

Federal Court



Cour fédérale

Date: 20180622

Docket: IMM-5043-17

Citation: 2018 FC 654

Ottawa, Ontario, June 22, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**KADRA MOHAMED IBRAHIM
WARSAMA OMAR FARAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This case concerns a refugee protection claim by a mother and son who fear persecution by members of their family and in-laws if they return to Djibouti. The Applicants' claim was denied by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] which determined that they are neither Convention refugees pursuant to section 96 nor persons in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In this application for judicial review, the Applicants raise two grounds for intervention. They first submit that the duty of fairness owed to the Applicants was breached by a failure to provide proper and accurate interpretation at the hearing before the RPD. Second, they submit that the RPD's credibility findings were unreasonable as they were based on various misunderstandings by the RPD or mistranslations of the interpreter.

[3] In my view, neither of the Applicants' arguments has merit. The Applicants have failed to establish that they were denied procedural fairness or that the RPD committed any reviewable error. The application is accordingly dismissed.

I. Facts

A. *Facts Alleged in the Applicants' Basis of Claim Form*

[4] The following is a summary of the facts alleged by the Applicants in their Basis of Claim Form [BOC], which was completed in French. They claim as follows:

- i. The Applicant, Kadra Mohamed Ibrahim, was born in Somalia in 1960 and is a citizen of Djibouti. She is also a member of the minority tribe known as Akisho. Her husband died from a cardiac event in April 2015.
- ii. Mrs. Ibrahim is the mother of three sons, including the Applicant, Warsama Omar Farah, born in 1989, and two daughters. Her two other sons still live in Djibouti with their aunt. One of her daughters lives in Dubai and the other lives in Canada.

- iii. On September 7, 2015, Mrs. Ibrahim's family and her in-laws informed her that she had to marry her brother-in-law according to levirate tradition. Mrs. Ibrahim said that she did not want to because she was too old to marry another man. Her brother-in-law responded that there was no age for this practice, and it was the will of the family and she could not refuse. Her parents and her parents-in-law were in complete agreement. Only Mrs. Ibrahim's children were against the decision.
- iv. On September 8, 2015, the family informed Mrs. Ibrahim's children that she would have to marry her brother-in-law. Mr. Farah was furious and said he would pay with his life before they would force his mother to marry another man. The father-in-law then threatened him and said he would be punished for insulting the family and the traditions.
- v. The following week [September 16, 2015], Mrs. Ibrahim's in-laws arrived at her home accompanied by eight young men from the family armed with knives and sticks who began beating Mr. Farah. They broke three of his teeth and his right hand. After the beating, Mr. Farah lost consciousness. Mrs. Ibrahim was not able to bring her son to the hospital for fear they would attack her and her other children.
- vi. On October 13, 2015, Mrs. Ibrahim's family and her in-laws came to the house for a customary celebration of her marriage to the brother-in-law that was to be concluded. Upon their arrival, Mrs. Ibrahim was overtaken by panic about having to marry her brother-in-law and categorically refused to do so. Her father-in-law threatened her with death if she humiliated the family with a refusal. He then beat her and crushed her left foot [écrasé le pied gauche] so she couldn't escape and so she would obey him. Several

hours later, she was taken to hospital and where it was discovered that she had a fractured foot.

- vii. After she left the hospital, Mrs. Ibarhim did not return home but stayed with her children at her sister's house. Her children tried to return home to collect certain personal effects but the house was occupied by members of the family. They beat and also threatened them and said that if their mother did not come back, they would attack them again.
- viii. Mrs. Ibrahim began looking for a way to leave the country and made contact with her daughter living in Canada. Because of her financial limitations, she could not leave the country with all of her children. She received United States visas for her and Mr. Farah on November 3, 2015 and left Djibouti on May 25, 2016, arriving in the United States the following day.
- ix. The Applicants arrived in Canada on July 9, 2016 and claimed refugee status. They believe that if they return to Djibouti they will continue to suffer persecution by members of both Mrs. Ibrahim's family and that of her in-laws. Mrs. Ibrahim believes that they will continue to force her to marry her brother-in-law. She also believes that they will attack her children, particularly her son Warsama, for running away with her and for opposing the marriage. The Applicants also believe they will continue to be persecuted for being a part of the minority Akisho tribe as minority tribes are discriminated against and marginalized in Djibouti.

B. *Decision of the Refugee Protection Division*

[5] The Applicants' claim was heard by the RPD on September 12, 2017. The hearing was conducted in French, with an interpreter translating to and from Somali and French. In its decision written in French dated September 29, 2017, the RPD found the Applicants were not Convention refugees or persons in need of protection. It concluded that Mrs. Ibrahim was not a credible witness because of numerous contradictions and implausibilities in her testimony. The RPD's credibility findings are canvassed in detail at paragraphs 17 to 59 of the decision.

[6] The RPD did not accept the various explanations provided by Mrs. Ibrahim as to why the in-laws would want to force her to marry her brother-in-law. Mrs. Ibrahim gave three different explanations during the hearing. When questioned by her lawyer as to why it was important for her in-laws that she marry her brother-in-law, Mrs. Ibrahim testified that it was to prevent the property of her deceased husband from falling into the hands of another family. She explained if she were to marry another man, her late husband's property could go to another family [les propriétés pourraient aller vers une autre famille]. When asked by the RPD member if the property of her deceased husband would go to their children, Mrs. Ibrahim responded that in Somali culture, the family of the husband inherits the property. When pressed further by the RPD, Mrs. Ibrahim testified that since she did not have any children old enough to support themselves [je n'ai pas d'enfants qui sont d'âge pouvant se débrouiller], the property of her husband would go to his family, which she then identified as his brother and parents. The RPD found that this version contradicted Mrs. Ibrahim's earlier testimony that her in-laws wanted to force her to marry her brother-in-law in order to prevent the inheritance from passing to the

family of another man if she remarried. Invited to explain the contradictions, Mrs. Ibrahim provided a new explanation for the alleged forced marriage, stating that the in-laws were forcing her to marry to make her a slave and to take control of the family and her husband's property. The RPD concluded that her credibility was undermined.

[7] The RPD also had difficulty with Mrs. Ibrahim's assertion that she did not have any children old enough to manage their own affairs. The RPD noted Mr. Farah is 27 years old, the daughter who lives in Canada is 32, the two other sons in Djibouti are 24 and 25 respectively, and finally the daughter in the United Arab Emirates is 25. When confronted with the fact that her children appeared to be well above the age of dependency, Mrs. Ibrahim skirted the issue. The RPD concluded that Mrs. Ibrahim's credibility was further undermined and gave no credence to her account that her in-laws could control her life as she claimed.

[8] Other contradictions were noted by the RPD. Mrs. Ibrahim testified that she lost consciousness after she was hit by her father-in-law on October 13, 2015. She also stated, in response to a question from the RPD, that she was taken to the hospital around 45 minutes after she was hit. The RPD pointed out that the BOC narrative reflects that Mrs. Ibrahim was taken to the hospital a few hours later [quelques heures plus tard] after the beating. When asked to explain this inconsistency, Mrs. Ibrahim responded that she was referring to the time that passed between the announcement of the marriage and the conflict, being 45 minutes. The RPD did not accept Mrs. Ibrahim's explanation as it was clear that she had understood the question and her response related to the period from the time she was beaten to the time she was taken to the hospital.

[9] Mrs. Ibrahim testified at the hearing that she fainted and lost consciousness [je me suis évanouie, j'ai perdu conscience] after being hit by her father-in-law. The RPD inquired why she had not mentioned the fact that she had fainted in the BOC. Mrs. Ibrahim responded that she had fallen and that she became dizzy [étourdie]. The RPD was not satisfied with the explanation provided as it was non-responsive. The RPD reasoned that if Mrs. Ibrahim had actually been beaten to the point of fainting, it would have been an important and relevant element to include in her BOC.

[10] The RPD also concluded that there were serious discrepancies between the testimony of Mrs. Ibrahim and sworn statements of two neighbours who allegedly witnessed the incident on October 13, 2015. The two neighbours declared that they heard cries and saw Mrs. Ibrahim and her family being attacked by their uncles. With the aid of other neighbours, they separated and calmed the assailants. They saw Mrs. Ibrahim lying on the ground, injured and unable to get up. According to these two individuals, "some neighbours" brought Mrs. Ibrahim to the hospital [des voisins l'ont emmenée à l'hôpital]. The RPD noted the discrepancy between this statement and Mrs. Ibrahim's testimony alleging they themselves brought her there. Confronted with this contradiction, she only could repeat that these two neighbours were those who had brought her to hospital as well as her sister and mother-in-law.

[11] The RPD made a negative credibility finding regarding both the September 16, 2015 incident in which Mr. Farah was allegedly beaten and the beating of Mrs. Ibrahim on October 13, 2015. Mr. Farah testified that he was beaten by eight young men from his tribe. Ms. Ibrahim testified that her father-in-law, mother-in-law, brother-in-law, the cousin of her husband, her

father, and her brother came to her house to announce the celebration of marriage on October 13, 2015. The two neighbours declare in their statement that on both dates, the Applicants were attacked at home by numerous people who were their uncles [leurs oncles], the same number in both incidents. The RPD noted that the neighbours' account contradicts the Applicants' narrative regarding the identity and number of assailants during both incidents. Mr. Farah, when asked to explain this, responded that the neighbours are people from the outside who didn't know what actually happened. The RPD concluded that no weight should be given to the neighbours' statement and that the Applicants' credibility was undermined.

[12] The RPD noted that at the hearing, Mr. Farah showed that one of his arms is shorter than the other and that he has broken teeth and scars on his body, claiming these were caused by the attack on September 16, 2015. However, the RPD believed that these were caused by other incidents than what he declared in support of his claim.

[13] The RPD found that the objective documentary evidence does not mention the practice of levirate in the Akisho tribe and that Mrs. Ibrahim did not show that she was subject to levirate marriage. Moreover, the documentary evidence did not indicate that members of the Akisho tribe are persecuted in Djibouti.

II. Judicial Review

[14] As the Applicants entered at a port of entry to Canada from the United States, the Canada-United States Safe Third Country Agreement would normally apply. However, the Applicants were found to be eligible to make a claim because they fit within one of the

exceptions to the Agreement by having a family member in Canada. The consequence of falling within an exception to the Agreement is that although the Applicants could make a claim before the RPD, they have no right of appeal to the Refugee Appeal Division [RAD] of the IRB. The only recourse from the negative RPD decision is an application for leave and for judicial review to this Court under paragraph 110(2)(d) of IRPA.

III. Issues to be Determined

[15] This application for judicial review raises two issues, which will be analyzed in turn.

A. *Was there a breach of procedural fairness stemming from the quality of the interpretation at the hearing before the RPD?*

B. *Are the RPD's credibility findings unreasonable?*

IV. Standard of Review

[16] The parties agree on the standard of review to be applied in this case. The standard of review applicable to procedural fairness issues arising from difficulties experienced during the Board hearing with the interpreter are to be reviewed on the standard of correctness (*Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161; *Goltsberg v Canada (Citizenship and Immigration)*, 2010 FC 886; *Sherpa v Canada (Citizenship and Immigration)*, 2009 FC 267).

[17] The RPD's assessment of the Applicants' credibility is to be reviewed on a standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No

732 (FCA) at para 4). Accordingly, this Court should not intervene so long as the RPD's decision is transparent, justifiable, intelligible, and within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

V. Analysis

[18] The Applicants impugn the RPD's decision on related grounds. The Applicants submit that there was a significant problem with the quality of the interpreter's work. They argue that numerous discrepancies and inaccuracies by the interpreter in translating their testimony resulted in confusion at the hearing and that the RPD ultimately failed to understand their evidence when making its credibility findings. I will first turn to the issue of the quality of interpretation at the hearing and then deal with the RPD's credibility findings.

A. *Was there a breach of procedural fairness stemming from the quality of the interpretation at the hearing before the Refugee Protection Division?*

[19] In proceedings before the RPD, refugee claimants have a guaranteed right to interpretation which is continuous, precise, competent, impartial, and contemporaneous (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 4). The Applicants submit that confusion arose from differences between the Somali and Djibouti dialects of the Somali language used by the interpreter and the Applicants. Mr. Farah states in his

affidavit filed in support of the application that the interpreter misinterpreted the Applicants' dialect and twisted their words. He declares that his mother testified that her husband's property would go to his male children. He further declares that his mother testified that the grandfather was worried that if she did not marry the uncle, she might marry someone else and her husband's property would end-up outside the family. Mr. Farah states that the RPD failed to understand the explanations provided by his mother.

[20] I have only Mr. Farah's self-serving evidence that the interpreter did not understand his dialect and that his mother's testimony was incorrectly translated. An audio recording of the hearing could have shed some light on this matter. Of course, even if such a recording was produced, I would not be in a position to assess the competence or suitability of the interpreter as I cannot understand Somali. Similarly, I am in no position to determine whether the respective dialects of the Applicants and the interpreter rendered them mutually unintelligible. In the circumstances, the Applicants ought properly have adduced an affidavit of a qualified and independent Somali interpreter to provide an opinion, after listening to the audio recording and reading the transcript of the hearing, as to whether there were in fact discrepancies which may have affected the RDP's findings.

[21] Upon reading the transcript of the hearing before the RPD, it is clear that there was some degree of confusion at the hearing regarding certain aspects of the Applicants' testimony. I am unable to conclude, however, that the evidence adduced by the Applicants, whether oral or documentary was miscommunicated by the interpreter or misunderstood by the RPD.

[22] The Applicants' submission that the dialectical problem became apparent only as the hearing unfolded is not supported by the record. The Applicants declared in the forms they submitted in support of their refugee claim that their mother tongue was Somali, with no specification of a particular dialect of Somali in the request for an interpreter. Mr. Farah also declared that he can communicate in French. The Applicants confirmed at the beginning of the hearing that they had met and could properly understand the interpreter in Somali. They only complained about the interpretation when inconsistencies in their evidence were pointed out by the RPD.

[23] More importantly, it appears from the answers provided by the Applicants that they properly understood the questions posed to them by their lawyer and the RPD. When the Applicants' answers were unclear or appeared inconsistent, they were given a full opportunity to clarify their answers.

[24] The Applicants submit that there was a difference between the Somali and Djibouti dialects of the Somali language that led to confusion over the French words "pied", "genou", and "jambe" that should have alerted the RPD member to the possibility of linguistic confusion on the issue of the inheritance. For example, the RPD noted that Mrs. Ibrahim stated in her BOC that her father-in-law hit her and crushed her left foot [m'a frappe et écrasé le pied gauche]. However, in her oral testimony, Mrs. Ibrahim testified that she was hit on the knee or leg. After a lengthy exchange between the RPD and the interpreter, it was established that in the Somali language the part of the body between the knees and the toes is generally referred to as the foot.

The RPD accepted the explanation and did not hold the difference in terms used against Mrs. Ibrahim.

[25] There was clearly some confusion at the hearing relating to certain terms used by the Applicants, however I am not satisfied that the gist of their testimony was improperly conveyed. A perfect translation is unattainable and not required (*Francis v Canada (MCI)*, 2012 FC 636 at para 4). The Applicants have failed to demonstrate how the conclusions drawn by the RPD, particularly regarding Mrs. Ibrahim's late husband's property, were due to alleged translation errors rather than shortcomings in her testimony. If an applicant testifies in a vague, confusing, or contradictory manner, a proper translation will reflect that testimony and allow the tribunal to draw the necessary conclusions.

[26] Counsel for the Applicants and Mr. Farah opine about what Mrs. Ibrahim actually meant in her testimony, however this is not evidence upon which this Court can rely. Upon review of the record, including the transcript of the hearing, I find that the RPD member's decision to continue the proceeding after the Applicants objected to the correctness of the translation, without specifying the alleged errors, does not fall outside the bounds of natural justice.

B. *Are the Refugee Protection Division's Credibility findings unreasonable?*

[27] In their lengthy and circuitous submissions, the Applicants impugn the reasonableness of the RPD's decision on nearly every negative credibility finding, namely: (1) the beneficiary or beneficiaries of Mrs. Ibrahim's late husband's property; (2) the ages of the children and their ability to manage on their own; (3) the length of time that passed between Mrs. Ibrahim being

attacked and then being taken to the hospital; (4) Mrs. Ibrahim's failure to include her fainting in the BOC narrative; (5) the contradictions found in the testimony and the declarations of the two neighbours concerning who took Mrs. Ibrahim to the hospital and number of assailants; and (6) the medical certificate concerning the hospital visit and the injured foot.

[28] The Applicants are essentially inviting the Court to reweigh the evidence and to dissect the decision in microscopic detail to identify contextual or grammatical inaccuracies by comparing the conclusions drawn by the RPD and what was allegedly said, or meant, by Mrs. Ibrahim. It is clear from the detailed decision and the transcript that the decision-maker was seeking to understand what motivation the late husband's family had to force her to marry her brother-in-law to keep the inheritance within the family. Counsel for the Applicants submits that the question called for speculation on the part of Mrs. Ibrahim. While that may be, the matter was raised by her own lawyer and she volunteered an answer.

[29] If Mrs. Ibrahim's children inherited the property, then the children would logically be free to move away or dispose of their late father's property as they saw fit. In the circumstances, it would be reasonable to conclude that there would be little for the in-laws to gain in forcing Mrs. Ibrahim to marry her brother-in-law. Given that Mr. Farah and his siblings are of adult age and Mrs. Ibrahim's testimony regarding her children inheriting their late father's property, it was not unreasonable for the RPD to conclude that her allegations regarding the reasons why her in-laws would be motivated to force her to marry her brother-in-law were not credible or plausible.

[30] It is well accepted that the RPD is entitled to make negative inferences from repeated internal contradictions and discrepancies in an applicant's story (*Kilola v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15045 (FC), [2000] 185 FTR 124 at para 18). In the present case, the RPD reasonably found a number of inconsistencies and discrepancies in the Applicants' evidence such that it was reasonable to make a general finding of a lack of credibility, for which it is owed considerable deference. Such a general finding of lack of credibility extends to all relevant evidence emanating from an applicant's version, including documentary evidence submitted to corroborate their version of the facts (*Sheikh v Canada (Ministry of Employment and Immigration)*, 1990 CanLII 8017 (FCA), [1990] 3 FC 238 at para 8 (FCA); *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 22).

[31] The neighbours' sworn declarations are significantly inconsistent with the Applicants' claims regarding the in-laws' intention to force Mrs. Ibrahim into a levirate marriage and, as the RPD found, contain several discrepancies with the Applicant's testimony. Moreover, the medical certificate does not identify the cause of Mrs. Ibrahim's foot injury beyond her being a "victim of aggression" and does not corroborate any of the claims regarding her in-laws that were disbelieved by the RPD (*Sanaj v Canada (Citizenship and Immigration)*, 2012 FC 744 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2013 FC 202 at para 39). As a result, the RPD's assigning of no probative value to the medical certificate and neighbours' declarations produced by the Applicants was reasonable in the circumstances of this case.

VI. Conclusion

[32] For the above reasons, I am not satisfied that the Applicants were denied natural justice. Further, I am not satisfied that there were material translation errors that affected the decision or that any reviewable error was made by the RPD. The basis for the determination is transparent, intelligible, and justified and it is defensible in respect of the facts and law. The application is accordingly dismissed.

[33] Neither party proposed a question of general importance for certification. No such question is therefore certified.

JUDGMENT IN IMM-5043-17

THIS COURT'S JUDGMENT is that:

This application is dismissed.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5043-17

STYLE OF CAUSE: KADRA MOHAMED IBRAHIM, WARSAMA OMAR
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