

Federal Court



Cour fédérale

Date: 20180131

Docket: IMM-3160-17

Citation: 2018 FC 105

Ottawa, Ontario, January 31, 2018

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

NGOMBA LINDA NANYONGO

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ngomba Linda Nanyongo seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board. The RPD found that Ms. Nanyongo was neither a Convention refugee nor a person in need of protection. The RPD also found that her

claim was manifestly unfounded, pursuant to s 107.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, I conclude that the RPD's adverse credibility findings, only some of which are challenged in this application for judicial review, were supported by the evidence. Despite the lack of care and attention given to the RPD's finding that the claim was manifestly unfounded, I am satisfied that this determination was reasonable. The application for judicial review is dismissed.

II. Background

[3] Ms. Nanyongo is a citizen of Cameroon. She claims to be a member of the Southern Cameroons National Council [SCNC], an organization that advocates for the independence of anglophone southern Cameroon from the predominantly francophone Republic of Cameroon. Ms. Nanyongo testified before the RPD that she joined the SCNC in 2014, and was arrested and detained twice: once in September 2015, and again in October 2016.

[4] Ms. Nanyongo entered Canada on December 20, 2016, and claimed refugee protection on March 16, 2017. She says that she will be arrested, detained and tortured if she returns to Cameroon, due to her affiliation with the SCNC.

III. Decision under Review

[5] On June 22, 2017, the RPD held that Ms. Nanyongo was neither a Convention refugee nor a person in need of protection, and that her claim was clearly fraudulent. The RPD based its decision on the following findings:

- (a) Ms. Nanyongo provided two different birth certificates, one of which must have been fraudulent, and did not provide an adequate explanation;
- (b) Ms. Nanyongo stated that her student card would confirm she was elected as secretary of the university's union, but in fact it did not, and no other documents were provided to substantiate this claim;
- (c) Ms. Nanyongo admitted to signing a false visa application, in which she untruthfully and inexplicably claimed that she was unmarried, even though she had been married to her husband since 2005, and that she had two sisters, even though she said in her Basis of Claim Form [BOC] that she had only one sister;
- (d) various documents provided by Ms. Nanyongo, including the Recognizance of Surety, the Release Orders, the Arrest Warrants, the medical report and the Undertaking, were fraudulent, given numerous spelling errors that could not be explained;

- (e) the letter from the chairman of the SCNC was entitled to little weight, given Ms. Nanyongo's lack of credibility, and the false and misleading documents she had submitted;
- (f) the affidavit from Ms. Nanyongo's lawyer in Cameroon was not properly sworn, or written in the first person – it amounted to a hearsay account of what Ms. Nanyongo's husband had allegedly endured;
- (g) the husband's affidavit contained irregularities that reduced the weight that could be given to the document; and
- (h) Ms. Nanyongo travelled to Canada using an Ethiopian passport, and could not establish her Cameroon identity except with a fake identity card.

[6] The RPD's original Notice of Decision stated that Ms. Nanyongo's claim had no credible basis and was manifestly unfounded. This was subsequently amended by the Registrar to indicate that the claim was manifestly unfounded.

IV. Issues

[7] This application for judicial review raises the following issues:

- A. Were the RPD's adverse credibility findings reasonable?

- B. Did the RPD reasonably conclude that Ms. Nanyongo's claim was manifestly unfounded?

V. Analysis

[8] The RPD's determinations of credibility are subject to review against the standard of reasonableness (*Nweke v Canada (Citizenship and Immigration)*, 2017 FC 242 at para 18 [*Nweke*]). A finding by the RPD that a claim is manifestly unfounded is also subject to review against the standard of reasonableness (*Nweke* at para 18). The Court will intervene only if the decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

- A. *Were the RPD's adverse credibility findings reasonable?*

[9] The RPD found that there were discrepancies between Ms. Nanyongo's visa application and her BOC. Ms. Nanyongo acknowledged the discrepancies, but says that she had no control over her agent's actions and lied in order to save her life.

[10] The RPD rejected Ms. Nanyongo's explanation as follows:

[10] ... When asked for an explanation, the claimant took a long pause without answering, before finally stating that she lied because her life was at stake. There was no explanation provided by the claimant as to how making a false declaration about not being married could save her life better than if she had stated the truth.

[11] In the family information form which formed part of the claimant's visa application, she listed two brothers and two sisters. When signing and certifying her BOC, however, the claimant only indicated one sister and two brothers. The claimant was asked to explain the discrepancy, but she could provide no satisfactory answer, even though she had signed and certified both documents as being true and complete.

[11] Ms. Nanyongo is asking the Court to re-weigh the evidence, and to substitute its view for that of the RPD. That is not the role of the Court on an application for judicial review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[12] Ms. Nanyongo also takes issue with the RPD's finding that she said her student card would confirm she was secretary of the student union. The relevant portion of the transcript reads as follows:

Q. So, in 2012 you said you were like the secretary of the student's union?

A. Yes, sir.

Q. And do we have evidence of that?

A. Yes, sir.

Q. Where, what do you have?

A. Sir, I have, but they have not come yet. I have the student card.

Q. It's going to be a student card and it's going to say on there that you're the secretary of the union?

A. Yes, sir, and I have an attestation to that.

[13] Ultimately, the student card did not corroborate this assertion. Nor did any other documentation provided by Ms. Nanyongo. The RPD's adverse credibility finding was therefore supported by the evidence.

[14] More generally, Ms. Nanyongo complains that the RPD unreasonably rejected her documentary evidence by failing to consider objective reports that spelling errors are common in official Cameroon documents. She also says that the RPD unreasonably accorded little weight to the affidavit of the Cameroon lawyer and the letter from the chairman of the SCNC.

[15] The objective reports cited by Ms. Nanyongo indicate that official English Cameroon documents may contain spelling and grammatical errors. However, several of the documents adduced by Ms. Nanyongo contained spelling and grammatical errors in French. Egregious spelling and grammatical errors were also found in non-official English documents, such as a medical report, that were prepared to support her claim. While it would have been preferable for the RPD to acknowledge the objective reports submitted by Ms. Nanyongo, I am not persuaded that they undermine the RPD's findings.

[16] An applicant's lack of credibility may extend to the documentary evidence submitted (*Huang v Canada (Citizenship and Immigration)*, 2015 FC 1250 at para 15). In *Cao v Canada (Citizenship and Immigration)*, 2015 FC 315, Justice Simon Noël held at paragraph 20 that it was reasonable for the RPD to find that a document was fraudulent and to afford the document no weight based on the applicant's lack of credibility, and the prevalence of fraudulent documents

in the country of origin. By the same token, it was open to the RPD to accord little weight to the hearsay affidavit from the Cameroon lawyer and the letter from the chairman of the SCNC, given the numerous adverse findings of credibility and fraudulent documents. Ms. Nanyongo is again asking the Court to re-weigh the evidence.

[17] Ms. Nanyongo does not challenge the remaining adverse credibility findings made by the RPD.

B. *Did the RPD reasonably conclude that Ms. Nanyongo's claim was manifestly unfounded?*

[18] A claim is manifestly unfounded when it is clearly fraudulent (IRPA, s 107.1). A claim is clearly fraudulent when “the decision maker has the firm conviction that refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection will be granted” (*Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 31). A finding that a claim is manifestly unfounded deprives an applicant of an appeal to the Refugee Appeal Division, and the benefit of a statutory stay of removal (*Nagornyak v Canada (Citizenship and Immigration)*, 2017 FC 215 at para 13).

[19] In its brief discussion of whether Ms. Nanyongo's claim was manifestly unfounded, the RPD stated that she had used an Ethiopian passport to enter Canada, and provided only a fake national identity card to establish her Cameroon citizenship. The RPD observed that she was more likely to be a citizen of Ethiopia.

[20] These findings are baffling. The paragraph in question appears to have been copied from a different, unrelated decision. At paragraph 4 of the decision under review, the RPD acknowledged that Ms. Nanyongo provided a certified copy of the first page of her Cameroon passport, and accepted that she is a citizen of Cameroon. The Respondent does not dispute this finding.

[21] It is clear that the RPD's analysis of whether the claim was manifestly unfounded was prepared without due care and attention. Nevertheless, a decision of a tribunal is reasonable if "the outcome is acceptable and defensible on the basis of reasons that could have been given or reasons that when viewed in light of the record must be seen as implicit" (*Canada (AG) v Shakov*, 2017 FCA 250 at para 103). Even if an erroneous finding is made, a decision should be upheld if there were other facts on which the decision maker could have reasonably based the ultimate decision (*Stelco Inc v British Steel Can Inc*, [2000] 3 FC 282 at para 22 (FCA)).

[22] In the unusual circumstances of this case, I reluctantly conclude that the RPD's finding that Ms. Nanyongo's claim was manifestly unfounded was reasonable, even though the single paragraph that explains the RPD's reasoning appears to have been copied from an unrelated decision. The RPD's many adverse credibility findings, only some of which are challenged in this application for judicial review, provide sufficient support for this determination.

VI. Conclusion

[23] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal, and none arises in this case.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3160-17

STYLE OF CAUSE: NGOMBA LINDA NANYONGO v MINISTER OF
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