

Federal Court



Cour fédérale

Date: 20181018

Docket: IMM-1402-18

Citation: 2018 FC 1046

Toronto, Ontario, October 18, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

MALKA MUSA ABDALLAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The present Application is a judicial review of a decision of the Refugee Appeal Division (RAD) dated February 28, 2018. The Applicant claimed refugee protection as a citizen of Sudan who feared persecution due to her political opinion.

[2] The Refugee Protection Division (RPD) rejected the Applicant's claim by a decision dated May 30, 2017 in which the RPD found that the Applicant failed to prove her identity. The

RAD agreed with the RPD on the identity issue. For the following reasons, I find that in determining the identity issue, the RAD breached a duty of fairness owed to the Applicant.

[3] When the Applicant arrived in Canada, the Canadian Border Services Agency (CBSA) seized a number of the Applicant's documents, including the original of a Sudanese nationality certificate (SNC). Before both the RPD and the RAD, the Applicant relied upon the SNC to establish her identity. Before the RAD, the Applicant argued that the RAD should request the CBSA to forward the original SNC for examination (Certified Tribunal Record [CTR], p. 157). The RAD rejected the Applicant's argument. Both decision-makers only scrutinized a copy of the SNC.

[4] The following passages from the RAD's decision are of critical importance:

Having reviewed the evidence, including listening to the Appellant's testimony, the RAD does not agree with the Appellant's argument. There were clear concerns with the Appellant's documents, including the source and circumstances of when and how the Appellant acquired the documents (and who had possession of them and why), as well as obvious issues on the face of the documents. For example, the Appellant's photograph on the Sudanese Nationality Certificate is very clearly torn and in pieces. [Emphasis added]

[...]

Moreover, contrary to the Appellant's argument, there was no duty for the RPD (or RAD) to obtain the originals of the Appellant's documents, particularly when there were clear irregularities on the face of the documents, as well as concerns about the source and circumstances of how the documents were obtained and their whereabouts in the US etc. [...]

(Decision, paras. 18 & 21)

[5] It is clear from the RAD's decision that the RAD came to a negative credibility finding with respect to the identity documents evidence. Counsel for the Applicant argues that had the RAD allowed the Applicant to verify the genuineness of the documents through requesting the originals from the CBSA, the outcome might have been different. If the identity documents were proved to be genuine, it could have an impact on the conclusions drawn. I accept this argument.

[6] On the facts of this particular case, I find it was unreasonable for the RAD not to have assisted the Applicant to obtain the original SNC from the CBSA, particularly when the authenticity of the SNC was questioned by only viewing a copy. The Applicant asked for fairness since she was helpless in obtaining the original SNC; fairness was not granted. In my opinion, this action constitutes a breach of the duty of fairness owed to the Applicant.

JUDGMENT IN IMM-1402-18

THIS COURT'S JUDGMENT is that for the reasons provided, the decision under review is set aside and the matter is referred back to a different decision-maker for redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1402-18

STYLE OF CAUSE: MALKA MUSA ABDALLAH V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATES OF HEARING: OCTOBER 15, 2018

JUDGMENT AND REASONS: CAMPBELL J.

DATED: OCTOBER 18, 2018

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