

Federal Court



Cour fédérale

Date: 20160725

Docket: IMM-5344-15

Citation: 2016 FC 873

Ottawa, Ontario, July 25, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PENPA LHAMO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] dated November 9, 2015 [Decision] which denied the Applicant's appeal from a decision of the Refugee Protection Division [RPD],

confirming that the Applicant is neither a Convention refugee within the meaning of s 96 of the Act or a person in need of protection under s 97 of the Act.

II. BACKGROUND

A. *Facts*

[2] The Applicant alleges that she was born in India in 1976 to Tibetan parents. She claims that her parents fled Tibet after it became occupied by China because they were followers of the Dalai Lama. She also claims to have no permanent status in India and fears that, without such status, she may be returned to Tibet where she could face religious persecution as a follower of the Dalai Lama.

[3] The Applicant traveled to Canada using a fraudulent passport on August 11, 2013.

B. *RPD Decision*

[4] The Applicant's application for refugee protection was heard on October 29, 2013. The RPD rejected her claim on March 20, 2013 finding that she was not a Convention refugee or a person in need of protection.

[5] The Applicant appealed the RPD decision to the RAD, claiming that the decision erred in fact and was based on unsustainable credibility findings. On June 26, 2015, Justice McVeigh of this Court set aside the RAD decision which rejected her claim, and her appeal was remitted back to the RAD for reconsideration by a different decision-maker (IMM-6102-14). Submitting

new evidence in support of her appeal, the Applicant again asked the RAD to set aside the decision of the RPD and substitute it with its own determination that she is a Convention refugee or a person in need of protection or, in the alternative, that the RAD refer the matter back to the RPD to be re-determined by a differently constituted panel.

III. DECISION UNDER REVIEW

[6] The RAD concluded that sufficient evidence exists to support the RPD's overall determination. The Applicant failed to establish her personal identity or that she was a citizen of the People's Republic of China. Therefore, the RAD was not persuaded that she faces a serious possibility of persecution in China on any Convention ground, or that there are substantial grounds to believe that she would be subjected personally to a danger of torture or a risk to her life or to cruel and unusual treatment or punishment in China.

[7] The RAD looked to Federal Court jurisprudence in considering the authenticity of the documentary evidence provided by the Applicant: *Sertkaya v Canada (Minister of Citizenship and Immigration)*, 2004 FC 734; *Kazadi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 292. The Applicant had provided the RPD with the following evidence: a copy of a Registration Certificate for Tibetans [RC]; a copy of a Tibetan Green Book; a handwritten note from "Tibetan Settlement Camp No. 3" indicating that the Applicant is a resident of the camp; and documents from "Central School for Tibetans," including a report card and a bio-data page. After the hearing, the Applicant provided additional evidence by way of a "Bonafide Certificate" dated November 14, 2013, indicating that she was living at Camp No. 3 in the Mysore District [*Bonafide Certificate*], a birth certificate issued April 25, 2000 by the Department of Home

Affairs Central Tibetan Secretariat of His Holiness the Dalai Lama [birth certificate], as well as an affidavit dated November 7, 2013 from the Applicant's mother attesting to her date and place of birth.

[8] The RAD placed little evidentiary weight on the copy of the RC, noting that it was difficult to ascertain whether the document contained any security features because it was a copy of a copy. As regards the Green Book, which according to the evidence is "designed to serve the purpose of (an) identity certificate (for) Tibetan nationals in lieu of the passport," the RAD found that, while the document may identify its holder as an exiled Tibetan, it does not ascribe nationality. The RAD found that the Applicant's explanation as to how her mother had attained a Green Book for her was deficient.

[9] The RAD similarly upheld the findings of the RPD with regards to the note from "Tibetan Settlement Camp No. 3" and the documents from the "Central School for Tibetans." The note lacked the stamp necessary to confirm its genuineness and the school documents were undated and insufficient to establish identity or nationality.

[10] As regards the documents that the Applicant provided after the hearing (the *Bonafide Certificate*, the birth certificate and the affidavit of the Applicant's mother), the RAD again assigned them little weight. The RAD took issue with the production of a birth certificate after the Applicant had initially indicated in testimony to the RPD that she was not eligible for one. Furthermore, the RPD found persuasive reasons to question the authenticity of both the birth certificate and the *Bonafide Certificate*, and determined that the statements made by the

Applicant's mother in her affidavit were insufficient to make up for the lack of verifiable identity documents – a central element of the Applicant's appeal to the RAD.

[11] Finally, the RAD concurred with the findings of the RPD that the Applicant's lack of knowledge regarding details associated with her travel to Canada, including the smuggler she traveled with and the documentation she was traveling under (a fraudulent Indian passport), detracted from her overall credibility.

IV. ISSUES

[12] The Applicant raises the following issue in this proceeding:

- Was the RAD's determination of the Applicant's identity unreasonable and/or wrong in law?

V. STANDARD OF REVIEW

[13] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[14] The Federal Court of Appeal has determined that the standard of review that the Court will apply when reviewing a decision of the RAD is that of reasonableness: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Ghuri v Canada (Citizenship and Immigration)*, 2016 FC 548 at para 22; *AN v Canada (Citizenship and Immigration)*, 2016 FC 549 at para 17.

[15] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

VI. STATUTORY PROVISIONS

[16] The following provisions from the Act are relevant in this proceeding:

Convention Refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions

politiques:

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

(b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires

generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

...

Credibility

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir

...

Crédibilité

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[17] The following provision of the *Refugee Protection Division Rules*, SOR/2012-26, is relevant in this proceeding:

Documents Establishing Identity and Other Elements of the Claim

11 The claimant must provide acceptable documents establishing their identity and

Document établissant l'identité et autres éléments de la demande

11 Le demandeur d'asile transmet des documents acceptables qui permettent

<p>other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.</p>	<p>d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.</p>
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VII. ARGUMENTS

A. *Applicant*

[18] The Applicant submitted to the RAD, and maintains now, that the RPD accepted that she was of Tibetan ethnicity. The Applicant suggests that, in the RPD's comments disputing whether the RPD had indeed recognized this, the RAD may have been confusing Tibetan ethnicity with citizenship of Tibet (China).

[19] The Applicant argues that the RAD placed an impossible burden on her by indicating that her identity documents could not be relied on because they lacked "security features," because no form of identity documentation in India is immune to fraud or contains such features, with the possible exception of passports issued after April 2013. The Applicant relies on part of the National Documentation Package for evidence that identity documents in India are easily and frequently counterfeited. Therefore, the Applicant submits that the RAD erred by finding she had not proven her identity, as the RAD discounted her sworn testimony as well as her mother's affidavit to that effect.

[20] The RAD accused the Applicant of giving "evolving" testimony with respect to the authentication of her RC. However, the Applicant says that there was no reason to expect that

she would have any knowledge of her ability to approach the Indian authorities to obtain a letter confirming any of her documents.

[21] The Applicant further argues that it was irrational for the RAD to blame the Applicant for failing to provide a fulsome explanation for how her mother obtained a Green Book for her without a supporting birth certificate. In light of this error, it was wrong for the RAD to apply no evidentiary weight to the Green Book, especially given that the RAD quoted from the document. The Green Book was capable of proving the Applicant's personal and ethnic identity as a Tibetan; it was unreasonable for the RAD to find that it did not do so.

[22] Finally, the Applicant says that it is hard to see how the RAD could reach the conclusion that she knowingly produced false documents (specifically, a statement from the Tibetan Settlement Camp No. 3 and the *Bonafide Certificate*). Given the poor quality of the stamps on the photocopies of the documents, it is impossible to tell whether, as the RAD alleged, the photos overlaid the stamps. There was no evidentiary basis for finding that the documents were fraudulent or that the Applicant was aware of such a fraud; therefore, the RAD erred in rejecting the evidence: *Tran v Canada (Citizenship and Immigration)*, 2013 FC 1080.

B. *Respondent*

[23] The question of identity is central to all refugee claims. A high degree of deference must be awarded to the RPD's or the RAD's conclusions as to identity, and the Court must not intervene unless the Applicant can demonstrate that a clearly arbitrary decision was rendered: *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 48 [*Rahal*]; *Jin v Canada*

(Minister of Citizenship and Immigration), 2006 FC 126 at para 14. The Respondent claims that the RAD engaged in a proper assessment of the Applicant's evidence concerning her identity and that its findings were reasonable and reached through independent analysis of the evidence and the law. While the Applicant established that she is a Tibetan by ancestry, she did not establish that she is a citizen of the People's Republic of China.

[24] The Applicant did not submit original documents in support of her identity and her justification as to why only copies were provided evolved throughout the hearing. When asked why she did not have an original RC, she hesitated before being prompted by her counsel that it should be possible to obtain a letter to confirm that she did hold a valid RC during her alleged time of residency in India. However, no letter or original document was ever produced.

[25] The Applicant's testimony at her RPD hearing was that she did not have a birth certificate or any other identity document that could be provided to the RPD. This was contradicted by the birth certificate, purported to have been issued in 2000 when she was 24 years old, provided without explanation post-hearing. The RAD rejected the document after visible mistakes and inconsistencies in the alignment of its letters were noted.

[26] The Respondent notes that none of the documents submitted by the Applicant and considered by the RAD were rejected simply because they did not contain security features. The RAD gave reasons for rejecting the documents, including abnormalities, the Applicant's failure to mention the existence of the documents sooner, the failure to provide originals or demonstrate

that attempts were made to obtain originals, and the fact that the documents did not purport to provide evidence of nationality/citizenship.

[27] Finally, as regards the Green Book, it was reasonable for the RAD to note that the Applicant had not explained how it had been procured by her mother. This statement was reasonable and should not detract from the RPD's central finding regarding this document: that it did not purport to indicate the Applicant's nationality or citizenship.

VIII. ANALYSIS

A. *Introduction*

[28] The Court has consistently pointed out the importance of identity as a pre-requisite for protection and the high burden that rests on any claimant to produce acceptable documents to establish identity.

[29] In *Su v Canada (Citizenship and Immigration)*, 2012 FC 743, Justice Snider had the following to say on this point:

[3] Proof of identity is a pre-requisite for a person claiming refugee protection as without it there can "be no sound basis for testing or verifying the claims of persecution or, indeed for determining the Applicant's true nationality" (*Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at para 26, [2006] FCJ No 181 (QL); see also *Liu v Canada (Minister of Citizenship and Immigration)*, 2007 FC 831 at para 18, [2007] FCJ No 1101 (QL)). Section 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and s. 7 of the *Refugee Protection Division Rules*, SOR/2002-228 [Rules] set out the importance of establishing a claimant's identity:

IRPA

[sic]

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

106. La Section de la protection des réfugiés prend en compte, s’agissant de crédibilité, le fait que, n’étant pas muni de papiers d’identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n’a pas pris les mesures voulues pour s’en procurer.

Rules

[sic]

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

7. Le demandeur d’asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S’il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s’en procurer.

[4] The onus is on the claimant to produce acceptable documentation establishing his or her identity. This is a high burden, as it should be.

[5] A decision of the Board with respect to identity is exclusively fact driven. As such, the Board’s decision is reviewable on a standard of reasonableness. In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, the Supreme Court of Canada explained that reasonableness is a deferential standard which recognizes that certain questions “may give rise to a number of possible, reasonable conclusions”. The Court elaborated that “reasonableness is concerned mostly with the

existence of justification, transparency and intelligibility within the decision-making process”, as well as with “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”.

[30] The Court has also consistently warned that the Court should be wary of second-guessing the RPD on this issue. For example, Justice Gleason in *Rahal*, above, warned as follows:

[48] The issue of identity is at the very core of the RPD’s expertise, and here, of all places, the Court should be cautious about second-guessing the Board. 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 specious) and provided there is no glaring inconsistency between the Board’s decision and the weight of the 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.

[31] In the present case, the Applicant argues that the RPD and the RAD placed too high a burden on her. Her point is that both tribunals placed too much emphasis on security features in examining her documents when the record establishes that fraudulent documents are readily available everywhere in India and authentic documents are not issued with security features, so it is impossible to tell the difference between the two. She says this is India’s fault and not hers, and she should not be penalized for it.

[32] Throughout its Decision, as it deals with each document in turn, the RAD makes frequent reference to a lack of security features. All that this means, in the context of India, is that there are no security features upon which the Applicant can rely for purposes of authentication.

However, the RAD also rejects these documents as proof of identity because they do not tell the RAD what it needs to know in order to determine that she has Tibetan or Chinese citizenship.

[33] The Applicant concedes this but argues that the documents were at least sufficient to determine that she is Tibetan by ethnicity and that she is who she says she is. She also points out that the fact that she has an RC means that she was regarded as a foreigner in India, and this is supported by the RCs of her father and mother. She argues that this is important because documentation from India does not have the security features to prove that she is a Tibetan or Chinese citizen, so she can only prove this in a negative way by showing that, in India, she is regarded as a foreigner. She also says that her mother's affidavit further supports her personal and ethnic identity and that, taken in conjunction with her personal testimony, the RAD was unreasonable in its conclusion that she had not established she was not an Indian citizen.

[34] It seems to me that, when the Decision is examined as a whole, the RAD certainly did take the lack of security features into account when examining each document in turn but, in this regard, the RAD was simply pointing out the obvious: that this documentation had no security features that would assist the Applicant and great care was necessary because the documents came from a country where forged documentation is readily and easily available.

[35] However, the RPD had also rejected the documentation as an indicator of citizenship for other reasons and gave the Applicant every opportunity to establish her identity by other means. She produced additional documents which were then examined in turn.

[36] I also do not think that the RPD and/or the RAD neglected to consider the Applicant's personal and/or ethnic identity. In considering the RC, for example, the RAD points out (at para 26) that, contrary to the Applicant's argument, the RPD did not find her to be a Tibetan; rather the RPD simply stated that she speaks Tibetan and submitted documents that she grew up in a Tibetan community in India. And the RAD points out that, with regard to the Green Book, "any individual who identifies themselves as an exiled Tibetan may make payments to maintain their identity regardless of their citizenship."

[37] I cannot find unreasonable the RAD's finding that Tibetan Settlement Camp No. 3 and the *Bonafide Certificate* were forgeries because of the presence of the photograph over the stamp. When I examine the copies of these documents, there is evidence for this assertion and I don't think I can second guess the RAD on this point.

[38] When the RAD says that the "affidavit is a statement of facts, but it is not an identity document," the RAD surely means that it doesn't make up for the lack of formal identity documents that establish citizenship. In fact, it seems to me that the affidavit of the Applicant's mother might indeed speak to the Applicant's personal or ethnic identity, but the RAD says that "even if the Applicant was able to establish herself as a Tibetan by ancestry/ethnicity, this does not mean she has established her personal identity or that she does not have a right to Indian citizenship." So I cannot agree that the RPD and/or the RAD simply leave out of account personal or ethnic identity.

B. *Identity Documents*

(1) Registration Certificate (RC)

[39] The Applicant produced a “copy of a copy” of an RC for Tibetans. The RAD’s conclusions on this document are as follows:

[25] The RAD notes that because the RC document is a copy of a copy, the RAD is unable to ascertain whether the document contains any security features and whether it is a genuine document. The RAD places little evidentiary weight on the copy of the RC document and further finds it is insufficient to prove identity or citizenship. The RAD further notes that the Appellant was given the opportunity to provide additional evidentiary support from Indian authorities, but no further submission was received by the RPD or the RAD.

[40] The Applicant says that “it defies reason to blame the applicant for not being immediately certain whether she could obtain confirmation of the existence of her original RC, from the Indian authorities”:

There was no evidence that the applicant had ever, in her life, been confronted with a need to approach the Indian authorities for a confirming letter concerning any of her documents. There was simply no reason to expect that the applicant would have any knowledge of her ability to do this and the RAD erred by reaching for deficiencies in her testimony where none existed.

[41] The real problem for the Applicant in this regard was that she did say it should be possible to provide a letter, and the RAD gave her the opportunity to provide any additional support from the Indian authorities, but she did not follow up with the RPD and no further submissions were ever received by either the RPD or the RAD. Hence, for reasons given, the RC could not be authenticated.

[42] The Applicant now says that the RAD placed an “impossible burden” on her because “no form of identity documentation in India contains security features (with the possible exception of passports issued after April 2013), or is immune from fraud” (at para 11).

[43] The onus is upon the Applicant to satisfy the RPD and the RAD as to her identity. The Applicant argues that this cannot be done in the usual way by producing conventional identity documents (at para 12):

It follows that no Indian citizen, let alone a Tibetan “refugee” like the applicant who had no access to an Indian passport or even a birth certificate issued by the Indian government, could satisfy the RAD of her identity given that the RAD would discount any identity document produced because it lacked “security features.”

[44] The RAD cannot simply accept any document that is produced. If no indicia of authentication are possible for any documents coming out of India, as the Applicant now alleges, then the Applicant could have said this. She was given the opportunity to provide any additional evidentiary support from the Indian authorities, but she made no further submissions. Her case before the RAD was not that such evidentiary support is not possible for the reasons that counsel now argues on review. She had the opportunity to explain to the RAD post-hearing what efforts she had made to obtain evidentiary support and why this was not possible, but she did not do this. She now argues on review that it was not possible to provide such documentation, but this was not put to the RAD, so the RAD cannot be held unreasonable for failing to consider an allegation of impossibility that was not made or substantiated before it. And the Applicant did produce a birth certificate.

[45] This is something of a catch 22 for the RAD to deal with. The Applicant alleges, in effect, that her documents were not fraudulent just because they lacked security features, and this is because, as the RIR IND 102461.A, April 26, 2007 points out:

...there are no identity documents in India that are not altered or counterfeited frequently. Even when we send them for verification we cannot be sure that the “verifier” has not been paid to tell us the document is genuine.

[46] The RAD could not accept that the RC was genuine because the Applicant produced a “copy of a copy” that did not show if there were any security features that could be relied upon. But the Applicant also testified that she didn’t hold a valid RC when she left India and she was then given an opportunity to provide any additional evidence she could to validate the RC. She never followed up. This does not mean that this document could not have been validated. And the fact that counterfeit documents are readily available in India does not mean that authentic documents cannot be validated. Nor did the RPD or the RAD reject the Applicant’s sworn evidence. That evidence was weighed with the documentary evidence and there is nothing to suggest that the presumption of truthfulness was not applied.

[47] It is notable that, after the RPD hearing, the Applicant provided a birth certificate even though she had earlier said she did not have a birth certificate. No explanation was given by the Applicant for this *volte-face*. I think it also has to be pointed out that none of the documentation submitted by the Applicant was rejected simply because it lacked security features.

(2) The Tibetan Green Book

[48] Much of the same can be said for the Tibetan Green Book. The RAD examined this document and the Applicant's testimony before reaching its conclusions:

[27] The RPD found that the Tibetan Green Book does not provide sufficient evidence of identity or citizenship. The RPD further found that a Green Book may identify the holder as an exiled Tibetan, but it does not ascribe a nationality to the holder. The RAD has reviewed the copy of the Tibetan Green Book provided to the RPD. The RAD further notes this document contains no security features.

[28] Documentary evidence states the Green Book is "designed to serve the purpose of (an) identity certificate (for) Tibetan nationals in lieu of the passport. It comes with requirements of voluntary contributions and keeping the book current." The RAD finds in reviewing the documentary evidence that a Green Book may identify the holder as an exiled Tibetan, but it does not ascribe a nationality to the holder. Moreover, the RAD notes that any individual who identifies themselves as an exiled Tibetan may make payments to maintain their identity regardless of their citizenship.

[29] The Appellant was questioned about how she obtained her Green Book without having a birth certificate. The Appellant testified that her mother obtained the document for her when she was a child. The RAD finds the Appellant's testimony did not fully address the question put to her. The RAD finds it is evident that she has submitted a Green Book in evidence, but she did not provide a fulsome explanation as to how her mother obtained it without supporting documentation. The RAD notes the Appellant's previous testimony confirmed she did not have a birth certificate. The RAD further notes the Appellant submitted a post-hearing document titled "Birth Certificate" issued in April 2000, when the Appellant was approximately 24 years old. The RAD addresses the Birth Certificate document in a following section.

[30] The RAD in considering the documentary evidence as well as the Appellant's explanation and her testimony concerning the birth certificate assigns the Green Book no evidentiary weight in establishing the Appellant's identity.

[31] The Appellant has provided no specific submissions in this regard, other than stating that the lack of security features is not determinative on any of the documents. After considering the lack of security features as well as its own assessment of the evidence that there is sufficient evidence to support placing little weight on this document as support for the Appellant's identity or citizenship The RAD agrees with the finding of the RPD in this regard.

[footnotes omitted]

[49] Counsel makes the following objections to this analysis:

16. Next, at paragraph 29 of its reasons, the RAD appeared to hold it against the applicant that she did not know how her mother obtained her Green Book for her without a birth certificate.

17. It is submitted in this regard that the RAD appeared to overlook the fact, which it had noted, that the applicant was a child when her mother applied for and obtained the Green Book. In these circumstances it was simply irrational for the RAD to blame the applicant, as it did, for failing to "provide a fulsome explanation" for how her mother obtained the Book "without supporting documentation" (assuming that no document but a birth certificate could have been or was supplied).

18. In light of the RAD's error, above, it is submitted that it could not, as it did, assign the applicant's Green Book "no evidentiary weight" in establishing her identity. This was particularly so given that the RAD had quoted the documentary evidence to the effect that the Green Book was

... designed to serve the purpose of [an] identity certificate [for] Tibetan nationals in lieu of the passport

19. While the Green Book might not establish the citizenship of a holder, it is submitted that it was capable of proving the holder's personal identity and ethnic identity as a Tibetan. It is submitted that the RAD acted unreasonably in finding that the Book did not do so.

[footnotes omitted]

[50] The RAD found that the Green Book “may identify the holder as an exiled Tibetan, but it does not ascribe a nationality to the holder,” and “any individual who identifies themselves as an exiled Tibetan may make payments to maintain their identity regardless of their citizenship.” The Applicant accepts this.

[51] The problem with the Applicant’s explanation as to how she obtained the Green Book was not simply about her not having a birth certificate. The Applicant said that her mother had obtained the document for her when she was a child and “the RAD finds the Appellant’s testimony did not fully address the question put to her.” The RAD finds it is evidence that “she had submitted a Green Book in evidence, but she did not provide a fulsome explanation as to how her mother obtained it without supporting documentation.” The birth certificate is mentioned, but only to point out that the Applicant had testified she didn’t have one. So the RAD needed to know how the Applicant’s mother had obtained a Green Book for her when she was a child. This is a question that would obviously be asked and, even if the Applicant did not know the answer, she could have made inquiries and provided an explanation. She did provide a birth certificate post-hearing that was issued in April 2000, when the Applicant was 24 years old. But this doesn’t explain how her mother obtained a Green Book for her. The explanation could have been provided by the mother in her supporting affidavit, but it was not.

[52] There is nothing unreasonable or unfair about the RAD’s treatment of the Green Book. The RAD needed proof of citizenship to support the claim. The Green Book did not provide that proof.

(3) Note from Tibetan Settlement Camp No. 3

[53] The RAD handles this documentation as follows:

[32] The RPD found that the letter from Tibetan Settlement Camp No. 3 dated August 13, 2013 did not support the Appellant's identity. No submissions were made by the Appellant in respect of this particular document. The RAD finds in its review of this handwritten note that this document does not contain any security features beyond a partial stamp. The stamp is overlaid by a photograph. The RAD finds that the photograph should bear a portion of the stamp. The absence of the stamp on the photograph gives the appearance that the photograph was added to the document after the issuing of the document.

[33] The purpose of a stamp is to "seal" the document to attest to its genuineness and as a means to demonstrate that it has not been altered or tampered with. The presence of the photograph over the stamp undermines the integrity of the stamp and as a result, the credibility of the document itself. The RAD finds this document has been tampered with and is a fraudulent document that can be given no weight in this appeal.

[34] The RAD finds this document is not capable of proving the Appellant's identity or nationality. The RAD concurs with the RPD's findings in respect to this document.

[footnotes omitted]

[54] The Applicant now takes issue with these findings as follows:

20. The RAD then accused the applicant of knowingly producing false documents, apparently the statement from the Tibetan Settlement Camp No. 3 and the "Bona Fide" Tibetan certificate. The RAD reached this conclusion because it found that the photographs of the applicant on the two documents, had been super-imposed over the stamps on them, since the photographs overlaid the stamps. As a result, the documents had been tampered with and were fraudulent.

21. It is submitted that it is difficult to see how the RAD reached this conclusion. The RAD does not say, and there is no evidence to suggest, that it had access to the original of either

document, rather than the copies contained in the RPD or appellant's records that were before it. Counsel's letter of December 2, 2013 to the RPD attaching the two documents as well as several others, indicates that copies of the documents were attached, not originals. It is impossible to tell from these copies, whether or not the photographs overlaid the stamps, given the poor quality appearance of the stamps on the photocopies of the documents. It is submitted therefore that there was no evidentiary basis for the RAD's finding that the documents were fraudulent, or that the applicant was personally aware of the alleged fraud.

22. Given that the RAD's finding of fraud was not "substantiated", it is submitted that, as argued above, the principles set out in **Tran, supra**, apply, and therefore the RAD erred in rejecting the applicant's (and her mother's), sworn evidence as to her identity.

[footnotes omitted]

[55] The Applicant chose to submit copies and to make no submissions regarding the Tibetan Settlement Camp No. 3 document. She now says it is "impossible to tell from these copies, whether or not the photographs overlaid the stamps, given the poor quality appearance of the stamps or the photocopies of the documents." She is now asking the Court to second-guess the RAD as to what the appearance of these documents suggests in terms of authenticity. In the absence of any evidence of authenticity that the RAD overlooked, the Court is not here to substitute its own opinion for the RAD's as to what the appearance of these copies might suggest about their authenticity. My own examination of this documentation suggests to me that copies provide sufficient grounds for the RAD's conclusions on inauthenticity.

(4) Documents from the Central School for Tibetans

[56] The RAD deals with these documents as follows:

[35] The RPD found the two undated documents from the “Central School for Tibetans” including a report card and a “bio-data” page were insufficient to establish identity or nationality. No submissions were made by the Appellant in regard to these documents. The RAD in its review of the two portions of this disclosure [notes] that the documents are copies and are not originals, the documents lack any visible security features. The RAD further notes the documents may indicate the Appellant attended the school, during a specified period of time, but they do not confirm her nationality or citizenship. The RAD places little weight on the copies of the documents from the Central School for Tibetans. The RAD supports the finding of the RPD in this instance.

[57] The Applicant makes no specific comments on this aspect of the RAD’s findings. Hence, the Applicant must be taken to accept them as reasonable in that this documentation does not confirm her nationality or citizenship.

(5) Post-Hearing Documents

(a) *The Bonafide Certificate*

[58] The RAD deals with this documents as follows:

[36] The RPD found that the “Bonafide Certificate” dated November 14, 2013 provided in the Appellant’s counsel’ post-hearing RPD disclosure does not establish her identity. The RAD has reviewed the document and noted the document is hand-filled and does not appear to contain any visible security features. The RAD notes a document such as this could be produced on any computer utilizing basic word processing skills. The RAD further notes the document states she is a “bonafide Tibetan who resides at the above address”. The RAD finds the document does not define what constitutes a bonafide Tibetan or how that individual or organization is qualified to make such a statement.

[37] The RAD further notes the document contains what appears to be a partial stamp. The stamp is overlaid by a photograph. The RAD finds that the photograph should bear a portion of the stamp.

The absence of the stamp on the photograph gives the appearance that the photograph was added to the document after the fact.

[38] The RAD has previously addressed that the purpose of a stamp is to “seal” the document to attest to its genuineness and as a means to demonstrate that it has not been altered or tampered with. The presence of the photograph over the stamp undermines the integrity of the stamp and as a result, the credibility of the document itself. The RAD finds this document has been tampered with and is a fraudulent document that can be given no weight in this appeal.

[39] The RAD finds this document is not capable of proving the Appellant’s identity or nationality. The RAD concurs with the RPD’s findings in respect to this document. The RAD further notes that submitting a false or irregular document may have an impact on the weight assigned to other documents provided by the Appellant, especially when they are interrelated, and on the overall credibility of an Appellant.

[40] The RAD finds there are persuasive reasons to question the authenticity of this document as well as ‘The Note from Tibetan Settlement Camp No. 3’. With this information in in [*sic*] mind, the RAD concludes that this finding severely undermines the credibility of the identity documents submitted by the Appellant.

[footnotes omitted]

[59] The Applicant raises the same criticisms of the RAD’s assessment as raised for the Tibetan Settlement Camp No. 3 document and I reach similar conclusions as to why the RAD cannot be said to be unreasonable. In addition, however, the contents of the document are also addressed and an explanation is given as to why those contents do not establish identity.

(b) *The Birth Certificate*

[60] The RAD addressed the birth certificate as follows:

[41] The RPD found that the Appellant’s sworn testimony that she had never been issued a birth certificate and her failure to

provide any explanation for the submission of this document post-hearing was sufficient to place no evidentiary weight on the birth certificate issued by the “Department of Home Affairs Central Tibetan Secretariat of His Holiness the Dalai Lama”. The Appellant submits the RPD misinterpreted the facts. The RAD is not persuaded by the argument of the Appellant.

[42] The Appellant further submits that the RPD erred when it drew a negative inference in the absence of a birth certificate, but when one was provided post-hearing, to accord it no weight, in the Appellant’s submission, was erroneous. The RAD has reviewed the audio recording of the hearing. The RAD notes the Appellant was asked if she had a birth certificate and she testified that she was not eligible for a birth certificate because she was born at home and no individuals born at home in India are issued birth certificates. She further added that her parents did not register her birth at the time, due to their lack of literacy and ignorance on their part. The RAD finds that this testimony by the Appellant may be in reference to not having an Indian birth certificate.

[43] However the following question by the RPD asks the Appellant if she had any additional identification documents, she indicated that she had none. The RAD notes the birth certificate, submitted post hearing, was allegedly issued on April 25, 2000, and the RAD finds that it would find it reasonable to expect that the Appellant would have confirmed its existence in her testimony and provided it at the RPD hearing. Further to this, the RAD finds this document does not negate the Appellant’s testimony that she had been born in India and her parents had failed to register her birth.

[44] The RAD has reviewed the document submitted in evidence and finds that it is a hand-filled document, with no evidence of visible security features. The RAD notes a document such as this could be produced on any computer utilizing basic word processing skills. The RAD further notes the document contains a mistake in the listing of the date of issuance as “month/day/year”, as it is entered as “day/month/year”. As well there are a number of inconsistencies in the alignment of the letters in the document for example the letter “e” in “Name of father”, “Name of mother” and the letter “t” in the word “Nationality”. The RAD finds that it is unreasonable for a document issued by an official Tibetan organization to contain errors such as this. The RAD when it considers the observational findings in respect to the document as well as the Appellant’s testimony, finds it places little evidentiary weight on the birth certificate as support for the

Appellant's identity. The RAD concurs with the finding of the RPD in this instance and the Appellant's argument must fail.

[61] The Applicant does not specifically address these findings and so must be taken to accept them.

(c) *Affidavit of Applicant's Mother*

[62] The RAD deals with this document as follows:

[45] The RPD found the affidavit from the Appellant's mother did not explain the fact that the Birth Certificate submitted post-hearing was issued in April 2000, but it was not identified by the Appellant when confronted about the possession of additional identity documents. The RPD assigned the affidavit little evidentiary weight. The Appellant submits the RPD erred in giving the affidavit from the Appellant's mother no weight.

[46] The Appellant further argues that she testified that she did not have a birth certificate issued by the Indian government, and the Appellant's mother's affidavit indicates that her birth was registered at the Tibetan Settlement Office. In light of this, the Appellant argues that there was no contradiction as found by the RPD. The RAD has previously discussed the Appellant's post-hearing submission of the Birth Certificate and found it was not credible in light of her testimony.

[47] When considering this finding, the RAD finds the statements in the affidavit are insufficient to offset the Appellant's sworn testimony. The RAD notes the affidavit is a statement of facts, but it is not an identity document. The RAD notes that the lack of identity documents is the central element of this appeal.

[48] The RAD agrees with the assignment of little evidentiary weight to the mother's affidavit and the Appellant's argument must fail. The RAD finds that even if the Appellant was able to establish herself as a Tibetan by ancestry/ethnicity, this does not mean that she has established her personal identity or that she does not have a right to Indian citizenship.

[63] The Applicant criticizes these findings as follows:

13. It is submitted therefore that, absent a “clear and substantiated finding of fraud”, the RAD erred by finding that the applicant had not proved her identity, because it discounted her sworn testimony to that effect. The RAD compounded this error in the manner in which it dismissed the affidavit of the applicant’s mother:

The RAD notes the affidavit is a statement of facts, but it is not an identity document. The RAD notes that the lack of identity documents is the central element of the appeal

The RAD, in the above finding, overlooked the fact that the affidavit was sworn evidence as to the applicant’s personal identity. It could not therefore be given no weight because it was not an “identity document”.

[64] The RAD specifically notes that “the affidavit is a statement of facts, but is not an identity document.” In the context of the Decision as a whole, the RAD is obviously distinguishing the affidavit from the other more official documents that the Applicant produces and that are normally used to establish identity. This is not to say that the affidavit does not speak to identity issues. The affidavit is not given little weight because, as the Applicant alleges “it is not an identity document.” It is given little weight for all of the reasons given by the RAD as set out above.

(d) *Other Credibility Issues*

[65] The RAD also made credibility findings based upon the Applicant’s account of how she traveled to Canada. The Applicant makes no mention of these findings in her submissions and so must be taken to have accepted them.

C. *Conclusions*

[66] All in all, I have to say that there is evidence to support the RAD's conclusions, reasons are given for these conclusions, and there are no real inconsistencies between the conclusions and the weight of the evidence. This being the case, I think that Justice Strickland's summary in *Dai v Canada (Citizenship and Immigration)*, 2015 FC 723 could equally well be applied to the present case:

[34] In conclusion, the burden was on the Applicants to establish their identity. The Member did consider the totality of the evidence (*Toure* at paras 31, 34; *Yang v Canada (Citizenship and Immigration)*, 2009 FC 681 at para 6), and the assessment of the weight to be given to documents is a matter within the discretion of the Member (*Zheng* at para 18; *Tkachenko v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1652 at para 11; *Ipala v Canada (Minister of Citizenship and Immigration)*, 2005 FC 472 at para 31). The issue of identity is at the very core of the RPD's expertise and the Court should be cautious about intervening in such decisions (*Toure* at para 32; *Barry v Canada (Citizenship and Immigration)*, 2014 FC 8 at para 19; *Rahal* at para 48). Having reviewed the decision and the materials filed by the parties, I am of the view that the Member's conclusion as to identity falls within the range of possible, acceptable outcomes that are defensible in respect of the law and the facts.

[67] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

D. Clifford Luyt

FOR THE APPLICANT

Catherine Vasilaros

FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt
Barrister & Solicitor
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT