

Federal Court



Cour fédérale

Date: 20190211

Docket: IMM-3705-18

Citation: 2019 FC 170

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 11, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ALBATOUR KONATE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. **Background**

[1] The applicant, Albatour Konate, alleges that she is a citizen of Mali, born on September 7, 1978. She entered Canada on July 9, 2016, and claimed refugee protection alleging

that she was a victim of domestic violence and that she feared that her two daughters, who stayed in Mali, would be circumcised.

[2] On November 16, 2016, the Refugee Protection Division [RPD] rejected her refugee protection claim on the ground that the applicant failed to establish her identity. It found the applicant's testimony not to be credible and attributed no probative value to the applicant's documents. In reaching this conclusion, the RPD took into account the applicant's admission that the documents she filed in support of her refugee claim were fake and the inconsistencies and errors found in the documents that she submitted after the hearing to corroborate her identity. The RPD also rejected the psychological report produced by the applicant on the ground that the report did not explain the contradictions related to her identity.

[3] On July 6, 2018, the Refugee Appeal Division [RAD] dismissed the applicant's appeal. Like the RPD, it concluded that the applicant was not credible and that she had failed to establish her identity given the obvious errors in the applicant's documents and her contradictory testimony regarding several aspects of her file. It added that the applicant gave very few explanations about the domestic violence, that she failed to claim protection when she arrived in South Africa and that she waited several years before coming to Canada.

[4] The applicant seeks judicial review of that decision. She alleges that the RAD failed to correctly assess her identity and erred in assessing her credibility. She argues that the RAD did not take into consideration all of her testimonial and written evidence and that the evidence had to be assessed taking into account the context of Mali, a country where standards and formats for

documents are not the same as in Canada. She also argues that the RAD did not take into account the fact that her Basis of Claim Form [BOC Form] was filled out after a long trip from Mali. Finally, she alleges that the RAD rejected her refugee claim based solely on the issue of identity without analyzing the fear of persecution in her file.

II. Analysis

[5] The standard of review applicable to RAD decisions regarding identity, credibility and the assessment of evidence is that of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Bahati v Canada (Citizenship and Immigration)*, 2018 FC 1071 at para 9; *Olanrewaju v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 679 at para 3; *Chen v Canada (Citizenship and Immigration)*, 2017 FC 539 at para 19; *Daniel v Canada (Citizenship and Immigration)*, 2016 FC 1049 at para 13 [*Daniel*]; *Ngeze v Canada (Citizenship and Immigration)*, 2016 FC 858 at para 23 [*Ngeze*]).

[6] When the reasonableness standard applies, the Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law". If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility", it is not open to the Court to substitute its own view of a preferable outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[7] The Court is of the view that the RAD decision is reasonable. The RAD conducted an independent assessment of the testimonial and documentary evidence on the record before

agreeing with the RPD's findings that the applicant was not credible and that she failed to establish her identity.

[8] Like the RPD, the RAD noted the numerous errors and inconsistencies in the documents filed by the applicant. The errors concerned the applicant's date of birth, her job, her street addresses as well as her spouse's date of birth and job. For example, the RAD noted the following:

- A. The applicant's passport indicates that her date of birth is September 7, 1978. The date of birth found on the marriage certificate extract produced after the hearing is August 7, 1978.
- B. During her testimony before the RPD, the applicant first indicated that she did not work. When she was confronted regarding this, she testified that she was a textile merchant. However, her passport and her children's birth certificates indicate that she is a mine operator.
- C. In her testimony, the applicant stated that she did not know her spouse's birth date. However, in filling out her BOC Form, she indicated that her spouse's birth date was June 28, 1964. However, the date of June 4, 1970, is on the marriage certificate extract that she produced after the hearing.
- D. The applicant stated that, before her marriage, she had lived on an air base and that, after she got married, she lived in a certain neighbourhood. According to the marriage certificate extract produced after the hearing, her wedding was on January 15, 2002. Yet, according to her IMM-5669 form, she lived on the air base

from 1996 to January 2013. In addition, her driver's licence issued in 2012 indicates that she lived on the air base, while her national identity card states that she resided in the neighbourhood in question. Finally, the applicant changed her testimony during the hearing to say that she did not know the address of the place where she had lived for several years.

[9] The RAD also noted that the identity documents filed by the applicant after the RPD hearing to establish her true identity also contained errors and inconsistencies, thus raising serious doubts regarding the content of these new documents. Among the errors and inconsistencies, the RAD noted that the birth certificate of one of the applicant's children stated that the certificate was issued on April 12, 2001, while the child was born on July 14, 2009.

[10] After reviewing the record, the Court is of the view that the significant number of errors and inconsistencies in the documents filed by the applicant and her testimony that was contradictory on several aspects of her file enabled the RAD to reasonably conclude that the applicant was not credible and that she had not established her identity on the balance of probabilities.

[11] Relying on certain case law of this Court, the applicant argues that all of the evidence related to a refugee claim must be considered before a general finding of lack of credibility is made. She also argues that the finding that one or more documents are fraudulent does not necessarily mean that all documents are fraudulent. She is of the opinion that the RAD should

have made some effort to ascertain the authenticity of documents that appeared to be genuine (*Hohol v Canada (Citizenship and Immigration)*, 2017 FC 870 at para 22).

[12] Contrary to the applicant's claims, the Court is not satisfied that the RAD failed to consider some of the applicant's evidence or that its decision not to give any weight to the applicant's documents is based on the ground that they were not authentic. The record rather shows that the RAD's finding is based on the numerous errors and inconsistencies in the applicant's documents as well as on her testimony that was contradictory on several points, which made the RAD doubt the applicant's true identity.

[13] In this regard, it is important to note that identity is the cornerstone of the Canadian immigration system and that findings regarding the identity and credibility of a refugee claimant are owed considerable deference by this Court. The burden was on the applicant to establish her identity on the balance of probabilities by producing acceptable and credible documents (*Canada (Public Safety and Emergency Preparedness) v Gebrewold*, 2018 FC 374 at para 21; *Anto v Canada (Citizenship and Immigration)*, 2017 FC 125 at paras 16–17 [*Anto*]; *Daniel* at para 29; *Ngeze* at para 35).

[14] Although the applicant does not agree with the RAD's findings or those of the RPD, it is not for this Court to reassess or reweigh the evidence in order to make a finding that would be favourable to the applicant (*Khosa* at para 59).

[15] Since the applicant failed to establish her identity, the RAD had no obligation to analyze the merits of the refugee claim (*Anto* at para 20; *Daniel* at paras 28–29; *Ngeze* at para 35).

Although it was unnecessary for it to do so, the RAD still noted in its decision the applicant's few explanations regarding the domestic violence allegations, her failure to claim protection when she arrived in South Africa, her return to her country for several years and the delay in leaving Mali despite the alleged fear.

[16] In conclusion, the Court is of the view that the RAD decision falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” and that it is justified in a manner that meets the criteria of transparency and intelligibility within the decision-making process (*Dunsmuir* at para 47).

[17] For these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court is of the view that this matter does not give rise to any.

JUDGMENT in Docket IMM-3705-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

Certified true translation
On this 1st day of March 2019

Margarita Gorbounova, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3705-18

STYLE OF CAUSE: ALBATOUR KONATE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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