

Federal Court



Cour fédérale

**Date: 20151007**

**Docket: IMM-1318-15**

**Citation: 2015 FC 1145**

**Ottawa, Ontario, October 7, 2015**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**BADRA ALY DIARRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] As the allegations of the Applicant clearly lacked credibility as per the evidence before the Refugee Protection Division [RPD], the Refugee Appeal Division [RAD], in its analysis of the evidence as a whole before the RPD, deferred to the determination of the RPD as per the RAD's mandate under its constituting legislation as interpreted by the jurisprudence.

## II. Introduction

[2] The Applicant seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, LC 2001, c 27 [IRPA], of a decision by the RAD of the Immigration and Refugee Board, wherein the RAD upheld a decision from the RPD in which the Applicant's claim for refugee protection was rejected.

## III. Background

[3] The Applicant is a 30-year-old citizen of Mali and has been living in the province of Quebec since 2009.

[4] In March 2012, the President of Mali, Amadou Toumani Touré, was ousted during a coup by the army of General Amadou Sanogo. At the time of the coup, the Applicant's step-father, Mr. Will Honders, was a successful businessman who had contracts with the Government of Mali; and, he was allegedly well-connected with important individuals of the Government.

[5] During the coup in March 2012, Mr. Honders allegedly received death threats, was intimidated and his house and offices were ransacked by soldiers due to his implications with the previous government.

[6] Fearing for his family's security, Mr. Honders left Mali and returned to the Netherlands at an unspecified date. Hoping that the situation in Mali may have improved, Mr. Honders went back to Mali in July 2013; however, he faced the same threats as he did previously and was

accused of corruption by soldiers under General Amadou Sanogo. Ultimately, Mr. Honders decided to leave permanently Mali in July 2013, and he returned to the Netherlands to live with his family at an unspecified date.

[7] Following the July 2013 incident, the Applicant was told by Mr. Honders that he could not return to Mali; and, if he chose to do so, his life would be in danger due to his relationship as that of step-son to Mr. Honders.

[8] On September 25, 2013, the RPD rejected the Applicant's refugee claim on the basis of Mr. Honders' return to Mali in 2013. The return of Mr. Honders did not correlate with a fear of persecution, as the Applicant did not file any corroborating documents to support his allegations of persecution. Subsequent to the RPD's decision, the Applicant did submit a letter to the RPD from Mr. Honders in which he did corroborate the Applicant's allegation. The Applicant unsuccessfully appealed the RPD's decision before the RAD. The Applicant then applied for judicial review at the Federal Court.

[9] The Federal Court quashed the RAD's decision on the grounds that the RAD applied the wrong standard of review (*Diarra v Canada (Citizenship and Immigration)*, 2014 FC 1009). On February 19, 2015, the RAD re-examined the Applicant's claim and decided to uphold the RPD's decision. It is this decision that is before the Court for review.

IV. Decision under Review

[10] The RAD held that the letter from Mr. Honders was admissible but nonetheless rejected the Applicant's refugee claim. The RAD found the letter from Mr. Honders to be authentic and reliable but raised several contentious issues, thereby refusing the Applicant's refugee claim.

[11] The RAD acknowledged that an appeal before its tribunal is not a judicial review (*Djossou v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1080 at para 37 [*Djossou*]); and, as a result, applied the standard of review of that of an hybrid approach:

[J]e dois effectuer ma propre évaluation de l'ensemble de la preuve, analyser la décision de la SPR, faire preuve d'une certaine déférence face à ses conclusions concernant la crédibilité de l'appelant et en arriver à ma propre conclusion quant à savoir s'il a la qualité de réfugié ou de personne à protéger.

(RAD's Reasons at para 54)

[12] The RAD found that the Applicant lacked credibility; and, that his testimony did not corroborated his own evidence. Firstly, before the RPD, the Applicant testified that his step-father had stayed in Mali for nine months subsequent to the coup in March 2012; and, he later returned to Mali in July 2013; however, subsequent to his testimony before the RAD, the RAD found the Applicant's testimony to be vague in respect of the precise dates on which his step-father had remained in Mali.

[13] Secondly, the RAD found that the "Attestation de prise en charge", a notarized document allegedly signed in Sikasso, on February 20, 2013, as well as a "Déclaration de soutien financier" contradicted the Applicant's testimony that Mr. Honders was no longer able to pay for the

Applicant's academic tuition; and, Mr. Honders had left the Netherlands in December 2012. Thirdly, in the "Attestation de prise en charge", it is stated that Mr. Honders' occupation is that of "Directeur-associé de la Société INTERAGRO, société à responsabilité limitée au capital de 3.500.00 F. CFA"; the RAD found that the information in the "Attestation de prise en charge" contradicted the Applicant's testimony that Mr. Honders lost everything during the coup in March 2012. As a result, the RAD found that the Applicant was not credible.

[14] Furthermore, the RAD found that the Applicant did not prove, on the balance of the probabilities, that Mr. Honders had a well-founded fear of persecution for reasons of political opinion. Mr. Honders was persecuted for his work with the previous government and in respect of the allegations of corruption that were made in his regard. The RAD also found that the Applicant was not a person in need of protection as the Applicant did not support his case with objective evidence that his step-father had been accused of corruption and had received death threats, if he would not leave Mali by March 2013.

[15] Finally, the RAD found that the Applicant did not rebut the presumption of state protection.

## V. Issues

[16] The central issues to be determined by this application for judicial review are:

- 1) Was it unreasonable for the RAD to uphold the RPD's finding on credibility?
- 2) Did the RAD err in finding that the Applicant had not rebutted the presumption of state protection?

VI. Legislation

[17] The following are the relevant legislative provisions of the IRPA:

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

**Person in need of protection**

**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

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

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

**Personne à protéger**

**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) 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

<p>Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(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,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> <p>(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.</p>	<p>Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(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 le sont généralement pas,</p> <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,</p> <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> <p>(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.</p>
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## VII. Position of the Parties

[18] In respect of the question of credibility, the Applicant submits that it was unreasonable for the RAD to find that the Applicant was not credible. Firstly, the Applicant submits that his

recollection could not have been entirely accurate because the events did not happen to him but to his step-father. Secondly, it was unreasonable for the RAD to find that it was implausible for Mr. Honders to stay in Mali for several months after the March 2012 coup although he had received death threats. The Applicant submits that tribunals have to be cautious in finding that an Applicant's claims are implausible (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paras 6-7); and, therefore must take for consideration the explanation provided by the Applicant (*Okoli v Canada (Minister of Citizenship and Immigration)*, 2009 FC 332 at para 31). Furthermore, the Applicant states that it was only in July 2013 that he feared a return to Mali. It was also in July 2013 that his step-father lost most of his wealth; as a result, it was unreasonable for the RAD to conclude that the "Attestation de prise en charge", signed in February 2013, contradicted the Applicant's testimony. Thirdly, it was unreasonable for the RAD to infer that the "Attestation de prise en charge" proved that Mr. Honders was in Mali in February 2013. The Applicant submits that the document was prepared by a notary in Mali but that Mr. Honders signed the document in the Netherlands. Finally, the Applicant submits that it is only secondary to his claim that he does not have a document which demonstrates that Mr. Honders has been accused of embezzling funds; it is the multiple death threats and the ransacking of Mr. Honders' home and office by members of the military which the Applicant considers as primary indices of persecution that Mr. Honders faced.

[19] Conversely, the Respondent submits that it was reasonable for the RAD to conclude that the Applicant's allegations lacked credibility. Firstly, the Respondent submits that given that Mr. Honders is a very powerful and financially successful businessman, the Applicant should have been able to provide documentary evidence that Mr. Honders had been formally accused of



corruption in Mali (*Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at paras 9-12). Secondly, the Respondent submits that the Applicant's disagreement with the assessment or weight, given by the RAD to the evidence, is not a sufficient ground by which to grant judicial review (*Obeng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 754).

[20] Regarding the question of state protection, the Applicant submits that the RAD's findings regarding the availability of state protection were selective and unreasonable because the RAD selectively quoted from paragraphs of reports which supported the argument that state protection existed for him in Mali.

[21] The Respondent submits that the RAD did consider the evidence as a whole in its decision as the RAD had reviewed evidence submitted, that includes the Applicant's testimony and the objective documentary evidence.

[22] The Respondent submits a presumption exists that the tribunal has considered all of the evidence submitted at a hearing (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ 598 (FCA)); and, the tribunal is entitled to prefer certain documentary evidence; and, it does not have to refer to all of the evidence (*Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ 946; *Martinez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1050), specifically, where the Applicant does not file objective documentation in support of allegations (*Zvonov v Canada (Minister of Employment and Immigration)*, [1994] FCJ 1089 [*Zvonov*]). The Respondent states that when a decision of a tribunal on state protection is

reasonable, it is unnecessary to consider other errors as alleged by an Applicant (*Osipenkov v Canada (Minister of Citizenship and Immigration)*, IMM-5424-03, at p 2, para 3; *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 153 at para 36; *B.M.(1) v Canada (Minister of Citizenship and Immigration)*, 2004 FC 399 at para 8).

#### VIII. Standard of Review

[23] Determinations of fact and, also, of mixed law and fact by the RAD, such as in matters of credibility and adequacy of state protection, are reviewable under the standard of review of reasonableness (*Hamidi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 243 at para 20 [*Hamidi*]; *Yin v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1209 at para 34; *Nahal v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1208 at para 25; *Kanto v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1049 at para 23 [*Kanto*]).

#### IX. Analysis

[24] The Court recognizes that the decision in review before the Court is primordially one bearing on significant credibility concerns. The RAD, in its determination of the RPD's decision, as per the jurisprudence in respect of its mandate (*Djossou*, above; *Geldon v Canada (Minister of Citizenship and Immigration)*, 2015 FC 374; *Sajad v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1107), concludes that the RAD as specified in the legislation as interpreted by the jurisprudence did review the RPD's decision reasonably (*Hamidi*, above; *Kanto*, above) by having reviewed the evidence as a whole.

[25] The RAD had analyzed the evidence as a whole as presented before the RPD; and, found key point by key point, that the contradictions, ambiguities and vague responses in respect of needed corroboration and precisions were indeed clearly missing (*Zvonov*, above).

[26] The decision, in respect of state protection, is reasonable due to explanations as given by the RAD in respect of the new political situation in Mali subsequent to the most recent elections; and, it is reasonable, as per the jurisprudence cited by the Respondent (as seen in *Sarfaz v Canada (Minister of Citizenship and Immigration)*, IMM-4874-02, September 9, 2003).

X. Conclusion

[27] Consequently, the application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-1318-15

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