

Federal Court



Cour fédérale

Date: 20180522

Docket: IMM-4400-17

Citation: 2018 FC 531

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 22, 2018

Present: Mr. Justice LeBlanc

BETWEEN:

FATOUMA OMAR DOUALEH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Djibouti. Saying that she feared her violent husband, whom she allegedly married under pressure from her father in May 2015, she fled the country in November 2016 and claimed refugee protection in Canada after passing through the United States, where she had obtained a visa. The Immigration and Refugee Board, Refugee Protection Division (RPD), did not believe her story and thus denied her claim for refugee protection.

[2] Dissatisfied with the RPD's decision, the applicant is seeking judicial review. Essentially, she criticizes the RPD for making an unreasonable assessment of the credibility of her story. She also criticizes the RPD for failing to give adequate consideration to the Board's *Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution (Guideline 4)*.

[3] The relevant facts in this case can be summarized as follows: The applicant says she was married, without her consent, to Samatar Hassan Awaleh (Samatar) on May 15, 2015. She says that, prior to that, she had been in a romantic relationship with another man. Their relationship had lasted three years but, for cultural reasons, she was afraid to tell her parents about him.

[4] In April 2015, her mother told her that her father had given her hand to Samatar, who was a powerful family friend in Djibouti. According to the arrangement negotiated, Samatar was also going to adopt the applicant's autistic nephew, Mourad. After resisting the idea of marrying a person who was a perfect stranger to her, and even fleeing the home to escape her fate, the applicant finally agreed to the marriage out of fear of her father disowning her.

[5] The first three or four months of the marriage allegedly went smoothly. However, things later deteriorated when Samatar began taking the applicant's entire salary from her job as an accounting assistant at a credit firm, and the couple began sleeping separately. Physical violence then followed, the applicant saying that, at one point, Samatar had even threatened to kill her. He also began being violent toward Mourad.

[6] In June 2016, the applicant contacted one of her sisters, who lives in Canada, and told her about her husband's abuse. Her sister advised her to leave him and flee the country. The

applicant took steps to come join her sister in Canada a few weeks later by applying for a United States visa. She obtained the visa on September 18, 2016. She apparently then convinced her mother to take Mourad into her home because she did not have the means to bring him with her to Canada. When he found out that Mourad was going to live with the applicant's mother, Samatar kicked her out of their home. The applicant felt that was the ideal opportunity to leave the country, which she did on November 3, 2016, after her sister purchased plane tickets for her.

[7] One week after she arrived in the United States on November 5, 2016, she went to the Canadian border to file a claim for refugee protection.

[8] On September 14, 2017, the RPD denied her claim, finding that the applicant was not credible. This finding of lack of credibility was based on the following elements:

- a. The applicant's difficulty, during her testimony before the RPD, was in specifying—which the narrative in support of her refugee claim did not do—what happened in the month during which the key moments in her narrative occurred or even specifying her husband's day-to-day behaviour toward her, as the RPD had to ask four times to obtain these details;
- b. The contradictory information about her husband's identity and date of birth in the applicant's Basis of Claim (BOC) Form, where her husband is identified as Samatar Hassan Awaleh, born in 1987; the marriage certificate, where his date of birth is indicated as 1991; the U.S. visa application, where her husband's name is listed as Samatar Hassan Hersi and his date of birth as January 6, 1984; and, lastly, the correction the applicant

made to the BOC at the beginning of the RPD hearing, where she said her husband's date of birth was February 12, 1991; and

- c. The contradiction between the applicant's statement, in the BOC, that she was so afraid of her husband that she did not dare speak to anyone about her situation and the correction made to the BOC at the beginning of the RPD hearing, where she said that she would sometimes go to a women's association in Djibouti while she was with her husband.

[9] The RPD said it was dissatisfied with the applicant's explanations when she was confronted with these contradictions. In particular, it did not accept the applicant's explanation that she had not checked the content of her U.S. visa application, which had been completed by a third party, as attentively as she should have because the deadline was approaching. Given that this application was of utmost importance to the applicant, who wanted to escape Djibouti, where she said she feared for her life, the RPD found it unlikely that she would not check the accuracy of the information on the visa application before signing it. The RPD also noted that her husband's name and date of birth were the only errors on the application form. As for the contradiction about the claim in the BOC that she was afraid to discuss her problems with anyone, the RPD found the applicant's explanations to be incomprehensible.

[10] I note that the respondent intervened before the RPD to produce the U.S. visa application form signed by the applicant and point out the contradiction in her husband's identity and date of birth.

[11] As previously stated, the applicant argues that the RPD erred in two respects: first, by making an unreasonable assessment of her credibility and, second, by failing to give adequate consideration to *Guideline 4* in its assessment of her manner of testifying.

[12] With regard to credibility, the applicant argues that the RPD focused too heavily on peripheral aspects of the record, such as her difficulties describing her daily life with her husband or specifying the dates or months when key incidents in her relationship with him occurred, insisting that women who have experienced spousal violence often have these kinds of difficulties when testifying. According to the applicant, the RPD thus conducted a microscopic analysis of the evidence, ignoring the key aspects of the refugee claim, that is, the alleged episodes of violence.

[13] The applicant also argues that the RPD's finding about the contradictory evidence regarding her husband's identity and date of birth does not consider the context in which the U.S. visa application was made, that of a woman who was the victim of spousal violence for more than a year before she left for Canada.

[14] Lastly, she argues that the RPD did not exhibit the sensitivity required by *Guideline 4* in assessing her testimony, particularly by failing to consider the impunity toward spousal violence that exists in Djibouti.

[15] Despite the commendable effort by counsel for the applicant at the hearing to assert his client's point of view, I cannot allow the judicial review.

[16] It is well established that the RPD's decision as to whether or not to recognize a claimant as a refugee or a person in need of protection, particularly when it is based on an assessment of the credibility of the claimant's story, is reviewable on a standard of reasonableness (*Lawal v. Canada (Citizenship and Immigration)*, 2010 FC 558 at para 11; *Rahal v. Canada (Citizenship and Immigration)*, 2012 FC 319 at para 22 [*Rahal*]). This is a deferential standard.

[17] Thus, the Court will not intervene unless it is satisfied that the impugned decision does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). It is also relevant to reiterate that when the basis for denying a refugee claim is the claimant's credibility, the Court must give great deference to the RPD's decision (*Rahal* at para 22; *Aguebor v. Canada (Citizenship and Immigration)*, 160 NR 315 at para 4, [1993] FCJ No. 732 (FCA)).

[18] In this case, I have difficulty finding, as the applicant is requesting, that the RPD's decision requires my intervention. Before delving into the applicant's story, the RPD needed to be convinced of her credibility, since that is the intrinsic nature of its mandate. In my view, there were a sufficient number of elements on record for the RPD to have reasonable doubt about the credibility of the applicant's story. Her inability to specify even the month when certain episodes of spousal violence occurred or to provide a spontaneous description of her day-to-day relationship with her husband, the confusion surrounding her husband's name and date of birth—an element of great importance—and the late amendment to the BOC that contradicted a statement that had been made on the form, could all, in my opinion, raise legitimate doubt for the RPD about the credibility of the refugee claim.

[19] The RPD could also reasonably doubt the applicant's explanations about this confusion and contradiction. First, I agree that it is unlikely that the applicant would not verify such critical information as her persecutor husband's identity when she signed the U.S. visa application, especially since, as the RPD pointed out, all of the other information on the form was correct. At the very least, it was not unreasonable for the RPD to arrive at that conclusion.

[20] Second, the applicant's explanation at the hearing about the contradiction resulting from the last-minute amendment to the BOC to indicate that she would occasionally go to a women's association in Djibouti when she had declared in her BOC that she had told no one about her situation, is indeed difficult to understand, having read the transcripts of the hearing. Counsel for the applicant argued that his client should not be penalized for what was, after all, an effort to be transparent. Even if this could be considered a conscious effort to be transparent, the result was a contradiction for which the applicant was unable to provide a satisfactory explanation. Once again, I cannot say that the RPD made an error here that would affect the reasonableness of its decision.

[21] Lastly, I am afraid that *Guideline 4* is of no help to the applicant in the circumstances of this case. Counsel for the applicant acknowledged that this guideline does not compensate for credibility issues. Although the guideline requires the RPD to be sensitive to the reality of refugee claimants who have experienced spousal violence and who, as a result, often present with post-traumatic symptoms that may affect their manner of testifying, *Guideline 4* is not intended to "serve as a cure for all deficiencies in an applicant's claim or evidence" (*Duran Mejia v. Canada (Citizenship and Immigration)*, 2009 FC 354 at para 66), or to corroborate "any evidence of gender-based persecution so that the giving of the evidence becomes proof of its

truth” *Newton v. Canada (Minister of Citizenship and Immigration)*, 182 FTR 294 at para 18, [2000] FCJ No. 738).

[22] In this case, I find that the RPD was sensitive to the applicant’s situation by giving her the benefit of the doubt with regard to her difficulty in recalling the dates when the key incidents in her relationship with her husband allegedly occurred. Moreover, in the written submissions made to the RPD following the hearing, the representative for the applicant acknowledged that the RPD [TRANSLATION] “had been very sensitive toward Ms. Doualeh” (Certified Tribunal Record, at page 54).

[23] However, other problems remained for which *Guideline 4*, in the RPD’s view, cannot compensate. Even if another decision-maker could have come to a different conclusion, which is not the criterion to be met here, I could not say that the RPD committed a reviewable error by finding as it did in its application of *Guideline 4* and in its assessment of the applicant’s credibility. In other words, there was a level of concern about the applicant’s refugee claim for which it was reasonable to find that *Guideline 4* could not compensate and that justified the rejection of the claim from the standpoint of the reasonableness standard of review.

[24] Ultimately, the applicant is requesting that I reassess the case and substitute my own findings for those of the RPD. However, it is well established that this is not the Court’s role when reviewing, as in this case, questions of mixed fact and law that fall within the expertise of the administrative decision-maker (*Hamed v. Canada (Citizenship and Immigration)*, 2009 FC 93 at para 7; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61 at para 54).

[25] The applicant's application for judicial review will therefore be dismissed. Neither party requested that a question of general importance be certified for appeal. I agree that there is no basis for certifying a question of general importance in the circumstances of this case.

JUDGMENT in file IMM-4400-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“René LeBlanc”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4400-17

STYLE OF CAUSE: FATOUMA OMAR DOUALEH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 15, 2018

JUDGMENT AND REASONS: LEBLANC J.

DATED: MAY 22, 2018

APPEARANCES:

Jacques Despatis FOR THE APPLICANT

Charles Maher FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jacques Despatis Law Office FOR THE APPLICANT
Lawyers
Ottawa, Ontario

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario