

Federal Court



Cour fédérale

Date: 20230106

Docket: IMM-6326-21

Citation: 2023 FC 29

Toronto, Ontario, January 6, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

AB

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a July 26, 2021 decision [Decision] of the Refugee Protection Division [RPD], vacating the Applicant's status as a Convention refugee under section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and Rule 64 of *Refugee Protection Division Rules*, SOR/2012-256 on the basis that the Applicant misrepresented her identity or withheld material facts relating to relevant matters before the RPD.

[2] For the reasons that follow, the application is dismissed.

I. Preliminary Issue – Request for Anonymity Order

[3] As a preliminary matter, the Applicant requests that the style of cause for this proceeding and this decision be anonymized to protect her identity. The Applicant proposes that she be referred to as “AB”, and that the other person referenced in the Decision be referred to as “NP”.

[4] Under Rule 151 of *Federal Court Rules*, SOR/98-106 the Court may order material that has been filed be treated as confidential if it is satisfied that the material should be so treated, notwithstanding the public interest in open and accessible court proceedings.

[5] The Applicant submits that the prerequisite elements for a confidentiality order are applicable here, namely that:

- (1) Court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

(Sherman Estate v Donovan, 2021 SCC 25 at para 38; see also Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at para 53)

[6] The Applicant asserts that publishing the names from this proceeding would pose a serious risk to her safety in Cameroon and the privacy of the other individual. She asserts that an

order anonymizing her identity and the identity of the other individual is necessary to prevent these risks and that the benefits of the order outweigh any negative effects.

[7] The Respondent does not object to the Applicant's request. In view of this consent and the concerns raised, in my view, the anonymizing order should be granted and the style of cause amended accordingly.

II. Background

[8] The Applicant, AB, is a 25 year-old Cameroon national. On August 20, 2014, she allegedly entered Canada and claimed refugee protection fearing persecution on the basis of her sexual orientation.

[9] On November 3, 2014, the RPD accepted the Applicant's claim. The RPD accepted the Applicant's identity based on the documents she produced, including a birth certificate and national identification card from Cameroon as well as academic records. The Applicant did not present a passport as she claimed that she arrived in Canada under a false identity with a passport supplied by an agent.

[10] After the Applicant applied for a driver's license, the Ministry of Transportation Ontario's [MTO] facial recognition software identified a match between the Applicant's photograph and the photograph of another woman [NP] who had applied for photo identification with the MTO. NP entered Canada on July 15, 2014 using a Cameroon passport. She had been

issued a study permit to attend Centennial College in Toronto, which expired on August 31, 2018.

[11] On September 4, 2019, the Respondent applied to the RPD to vacate the Applicant's status as a refugee, asserting that the Applicant and NP were in fact the same person and therefore that the Applicant had misrepresented or withheld material facts in her claim for refugee protection.

[12] On July 15, 2021, the Applicant applied to the RPD for a summons of an MTO agent to testify as to the evidence that formed part of the Respondent's application. On July 19, 2021, the Respondent opposed the Applicant's request.

III. Decision under review

[13] The Decision is dated July 26, 2021. The RPD granted the application and nullified its November 3, 2014 decision that conferred refugee status on the Applicant, revoking her permanent resident status in Canada.

[14] The RPD heard testimony from the Applicant regarding her refugee claim and arrival in Canada with the assistance of the agent who had a fake passport for her. The Applicant did not know the name, information, or country of origin of the passport that she used to enter Canada. The RPD did not find the Applicant's explanation credible that the agent travelled with her from Cameroon to France and then to Canada while keeping her passport secret.

[15] The RPD accepted that the Applicant had used the identities of AB and NP in Canada and by failing to disclose her alternate identity at the time she made her refugee claim in 2014 had engaged in a direct misrepresentation regarding identity, which was grounds for vacating her refugee protection. The RPD further determined that the documents the Applicant relied on for her refugee claim were insufficient to justify granting refugee protection notwithstanding the misrepresentation.

[16] The RPD rejected the Applicant's request for a summons of the MTO agent, finding it was not necessary to obtain the MTO agent's testimony to have a full and proper hearing as the RPD had authority to determine the Applicant's identity.

IV. Issues and Standard of Review

[17] The Applicant raises the following issues in this application:

- A. Did the RPD err in determining that the Applicant's identity documents were inauthentic in the absence of expert evidence?
- B. Did the RPD err in determining that the Applicant's explanation regarding her passport was not credible?
- C. Did the RPD err in relying upon the similarities between the photographs and personal information?

[18] The parties assert and I agree that the standard of review for the Decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. None of the situations that would rebut the presumption of reasonableness review for administrative decisions is present: *Vavilov* at paras 16-17.

[19] In conducting reasonableness review, the Court must determine whether the decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[20] It bears mention that where the consequences of a decision are particularly severe or harsh, decision-makers have a heightened responsibility to ensure that their reasons are justified in light of the facts and law: *Vavilov* at paras 133-135.

V. Analysis

A. *Did the RPD err in determining that the Applicant’s identity documents were inauthentic in the absence of expert evidence?*

[21] Subsection 109(1) of the IRPA provides the RPD with discretion to vacate refugee protection where an individual has obtained refugee protection through misrepresentation. Pursuant to subsection 109(2), upon finding a misrepresentation, an application to vacate status may nonetheless be rejected if the RPD is satisfied that other evidence supported the application for refugee status when the application was made.

Vacation of refugee protection

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly

Demande d’annulation

109 (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d’asile résultant, directement ou indirectement, de

or indirectly misrepresenting or withholding material facts relating to a relevant matter.

présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

Rejection of application

Rejet de la demande

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

[22] In allowing the Minister's application to vacate the Applicant's refugee protection in this case, the RPD found that the Applicant had withheld her alternate identity and the passport in NP's name that she used to enter Canada to the original RPD Panel. The RPD considered this to be a material fact. The RPD found, with respect to subsection 109(2), that the other documents the Applicant presented at the time of her application for refugee protection (her birth certificate and national identification card) would have been viewed as less important than the passport and would have been insufficient, when considered with a passport in a different name, to justify refugee protection. As stated in the Decision:

....The respondent, by failing to disclose her alternate identity to the original RPD Panel, precluded that Panel from engaging in a fulsome and detailed analysis of her personal identity. This is clearly, in my view, a direct misrepresentation and a withholding of fact regarding identity, which is sufficient basis upon which to grant the application by the Minister, as has been confirmed by the Federal Court in *Chahil*, C-H-A-H-I-L, citation 2007 FCJ 1573 at 21, which confirmed identity is fundamental in a refugee claim.

I have taken into account, again here today, that the respondent did present other documents when she made her refugee claim before the original RPD Panel. However, it is noted that a passport is a primary means by which one assesses the individual's identity as a citizen of a certain country. These other documents provided by the individual at the original RPD claim are of lesser import and

would have been, in the original Panel's view, had they been presented with the passport in the name of [NP].

[...]

In my view, when the Minister's evidence and the respondent's evidence is considered conjunctively, the Panel finds and determines that there is not sufficient evidence remaining to justify the retention of refugee protection.

[23] The Applicant argues that the RPD erred by finding her identity documents inauthentic without relying on expert evidence. However, this argument is premised on the fact that the RPD made a finding that the Applicant's other identity documents (birth certification, national identification card) were inauthentic. In my view, no such finding was made.

[24] Rather, the RPD simply found that the passport issued under NP's name would have been treated as a material document, such that its presence would have decreased the importance of the Applicant's other identity documents had all information been before the RPD at the time the original application for refugee protection was made. As such, the other documentation would have been insufficient to justify refugee protection for AB.

[25] Further, I agree with the Respondent that any assertion that expert evidence was required to determine that a misrepresentation was made is not supported in law. As noted by the RPD, this Court has held that the RPD is empowered to make a finding that an applicant is or is not the person appearing in a photograph of an identity document without resorting to expert testimony to make the finding: *Olaya Yauce v Canada (Citizenship and Immigration)*, 2018 FC 784 [*Olaya Yauce*] at para 9; *Liu v Canada (Citizenship and Immigration)*, 2012 FC 377 [*Liu*] at paras 9-10.

[26] The Applicant asserts that expert evidence is not necessary to determine the authenticity of an identity document only if there is enough evidence to support the conclusion reached:

Culinescu v Canada (Minister of Citizenship and Immigration), (1997) 136 FTR 241. She argues that, in this case, the RPD did not have sufficient evidence to allow it to determine the Applicant was not who she said she was.

[27] While *Liu* and *Olaya Yauce* involved an analysis of photographs to determine that the person depicted in the applicant's identity document was not the applicant, in my view the same logic applies when comparing photographs to determine similarity as opposed to differences.

[28] In this case, the RPD considered the entirety of the evidence, which included not just a comparison of the photographs from the MTO and the immigration database, but also secondary information relating to the Applicant's entry and date of birth, as well as the Applicant's testimony in making its determination. In my view, there is no basis or authority to suggest that expert evidence was also required.

B. *Did the RPD err in determining that the Applicant's explanation regarding her passport was not credible?*

[29] Further, I agree with the Respondent, there is no basis for the Court to intervene on the RPD's credibility findings relating to the Applicant's flight to Canada with the assistance of her agent. The Applicant claimed that the agent never disclosed the name, date of birth, or country of the passport she used to leave Cameroon, enter France, and then enter Canada. She asserted that the agent only told her not to worry, that he would take care of the details, and that she should remain quiet and pretend not to know the language.

[30] The RPD found that the Applicant's story about her passport was not credible. In the Decision, the RPD stated that "it strains credulity to think that the smuggler would have disclosed no information to the respondent whom he was shepherding through these different countries through different airline flights, through immigration authorities in both France and Canada". The RPD relied on the decision in *Ahmedin v Canada (Citizenship and Immigration)*, 2018 FC 1127 [*Ahmedin*] where the applicant, in that case, fled Eritrea with the aid of a smuggler and traveled through Egypt and France to reach Canada, yet did not know the name or information on the passport that he had used. The Court in *Ahmedin* held that 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 as "[t]he severe consequences that would befall both the applicant and the smuggler if an immigration officer asked basic questions of the applicant necessitated such knowledge" (*Ahmedin* at para 42). As noted by the RPD, the Court in *Ahmedin*, relying on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 [*Valtchev*] at paragraph 7, found that it was reasonable to make an implausibility finding in the circumstances as the facts presented were outside the realm of what could reasonably be expected.

[31] The Applicant asserts that the implausibility finding in this case was unreasonable because it was not made in clear and unmistakable terms. She asserts that the RPD failed to elucidate that it was relying on a lack of plausibility to find the Applicant not credible. She further argues that the RPD's reliance on *Ahmedin* is misplaced as that case concerned a 35-year-old man who fled Eritrea with the aid of a smuggler, while the Applicant here entered Canada as an 18 year-old who would not have been expected to complete immigration

procedures on her own. She asserts that unlike in *Ahmedin*, the agent did all of the talking to immigration authorities and she never got a chance to see the passport. She argues that these differences speak directly to the plausibility of her story.

[32] The RPD may make adverse findings on credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, implausibility findings should only be made in the clearest of cases, such as if the facts presented are outside the realm of what could reasonably be expected to exist, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted, and must be clearly expressed in terms sensitive to cultural differences: *Valtchev* at para 7; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 26; *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 14.

[33] In this case, the RPD's finding that the Applicant's story strained credulity is a clear finding of implausibility, particularly as it followed the RPD's discussion of *Ahmedin* and the Court's comments in that case on *Valtchev*. In my view, it was reasonable for the RPD to find that it was implausible that the smuggler would not have disclosed some information to the Applicant whom he was shepherding through multiple different countries, through different airline flights and through immigration authorities in both France and Canada.

[34] Further, the Applicant's attempt to distinguish *Ahmedin* is not persuasive. The Applicant was a young adult woman with two years of undergraduate education at the time she entered Canada. Many of the same concerns in *Ahmedin* apply to the present case and it was open to the

RPD to find it implausible for the agent to have not disclosed information to the Applicant particularly in consideration of questions that might be asked by immigration authorities at the check-points in France and Canada.

[35] In my view, the RPD did not err in its credibility finding.

C. *Did the RPD err in relying upon the similarities between the photographs and personal information?*

[36] Similarly, the Applicant has not established that the RPD's reasons are inadequate or that the rationale for comparing the photographs of AB and NP was lacking.

[37] In the Decision, the RPD expressly states that it did not rely on the MTO's facial recognition technology. Rather, it conducted its own comparison of four photographs, two of each of AB and NP. Two of the photographs were those that were on file with the MTO and two of the photographs were part of the immigrations filings. The RPD set out the details of the many features and measurements it compared in arriving at the conclusion that the identity of the individual in the photographs was the same:

I have compared the shape of the face. I have compared the eyebrows, their shape, their length, distance from the eye, the width between the eyes themselves, the shape of the eyes, the shape of the fold of the eyes. I have compared, also, the nose, the nostrils, the shape therein, the width of the nose and the length, the distance from the bottom of the nose to the top of the lip, shape of the lips, the indentation or philtrum [...], at the bottom of the area just below the nose where the lip starts. I have compared the jawline and the shape of the face overall. In particular, I note a common feature between all four photographs I refer to is a particular distinctive discoloration, if you will, or dot just to the right of the iris on the white of the eye of the person portrayed in all four of the photographs on pages 32, 35, 44, 46. The respondent

contended this is something that she first noticed early in her childhood, but which has grown over time. So, again, this particular distinctive feature may not be unique just to these photographs of the person portrayed, but provides additional corroboration, in my view, that all 4 photographs are of one and the same person.

[38] While the Applicant refers to the decision in *Barre v Canada (Citizenship and Immigration)*, 2022 FC 1078 [*Barre*] at paragraphs 74-75, as support for its argument that the comparisons made are insufficient; in my view, that decision is distinguishable. In *Barre*, the Court found the decision of the RPD unreasonable as the RPD failed to provide justification for concluding there were “great similarities” between the sets of photographs that were compared beyond the similarities in features common to the applicant’s ethnic heritage. Further, while there were similarities between the photographs, there were also marked dissimilarities described in the submissions to the RPD, which the RPD did not reconcile.

[39] In the present case, the RPD highlighted the multiple features and characteristics compared and in common, including the length and distance of and between various facial features, and the distinctive discoloration to the right of the iris on the white of the eye, which was consistent in all four photographs. There were no noted dissimilarities to be reconciled.

[40] Similarly, the Applicant’s reliance on *Gedi v Canada (Citizenship and Immigration)*, 2022 FC 318 [*Gedi*] is of no assistance. In *Gedi*, the RPD did not explain the distinguishing features that led it to find that the photographs were of the same person (at paras 19-21). In this case, the features of comparison are noted in detail in the Decision.

[41] Further, the comparative analysis in this case was additionally supported by the similarities noted in the personal information between the Applicant and NP. Not only was this information strikingly similar, but when considered in conjunction with the Applicant's evidence of her travel to Canada, it also explained the likelihood that the Applicant entered the country as NP, disclosing an internally coherent and rational basis for finding the Applicant had misrepresented her identity in her refugee claim.

[42] In my view, the Applicant has not established any reviewable error in the RPD's analysis.

VI. Conclusion

[43] For all of these reasons, the application is dismissed.

[44] There was no question for certification proposed by the parties and I agree none arises in this case.

JUDGMENT IN IMM-6326-21

THIS COURT'S JUDGMENT is that:

1. The decision is anonymized and the style of cause is amended to anonymize the name of the Applicant as "AB" and the name of the other person referenced as "NP".
2. The application for judicial review is dismissed.
3. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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