

Federal Court



Cour fédérale

**Date: 20180202**

**Docket: IMM-2824-17**

**Citation: 2018 FC 122**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, February 2, 2018**

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

**BETWEEN:**

**FANTA KONÉ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is seeking judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated May 31, 2017, which affirms a decision by the Refugee Protection Division [RPD].

[2] In short, the RPD denied the applicant's claim for refugee protection on the grounds that she had not established her identity. The RAD's decision to dismiss her appeal is reasonable and must be upheld in this case.

***Problems with establishing identity before the RPD***

[3] The applicant is allegedly a citizen of Mali and originally from the city of Gao. She arrived in Canada on February 15, 2015, with a false Malian passport bearing the name Agaichatou Maïga. She claimed refugee protection on July 31, 2015, under the name Fanta Koné, on the ground that she is persecuted by the jihadist group Hamza Deen. Jihadists allegedly vandalized her house and kidnapped and murdered her partner because they were living together without being married, which violates Sharia law. At the time she made her claim, the applicant was detained because she was unable to prove her identity. Meanwhile, a Malian friend allegedly sent identity documents to her.

[4] Before the RPD, the applicant submitted five documents:

1. Malian national identity card, issued on December 17, 2013, in Baroueli (pages 156–157 of the certified record);
2. Excerpt from birth certificate no. 26, issued on April 24, 2015 (page 158 of the certified record);
3. Birth certificate no. 347, issued on December 17 or 20, 2013, in Bamako (page 159 of the certified record);
4. Birth certificate no. 26, issued on October 27, 2014, in Bamako (page 160 of the certified record); and

5. Certificate of Malian nationality, dated April 17, 2015 (page 161 of certified record).

[5] The RPD carefully examined the identity documents and noted a number of problems:

- No passport was submitted;
- The only document with a photo is a national identity card that has several irregularities. First of all, the fingerprints are not the applicant's. During the hearing, she alleged that they could be her partner's fingerprints, which were allegedly taken when they went to obtain the card. The applicant does not remember what documents she submitted to obtain that card. However, she stated that she had obtained the card because there were many police roadblocks at that time and she needed an identity document. However, the RPD found it inconsistent that the card was issued in Baroueli, a town located over 15 hours by car from the applicant's residence in Gao and where she had no family and had never lived. In addition, the address on the card does not match the applicant's address at the time. Thus, the RPD gave no probative value to the document;
- The applicant alleged that document 26 was issued when she obtained her national identity card in December 2013 because her original birth certificate was torn and considered to be in too poor a condition. However, document 26 was issued 10 months later, in October 2014, which the RPD found to be inconsistent;

- With respect to the birth certificate excerpt, although it was sent to her by a friend, the applicant stated that she had been unaware of its existence. That excerpt appears to match an original dating from 2014. The RPD found it inconsistent that a new birth certificate was issued in 2014, while the applicant alleged to have another birth certificate dating from 2013 (document no. 347). The applicant stated that she did not know why or how these documents were obtained. The RPD noted that the applicant's illiteracy and lack of education do not justify her inability to answer those questions;
- The RPD also noted that the certificate of nationality and the excerpt were issued in Mali in 2015 when the applicant was already in Canada. The RPD found that those documents must have been obtained fraudulently and gave them no probative value; and
- The certificate of nationality was allegedly issued in 2015 based on the original birth certificate dating from 1990, a document that had apparently been considered in too poor a condition to issue the national identity card in December 2013. The RPD found it incongruous that a document that was deemed insufficient to obtain an identity card would be sufficient to obtain a certificate of nationality.

[6] For those reasons, the RPD denied the refugee claim and found that it was unnecessary to examine the merits of the claim.

***Appeal before the RAD***

[7] Before the RAD, the applicant essentially argued that her lack of education justified her insufficient and implausible answers provided during the hearing before the RPD. She stated that she had testified frankly and reminded the RAD of the presumption in *Maldonado v. Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302, 1 ACWS (2nd) 167 (FCA) [*Maldonado*], in which what is alleged in the narrative is presumed to be true. She did not submit any new evidence. The appeal was determined without a hearing.

[8] On the basis of *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 [*Huruglica*], the RAD reviewed the RPD's decision according to the correctness standard, since it was not the applicant's testimony before the RPD that was at issue, but rather the reason for her inconsistent explanations. After a thorough examination of the evidence and the recording of the hearing, the RAD affirmed the RPD's decision, finding that the applicant had not established her identity. The RAD found that the RPD's findings regarding the credibility of her testimony are correct. The applicant's lack of education and illiteracy are not a sufficient explanation to justify the numerous implausibilities, contradictions and inconsistencies or to justify a vague and evasive testimony. The presumption in *Maldonado* is rebutted. The RAD noted that the RPD member had conducted the hearing calmly and had given the applicant sufficient time to answer. Despite that, she had been unable to give reasonable explanations for the major irregularities in her various identity documents.

[9] Without reviewing all the irregularities and all the applicant's explanations at the hearing before the RPD, the RAD essentially affirmed its findings on the following points:

- The applicant was unable to explain how her identity documents had been obtained and stated that she knew nothing about that. The RAD found that being illiterate is not a sufficient explanation. She was able to get through her everyday life, find a job as a hairdresser and come to Canada. She should at the very least be aware of the procedure to follow and how her identity documents had been obtained;
- Two documents were issued in Mali in 2015, while the applicant was already in Canada and had made no effort to obtain them. She stated at the hearing that she did not know why her friend had requested them;
- The only document with a photo, the national identity card, has significant irregularities. The applicant's lack of explanations greatly undermines her credibility and cannot be explained by her lack of education:
  - The fingerprints on the document are not the applicant's, and it is implausible that they belong to her partner. In fact, the briefing book on Mali explains that fingerprints are taken at the time of the request, when the applicant was present. The applicant has no explanation for this. The RAD also found it implausible that the authorities would issue official documents used for identification with just anyone's fingerprints;
  - The applicant is unable to explain the source of the documents submitted in order to obtain that card. She stated at the hearing that document 26 had been submitted, but that document was issued in 2014, after the card was obtained. The applicant then changed her

testimony and alleged that she had submitted an old birth certificate in poor condition and that a new one had to be requested. Document 26 was then allegedly obtained a few days later by her partner, which is not credible, since document 26 was issued on October 27, 2014, 10 months after the request for the identity card in December 2013. The RAD found that these inconsistencies could not be explained by the applicant's lack of education or illiteracy and are instead an indication of a lack of credibility;

- The applicant allegedly told an immigration officer in 2015 that this document had been issued in Bamako, but it states that it was issued in Baroueli. When confronted with this error, her only explanation was that she was tired and confused. She repeated that explanation before the RPD. The RAD found that the applicant should have been able to remember where such an important document had been issued;
- The address on the document is not the one the applicant provided on her form. Once again, she has no explanation;
- Like the RPD, the RAD found it strange that the national identity card had been issued in Baroueli, when the applicant lived in Gao, which is over 1,000 km away. She explained that she had stopped in Baroueli on her way to Bamako to celebrate Christmas, which the RAD did not take seriously. The RAD also found it implausible

for her to have made the entire trip without identity documents when the very reason for obtaining a national identity card was to have an identity document in case of roadblocks. The applicant had no explanation for that; and

- The birth certificate excerpt issued in 2015 refers to a [TRANSLATION] “judgment in lieu of a birth certificate.” The applicant seemed to be unaware of what that was. The RAD noted that a judgment in lieu of a birth certificate is normally issued when no birth certificates exist. However, the applicant alleges that there was a torn original from 1990 as well as the document from December 2013 that was submitted. Therefore, the RAD found it inconsistent that there was a judgment in lieu.

[10] The RAD affirmed the RPD’s decision and dismissed the appeal.

***This application for judicial review***

[11] The only issue is to determine whether the RAD’s decision is reasonable (see *Huruglica* at paragraph 35).

[12] The applicant presents three grounds for setting aside the decision. First, the RAD did not consider her argument that her lack of education explains why she entrusted third parties to obtain her identity documents and is unaware of the procedures followed. Instead, the RAD considered only the matter of her illiteracy. Second, she submits that the RAD took an overly Western approach by finding that it was illogical to obtain her identity card in Baroueli, when



she gave valid explanations on this matter. Third, the RAD failed to consider a relevant document: birth certificate no. 347, dated December 2013.

[13] The respondent replies that the decision is clear, detailed and reasoned. The RAD carefully reviewed the entire case, considered the grounds for appeal and listened to the recording of the hearing in order to make the same finding as the RPD. The burden was on the applicant to submit sufficient evidence to establish her identity; otherwise, her refugee protection claim could not be considered on its merits (see, in particular, section 106 and subsection 100(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]; section 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [Rules]; see also *Najam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 425). The RAD was sensitive to the fact that the applicant is illiterate and has limited education, but that cannot justify her total ignorance of how the documents were issued and obtained, the flagrant irregularities noted in the documents, and the changing and evasive nature of her testimony. The RAD could therefore draw negative inferences based on those inconsistencies. Contrary to the applicant's submissions, the RAD's decision also explicitly demonstrates that it considered her lack of education (see paragraphs 11, 12, 17 and 24 of the decision). Lastly, the respondent submits that the applicant's argument regarding the failure to examine birth certificate no. 347 is unfounded. Relying on *Rahal v. Canada (Citizenship and Immigration)*, 2012 FC 319 at paragraphs 48, 50 and 53 [*Rahal*], counsel for the respondent reiterated at the outset of the hearing that a failure to address an identity document explicitly is not in itself sufficient to render a decision unreasonable. Instead, it is appropriate to consider the reasons as a whole to understand the RAD's finding on identity (see *Barry v. Canada (Citizenship and Immigration)*, 2014 FC 8 at paragraphs 14 and 25). The

issue of identity is in fact central to the RAD's expertise, which calls for great deference from this Court. In addition, the applicant did not cite this document specifically as a ground for appeal and therefore cannot criticize the RAD for not reviewing that evidence in detail at the judicial review stage. Furthermore, paragraphs 15 and 23 of the decision show that the panel did in fact consider that document: the RAD found it problematic that the applicant was unable to explain the source of her documents, including certificate no. 347. Paragraph 23 also shows that the RAD did not give any probative value to that document because of the inconsistencies related to the unexplained judgment in lieu. In fact, it noted that it was inconsistent that a judgment in lieu had to be issued in 2014 if there was already another birth certificate (no. 347) or the other certificate from 1990, which constitutes an explicit consideration of this document. Lastly, in any event, birth certificate no. 347 would be insufficient in itself to establish the applicant's identity, given that it contains no biometric data.

[14] The RAD's decision is reasonable and must be upheld. The arguments for dismissal submitted by the respondent are determinative.

[15] Section 11 of the Rules states that "[t]he claimant must provide acceptable documents establishing their identity". Therefore, the claimant has the heavy burden of providing acceptable documents (see, for example, *Su v. Canada (Citizenship and Immigration)*, 2012 FC 743 at paragraph 4). Section 106 of the IRPA stipulates that, if a claimant who has not provided such documents cannot provide a reasonable explanation or has not taken reasonable steps to obtain the documentation, the RPD may take that into account in its analysis of credibility. To do this, the RPD must examine and weigh all the evidence, that is, the identity documents submitted, the

applicant's testimony and the rest of the documentary evidence (see, for example, *Lin v. Canada (Citizenship and Immigration)*, 2012 FC 157 at paragraph 55). It then falls to the RAD to review those findings on appeal. This is an exercise that is at the very core of its expertise and to which this Court must show great deference (see *Rahal* at paragraph 48).

[16] In this case, the RAD carried out a detailed review of the applicant's record, the identity documents submitted and the recording of the hearing before the RPD. It made a detailed, reasoned and intelligible decision that provided the applicant with ample understanding of why her claim was denied. In fact, the RAD took the time to carry out a detailed review of the numerous irregularities, inconsistencies and contradictions between the various identity documents submitted. It was correct to draw those inferences from the evidence and the testimony and subsequently to determine whether the applicant's lack of education and illiteracy were sufficient to justify them.

[17] Contrary to the applicant's argument, the decision clearly shows that her lack of education was considered, as illustrated by the explicit references in paragraphs 11, 12, 17, 22 and 24 of the decision. It cannot be found that the RAD considered only the matter of her illiteracy. Instead, it examined her illiteracy and lack of education together—as two related factors. All things considered, it nevertheless found that this explanation was insufficient to justify the applicant's total ignorance as to the origin of those identity documents and the procedures followed to obtain them. That finding is reasonable and is based on the evidence on record. The RAD carefully reviewed the applicant's testimony at the hearing before the RPD, noting her lack of explanations and failure to answer the questions.

[18] The applicant also submits that the RAD apparently took an overly Western approach by determining that it was implausible for her to have obtained her identity card in Baroueli. I concur with the applicant that the RAD and the RPD were required to be sensitive to the Malian cultural context. However, the RPD can make findings of implausibility undermining the claimant's credibility as long as they are based on the evidence and expressed in clear and unmistakable terms (see *Lubana v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraph 9). The RAD was thus entitled to review such findings and confirm them. In this case, the RAD explained in detail why it considered it implausible that the applicant would obtain her card in Baroueli, considering the great distance from her native city of Gao and considering that the reason for obtaining the card was the presence of numerous police roadblocks throughout the country, in addition to her lack of explanations when she was confronted with this inconsistency. Therefore, the RAD's finding is reasonable.

[19] Lastly, the RAD considered the document [TRANSLATION] "birth certificate no. 347". Evidently, the RAD cannot be criticized for not addressing an argument that was not presented to it. However, it must render a decision based on all of the evidence submitted to the RPD (see subsection 110(3) of the IRPA). In this case, the applicant does not raise any new arguments but rather submits that a relevant piece of evidence was not considered. Regardless, the fact remains that the RAD gave this document sufficient weight. The RAD's reasons show that it examined the various birth certificates but found them to be problematic in many respects. It notes, for example, at paragraph 23 of the decision that it is inconsistent that a judgment in lieu was issued when birth certificate no. 347 from 2013 existed—since such a judgment is generally issued when there is no birth certificate. This conclusion shows not only that the RAD considered this

document, but also that its existence contributed to the general finding regarding the inconsistency of the identity documents submitted. Thus, even if the RAD did not have reservations about birth certificate no. 347 specifically, it was by looking at all the documents that it was able to conclude that the evidence was inconsistent. Moreover, the applicant had no explanation for these inconsistencies or for the source of any document, as the RAD noted. That confirms once more that birth certificate no. 347 was taken into consideration. Lastly, the respondent correctly submits that birth certificate no. 347 would not have been sufficient in itself to prove the applicant's identity, even if the RAD had considered it to be authentic. The analysis report by the Canada Border Services Agency, at pages 248–249 of the certified record, recommended that it not be accepted as sole proof of identity, without biometric data.

[20] Thus, it must be concluded that the applicant did not raise valid grounds for review to justify setting aside the RAD's decision, which is reasonable as a whole.

### ***Conclusion***

[21] For these reasons, the application for judicial review is dismissed. No questions of general importance were raised or arose in this case.

**JUDGMENT in IMM-2824-17**

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

No question is certified.

“Luc Martineau”

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Judge

Certified true translation  
This 24<sup>th</sup> day of October 2019

Lionbridge

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

**DOCKET:** IMM-2824-17

**STYLE OF CAUSE:** FANTA KONÉ v. THE MINISTER OF CITIZENSHIP  
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