

Federal Court



Cour fédérale

Date: 20130917

Docket: IMM-11754-12

Citation: 2013 FC 959

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, September 17, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN::

ALHASSANE DIALLO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated July 26, 2012, wherein the RPD determined that the applicant was neither a Convention refugee nor a person in need of protection within the meaning of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

II. Facts

[2] The applicant, Alhassane Diallo, is a citizen of Guinea, born in 1967 in Conakry.

[3] Mr. Diallo left Guinea for the United States on June 23, 1999.

[4] On April 5, 2007, Mr. Diallo married a U.S. citizen, Sharon Powell. At the time, Mr. Diallo had been living in the United States illegally. His spouse commenced sponsorship proceedings eight (8) months after the wedding.

[5] The couple separated on March 26, 2008, following Ms. Powell's move to Tampa, Florida, for work. For this reason, the applicant's sponsorship in the U.S. was never completed.

[6] On November 1, 2010, the applicant arrived in Canada with the help of a truck driver, claiming that he wanted to reunite with his spouse, Mariame Drame, a former girlfriend from Guinea. The applicant filed a claim for refugee protection on November 3, 2010, in Montréal, Quebec.

[7] In his claim for refugee protection, the applicant stated that he feared returning to Guinea because he was at risk of being killed by his spouse's ex-husband, Soriba Camara.

[8] The applicant alleged that Mr. Camara, a member of Guinea's military, had made threats to his family that he would kill him if he returned to Guinea because the applicant had had a child with his ex-wife in 2009.

[9] The applicant further claimed that his spouse's family, her father in particular, had also threatened him prior to his leaving Guinea in 1999, because he had continued seeing Ms. Drame despite the fact that she had been offered to Mr. Camara by her father.

III. Decision under review

[10] In the case at bar, the RPD determined that the applicant was neither a refugee nor a person in need of protection. According to the RPD, the applicant's testimony was not truthful and he had fabricated "a number of scenarios" to support his refugee protection claim.

[11] The RPD found the applicant's claims implausible for the following reasons:

- a. The RPD found it implausible that Mr. Diallo had continued seeing Ms. Drame in spite of the fact that she had been offered to Mr. Camara in 1999, and that her father had forbidden him to see her;
- b. The RPD found that it was not credible that Ms. Drame's parents would have threatened him to get him to stop seeing their daughter, because she had not alluded to this love or friendship in her Personal Information Form (PIF) when she herself claimed refugee protection in Canada in 2006. The RPD pointed out that had his spouse's father really objected to their relationship, she would have mentioned it in her PIF;
- c. The RPD determined that the applicant's lack of credibility was due, in large part, to his claim that he was the cause of the divorce between Ms. Drame and her ex-husband, Mr. Camara. The RPD concluded that it was implausible that the applicant

had caused the divorce, given the fact that he had left Guinea four years before Ms. Drame had married Mr. Camara. Furthermore, Ms. Drame stated in her PIF that she requested the divorce because Mr. Camara had beaten and injured her, and not because she had been the applicant's "girlfriend".

[12] The RPD explained that since it did not "at all" believe his testimony, the applicant failed to discharge his burden of proof. The RPD therefore denied his claim for refugee protection.

IV. Issue

[13] Did the RPD err in its assessment of the applicant's credibility?

V. Relevant legislative provisions

[14] Sections 96 and 97 of the IRPA apply to this case:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed

(iii) la menace ou le risque ne résulte pas de sanctions légitimes —

in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VI. Standard of review

[15] The case law of this Court clearly establishes that the Board's findings with regard to credibility and plausibility are questions of fact and are subject to review on a reasonableness standard (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 (QL/Lexis) (FCA); *Cekim v Canada (Minister of Citizenship and Immigration)*, 2011 FC 177; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

VII. Analysis

[16] In this case, the applicant contends that the RPD's decision is unreasonable and that its credibility findings are not justified. In particular, he claims that the RPD based its decision on secondary facts which did not go to the core of his claim.

[17] The respondent asserts that the RPD's credibility findings are reasonable and supported by transparent and intelligible reasons. The respondent argues that the RPD was entitled to rely on omissions and contradictions between the applicant's PIF and his testimony to assess his credibility, and that its credibility assessment does not warrant the intervention of this Court.

[18] It is settled law that the duty to provide reasons for adverse credibility findings becomes particularly important when such findings are based on implausibilities. The recent decision in *Ansar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1152, explains the important distinction between credibility findings and those with respect to plausibility:

[17] Initially, an important distinction must be made between the RPD's credibility findings and its conclusion that the threat posed by Mr. Choudhry was "implausible". The panel must be mindful of the use of this term and its implications. Implausibility findings must only be made "in the clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] FCJ 1131). The panel's inferences must be reasonable and its reasons set out in clear and unmistakable terms (*R.K.L. v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 9, [2003] FCJ 162). As Justice Richard Mosley explains in *Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at para 15, [2004] FCJ 1149:

[P]lausibility findings involve a distinct reasoning process from findings of credibility and can be influenced by cultural assumptions or misunderstandings. Therefore, implausibility determinations must be based on clear evidence, as well as a clear rationalization process supporting the Board's inferences, and should refer to relevant evidence which could potentially refute such conclusions

[Emphasis added.]

[Emphasis added.]

[19] In *Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155, 419 FTR 135, Madam Justice Mary Gleason, reviewing the case law on this subject, points out that:

[11] ... the Board should provide “a reliable and verifiable evidentiary base against which the plausibility of the Applicants’ evidence might be judged”, otherwise a plausibility determination may be nothing more than “unfounded speculation” (*Gjelaj v Canada (Minister of Citizenship and Immigration)*, 2010 FC 37 at para 4, [2010] FCJ No 31; see also *Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 694 at para 20, [2012] FCJ No 885 [*Cao*]).
[Emphasis added.]

[20] After having reviewed the case law and the RPD’s decision, the Court finds that the panel’s findings with regard to plausibility completely justify the negative determination with respect to the applicant’s credibility. There is no reason for this Court to intervene. The RPD’s conclusions in this case are reasonable.

[21] The Court finds that the RPD’s implausibility determinations are based on reasonably clear evidence and on a reasonably clear rationalization process supporting its inferences.

[22] Ms. Drame’s refugee protection claim was founded on the domestic violence she was subjected to while she was married to Mr. Camara and included a number of supporting details that clearly and evidently demonstrated the reasons for the divorce, but it did not contain any reference to another underlying story.

[23] The Court is of the opinion that the RPD’s determination of implausibility with regard to the applicant’s testimony to the effect that he was responsible for his spouse’s divorce is based on a

reasoning process which becomes evident by reading the details surrounding his testimony and through an understanding of all of the evidence that was before panel.

[24] The RPD reasonably concluded that the applicant's lack of credibility was based on his testimony about the divorce because that claim contradicted his original claim the Mr. Camara wanted to kill him because he and Camara's ex-wife had had a child together.

[25] It is difficult to reconcile the two allegations, but in this case, it is obvious from reading the transcript that the applicant fabricated the story of him being in danger of being killed by Mr. Camara because he had had a child with his ex-wife. Acknowledging that when the applicant first testified at the hearing he claimed that he had also received threats relating to the divorce before the threats in 2009, this evidence clearly shows a blatant lack of credibility in the applicant's testimony, as the RPD determined. Indeed, such an added fact is reason enough to warrant the dismissal of the applicant's narrative in its entirety (see Transcript at page 51).

[26] In its reasons the RPD explains that it realized the applicant lacked credibility from this fact. This in turn led the RPD to base its decision on the inherent lack of logic and perceived inconsistency in the applicant's testimony and to conclude that he had changed his version of the facts and was not credible. Thus, the RPD decided to discount other pieces of evidence, including the letter from the applicant's sister, as a result of this blatant lack of credibility. The Court is of the opinion that this omission does not constitute a reviewable error.

[27] All in all, the Court is fully satisfied that the RPD properly weighed the evidence that was before it in this case, and that it set out its reasons in clear and logical terms. In light of all of the evidence, both oral and written, the RPD's decision was not based on speculation or conjecture. Accordingly, the Court is of the view that the RPD made a reasonable finding with regard to Mr. Diallo's non-existent credibility.

[28] The reasons were clearly articulated and demonstrated, on the evidence and in their inherent logic, the reasonableness of the decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708). The Court specifically stated that a decision must still be reasonable in terms of "the existence of justification, transparency and intelligibility within the decision-making process [and] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law?" (*Dunsmuir*, above, at para 47), all of which was done.

[29] The decision under review is transparent and intelligible; and it provides justification for the result based on the entire record (see trilogy of Supreme Court of Canada decisions (*Dunsmuir*, above; *Newfoundland and Labrador Nurses' Union*, above; *Alberta (Information and Privacy Commission) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654). Therefore, the decision is reasonable.

VIII. Conclusion

[30] For all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. There is no question of general importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11754-12

STYLE OF CAUSE: ALHASSANE DIALLO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: SEPTEMBER 16, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: SEPTEMBER 17, 2013

APPEARANCES:

Jean Cantin FOR THE APPLICANT

Margarita Tzavelakos FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jean Cantin FOR THE APPLICANT
Counsel
Montreal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Montreal, Quebec