

Federal Court



Cour fédérale

**Date: 20131212**

**Docket: IMM-9787-12**

**Citation: 2013 FC 1247**

**Ottawa, Ontario, December 12, 2013**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**MUSTAFA IBRAHIM ELHASSAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision made by the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated August 28, 2012, whereby it was decided that Mustafa Ibrahim Elhassan was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act. The determinative issues before the Board were the identity of the claimant and his credibility.

[2] For the reasons that follow, I find that the intervention of this Court is warranted. It was unreasonable for the Board to question the identity of the Applicant since the authenticity of his birth certificate has not been impeached.

## **FACTS**

[3] The Applicant presented the following facts in his Personal Information Form (PIF). He claims to be a Sudanese citizen born in Omdurman in 1970. He is suspected by authorities of being a supporter of Abdul Aziz, former deputy governor of Kadugli of Nubian ethnicity and who protested the election of the current regime.

[4] On June 10, 2011, following a conflict between the Khartoum regime and the opposition, a friend of the Applicant, suspected by the authorities of supporting Abdul Aziz, fled the Nubian region along with his family, and sought shelter with the Applicant in Omdurman.

[5] On June 29, 2011, the Applicant received a phone call mid-morning from his uncle informing him that security forces had raided his home and taken away his friend, together with his family. He was told that the officers were still in his home and were looking for him as a supporter of Abdul Aziz. Some time around mid-day, the Applicant received a phone call from his sister informing him that the security forces were still in his home and cautioning him not to return. The Applicant took shelter with a friend and remained there until July 14, 2011. On that day, he left Sudan with a fake Dutch passport provided by his uncle. He arrived in Canada on July 15, 2011, and claimed refugee status on July 19, 2011.

[6] The Applicant submitted a birth certificate to the Board. He testified that he had a citizenship card in Sudan but that his uncle was too afraid to send it to him. He also testified that some people in Sudan had a “personal card”, but that he never had one.

### **THE IMPUGNED DECISION**

[7] The Board found that the Applicant had failed to produce enough evidence to establish his personal identity and, alternatively, that his claims were not credible.

[8] On the issue of identity, the Board noted that the only document submitted was a birth certificate. The Board’s assessment of this document is the following:

The panel notes that this document contains no photograph of the claimant, and no security features. It consists of a hand-written fill-in-the-blank form. For these reasons, this document has little probative value. Together with the cumulative credibility problems noted below, the panel gives this document no weight in terms of establishing his identity.

Tribunal Record, p. 5.

[9] The Board then went on to assess the Applicant’s description of his citizenship card. The Applicant testified at the hearing that he was issued a citizenship card in 1989 but that his uncle was too afraid to send it to him. The Board’s conclusion was that the Applicant never had the citizenship card. The Board found that the Applicant’s oral evidence was inconsistent with the objective evidence for the following reasons:

- The Applicant’s description of the document was incomplete;
- The Applicant denied that the citizenship card was necessary to write exams; and

- While the Applicant testified that he has the old citizenship card, the objective evidence does not indicate that there is a new citizenship card, and the only card described in the objective evidence is different in color from the “new card” described by the Applicant.

[10] The Board also noted that the Applicant presented contradictory statements. He first said that he had obtained the citizenship card in 1989. He then stated that he had to present the citizenship card in order to receive his secondary school diploma in 1988. When confronted with the inconsistency, the Applicant said that this was an error and he had in fact graduated in 1989. The Board noted that the Applicant stated in his PIF that he finished school in 1988.

[11] The Board also took issue with the Applicant’s failure to mention the citizenship card in his PIF at Question 22 (“What other identify documents do you have or could you obtain?”) and rejected his explanation for failing to obtain the document from his uncle. In the Board’s view, if the Applicant’s uncle was able to provide him with a fraudulent Dutch passport, it does not make sense that he would be too afraid to mail legitimate documents.

[12] Finally, the Board found that the Applicant’s oral evidence concerning the “personal card” was inadequate. The Applicant’s description of the card and minimum age requirement was found to be inconsistent with the objective evidence. The Board rejected the Applicant’s explanation that the card had changed, because this is not reflected in the objective evidence and because the Applicant failed to present this argument earlier during the hearing.

[13] Under the heading “Credibility”, the Board noted that the Applicant had failed to mention in his PIF that the security forces had ordered him to surrender by the evening of June 29, 2011, and that the security forces had approached his uncle concerning his whereabouts. The Board also found that the Applicant had presented inconsistent statements regarding the time when he first found out that the security forces were looking for him. He testified that he learned this information when his sister called him at around 12:30. However, the Applicant stated in his PIF that he learned this information at 10:30.

## **ISSUES**

[14] This application raises the following two issues:

- a) Did the Board err in finding that the Applicant had not established his identity?
- b) Did the Board err in finding that the Applicant lacked credibility?

## **ANALYSIS**

[15] There is no disagreement between the parties that the standard of reasonableness applies to both issues. This Court has consistently held that credibility findings are findings of fact which attract a significant degree of deference. The Board’s credibility findings should not be overturned unless they are unreasonable: *Aguebor v Canada (Minister of Employment)* (1993), 160 NR 315, 42 ACWS(3<sup>d</sup>) 886, at para 4; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22.

[16] It is also well established that the Board’s identity findings are to be reviewed on the standard of reasonableness: *Liu v Canada (Minister of Citizenship and Immigration)*, 2012 FC 377, at para 8.

[17] The standard of reasonableness refers both to the process whereby a decision is made and to the substance of that decision. As noted by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9, at para 47, “...reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”.

a) Did the Board err in finding that the Applicant had not established his identity?

[18] Subsection 100(4) of the *IRPA* provides, in part, that “[a] person who makes a claim for refugee protection inside Canada ...must provide the Division [Refugee Protection Division]...with the documents and information ...required by the rules of the Board...”. Rule 7 of the *Refugee Protection Division Rules*, in turn, states:

Providing Basis of Claim Form  
— inland claim

7. (1) A claimant referred to in subsection 99(3.1) of the Act must provide the original and a copy of the completed Basis of Claim Form to the officer referred to in rule 3.

Transmission du formulaire —  
demande ailleurs qu’à un point  
d’entrée

7. (1) Le demandeur visé au paragraphe 99(3.1) de la Loi transmet l’original et une copie du Formulaire de fondement de la demande d’asile rempli à l’agent visé à la règle 3.

[19] Section 106 of the *IRPA* requires the Board to consider a claimant's lack of documents to establish identity in assessing a claim for refugee protection:

Credibility	Crédibilité
<p>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.</p>	<p>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.</p>

[20] There is no doubt that the onus is on a claimant to establish his identity with documentary evidence, and if no such documents are provided, to explain what steps were taken to obtain them: *Qiu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 259, at para 6; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 877, at para 14 [*Zheng*]. If identity is not established, the Board need not assess the substance of the claim: *Hussein v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 726, at para 13; *Zheng*, above, at para 15; *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126, at para 26; *Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 296, at para 8.

[21] Documents issued by a government authority that appear genuine on their face are presumed to be authentic unless there is a valid reason to doubt their authenticity. In the case at bar, the Board did not explicitly rule on the authenticity of the Applicant's birth certificate but nevertheless found this document to have little probative value. This finding is problematic for a number of reasons.

[22] While it was not entirely inaccurate to characterize the birth certificate as a handwritten “fill-in-the-blank form”, it was clearly unreasonable to conclude that the document contains no security features. It is apparent on the face of the birth certificate that it bears the official emblem of Sudan and an official stamp. As submitted by the Applicant, official stamps are recognized as security features in the jurisprudence of this Court, and the following quote from *Ru v Canada (Minister of Citizenship and Immigration)*, 2011 FC 935, at para 49 [*Ru*] is but one illustration of that jurisprudence:

My review of the Marriage Certificate reveals that the English translation says that the original does bear an official seal or stamp. Likewise, the Birth Certificate also appears to have an official stamp. As Justice Tremblay-Lamer pointed out in *Zheng [Zheng v Canada (Minister of Citizenship and Immigration)]*, 2008 FC 877, above, at paragraphs 18-19, official stamps are recognized as security features...

[23] Moreover, I agree with the Applicant that a document that is presented as an authentic document cannot be given “little probative value”. If the Board believed the birth certificate to be inauthentic, it should have been discarded entirely. This error is compounded by the fact that most of the credibility findings which were relied upon by the Board to give little probative value to the birth certificate are themselves unreasonable, as will be discussed below.

[24] Finally, the cumulative credibility problems referred to by the Board relate to Mr. Elhassan’s testimony regarding his citizenship document, other Sudanese identity documents and the agent of persecution. Such credibility problems are completely unrelated to the birth registration document, and it is clearly incorrect to assess the validity of a document on the basis of concerns that are completely unrelated to the document itself: see, for ex., *Ru*, above, at para 53. Indeed, such reasoning is circular and must be rejected: the birth certificate is given little probative value because



Mr. Elhassan is found not to be credible, and in part because he is unable to establish his identity. A reasoning of this kind is hardly the hallmark of reasonableness.

b) Did the Board err in finding that the Applicant lacked credibility?

[25] It is well established that the Board's credibility findings are owed a high degree of deference, unless these findings were made capriciously or without supporting evidence, or if the Board failed to provide sufficient reasons in clear terms as to how it arrived at its conclusions. In the case at bar, the Board made a number of credibility findings, some being entirely reasonable but others clearly not so.

[26] In the first category the discrepancies between the Applicant's PIF narrative and his testimony are noted by the Board. The Applicant informed the Board for the first time during the hearing that Sudanese security forces had instructed him to present himself to them in Khartoum by the evening of June 29, 2011 and that they had approached his uncle asking about his whereabouts. The Applicant tried to explain that his PIF was only meant to be a summary of his story, but the Board reasonably questioned that explanation, stressing that the very core of his claim was the pursuit of Sudanese security forces and that these were not insignificant details. The Board also found that the Applicant had provided inconsistent evidence as to when he became aware security forces came looking for him, stating in his PIF narrative that his uncle telephoned him around 10:30 in the morning, whereas he responded at the hearing that he came to know about it when his sister telephoned him around 12:30.

[27] Other findings, however, are much more debatable. For example, the Board found that the Applicant never had a citizenship card because he was only able to point to 6 of the 9 particulars contained in this document. Despite the fact that Mr. Elhassan correctly identified that the citizenship card has a green exterior with white interior and contains his photograph, a stamp, the Minister's signature, and his mother's name, the panel drew a negative inference with respect to Mr. Elhassan's credibility because he forgot to refer to his fingerprint, details of his tribe and his father's name. It was unreasonable to expect an individual to recall every single detail on a piece of identification. Even the most familiar piece of identification contains information that is difficult to completely recall.

[28] The Applicant also testified that he did not have to provide any documents to sit for his tests or exams in school. Yet, in order to discount his testimony, the Board relied on objective evidence dating from 2007 according to which a person will not be able to sit for exams at schools or university without a certificate of nationality. In doing so, the Board shifted the burden of proof and required the Applicant to provide corroborating documentation to show that this system only started subsequent to the Applicant finishing his studies. Having said that, the Board could rightly point out that the Applicant shifted his testimony and provided inconsistent evidence when asked what documents he presented to obtain his secondary school certificate.

[29] I need not go through a minute examination of all the credibility findings made by the Board. As already mentioned, some adverse credibility findings are eminently reasonable, while others are microscopic and unfair. Had it not been for the errors committed in assessing the Applicant's identity, I might have been inclined to quash the application for judicial review and to

find in favour of the Minister. However, as stated by the Board, identity was the determinative issue in this case, and the flaws undermining and contaminating that analysis unavoidably coloured the credibility assessment. Had the Board properly applied the relevant principles in resolving the identity issue, it may well have found in favour of the Applicant with respect to his credibility.

[30] For those reasons, this application for judicial review is granted. No question is certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is granted. No question is certified.

"Yves de Montigny"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-9787-12

**STYLE OF CAUSE:** MUSTAFA IBRAHIM ELHASSAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 17, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** de

MONTIGNY J.

**DATED:** DECEMBER 12, 2013

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