the weight of evidence in the record, the

RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[33] In the case at bar, the Applicant argues that the RPD challenged the validity of foreign issued identity documents without adducing any evidence in support of its contention. I disagree. Firstly, the RPD reasonably concluded that the two birth certificates submitted by the Applicant could not establish her identity, because the content of each documents differed and because the Applicant was unable to provide a reasonable explanation for the discrepancies identified, such as the different places of residence stated on both documents (AR at page 17 and Tribunal Record [TR] at pages 168-170, Applicant's affidavit at para 12). My own review of the two birth certificates as it was discussed at the hearing was that there was other discrepancies than the two identified by the RPD. The name of the "déclarant", the place of birth and the date of the "declaration" are all different from one document to the other. Since we are dealing with "extrait d'acte de naissance", it is not possible that the main registry would contain at least five differences between the two "extraits". In response to the argument that it is normal in Guinea to see flagrant anomalies on authentic documents, I find that at least five (5) factually important discrepancies on two (2) "extraits d'acte de naissance" are just not acceptable. These five (5) discrepancies are more than "flagrant anomalies". Second, because the RPD did not give any probative value to the Applicant's birth certificates, it was also reasonable not to give any probative value to the Applicant's national identity card and the Applicant's passport, since a birth certificate is necessary to obtain a national identity card, and a national identity card and a birth certificate are necessary to obtain a passport (TR at pages 152-153, RPD's decision at para

20). The RPD therefore offered reasons for its negative conclusion and there are no glaring inconsistencies between the RPD's decision and the weight of evidence in the record.

[34] Also, the Court must examine the overall reasoning with regards to the identity in the RPD's decision (*Barry, supra* at para 25). In the case at bar, the Court finds ample evidence to support the RPD's decision to reject the Applicant's identity documents and conclude that the Applicant's identity was not established. Although, I agree with the Applicant that the RPD made an incorrect assessment of the Applicant's university diploma and the evidence provided corroborate each other, this alone does not render the RPD's decision unreasonable. Those university diplomas are by themselves insufficient to prove the Applicant's identity, when taking into account all of the other irregularities found in the other documents and also contradictions between her testimony when compared to her PIF such as the length of her internship. The RPD's identity determination warrants deference and in the present case, I conclude that the RPD's determination was not made in a perverse or capricious manner or without regard to the evidence (*Rahal, supra*). The application for judicial review is thus dismissed.

VIII. Conclusion

[35] The Applicant failed to establish her identity, despite providing various documents to the RPD. The Applicant's testimony did not clarify the main issues identified by the RPD with regards to those documents. The RPD's decision, when read as a whole, falls within the range of possible, acceptable outcomes, defensible in respect of the facts and the law. There is therefore no need for this Court to intervene.

[36] The parties were invited to submit questions for certification but none were proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review of the decision of Renée Bourque, dated February 27, 2014, is dismissed.
2. There is no serious question of general importance to be certified.

“Simon Noël”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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