Federal Court  Cour fédérale

Date: November 7, 2016

Docket: IMM-4795-15

Citation: 2016 FC 1240

Montréal, Quebec, November 7, 2016

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

YOUSEF ABU BAKER JADALLAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Yousef Abu Baker Jadallah, seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated October 2, 2015, dismissing his appeal of the decision of the Refugee Protection Division [RPD]. The RPD determined that the Applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons set out below, the application for judicial review is dismissed.

I. Background

[3] The Applicant alleges that he was born in Darfur, Sudan and that he is Tunjer by ethnicity. He claims that on October 16, 2014, government authorities arrested his father, his brother, two (2) of his paternal uncles and three (3) of his cousins and accused them of being part of the opposition to the government of Omar al-Bashir. Fearing for his safety, the Applicant remained in hiding at his maternal uncle's home for approximately eleven (11) days. On October 27, 2014, the Applicant left Sudan by truck with his uncle and entered Libya. His uncle arranged for him to be smuggled out of the country on December 10, 2014.

[4] The Applicant alleges that the smuggler gave him a false passport and they flew together to another city in Libya, where they had a layover, and then continued to an unknown city in Europe. From there, the Applicant and the smuggler boarded another plane and flew to Stockholm. In Stockholm, the smuggler retrieved the passport the Applicant had been using and gave him another false passport, along with the confirmation of his e-ticket, hotel arrangements, and a pre-filled Canada Customs declaration card. The smuggler and the Applicant travelled to Iceland but the Applicant then boarded his next flight to Toronto alone.

[5] Upon arrival in Toronto on December 11, 2014, the Applicant claimed asylum, stating that he feared persecution by the government authorities, Arab rebel groups and the Janjaweed militia because of his ethnicity and the arrests of his family. The Canada Border Services Agency [CBSA] confiscated his fraudulent passport and his birth certificate.

[6] The Applicant was heard by the RPD on February 13, 2015. At the hearing, the Applicant presented a number of documents to establish his identity including his birth certificate, a copy of his sister's birth certificate and a copy of his brother's Sudanese National Identity Card. The RPD questioned the Applicant extensively and the Applicant's counsel was also given the opportunity to question the Applicant.

[7] After the hearing, counsel for the Applicant made a request to submit documents because the Applicant had been making efforts to obtain further identity documents. On April 9, 2015, the Applicant provided additional documentation to the RPD, which included his brother's original Sudanese National Identity Card and a photocopy of his sister's birth certificate which had been previously provided in email format.

[8] On May 6, 2015, the RPD sent the Applicant's counsel questions regarding the Applicant's travel from Stockholm to Canada. Particularly, the RPD inquired about how his airline ticket was purchased by credit card thirteen (13) days before the Applicant's family members were arrested and whether the Applicant had left the Stockholm airport. The letter also informed the Applicant that he could make submissions on the resumption of the hearing. On May 18, 2015, the Applicant's counsel provided a written response, clarifying that the Applicant had received the ticket from his smuggler and that perhaps it had been originally purchased for another person. The letter also informed the RPD that the Applicant had never left the Stockholm airport. Counsel for the Applicant concluded by stating that if there were any concerns about the accuracy or credibility of the information provided in the letter, the oral hearing should be resumed.

[9] On June 11, 2015, the RPD rejected the Applicant's claim on the ground that he had failed, on a balance of probabilities, to adequately establish his identity. The RPD determined that the numerous spelling errors, irregularities, and inconsistencies in the Applicant's identity documents indicated that they were not authentic and that little or no weight should be afforded to them. In particular, the RPD found that the Applicant's birth certificate contained numerous spelling errors in the English portion of the document and that it was substantially different from that of the Applicant's sister, which contained no such errors. The Sudanese National Identity Card of the Applicant's brother also contained a number of irregularities, leading the RPD to conclude that the document was fraudulent. Additionally, the RPD accorded little weight to the post-hearing documents provided by the Applicant.

[10] Moreover, the RPD further wrote that it had serious concerns regarding the Applicant's escape and travel route. It noted that the ticket for the flight to Toronto found in possession of the Applicant upon arrival in Canada was purchased by credit card on October 3, 2014 and was in the same name as the passport used by the Applicant to board his flight to Toronto. It also noted that an email address appeared on the hotel booking confirmation. The RPD considered the explanations provided by the Applicant to the May 6, 2015 request for additional information and found it unreasonable that a professional smuggler would pay for an airline ticket with a credit card. The RPD also noted that the smuggler had used a Hotmail account, which could lead to his identification. The RPD found suspect the timing of the booking of the airline reservation given that the arrest of the Applicant's family members occurred after the airline reservation was made. The RPD considered that there was insufficient evidence to establish that the Applicant was actually in Sudan when the alleged events occurred, given that the only documentary

evidence establishing the Applicant's whereabouts prior to his arrival in Canada started and ended in Stockholm.

[11] Based on all the evidence, the RPD concluded that the Applicant failed to adequately establish his identity and thus concluded that he was neither a Convention refugee nor a person in need of protection.

[12] The Applicant appealed the RPD's decision to the RAD, alleging that the RPD had breached procedural fairness by failing to give the Applicant the opportunity to respond to the concerns raised by the RPD after the hearing and that it had made inaccurate findings regarding his evidence.

[13] The Applicant also sought to introduce the following additional documents to establish his identity:

a) An affidavit from a Canadian citizen, member of the Darfur Association of Canada, dated July 15, 2015, describing how he met the Applicant in June 2015 after the Applicant contacted the Darfur Association of Canada in Toronto to seek help in corroborating the Applicant's identity and how he assessed, through discussion with the Applicant, that he was indeed from the town and tribe he claimed to come from;

b) An affidavit from a Canadian permanent resident, dated July 13, 2015, stating that he met the Applicant shortly after moving to Toronto in early 2015 and how he knew the Applicant's brother;

c) A letter of support from the Darfur Association of Canada dated July 16, 2015; and

d) A translated non-notarized letter dated July 13, 2015 from a relative attempting to confirm the Applicant's identity, accompanied by a photo and a number of other documents to establish the author's identity.

[14] On October 2, 2015, the RAD dismissed the Applicant's appeal and confirmed the RPD's decision that the Applicant had not produced acceptable documentation to establish his identity.

[15] Before determining whether to admit the Applicant's proposed new evidence, the RAD noted the requirements of subsection 110(4) of the IRPA as well as the additional factors set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]. The RAD considered the proposed new evidence but refused to admit it on the basis that the information could have reasonably been acquired and presented at the RPD hearing.

[16] Although it did not have the benefit of the Federal Court of Appeal's decision in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica FCA*], the RAD indicated that it agreed with the standard of review set out by Justice Phelan in the *Huruglica v Canada (Minister of Citizenship and Immigration*), 2014 FC 799. It then stated that it would conduct its own assessment of the RPD's decision of whether the Applicant was a Convention refugee or a person in need of protection and would give deference to the credibility findings of the RPD or other findings where the RPD had a particular advantage in reaching its conclusions.

[17] The RAD determined that the RPD did not breach procedural fairness by failing to give the Applicant the opportunity to respond to its concerns regarding the Applicant's escape from Sudan and travel route to Canada. The RAD found that while the RPD made a credibility finding, credibility was already an issue for the RPD. The RAD found that the issue of the timing of the ticket was not an issue that needed to be put to the Applicant.

[18] The RAD then proceeded to conduct its own review of the Applicant's documentation. It found that the Applicant's only identification document, his birth certificate, was seriously flawed. It deferred to the RPD's assessment of the National Identity Card of the Applicant's brother as the original document was not in the RAD's file. With respect to the other documents submitted by the Applicant, the RAD noted that the RPD's findings were not challenged by the Applicant. In the end, the RAD concluded that the RPD did not commit any error in its consideration of the Applicant's documentation.

[19] Finally, the RAD found that the Applicant's narrative of his escape from Sudan was not credible, given the lack of evidence and his evasiveness at the Port of Entry regarding his pre-Sweden travel route. The RAD also found that the Applicant's inability to tell Canadian immigration officials about his travels was not credible, as well as the Applicant's speculation about the smuggler having already purchased the ticket for someone else. The RAD considered that a person fleeing through different countries would reasonably have asked his smuggler his location.

II. Issues

[20] Although framed differently by the parties, this application for judicial review raises the following questions:

a) Did the RAD err in failing to admit the Applicant's new evidence?

b) Did the RAD err in finding that the RPD did not breach procedural fairness in making a credibility finding in the absence of an oral hearing?

c) Did the RAD breach procedural fairness by making a credibility finding of its own?

d) Did the RAD err in deferring to the RPD regarding the authenticity of one of the Applicant's documents?

III. Standard of Review

[21] The Federal Court of Appeal recently clarified the standard of review to be applied by the RAD to decisions of the RPD in *Huruglica FCA*. It found that "the role of the RAD is to intervene when the RPD is wrong in law, in fact or in fact and law. This translates into the application of the correctness standard of review" (*Huruglica FCA* at para 78). The Federal Court of Appeal indicated that the RAD is required, after carefully considering the RPD's decision, to carry out its own analysis of the record to determine whether the RPD erred. The RAD can either confirm the RPD's decision or set it aside and substitute its own determination of the merits of the refugee claim. It can only refer the matter back to the RPD for redetermination where it is of the opinion that it cannot provide a final determination without

hearing the oral evidence presented to the RPD (*Huruglica FCA* at para 103). As to whether the RAD owes any deference to the RPD's findings, the Federal Court of Appeal noted that the issue must be addressed on a case-by-case basis. In each case, the RAD should determine whether the RPD truly benefited from an advantageous position, and if so, whether it can nevertheless make a final decision in respect to the refugee claim.

[22] The Federal Court of Appeal also specified that the reasonableness standard of review applies when this Court is reviewing the RAD's findings with respect to questions of fact and mixed fact and law, and questions of law involving the interpretation of the RAD's home statute (*Huruglica FCA* at paras 30-35). This includes determinations regarding the admissibility of new evidence under subsection 110(4) of the IRPA (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 29, 74 [*Singh*]).

[23] When reviewing a decision on a standard of reasonableness, the Court is concerned with whether the decision is justifiable, intelligible and transparent and whether is falls within the range of acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[24] As for issues of procedural fairness, the courts have consistently held that the applicable standard of review is correctness. When reviewing a decision on the basis of correctness, the question that arises is not whether the decision was "correct", but rather whether, in the end, the process followed by the decision-maker was fair (*Majdalani v Canada (Citizenship and*

Immigration), 2015 FC 294 at para 15; *Hashi v Canada (Citizenship and Immigration)*, 2014 FC 154 at para 14).

IV. Analysis

A. *Did the RAD err in failing to admit the Applicant's new evidence?*

[25] In *Singh*, the Federal Court of Appeal found that in determining the admissibility of new evidence under subsection 110(4) of the IRPA, the RAD must comply with the explicit conditions set out in this provision, as well as the implied criteria of credibility, relevance, newness and materiality of the evidence as enunciated in *Raza* at paragraph 13 (*Singh* at paras 49, 74). The Federal Court of Appeal also specified that the scope for the introduction of new evidence before the RAD is narrow and, as a basic rule, the RAD must proceed on the basis of the record before the RPD (*Singh* at para 51).

[26] The explicit conditions for the admission of new evidence before the RAD are set out in subsection 110(4) of the IRPA which provides that only the following evidence is admissible (*Singh* at para 34):

- Evidence that arose after the rejection of the claim;
- Evidence that was not reasonably available; or
- Evidence that was reasonably available, but the person could not reasonably have been expected in the circumstances to have presented at the time of the rejection.

[27] The Applicant argues that the RAD asked only whether the evidence was reasonably available thus ignoring the disjunctive nature of subsection 110(4) of the IRPA. Relying on the

decisions of this Court in *Olowolaiyemo v Canada (Citizenship and Immigration)*, 2015 FC 895 and *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928, the Applicant contends that the RAD erred in failing to consider whether the new evidence produced and dated after the rejection of the claim could be admissible under the first prong of the test in subsection 110(4) of the IRPA, as "it arose after the rejection of the claim".

[28] In my opinion, the RAD did not err in its application of the criteria for determining the admissibility of evidence. Its decision to refuse the new evidence was both reasonable and consistent with the decision of the Federal Court of Appeal in *Singh*.

[29] In considering the affidavit of the Canadian citizen from the Darfur Association of Canada, the RAD explicitly noted that the affidavit was dated July 15, 2015 and that the meeting between the Applicant and the affiant occurred in June 2015. The RAD also noted that the purpose of the meeting was to help the Applicant corroborate his identity following the RPD's decision. The RAD found that although the affidavit was prepared after the date of the RPD's decision, the Applicant could have reasonably contacted the Darfur Association of Canada and met this individual prior to the RPD hearing. Moreover, the RAD found that even if the affidavit established the Applicant's knowledge of the conditions and circumstances of the area where he claimed to have come from, the affiant did not know the Applicant personally and thus could not prove his identity.

[30] The RAD also rejected, for the same reasons, the affidavit of the Canadian permanent resident who claimed to know the Applicant's brother. In addition to noting that the affidavit was

dated July 13, 2015, the RAD indicated that the affidavit also stated that the affiant had arrived in Toronto in early 2015 and that he had met the Applicant a few times at the request of members of the Sudanese community. The RAD found that the information could have reasonably been presented at the RPD hearing and that no explanation had been provided for the failure to do so. The RAD also considered that the affidavit could not be given any probative value as it did not establish the Applicant's identity since the affiant only knew the Applicant's brother.

[31] Regarding the letter of support from the Darfur Association of Canada, the RAD noted the date of the letter and considered that it could have reasonably been made available and presented at the RPD hearing. The RAD also found that there was nothing in the letter to prove the identity of the Applicant.

[32] Finally, the RAD rejected a translated letter from a relative of the Applicant, on the basis that the attached documents could have reasonably been acquired and presented at the RPD hearing. Noting that the letter was dated July 13, 2015, the RAD indicated that no reasons were advanced to explain why the accompanying documentation had not been sent earlier. The RAD further noted that the letter was not notarized and the author's identity had not been sworn and found that even if it accepted the document, it could not give it any probative value.

[33] While the RAD did not specifically discuss why it declined to admit the Applicant's evidence under the first prong of the criteria set out in subsection 110(4) of the IRPA, I am satisfied that the RAD considered it—if not explicitly, then implicitly—given the specific references to the timing of the documents and events. In order for the RAD to conclude that it

would have been reasonable for the Applicant to present the new evidence at the RPD hearing, it had to find that the evidence was available prior to the RPD's decision. Consequently, if the evidence was available prior to the RPD's decision, one cannot say it "arose after the rejection of the claim".

[34] This Court has repeatedly stated that documentary evidence is not new merely because of its date of creation (*Tuncdemir v Canada (Citizenship and Immigration)*, 2016 FC 993 at para 14; *Torres v Canada (Citizenship and Immigration)*, 2015 FC 888 at para 12; *Zakoyan v Canada (Citizenship and Immigration)*, 2008 FC 217 at para 21). The focus must be on the date of the event or circumstance that one is trying to prove (*Raza* at para 16). In this case, the purpose of the Applicant's evidence was to establish his personal identity and Sudanese origins. They are not new events or circumstances that arose after the rejection of his claim. Additionally, as none of the documents met the explicit statutory criteria of subsection 110(4) of the IRPA, there was no need for the RAD to pursue a further analysis with regards to the implicit criteria of *Raza*.

[35] The Applicant argued before the RAD that he could not have anticipated that the RPD would find his birth certificate and brother's Sudanese National Identity Card to be fraudulent. This argument is without merit as the Applicant, who was represented by counsel, had the burden to produce acceptable documentation establishing his identity (*Su v Canada (Citizenship and Immigration)*, 2012 FC 743 at para 4). Even if the Applicant did not anticipate that his birth certificate would be considered fraudulent, the Applicant was aware of the RPD's concerns regarding the authenticity of his documentation once the hearing was completed. I have listened to the audio recording of the RPD hearing. The RPD clearly raised the issue with the Applicant

during the hearing and pointed out to him the several spelling mistakes appearing throughout the English version of his birth certificate.

[36] While I recognize that there may have been little time between the Applicant's arrival in Canada on December 10, 2014 and the RPD hearing on February 13, 2015 to obtain documents establishing his identity, the RPD granted the Applicant an additional delay to do so. The Applicant provided additional documentation to the RPD on April 9, 2015 and corresponded with the RPD again on May 18, 2015. Even after this last written communication, the RPD did not render its decision until June 11, 2015. The Applicant had more than ample time to obtain the appropriate documentation to establish his identity.

[37] The Applicant also argues that the RAD erred by failing to address his submission that the RAD has discretion to admit evidence pursuant to section 7 and subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11 [*Charter*]. I disagree. Even if the RAD did not make such a finding, this argument was rejected by the Federal Court of Appeal in *Singh* on the basis that a decision of the RAD refusing to admit new evidence did not engage the principles of fundamental justice. The Federal Court of Appeal found that subsection 110(4) of the IRPA does not grant any discretion to the RAD regarding the admissibility of new evidence and thus the RAD's obligation to enforce *Charter* values does not arise (*Singh* at paras 61-63).

[38] The Applicant has not persuaded me that the RAD erred in its application of subsection 110(4) of the IRPA in failing to discuss in its reasons whether the new evidence "arose after the

rejection of the claim". It is well-established in jurisprudence that reasons need not include all the details the reviewing judge would have preferred, nor is the tribunal required to make an explicit finding on each constituent element leading to its final conclusion. Reasons are to be read as a whole, in conjunction with the record. They will be found to be sufficient if they allow a reviewing court to understand why the tribunal made its decision and permit the reviewing court to determine if the decision falls within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*), 2011 SCC 62 at paras 14, 16).

[39] When read as a whole, I consider the RAD's decision regarding the admissibility of the new evidence to be reasonable because it is transparent, justifiable, and intelligible and it falls within the range of acceptable outcomes which are defensible in respect of the facts and the law. Most importantly, it is in keeping with the decision in *Singh* where the Federal Court of Appeal stated that the role of the RAD is not to provide the opportunity to complete a deficient record submitted before the RPD. Rather, its role is to oversee that errors of fact, law or mixed fact and law are corrected (*Singh* at para 54).

B. *Did the RAD err in finding that the RPD did not breach procedural fairness in making a credibility finding in the absence of an oral hearing?*

[40] After examining the totality of the documentary evidence submitted by the Applicant, including the airline ticket he used to come to Canada and a hotel booking confirmation, the RPD noted that it had serious concerns and doubts in relation to the Applicant's alleged escape from Sudan to Canada. The RPD found the timing relating to the purchase of the Applicant's

airline ticket to Canada suspect given that the Applicant's account of what had happened to him in Sudan had occurred almost two (2) weeks after the airline reservation was made. The RPD indicated that it did not believe this to be a coincidence or that the smuggler just happened to have a ticket and passport already available and waiting to be used. It also did not find it reasonable that a professional smuggler would pay for and reserve an airline ticket with a credit card online.

[41] The Applicant argued before the RAD that the RPD's conclusions constitute a negative credibility finding made on the basis of post-hearing submissions. The Applicant submitted that the RPD breached his procedural fairness rights by failing to resume the hearing to allow him the opportunity to make oral submissions in response to the RPD's credibility concerns.

[42] The RAD found that the Applicant was not denied natural justice and that the RPD was not required to resume the oral hearing. The post-hearing questions were not issues that had to be put to the Applicant as the RPD was looking for more information regarding the Applicant's travels. Furthermore, while the RPD did make a credibility finding based on the Applicant's travel information, the credibility finding was "based on a previous lack of credibility in the hearing".

[43] Before this Court, the Applicant submits that the RAD erred in finding that there was no breach of procedural fairness because the RPD had not made any previous negative credibility findings based on his testimony at the RPD hearing.

[44] Upon review of the RPD's decision and record, I am unable to find that the RAD erred in its assessment that the RPD had made a previous negative credibility finding. At paragraph 17 of its decision, the RPD indicated that it did not reasonably believe that an official document such as a birth certificate issued by the Sudanese government would contain so many errors, including errors in the name of the issuing body itself. The RPD also wrote that it disbelieved that the Federal Ministry of Health of Sudan would incorrectly type its own name on a stock document such as a birth certificate. The authenticity of the Applicant's documents raised a credibility issue with the RPD as, later at paragraph 22 of the decision, in discussing the weight to be afforded to another document, the RPD wrote that it gave the document little weight because of the "credibility issues previously identified".

[45] I also note that the RPD equally raised the issue of credibility during its hearing. From the outset, the RPD indicated to the Applicant that it would be focussing on both his personal identity and his identity as a Sudanese national and that credibility was an issue in every refugee hearing. The RPD later informed the Applicant that the CBSA had stamped the words "suspected fraudulent" across his birth certificate. The RPD indicated to the Applicant that it had concerns because of the spelling mistakes in the document. The RPD pointed them out to the Applicant and questioned him on whether he knew why there would be mistakes in the birth certificate.

[46] It was therefore not unreasonable for the RAD, having listened to the recording of the RPD hearing, to conclude that the issue of the Applicant's identity documentation also raised credibility concerns with the RPD.

[47] The Applicant argues that the authenticity of an applicant's documentation cannot be determinative of credibility. However, section 106 of the IRPA provides that the RPD "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 that documentation". This Court has also held that a negative conclusion as to credibility will almost inevitably be drawn where an applicant has not succeeded in establishing his identity and that this can be, in and of itself, dispositive of the claim (*Barry v Canada (Citizenship and Immigration*), 2014 FC 8 at paras 21-22).

[48] Even if I were to agree with the Applicant's submission that there were no previous credibility findings made by the RPD, I do not consider that the RPD breached the Applicant's procedural fairness rights. The issue of the Applicant's travel was extensively canvassed by the RPD during the hearing. In addition to being questioned on his travel route and the passports he used, the Applicant was also asked several questions about whether the smuggler had told him anything about how and who had booked the ticket to come to Canada and how he had paid for the ticket. The Applicant consistently replied that he did not know anything. While the RPD did not specifically refer during the hearing to the inconsistency between the date of purchase of the airline ticket and the date the alleged event occurred in Sudan, the inconsistency in the dates could have been addressed by the Applicant, either at the hearing or thereafter, as he was provided a copy of the electronic ticket and the date it was issued is clearly indicated. It was therefore not unreasonable for the RAD to find that the issue did not need to be put before the Applicant.

[49] Finally, even if I had found that the RPD had breached procedural fairness, I do not consider this error to be determinative (*Mobil Oil Canada Ltd v Canada-Newfoundland (Offshore Petroleum Board),* [1994] 1 SCR 202 at 228). The RPD clearly indicated at paragraph 7 of its decision that identity was the determining factor in its refusal of the refugee claim and found upon review of the entire record, that the Applicant had failed, on a balance of probabilities, to establish his identity.

C. *Did the RAD breach procedural fairness by making a credibility finding of its own?*

[50] The Applicant also submits that the RAD erred in impugning his credibility based on a finding that it was implausible that a nineteen (19) year old would not ask his smuggler the names of the countries through which he was travelling. The Applicant argues that the RAD's finding is unfair and in breach of procedural fairness because the plausibility of the Applicant's account is a new concern raised only by the RAD, and one to which he did not have the chance to respond. The Applicant relies on the decisions of this Court in *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684, *Ortiz v Canada (Citizenship and Immigration)*, 2016 FC 180, *Ojarikre v Canada (Citizenship and Immigration)*, 2015 FC 896 and *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 in support of his argument.

[51] Contrary to the Applicant's submission, the RAD did not raise a new issue or ground of appeal in its decision and was not required, in my view, to give the Applicant an opportunity to respond. It is important to put the RAD's comment in its proper context. The RAD was addressing the very issue raised by the Applicant, namely whether the RPD erred in faulting the Applicant for being unable to produce corroborative evidence of his travels. In addressing the

ground of appeal raised by the Applicant, the RAD reviewed the RPD's analysis and assessment of the information found in the Applicant's possession, including the Applicant's explanations for not producing the passport of the earlier portion of his journey and baggage checks. The RAD found that the Applicant's lack of documentation prior to his trip from Stockholm to Toronto, along with his evasiveness regarding his travels with the Canadian immigration authorities, impugned his credibility about his escape from Sudan. The RAD found the Applicant's inability to tell the Canadian immigration authorities about his travels not credible and considered that a person fleeing through different countries would reasonably be asking his smuggler his location.

[52] As it is required to do, the RAD conducted its own assessment of the RPD's decision and record, including listening to the recording of the hearing. It reached its own independent conclusion and found the Applicant's explanations not credible. It was open to the RAD to find it reasonable that a person would ask for his location when fleeing through different countries. The Applicant has failed to convince me that the RAD breached procedural fairness.

D. *Did the RAD err in deferring to the RPD regarding the authenticity of one of the Applicant's documents?*

[53] The Applicant submits that the RAD failed to independently assess the original Sudanese National Identity Card of the Applicant's brother. The Applicant argues that instead of assessing the original document, the RAD erroneously deferred to the RPD's conclusion.

[54] While it is true that in most cases the RPD enjoys no advantage over the RAD in assessing documentary evidence, in the present case, it was reasonable for the RAD to give deference to the RPD regarding the authenticity of this document, given that the original document was not in the file at the time the RAD made its decision. The RAD noted that the RPD had identified a number of specific problems with the Sudanese National Identity Card of the Applicant's brother. The irregularities identified by the RPD included: 1) the appearance that it had been printed in inkjet ink; 2) the photo and the Sudanese flag did not align; 3) the laminated documents appeared to be two (2) separate pieces stuck together; 4) the certificate number located on the back of the card near the top appeared to be cut off; and 5) the top edge of the card inside the laminate appeared cut irregularly, as if cut by hand. Given the nature of these irregularities, in the absence of the original document, the RAD was clearly at a disadvantage to assess the authenticity of the document and it was reasonable for it to defer to the RPD.

V. Conclusion

[55] For all the reasons above, I find that there is no basis for this Court to interfere with the RAD's decision and as a result, the application for judicial review must be dismissed. The parties did not raise any question of general importance for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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