Federal Court  Cour fédérale

Date: 20211125

Docket: IMM-3511-20

Citation: 2021 FC 1303

Ottawa, Ontario, November 25, 2021

PRESENT: The Honourable Mr. Justice Henry S. Brown

BETWEEN:

SALIM BELAY OKBET

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated June 23, 2020 [Decision]. The RPD determined the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27

[*IRPA*]. The RPD also determined the Applicant's claim has no credible basis pursuant to section 107(2) of *IRPA*.

II. Facts

[2] The Applicant is a 53-year-old citizen of Eritrea. In her Basis of Claim [BOC] she alleges fear of persecution by the Eritrean state because she was detained based on her perceived religion, specifically Pentecostal. However, in her schedule 12 she alleges her detention and related alleged mistreatment were based on her political opinion. This is but one of many inconsistencies identified by the RPD.

[3] In her BOC she says one evening the Eritrean military raided her house in search of her brother who was holding a Pentecostal group prayer meeting, which is illegal in Eritrea. The Applicant says her brother and his friends escaped; however, she was arrested and detained in prison for about two and a half months. While in prison she says she was interrogated, tortured, and accused of being Pentecostal.

[4] On June 18, 2017, the Applicant says she was released on strict conditions, namely, to report monthly to police, not attend prayer services, not leave her city without permission, and to find her brother and turn him into police. The Applicant says if she failed to comply, she could be imprisoned indefinitely and killed.

[5] On July 20, 2017, the Applicant says she left Eritrea for Sudan with the aid of a smuggler.

[6] The Applicant says after her escape to Sudan, the Eritrean police harassed and interrogated her mother as to the Applicant and her brother's whereabouts.

[7] The Applicant says she decided to leave Sudan because she felt unsafe. She contacted an agent who agreed to assist her with leaving Sudan, travelling to Uganda, and then to Canada if she paid him $15,000 USD. On January 7, 2018 the Applicant left Uganda and on January 8, 2018 arrived in Canada. In her testimony, she alleged (for the first time) there was also a layover in a third country the name of which she said she did not remember. She did not claim asylum in either Uganda or the other country.

[8] On February 14, 2018, the Applicant filed for refugee protection in Canada.

III. Decision under review

[9] On June 23, 2020, the RPD found the Applicant was not a Convention refugee nor a person in need of protection. The determinative issues were identity and credibility.

A. *Identity*

[10] The RPD found the Applicant failed to establish her identity on a balance of probabilities.

[11] Entry to Canada: The Applicant testified she never had a genuine passport, she lost her Eritrean identity card when she left Eritrea for Sudan, and her travel route to Canada was facilitated by the aid of two smugglers. The RDP asked the Applicant how she boarded a plane to

Uganda if she had no passport or identification card. She replied she used a fake passport. Importantly however, she said she did not know the nationality of the fake passport nor did she ask the smuggler what country she was supposed to be from. The RPD did not find this credible.

[12] The RPD asked the Applicant if she had a visa to enter Canada. She replied she didn't know because the smuggler took care of everything. She testified the last time she spoke to him was January 5, 2018. The RPD asked how this was possible when she alleged travelling to Canada on January 7, 2018. She did not fully answer the question. Given her inability to provide a satisfactory explanation for the inconsistency, or any documentation to show her arrival to Canada, the RPD drew a negative inference with respect to her credibility.

[13] Omission of layover in a third country: In her BOC, the Applicant alleged she traveled to Canada directly from Uganda. However, as noted she subsequently testified there was a layover in another country. She testified to not knowing which country she stopped in despite the layover being 4 or 5 hours. The RPD found it not credible that an educated person such as herself would not know or pay attention to what country their plane landed in, especially when allegedly fleeing persecution.

[14] Furthermore, the RPD found it implausible the Applicant would travel across three international borders (Uganda, a third unknown country, and Canada) and not be questioned by any customs agents as she alleged. I note this includes not being questioned by Canadian border authorities. She also said she was not worried she would be questioned and did not bother to learn the nationality of the fake passport on which she was traveling. The RPD ultimately found

the omission to be significant and highly damaging to her identity as to who she is and where she came from, and to her overall credibility.

[15] Other documents regarding Identity: The Applicant testified she arrived in Canada with no identity documents. She provided a birth certificate; however, information on it was different from the name and birthday under which she allegedly travelled. The Applicant also submitted a diploma and transcripts, but there were slight variations in the names presented on the documents. The RPD found the slight variations on their own would not be significant. However, given the Applicant's propensity to utilize fraudulent documents, the prevalence of fraudulent Eritrean identity documents, in addition to the noted credibility concerns, the RPD placed little weight on these documents in terms of establishing the Applicant's identity.

[16] The Applicant also submitted a letter from an Eritrean church in Toronto, indicating she is a member of the church and Eritrean by birth. However, the letter did not indicate how the church assessed either her identity or nationality; the RPD found the letter insufficient to establish identity. The Applicant submitted no other documents.

[17] Given the above, the fact the Applicant admitted to using false travel documents, and the absence of documents evidencing her arrival to Canada, the RPD found it was not in a position to know who the Applicant is, where she came from, when or how she entered Canada, or with what passport she traveled. As such, the RPD concluded:

> Without knowing claimant's identity, the panel is unable to assess as against the claim the issues of countries of reference or exclusion. Specifically, the panel is not in a position to know

> whether claimant holds any other citizenship(s) or whether she is ineligible or should be excluded under the legislation.
>
> In view of the aforementioned, the panel finds that the claimant has not established her identity or nationality, on a balance of probabilities, as required by section 106 of the *IRPA* and Rule 11 of the Refugee Protection Division Rules.28 The establishment of one's identity is crucial to the determination of an individual's refugee claim. As such, where the claimant's identity cannot be proven, their claim must fail.

B. *Credibility*

[18] First, the RPD found discrepancies between the Applicant's forms, BOC and testimony. She explained the discrepancies were mistakes; however, the RPD did not accept this explanation in part because she was represented throughout by experience counsel. The lack of evidence to corroborate her allegations of persecution, detention and torture, led to the RPD drawing a negative inference with respect to her overall credibility.

[19] Second, the Applicant testified she lived in Sudan and Uganda with friends before travelling to Canada. She testified they were aware of what happened to her in Eritrea. However she did not provide any statements from them because "she did not think to ask them or that it was necessary". The RPD did not accept her explanation for the lack of supporting statements from her friends and drew a negative credibility inference.

[20] Third, the RPD noted the Applicant "submitted no documents whatsoever in support of her claim", noting it was the Applicant's burden to provide evidence to establish her claim; the RPD drew a negative inference in this respect. The RPD further found the Applicant's testimony

not credible. As such, the RPD found she is not wanted by Eritrean authorities and her allegations of detention and torture were made in order to bolster her refugee claim.

C. *No Credible Basis*

[21] The Applicant submitted various articles regarding country conditions in Eritrea. However, there was almost no evidentiary link between these documents and the Applicant – the exception being an Immigration and Refugee Board Responses to Information Requests report [RIR] that Eritrea persecutes Pentecostals (which was not referred to by Applicant's counsel at the RPD). The RPD held it could not make a positive determination of her claim. Furthermore, the Applicant provided no evidence of persecution in Eritrea despite the information in the RIR, despite being represented by experienced counsel, and despite having over two years from the date she retained counsel to obtain corroborating documents. Given her lack of supporting documentation establishing the allegations of her claim, the RPD found the Applicant's claim had no credible basis.

IV. Issues

[22] The only issue in this application is whether the Decision is reasonable.

V. Standard of Review

[23] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, majority reasons by Justice Rowe [*Canada Post*], which was issued at the same time as the Supreme Court of Canada's decision in *Vavilov*, the majority explains what is required for a reasonable

decision, and importantly for present purposes, what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[24] As summarized recently by Justice Roussel in *Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296:

> [9] When the reasonableness standard applies, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The reviewing court must consider "the

> decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Close attention must be paid to a decision maker's written reasons and they must be read holistically and contextually (*Vavilov* at para 97). It is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). If "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision", it is not for the reviewing court to substitute the outcome it would prefer (*Vavilov* at para 99).

[25] *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

VI. Analysis

A. *Preliminary Issue: Third Party Affidavit*

[26] The Respondent submits, given the credibility concerns expressed by the RPD, the Applicant's failure to provide a personal affidavit in support of her application goes to the matter of weight, which must be considered in assessing the Applicant's evidence and arguments:

> The Applicant failed to provide a personal affidavit in support of her application for leave and judicial review. Instead, her Application Record is supported by an affidavit affirmed by Joseph Brown, who states he is a law clerk. While it is notionally not improper for a third party to swear or affirm an affidavit for the purpose of appending documents from the file, given the credibility concerns expressed by the RPD, Mr. Brown is certainly not the best person to swear or affirm an affidavit. In this case, this failure goes to the matter of weight, which must be considered in assessing the Applicant's evidence and arguments on leave and judicial review.

[27] I agree. In *Huang v Canada (Citizenship and Immigration),* 2017 FC 1193, at para 7, Justice Phelan held:

> 7 The Court was asked to draw a negative inference from the filing of a third party affidavit on the judicial review in lieu of one from the Applicant. Such an inference is entirely reasonable, particularly when the affidavit is based on a "review of the contents of the Applicant's file". Absent a compelling reason, such a failure is "theoretically" fatal, as Justice LeBlanc[ed. note, as he then was] found in *Mabonze c. Canada (Ministre de la Citoyenneté et de l'Immigration),* 2017 FC 309 (F.C.) at para 9, 2017 CarswellNat 1322 (F.C.). It is more than that - such a failure should be practically fatal.

[28] Other examples of jurisprudence in line with Justice Phelan's holding include: *Zhang v Canada (Minister of Citizenship and Immigration),* 2017 FC 491 [Manson J] at para 12-14;

Fatima v Canada (Citizenship and Immigration), 2017 FC 1086 [Martineau J] at para 5; *Dhillon v Canada (Citizenship and Immigration),* 2009 FC 614 [Shore J] at paras 4-10 ; *Muntean v Canada (Minister of Citizenship and Immigration),* [1995] FCJ No 1449 [Cullen J] at para 11.

[29] I also note the affidavit in question is an 'attaching affidavit', which does not verify the facts relied upon by the Applicant. Perfecting an application for leave requires "one or more supporting affidavits that verify the facts relied on by the applicant in support of the application", pursuant to subparagraph 10(2)(a)(v) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules,* SOR/93-22 [*Rules*]:

Perfecting Application for Leave	**Mise en état de la demande d'autorisation**
10 (2) The applicant shall	**10 (2)** Le demandeur:
(a) serve on every respondent who has filed and served a notice of appearance, a record containing the following, on consecutively numbered pages, and in the following order:	**a)** signifie à chacun des défendeurs qui a déposé et signifié un avis de comparution un dossier composé des pièces ci-après, disposées dans l'ordre suivant sur des pages numérotées consécutivement:
…	…
(v) one or more supporting affidavits that verify the facts relied on by the applicant in support of the application or a request for an anonymity order under rule 8.1, if any,	**(v)** un ou plusieurs affidavits établissant les faits invoqués à l'appui de sa demande ou de sa demande pour une ordonnance d'anonymat prévue à la règle 8.1, le cas échéant,
…	…

B. *Credibility Findings*

[30] The Applicant submits “had [she] had an opportunity to appeal the decision to the RAD, there would have been an opportunity to present new evidence that could impact both the identity and credibility aspects of the claim.” The Applicant does not make further submissions on this point. Respectfully, the onus was on the Applicant and her counsel to put her best foot forward without relying on the availability of an appeal.

[31] As noted already, this Court is not to engage in the reweighing and reassessing of the evidence, yet and with respect, it appears this is what the Applicant asks the Court to do throughout this matter.

[32] In my respectful view, the RPD is the proper forum to assess credibility. The Federal Court of Appeal has held credibility determinations lie within 'the heartland of the discretion of triers of fact': see *Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481 (FCA) at para 1:

> [1] The Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") chose to base its finding of lack of credibility here for the most part, not on internal contradictions, inconsistencies, and evasions, which is the heartland of the discretion of triers of fact, but rather on the implausibility of the claimant's account in the light of extrinsic criteria such as rationality, common sense, and judicial knowledge, all of which involve the drawing of inferences, which triers of fact are in little, if any, better position than others to draw.
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> [Emphasis added]

[33] See also *Tariq v Canada (Minister of Citizenship and Immigration)*, 2015 FC 692, where relevant case law on the RPD's role in making credibility assessments is set out:

> 10 Because this is a case that turns almost exclusively on credibility, it is useful to note other law in this regard. It is well established that the RPD has broad discretion to prefer certain evidence over other evidence, and to determine the weight to be assigned to the evidence it accepts: *Medarovik v. Canada (Minister of Citizenship & Immigration)*, 2002 FCT 61 (Fed. T.D.) at para 16; *Pushpanathan v. Canada (Minister of Citizenship & Immigration)*, 2002 FCT 867 (Fed. T.D.) at para 67. Analyzing findings of fact and determinations of credibility fall within the heartland of its expertise: *Giron v. Canada (Minister of Employment & Immigration)* (1992), 143 N.R. 238 (Fed. C.A.) at 239. In fact, the RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v. Canada (Minister of Citizenship & Immigration)*, 2003 FCT 805 (Fed. T.D.) at para 10. Therefore, the Court should not substitute its own findings for those of the RPD where the conclusions it reached were reasonably open it: *Giron v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 1377 (F.C.) at para 9 [*Giron*].

[34] The Respondent correctly notes more than a dozen credibility issues considered by the RPD in respect of which the RPD found against the Applicant:

a. The RPD did not find credible the Applicant would know her uncle, who was allegedly close enough to her to give her $17,500 USD for the smugglers, works in Israel yet not know what he does for work nor think to attempt to get a supporting letter from him (paras 13-15);

b. The RPD did not find credible the Applicant traveled to Uganda and Canada without knowing the citizenship of the fake passport she allegedly used, despite her having memorized the fake date of birth and name (paras 16-17, 20, 24-25);

c. The RPD further found implausible the Applicant's statement that she never spoke to any immigration officers at any points in her travel (paras 16-17, 20, 24-25);

d. The RPD noted the Applicant's unexplained inconsistency in her testimony with her having stated she last spoke with the smuggler on January 5, 2018, when this was inconsistent with her statement that she had traveled with the smuggler to Canada on January 7, 2018 (paras 18-19);

e. The RPD noted the Applicant stated in her basis of claim [BOC] form and initial testimony she traveled to Canada from Uganda directly, yet she later added at the hearing that she had transited a third country but did not know which country (paras 22-23, 26);

f. The RPD found the Applicant's explanation for this omission and her lack of knowledge about what country she transited lacked credibility given her statement, that she did not pay attention during the 4-5 hour layover as she was worried, contradicted her earlier explanation that she had not learned the country of her allegedly fraudulent passport because she was not worried about knowing that information as the smuggler looked after everything (paras 22-23, 26);

g. Given its credibility concerns with the Applicant, the Applicant's alleged use of fraudulent documents, and the prevalence of fraudulent Eritrean identity documents, the RPD found the birth certificate of little weight and insufficient to overcome its credibility concerns (para 29);

h. The RPD noted inconsistencies between the three school documents provided by the Applicant, with her last name being spelt differently on two of the documents ("Okbat" versus "Okbet") and only "Salim Belay" appearing as her name on the third document; as a result, it found these documents likewise did not establish her identity given its credibility concerns and the prevalence of fraudulent Eritrean documents (paras 30-31);

i. The RPD noted the letter from an Eritrean church in Canada, stating the Applicant is a member of the church and Eritrean by birth, did not provide any details about how the church arrived at this conclusion and as a result found the letter was insufficient to establish identity and nationality (paras 32-33);

j. The RPD noted Tigrinya, the language the Applicant speaks, is spoken in both Eritrea and Ethiopia and found it was not in a position, given its other credibility concerns, to know whether the Applicant is Eritrean, Ethiopian, or any other nationality (para 36);

k. The RPD found the Applicant's immigration forms were inconsistent on the dates of her alleged detention in Eritrea (March 21st versus 31st) and were also inconsistent on the reasons for her detention (perceived religious affiliation versus political opinion) (paras 41-43);

l. The RPD found the Applicant did not provide a reasonable explanation for her failure to obtain supporting documents which it found could have been reasonably obtained from her mother, sister, and friends, whom she continued to be in contact with (paras 44-49);

m. The RPD noted the Applicant's testimony was inconsistent with her BOC form as at the hearing she stated she was told by friends Uganda was not granting refugee protection so she did not look into it, while in her BOC said she "went to the refugee office in Kampala [Uganda], but the government was not accepting Eritrean refugees" (paras 50-53).

[35] Given the law just cited, in my respectful view it was reasonable for the RPD to be concerned with the Applicant stating she did not know the nationality of the fraudulent passport she allegedly used. Likewise, it was reasonable for the RPD to find the Applicant omitted transiting a country between Uganda and Canada, and failed to provide a reasonable explanation for why she did not know the country's name. It was also reasonable for the RPD to note inconsistencies within and between the Applicant's immigrations forms and testimony. See *Ahmedin v Canada (Citizenship and Immigration)*, 2018 FC 1127 [Walker J] at paras 39-43 [*Ahmedin*]:

> [39] The RPD drew no adverse inference from the use by the Applicant of a non-genuine passport, as it is not unexpected for a refugee to use such documentation to travel to safety, but stated:
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> > It is the claimant's implausible ignorance of basic information that was both readily available to him, and to his benefit to become familiar with, and the implausibility of being able to travel through multiple countries without speaking to a single immigration authority, that leads me to draw a

> negative inference regarding the claimant's credibility and the credibility of his allegations regarding his identity documentation and his travel to Canada.

[40] The RPD asked the Applicant what information he would have given if asked by an immigration officer for his name. The Applicant stated that he would have given his own name but acknowledged that such a response would probably have led to his detention. In light of the risk of detention, the RPD found it was "reasonable to expect the claimant to have made a greater effort to familiarize himself with the most basic of information necessary to answer potential questions from immigration authorities about his name and citizenship".

[41] The Applicant argues that implausibility findings must be made sparingly and not as an exercise in speculation. I agree. However, the RPD's findings of implausibility in this case were not based on mere speculation.

[42] In the context of the multi-country journey the Applicant and his smuggler had to undertake to arrive in Canada, it was reasonable for the RPD to expect that the Applicant would have taken the minimal effort required to know the name under which he was travelling and the country of issuance of his passport. The severe consequences that would befall both the Applicant and the smuggler if an immigration officer asked basic questions of the Applicant necessitated such knowledge. It was also reasonable for the RPD to consider the normal practices of immigration officers when a traveller presents them with a passport and seeks entry to their country. The panel referred particularly to the well-developed immigration system and trained immigration authorities in Canada in this regard.

[43] Justice Muldoon in *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776 at paragraph 7, articulated the circumstances in which a tribunal may reasonably make a finding of implausibility as circumstances in which "the facts presented are outside the realm of what could reasonably be expected". I find Justice Muldoon's statement apt in the present case. The Applicant's testimony does not make sense when assessed against the evidence before the RPD. His complete lack of knowledge of the basic information required to safeguard his journey through multiple countries to arrive in Canada is outside the realm of what could reasonably be expected.

[36] Moreover, it was reasonable for the RPD to find the Applicant failed to provide reasonably expected corroborating documentation. As noted by Justice Gascon in *Lawani v Canada (Citizenship and Immigration),* 2018 FC 924 at para 25, "[w]here corroborative evidence should reasonably be available to establish essential elements of a claim and there is no reasonable explanation for its absence, a decision-maker can draw a negative inference of credibility based on the claimant's lack of effort to obtain such corroborative evidence". Here, the RPD did just this, and reasonably drew negative inferences from the Applicant's failures to make any effort to provide reasonably expected corroborative evidence on essential elements of her claim without reasonable explanation.

[37] I will not go through each of the credibility findings addressed by the RPD as set out above, except to say I am not persuaded any of them lie outside the constraints imposed by the law and record in this case. It is apparent the Applicant seeks to relitigate the factual bases of the RPD decision which is not the role of a reviewing court per *Vavilov*.

[38] For completeness, I should add the assessments by the RPD noted above at paragraphs 11 to 17, 18 to 20 and paragraph 21 are all, in my respectful opinion, reasonable in that they accord with constraining law and are justified on the record.

C. *The Applicant's Identity*

[39] The RPD concluded the Applicant failed to establish her personal identity pursuant to section 106 of *IRPA*, which provides:

Credibility	**Crédibilité**
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.

[40] The Applicant submits the RPD erred by reducing the weight accorded to her birth certificate and other documentary evidence because she was found to lack credibility, see *Omar v Canada (Citizenship and Immigration),* 2017 FC 20 [Fothergill J] at para 15 [*Omar*]. However I note in *Omar,* while Justice Fothergill agreed the RPD should not have reduced the weight accorded to the applicant's evidence, he ultimately found the RPD's decision to reject the applicant's claim did not fall outside the range of possible, acceptable outcomes because this was only one of many deficiencies that the RPD identified in the testimony and documents:

> [15] I agree with Mr. Omar that the RPD should not have reduced the weight it accorded to the supporting letters from family members on the ground that it had already found him to lack credibility (*Chen v Canada (Citizenship and Immigration),* 2013 FC 311; *Tshibola Kabongo v Canada (Citizenship and Immigration),* 2012 FC 313 at para 11). However, this was only one of many deficiencies that the RPD identified in the testimony and documents Mr. Omar offered in support of his claim. Given the deference owed to the RPD's assessment of a claimant's credibility, and the numerous instances it identified of uncorroborated, inconsistent, incoherent and implausible evidence (see paragraph 7, above), I am unable to find that the RPD's decision to reject Mr. Omar's refugee claim as lacking in credibility falls outside the range of possible, acceptable outcomes.

[41] Here, as noted, the RPD identified a very large number of deficiencies in the Applicant's testimony and documents. The Applicant did not provide consistent testimony, she failed to disclose the layover in a third country, and she did not provide identity documents aside from the birth certificate in question. Moreover, the RPD did assess the birth certificate and found the name and date of birth were different from the document under which she allegedly travelled on.

[42] The Applicant says her propensity to use fraudulent documents was not established by the RPD because she only used fraudulent documents procured by the smuggler. This offends the well-known rule that an applicant takes responsibility for the actions of their agent be it smuggler, consultant, counsel or otherwise. The Applicant relies on *Takhar v Canada (Minister of Citizenship and Immigration),* 1999 CanLII 7544 [Evans J as he was then] at paras 14 [*Takhar*], submitting that when a refugee fleeing persecution relies on fraudulent documents to procure their flight, said documents ought not to be used against them in assessing their credibility. In my respectful view, while not disputing the holding in *Takhar*, the RPD's conclusion was open to it on the record, its assessment of credibility is owed deference and as such, I am not persuaded its conclusion was unreasonable in this case.

[43] It is also well known and a basic proposition in immigration law that the onus is on an applicant to establish their identity on a balance of probabilities using acceptable documentation or an explanation for why they do not have such documentation and what they have done to attempt to obtain it. See *Ahmedin,* above, at paras 34-36; *Su v Canada (Citizenship and Immigration),* 2012 FC 743 [Snider J] at para 4. Moreover, in *Jin v Canada (Minister of Citizenship and Immigration),* 2006 FC 126 at para 13, Justice Barnes held: "The issue of

identity is, of course, a critical threshold decision for the Board. It is obliged by section 106 of *IRPA* to determine, as a matter of credibility, whether a refugee claimant 'possesses acceptable documentation establishing identity'".

[44] As summarized by Justice Walker in *Ahmedin*:

> [34] The starting point for my analysis of the Decision is the premise that the onus rests on a claimant for refugee status to establish his or her identity on a balance of probabilities. The claimant is required to provide acceptable documentation establishing identity, failing which the claimant must explain why they do not have such documentation and what steps they took to obtain the documentation (section 106 of the *IRPA*; RPD Rule 11):

Immigration and Refugee Protection Act	***Loi sur l'immigration et la protection des réfugiés***
Claimant without Identification	**Étrangers sans papier**
Credibility	**Crédibilité**
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.
Refugee Protection Division Rules	***Règles de la Section de la protection des réfugiés***
Documents	**Documents**
11. The claimant must provide acceptable documents	**11.** Le demandeur d'asile transmet des documents

establishing their identity and 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.	acceptables qui permettent 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.

[35] The issue of identity is fundamental to a refugee claim pursuant to either section 96 or section 97 of the *IRPA* and the determination of identity is at the core of the expertise of the RPD. The deference owed by this Court on review of the RPD's identity findings is succinctly described by Justice Gleason, as she then was, in *Rahal* (at para 48):

> [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.

[36] In the present case, there is no glaring inconsistency between the RPD's findings and the weight of the evidence in the record. The panel considered the Applicant's documentary evidence and his explanations for the absence of other identity documents thoroughly and reasonably. As a result, I find that the Decision was reasonable.

[45] Moreover, in *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288, Justice Near (as he then was), held that an applicant's overall credibility may affect the weight given to the documentary evidence:

> [21] As the Respondent submits, there is no merit to the PA's argument. This Court has held that an applicant's overall credibility may affect the weight given to the documentary evidence (*Granada v Canada (Minister of Citizenship and Immigration*), 2004 FC 1766, 136 ACWS (3d) 123 at para 13). Furthermore, this Court has gone so far as to hold that where the Board has concluded that the Applicant's claim, including facts to which personal documents refer, is not credible on the whole, it is not an error to fail to explain why the documents which purport to substantiate allegations found not to be credible are not given any weight (*Ahmad v Canada (Minister of Citizenship and Immigration*), 2003 FCT 471, 122 ACWS (3d) 533 at para 26; *Hamid v Canada (Minister of Employment and Immigration)* (1995), 58 ACWS (3d) 469 (FCTD) at para 21).
>
> [22] Given the Board's findings regarding the authenticity of the other documents and the resulting negative credibility inference, coupled with the evidence in the national documentation package, the Board's decision to attribute little weight to the notice, is entirely justified, transparent and intelligible (*Chen v Canada (Minister of Citizenship and Immigration)*, 2010 FC 282, at para 4). If anything the PA is asking the Court to reweigh the evidence, an activity which is outside the scope of this Court's function on judicial review (*Brar v. Canada (Minister of Employment and Immigration)* (FCA), [1986] FCJ No 346 (QL)).

[46] Determinations on identity lie at the core of the RPD's expertise and its reasons for identity conclusions warrant deference absent a glaring inconsistency between its findings and the weight of the evidence in the record. See *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 [per Justice Gleason as she was then] at para 48:

> [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.

[47] In my respectful view, none of the qualifiers enunciated by Justice Gleason apply in the case at bar. I respectfully adopt Justice Gleason's reasons as my own and apply them in this case. Therefore, in light of the constraining jurisprudence, the Applicant did not meet her onus; it was reasonable for the RPD to conclude the Applicant failed to establish her personal identity pursuant to section 106 of *IRPA*.

[48] The Applicant submits the RPD failed to conduct a *sur place* analysis. However, and with respect, given the Applicant's failure to establish her identity, her *sur place* claim was reasonably rejected simply because the RPD was not able to establish a country of reference against which to assess her claim. The lack of identity was determinative of all possible claims, and therefore there was no requirement for a *sur place* analysis. See *Liu v Canada (Minister of Citizenship and Immigration)*, 2012 FC 377 [Gleason J as she then was]:

> [6] In argument, counsel for the Applicant conceded that if I were to find that the Board's identity finding was reasonable, it is not necessary to address the other errors that were asserted because the RPD's reasoning on the three impugned points was inter-related and because the case law recognises that the failure of a claimant to establish his or her identity before the RPD affords the Board the basis to dismiss a refugee claim in its entirety. Counsel is correct in this regard. Section 106 of the *IRPA* provides that the RPD "… 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 … ". It is firmly-settled that if a claimant does not establish his or her identity, the Board need not consider the merits of a putative refugee's claim and may reject it out of hand (*Flores v Canada (Minister of Citizenship and Immigration*), 2005 FC 1138 at paras 7 and 9, [2005] FCJ No 1403).

D. *No Credible Basis Finding*

[49] The RPD concluded the claim has no credible basis by virtue of subsection 107(2) of *IRPA*, which provides:

No credible basis	**Preuve**
107 (2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.	**107 (2)** Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[50] The acceptable basis of a "no credible basis" finding is summarized by Justice Rennie, as he was then, in *Ramón Levario v Canada (Minister of Citizenship and Immigration)*, 2012 FC 314:

> [18] The threshold for a finding that there is no credible basis for the claim is a high one, as set out in *Rahaman*, at para 51:
>
> > …As I have attempted to demonstrate, subs. 69.1(9.1) requires the Board to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.
>
> [19] Thus, if there is *any* credible or trustworthy evidence that could support a positive determination the Board cannot find there is no credible basis for the claim, even if, ultimately, the Board finds that the claim has not been established on a balance of probabilities.

[51] The Applicant submits the RPD failed to establish there was no credible or trustworthy evidence which could have led it to a favourable decision, namely the Applicant's identity documents. However, in my view the RPD reasonably concluded there was no such evidence capable of supporting a positive determination of the Applicant's claim before it.

[52] Pursuant to subsection 107(2) of *IRPA*, the RPD may make a finding of no credible basis where there is "no credible or trustworthy evidence on which it could have made a favorable decision". The Applicant relies on *Chen v Canada (Citizenship and Immigration),* 2015 FC 1133 at para 16-18 to argue that a finding of "no credible basis" is not the same as a finding that a claimant is not credible. However, the Respondent submits, and I agree the RPD gave coherent and rational reasons for why this was not the case. The minimal personalized documentation of questionable reliability submitted by the Applicant was reasonably found by the RPD not capable of supporting a positive determination of her claim on its own, see *Douillard v Canada (Citizenship and Immigration),* 2019 FC 390 [LeBlanc J, as he was then] at para 17.

[53] See also *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 [Evans JA] at para 29:

> 29 However, as MacGuigan J.A. acknowledged in *Sheikh*, supra, in fact the claimant's oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they [page 556] are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim.

[54] As such, it was not unreasonable for the RPD to find the Applicant's claim had no credible basis pursuant to subsection 107(2) of *IRPA*.

VII. Conclusion

[55] In my respectful view, the Applicant has not shown the decision of the Officer was unreasonable. In my respectful view, the RPD found the Applicant failed to establish her identity and was not credible. These determinations are transparent, intelligible and justified based on the facts and constraining law. Therefore this application will be dismissed.

VIII. Certified Question

[56] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-3511-20

THIS COURT'S JUDGMENT is that this application is dismissed, no question of general importance is certified, and there will be no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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