Federal Court  Cour fédérale

Date: 20150330

Docket: IMM-5488-14

Citation: 2015 FC 401

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 30, 2015

Present: The Honourable Mr. Justice Martineau

BETWEEN:

HABAYATOU DIALLO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant challenges the legality of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (panel), dated June 12, 2014, rejecting her refugee claim on the ground that she is not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act).

[2] The applicant alleges that she is a Guinean citizen who fled her country because of her husband, whom she was forced to marry, and he beat her so that she would submit to his authority. One of her fellow wives allegedly discovered that she was taking contraceptives, which led to her husband beating her and locking her up. After succeeding in convincing her husband to let her go out to meet with her mother, she was able to leave the country with her mother's help. She arrived in Canada, May 3, 2012, with a passport bearing the name of Habayatou Camara. On August 27, 2012, the applicant made a refugee claim as Habayatou Diallo. She was then detained until September 25, 2012, when the Canada Border Services Agency (CBSA) stated that it was satisfied with her identity.

[3] Before the RPD, the minister intervened to state that he was satisfied with the applicant's identity under the name Habayatou Diallo, but that the refugee claim had to be rejected for lack of credibility and subjective fear. However, the RPD dismissed the application on the ground that the applicant had not succeeded in satisfactorily demonstrating her identity. The applicant had filed the identification document with which she had entered Canada, a passport bearing the name Habayatou Camara, born on October 11, 1990, and with which a Canadian visa application was filed. She also filed several exhibits in the name of Habayatou Diallo, born on October 11, 1979, including a photocopy of an extract of a birth certificate, a substitute birth certificate and an excerpt from the transaction record, a certificate of nationality, a national identity card and a consular ID card. The applicant also submitted a DNA analysis to show the relationship between the applicant and her mother, Aissatou H. Sow.

[4] The panel found that the applicant had not demonstrated her identity in the name of Habayatou Diallo, for several reasons:

a) The applicant had only filed a photocopy of the extract of birth certificate, which did not establish the date of issue and whose seal was hard to read;

b) The panel also noted that the applicant had not adequately explained why she had obtained a substitute birth certificate, which is generally issued in the absence of a birth certificate or when there are errors in the birth certificate, which does not seem to be the case here. Furthermore, the applicant did not explain why it was indicated in the substitute that she had come in person to the court of first instance on August 29, 2012, while she was detained in Canada;

c) The panel did not give probative value to the certificate of nationality, which did not contain a photo and, according to the panel, was based on the extract of birth certificate;

d) The panel also did not give any probative value to the national identity card because of the contradictions in her age. The applicant stated that she had her husband's card after her marriage, while she was [TRANSLATION] "approximately 20 years old, 20 years old or more". The panel stated that the age of 20 is not compatible with the birth date indicated on the national identity card, since, according to this card she was allegedly 29 years old at the time of her marriage;

e) The panel also noted that the consular identity card is genuine, but did not give it probative value since it was obtained using the national identity card.

[5] However, the panel noted that according to the analysis done by the CBSA, the passport bearing the name of Habayatou Camara is genuine. While there are good reasons to believe that this passport was obtained in a usual manner, the contradictions are such that the panel can also not find that Habayatou Camara is the applicant's true identity. Furthermore, the panel did not give probative value to the DNA analysis since it was of the view that the evidence was not complete without the identification used by the applicant and, supposedly, her mother to obtain

the DNA analysis. Therefore, the panel found that the applicant had not satisfactorily demonstrated her identity and rejected the refugee claim.

[6] The Court is dealing with two issues. First, did the panel commit a reviewable error in finding that the applicant did not satisfactorily demonstrate her identity? Second, did the panel show bias? The standard of reasonableness applies to the first issue, while the standard of correctness applies to the second (*Dunsmuir v New Brunswick*, 2008 SCC 9 (*Dunsmuir*); *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 48 (*Rahal*)).

[7] First, the applicant claimed that the panel imposed too stringent a burden of proof on the issue of identity. In this case, the applicant filed a number of exhibits showing her identity to be Habayatou Diallo and, as a whole, this evidence proved, on a balance of probabilities, that the applicant is indeed Habayatou Diallo. Furthermore, the panel committed a reviewable error by using its specialized knowledge to reduce the probative value of foreign government documents, which goes against the presumption of validity of passports and identity documents issued by a foreign government (*Ramalingam v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 (FC)). The applicant alleged that the panel erred in rejecting identity documents without reliable contradictory evidence. In addition, the national identity card and the consular identity card were evaluated and analyzed by the CBSA, which stated that they contained elements of security and seemed to be genuine.

[8] The respondent replied that the panel analyzed all the relevant evidence and reasonably found that some exhibits, in particular the copy of the extract of birth certificate, the certificate of nationality and the national identity card, did not merit any probative value. As there were two documents considered genuine bearing the name Diallo and one genuine document bearing the name Camara, it was reasonable for the panel to doubt the applicant's identity. Furthermore, the panel benefits from full latitude with respect to the assessment of the genuineness and the probative value of the evidence and in one such case, the panel had sufficient evidence to doubt the genuineness of the documents filed. The complete reasoning of the panel was reiterated in detail by counsel for the respondent during the hearing of this application for judicial review. The panel's grounds show well that it did not rely on its specialized knowledge, but that it separately assessed the probative value of each of the identity documents. Its findings rely on the evidence and are not arbitrary.

[9] I agree with the respondent. The panel faced the situation where the three documents that were authenticated by the CBSA referred to two different identities, Habayatou Diallo and Habayatou Camara, with birth dates of eleven years' difference. In *Rahal*, above, at para 48, the Court indicated that:

> [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.

[10] In this case, the panel had contradictory evidence regarding the applicant's true identity before it. The replies provided at the hearing by the applicant are not conclusive and do not overcome the panel's real concerns regarding her identity. It was also reasonable for the panel to find that the excerpt of birth certificate did not have any probative value since only a photocopy was submitted (*Flores v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1138 at para 7) and the applicant had not explained why she could not obtain the original. It was also reasonable for the panel not to give probative value to the substitute since it indicated that the applicant had come in person to obtain it on August 29, 2012, although she was in detention in Canada at this time. The other reasons for rejecting the other identity documents also appear to be reasonable.

[11] Moreover, the panel had concrete evidence that went directly against the evidence filed in support of the identity bearing the name Diallo: the passport considered to be genuine bearing the name Camara. There is no obvious inconsistency between the panel's decision and the probative value of the identity documents filed (*Rahal*, above at para 48). On the basis of all the documents filed, including the passport bearing the name Camara and, in the absence of a satisfactory explanation as to how the passport was obtained, it was thus reasonable for the panel to find that it did not know what the applicant's true identity is and, consequently, to refuse the refugee claim. It may have been possible for the panel to come to another conclusion, but that does not mean that its finding is not part of the "range of possible, acceptable outcomes which are defensible in respect to the facts and law" (*Dunsmuir*, above, at para 47).

[12] As for reasonable apprehension of bias, the applicant alleged that the panel's conduct shows that the member had preconceived ideas, prejudices and a lack of open-mindedness toward the applicant. A number of statements show that the member had already made a decision regarding the applicant's identity and that she used her personal knowledge to discredit the applicant. The panel did not use the information contained in the National Documentation Package. The applicant also alleged that the member made a sarcastic comment toward the applicant during the hearing.

[13] According to the respondent, the applicant did not raise the apprehension of bias in a timely manner, since at no time during the hearing did the applicant, who was represented by counsel, object to the member's inappropriate comments, if any, which constitutes a waiver of the right to raise now the reasonable apprehension of bias with the Court. To the contrary, the panel's conduct shows that it showed flexibility toward the applicant and that several times, the member offered to the applicant to take breaks and take her time and offered to repeat the question if necessary. Therefore, the applicant did not show that the panel's conduct gives rise to a reasonable apprehension of bias.

[14] I agree with the respondent. The reasonable apprehension of bias alleged by the applicant relies on comments made during the hearing and could have been raised earlier. The applicant did not object in the hearing and in no way explained why she should not be considered to be waiving her right to claim reasonable apprehension of bias (*Zaroud v Canada (Secretary of State)*, [1995] FCJ No 1326 at paras 15-17; *Chamo v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1219 at para 9). Furthermore, the apprehension of bias cannot rely on

mere suspicion. The evidence raised must be serious. In this case, the panel's comments do not create reasonable apprehension of bias, unless it is interpreted to be a "very sensitive or scrupulous person".

[15] In conclusion, the applicant did not show that an "informed person, viewing the matter realistically and practically—and having thought the matter through" would come to the conclusion that panel's conduct gives rise to a reasonable apprehension of bias (*Committee for Justice and Liberty v National Energy Board et al.*, [1978] 1 SCR 369, Justice de Grandpré, at p 394).

[16] The application for judicial review will be dismissed. Counsel have proposed no questions to certify.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Luc Martineau"

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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