

Federal Court



Cour fédérale

Date: 20181108

Docket: IMM-4821-17

Citation: 2018 FC 1127

Ottawa, Ontario, November 8, 2018

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

IBRAHIM OMER AHMEDIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Ibrahim Omer Ahmedin, the Applicant, seeks judicial review of a decision (“Decision”) of the Refugee Protection Division (“RPD”) of the Immigration and Refugee Board of Canada. The RPD found that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). The RPD denied the Applicant’s claim on the basis that he had failed to establish his identity.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Applicant claims to be from Asmara, Eritrea. He sets forth the following chronology of events in his Personal Information Form (“PIF”) submitted in support of his refugee claim. In August 2011, the Applicant was arrested and interrogated by Eritrean security forces. He was accused of being a member of the Eritrean National Salvation Front, a political opposition party. The Applicant was detained and tortured. In March 2012, he was sent to a rehabilitation program and subjected to forced labour. Several months later, he escaped with two other detainees to Kassala, Sudan and then to Khartoum, Sudan. In Khartoum, the Applicant found and paid a smuggler to bring him to Canada. The smuggler provided all necessary documentation, including a passport and air ticket. The Applicant arrived in Canada accompanied by the smuggler on November 12, 2012.

[4] The Applicant made a claim for refugee protection in Canada on November 15, 2012. His hearing before the RPD was held on July 20, 2017. In support of his claim, the Applicant submitted a number of documents. The review by the RPD of those documents is the focus of the Applicant’s request for judicial review of the Decision.

II. Decision under Review

[5] The Decision is dated August 24, 2017. The determinative issue before the RPD was the Applicant’s identity. The RPD reviewed the documentary evidence provided by the Applicant in

support of his identity and found “there is cause to doubt the credibility, genuineness, or trustworthiness of the evidence provided by the claimant in support of his identity”. The RPD concluded that the Applicant had not satisfied his burden of establishing a serious possibility of persecution on a Convention ground under section 96 of the IRPA or that, on a balance of probabilities, he would be personally subjected to a danger of torture or a risk to life, or a risk of cruel and unusual treatment or punishment within the meaning of subsection 97(1) of the IRPA.

[6] The RPD referred to section 106 of the IRPA and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 (“RPD Rules”) and framed the case as follows:

There is a requirement to “take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity.” The claimant has the onus to “provide acceptable documents establishing their identity and other elements of the claim.”

[7] The RPD analysed in detail the documentary evidence provided by the Applicant.

Birth Certificate

[8] The Applicant’s birth certificate was issued in 2007, when the Applicant was almost 30 years old. It was not clear when or how the Applicant came into possession of his birth certificate following his escape from Eritrea. The Applicant’s testimony regarding the provenance of the birth certificate and whether or not it was taken from him by Eritrean authorities was inconsistent.

[9] The RPD identified a number of material inconsistencies between the Applicant's birth certificate and the format and content of the sample Eritrean birth certificates contained in the National Documentation Package ("NDP") for Eritrea. The panel acknowledged that perfect consistency with the sample NDP birth certificates was not required but found that the unexplained inconsistencies between the certificates, coupled with the availability and prevalence of fraudulent Eritrean identity documents, gave rise to concerns regarding the genuineness of the Applicant's birth certificate. The RPD concluded that the birth certificate was unreliable and gave it little weight in assessing the Applicant's identity.

Driver's License

[10] The Applicant submitted his Eritrean driver's license and a translation of the license. The RPD summarized the Applicant's inconsistent testimony regarding how he maintained possession of his driver's license following his detention in Eritrea when he had initially testified that Eritrean authorities took all of his documentation. It was only when specifically asked about his driver's license that the Applicant stated the license was not taken by the authorities as it was in his car when he was detained. The RPD found that the Applicant's inconsistent testimony raised a concern regarding his credibility.

[11] The RPD stated that a driver's license is not issued for the primary purpose of identification but rather to permit the holder of the license to drive motor vehicles. There was no indication in either the Applicant's testimony or the NDP documentation that the issuance of a driver's license in Eritrea required verification of the identity or nationality of the person applying for the license. Finally, the RPD identified specific concerns with the driver's license

itself, including the fact that the Applicant's picture on the license appeared to be a hand-cut photograph pasted onto the document. For all of these reasons, the RPD gave little weight to the driver's license in establishing the Applicant's identity.

Identity Card of the Applicant's Wife

[12] The Applicant submitted a copy of his common-law spouse's Eritrean national identity card as evidence in support of his identity. However, the identity card did not identify the Applicant in any way nor did it indicate that the woman named on the card was married or in a common-law relationship with the Applicant. While the Applicant provided an envelope that appeared to have been sent to him by the woman named on the identity card, the Applicant established no relationship with the woman. He submitted no marriage certificate or other evidence of a common-law relationship, nor did he call his wife as a witness or provide an affidavit from her regarding their relationship or the Applicant's identity.

Identity Witness

[13] The Applicant provided a witness statement in contemplation of having a witness who knew him from Eritrea testify at the hearing. Unfortunately, the witness did not appear on the day of the hearing. Despite the absence of the witness, the RPD considered the witness statement. The statement did not explain how the witness came to have knowledge of the Applicant's citizenship as the two men had become acquainted at football games. They would meet when there was a football game and socialize at other times. The witness signed the statement and provided a copy of his Ontario driver's license but the RPD found that the

signatures bore no resemblance to each other. For these reasons and the fact that it was unable to test the evidence by questioning the witness, the RPD gave little weight to the witness statement.

Family Photographs and Applicant's School Certificate

[14] The Applicant provided four photos that he identified as family photographs, presumably depicting the Applicant's spouse and children. However, the Applicant provided no information about the photographs, including the identities of the people pictured or their relationship to him. The Applicant also submitted a secondary school certificate from 1996. The RPD noted that the certificate included the Applicant's name and photograph but did not contain a date of birth or statement of nationality. The Applicant did not provide the original school certificate, which precluded a closer examination of the document. Neither the photographs nor the school certificate was accorded significant weight by the panel in establishing the Applicant's identity.

Non-genuine Passport

[15] The RPD recounted the Applicant's testimony regarding his use of a non-genuine passport to travel to Canada. The Applicant testified he did not know the country of origin of the passport or the name used in the passport. He stated that he did not look at the cover or inside of the passport yet was able to testify that the passport did not contain his name or photograph. The Applicant exited Sudan, travelled through Egypt and France, and entered Canada using the passport. He handed the passport to immigration authorities in each country. The Applicant testified that he at no point spoke to or communicated with an immigration officer. The RPD stated:

It is implausible that the claimant would be able to successfully exit Sudan, transit through Egypt, transit through France, and then gain entry to Canada, using a passport which he would present to immigration authorities, without speaking or communicating with a single immigration authority in any of those countries. It is reasonable for immigration authorities to ask at least one or two basic questions when a traveller, such as the claimant, presents them with the passport and seeks entry to the country, particularly in Canada which has a well-developed customs and immigration system and set of laws and professional authorities to interact with those who seek to enter the country.

[16] The Applicant was asked at the hearing what he planned to say about his name or nationality in the non-genuine passport if he was questioned by an immigration officer. He replied that he would have given his true name despite knowing that detention was the likely consequence. The RPD found that it was “inherently implausible that the claimant would not have taken even basic and cursory steps of looking inside the passport he was using or familiarizing himself with the name in the passport, or the country which issued the passport”. It was reasonable to expect the Applicant to make a greater effort to familiarize himself with the minimal information needed to answer basic questions given the likelihood of detention should he not respond accurately. The RPD found the Applicant’s lack of knowledge of the contents of the passport given its critical importance to his journey implausible. The panel drew a negative credibility inference regarding the Applicant’s credibility and his evidence pertaining to his identity documentation and travel to Canada.

Absence of witnesses/documentary evidence from family members

[17] Finally, the RPD observed that the Applicant did not call any of his family members as witnesses at the hearing. As the Applicant had no passport or national ID card and was aware

that his identity was an issue, the RPD stated that it would have been helpful to have testimony or written evidence from his family members who were much closer to the Applicant than his proposed identity witness. The fact that the Applicant provided no reason for the absence of evidence from his family caused the RPD further concern regarding his credibility.

[18] In conclusion, the RPD found reason to doubt the credibility, reliability and genuineness of the documents provided by the Applicant. The Applicant failed to establish his identity and his claim for refugee protection was rejected.

III. Issues

[19] The Applicant questions the procedural fairness accorded to him by the RPD in failing to allow him additional time to locate his identity witness and in making negative credibility findings without first questioning him. He also submits that the Decision itself was unreasonable.

[20] I address the issues raised by the Applicant as follows:

1. Was the Applicant's right to be heard breached by the RPD: (A) in failing to hear the Applicant's identity witness; or (B) in failing to put specific questions to the Applicant regarding his testimony and documentary evidence?
2. Was the Decision reasonable?

IV. Standard of review

[21] The issues of procedural fairness raised by the Applicant will be reviewed for correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56 (*Canadian Pacific*)). The review

focuses on the procedures followed in arriving at a decision and not on the substance or merits of the case in question. I must assess whether the process followed by the RPD in the Applicant's case was just and fair having regard to all of the Applicant's circumstances, the substantive rights at stake and the other contextual factors identified by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific* at para 54):

[54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in *Eagle's Nest* (at para. 21) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied.

[22] Turning to the concerns raised by the Applicant as to the substance of the Decision itself, it is well-established that the RPD's findings regarding the Applicant's credibility, including his proof of identity, are essentially findings of fact and are reviewed by this Court on a standard of reasonableness (*Behary v Canada (Minister of Citizenship and Immigration)*, 2015 FC 794 at para 7; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 22, 47-48 (*Rahal*); *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315 (FCA)). The review of a tribunal's credibility findings against a standard of reasonableness requires the reviewing court to give significant deference to the findings of the tribunal, recognizing that "the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive

to all the factual nuances and contradictions in the evidence” (*Rahal* at para 42; *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 3 (*Aguilar Zacarias*)).

V. Analysis

1. *Was the Applicant’s right to be heard breached by the RPD: (A) in failing to hear the Applicant’s identity witness; or (B) in failing to put specific questions to the Applicant regarding his testimony and documentary evidence?*

A. The RPD’s Failure to hear the Applicant’s Identity Witness

[23] The Applicant argues that the RPD denied him the opportunity to contact his identity witness thereby breaching his right to be heard, one of the fundamental elements of the right to procedural fairness. Having reviewed the transcript of the RPD hearing, I find that the panel committed no error in this regard.

[24] The Applicant’s witness was not present at the outset of the hearing despite having been given adequate notice of the date, time and place of the hearing. The RPD began the hearing and questioned the Applicant regarding his experiences in Eritrea, his voyage to Canada, his birth certificate and his family status. The panel then called for a break to see if the Applicant’s witness had arrived. The hearing resumed ten minutes later and the following exchange occurred:

MEMBER: And we are back on the record, the same people are present. So, sir, just for the record are you sure that the identity witness is not coming?

CLAIMANT: He is at work, he is not coming.

MEMBER: Is there a reason he could not make some alternative arrangements or you did not make some alternate arrangements to have him appear as a witness today?

CLAIMANT: It is just the nature of his job that like I mentioned earlier he is not stationed in one place, his job it is called the railway, he goes across Canada.

MEMBER: Is there something you wanted to add counsel?

COUNSEL: I guess I must have ... I should have asked for a room with a telephone connection, I just did not recall that, that is what we normally do, it has happened fairly frequently. He would be available to call on the phone though right?

CLAIMANT: Yes.

MEMBER: Okay, unfortunately this room is not set up for a telephone right now. Sir, when did you first meet this identity witness in Canada?

CLAIMANT: I think it was in 2013 or 2014 when I first met him.

MEMBER: And when did you ask him to be a witness for you for your hearing?

CLAIMANT: About three weeks ago, maybe one month ago, but when I went to see the lawyer we had gone to him together.

MEMBER: Did you tell this witness when the date of your hearing was and where it was?

CLAIMANT: Yes.

MEMBER: And at what point did you learn that he would not be able to physically attend at this hearing?

CLAIMANT: He had told me that if he did come into town then he would appear, because he usually comes around in two months or so.

MEMBER: Well, when did he tell you this?

CLAIMANT: That same day when we met the lawyer, but he did not come.

MEMBER: Alright, counsel, is there anything else you want to say regarding the witness?

COUNSEL: Can we try on the phone here? I am sure there are other rooms we can probably find to ...

MEMBER: Before we get into that why do you ... why do we not go off record very briefly, try and give him a phone call and see if he is even available, okay. We will go off record.

----- **OFF THE RECORD** -----

MEMBER: Okay, we are back on the record, same people are present. During the brief recess the claimant attempted to contact the witness by telephone but was put through to the witness's voicemail. Sir, during the break you asked me if we could try him again in 30 minutes and at this point we have already tried him and we are going to move on.

[25] It is clear from the transcript that the RPD provided the Applicant with the opportunity to contact his witness. The hearing was interrupted twice and the Applicant was permitted to follow up by phone with his witness to determine why he was not present. When the hearing resumed, the panel was informed that the witness was not going to attend the hearing. In these circumstances, I find that the RPD acted fairly in its attempt to accommodate the Applicant and was not required to take a third break to allow the Applicant a further opportunity to contact the witness. It was the Applicant's obligation to secure the attendance of his witness at the hearing.

[26] The Applicant relies on the decision of this Court in *Wang v Canada (Minister of Citizenship and Immigration)*, 2007 FC 531 (*Wang*), in which Justice Barnes stated that the right to make one's case is subject to reasonable limitations but the exercise of discretion by a decision-maker to refuse to hear evidence of a party must be carried out on a principled basis. In *Wang*, the party in question failed to provide formal notice of her intention to call a witness although an outline of the witness's evidence and his curriculum vitae had been filed with the RPD. The RPD gave no reason for failing to exercise its discretion to hear the witness. It simply refused to do so. In the present case, the RPD did not refuse to hear the Applicant's witness. The

panel was prepared to hear from the witness and afforded the Applicant time to contact the witness.

B. The RPD's Failure to Question the Applicant

[27] The Applicant submits that the RPD failed to put sufficient specific questions to him that would have permitted him to answer the panel's concerns regarding his identity documentation. The Applicant states that the RPD's failures in this regard amount to a denial of his right to know the case he had to meet and a breach of his right to procedural fairness.

[28] The Applicant focuses on the statements made by the RPD regarding the Applicant's failure to provide copies of his children's birth registrations, any evidence from his spouse or family and the original copy of his school certificate. The Applicant also takes issue with the RPD's negative findings regarding the authenticity of the evidence he did provide. He argues that the panel did not raise these omissions and authenticity concerns to the Applicant. Consequently, he had no opportunity to respond.

[29] The Respondent submits that the onus was on the Applicant to establish his identity by providing acceptable documentation confirming his identity. He argues that the RPD did not breach the Applicant's right to procedural fairness in pointing out documentation that could have been provided in support of the evidence submitted or as independent proof of identity. The role of the RPD is to probe and assess the evidence provided and determine whether the Applicant has established his identity. The RPD's assessment of the evidence does not raise issues of procedural fairness.

[30] I find that the RPD committed no breach of the Applicant's right to procedural fairness in its assessment of: the probative value and authenticity of the evidence before it; its observations regarding additional evidence that could readily have been provided by the Applicant and that would have supported the documentary evidence that was provided; or, in the scope of its questions put to the Applicant. The majority of the issues raised by the Applicant in the guise of procedural fairness issues pertain to whether the Decision was reasonable. I will address those issues in the next section of this judgment.

[31] At its simplest, the Applicant's argument is that he did not know the case he had to meet. I have difficulty with this argument. The IRPA and the RPD Rules require the Applicant to establish his identity. The transcript of the hearing and the Decision focus on identity and the documentary identity evidence submitted by the Applicant. It was clear at the hearing that the RPD had concerns with the documentation provided by the Applicant and that its conclusions would centre on that documentation. The panel engaged with the Applicant during the hearing, posing him both specific and open-ended questions. The RPD asked the Applicant to explain the discrepancies between his birth certificate and the examples provided in the NDP. As part of its consideration of the identity card and photographs submitted by the Applicant, the RPD asked whether the Applicant had any "family registration or I.D. that would indicate that you are a family unit with your girlfriend and these children". The RPD also asked questions about the process for obtaining his driver's license and queried why the Applicant did not have other identity documents.

[32] The RPD focused its analysis in the Decision on the documentation before it. The issues raised by the panel derived from the documentation and form part of the fact finding and weighing of evidence that is the central role of the RPD. A decision-maker is not required to question an applicant point-by-point on every finding it may make. The RPD did not raise ancillary issues or documents that could not have been contemplated by the Applicant and, therefore, should have been put to him in the hearing as a matter of fairness. The Applicant was provided with every opportunity to place his evidence before the RPD and to explain its provenance and relevance.

2. *Was the Decision Reasonable?*

[33] The determinative issue in this application for judicial review is whether the Decision was reasonable. The Applicant's arguments centre on three issues. First, the Applicant submits that the RPD made unreasonable implausibility and negative credibility findings. The Applicant relies on jurisprudence of this Court in arguing that implausibility findings should only be made in the clearest of cases and must not be made on mere speculation (*Aguilar Zacarias* at paras 10-11). Second, the Applicant submits that a number of the RPD's findings regarding the Applicant's documentation were unreasonable. Third, the Applicant submits that, even if the RPD's findings regarding each document submitted by him were reasonable, the Decision as a whole was not reasonable as the panel failed to consider the Applicant's evidence in its totality.

[34] The starting point for my analysis of the Decision is the premise that the onus rests on a claimant for refugee status to establish his or her identity on a balance of probabilities. The claimant is required to provide acceptable documentation establishing identity, failing which the

claimant must explain why they do not have such documentation and what steps they took to obtain the documentation (section 106 of the IRPA; RPD Rule 11):

Immigration and Refugee Protection Act

Claimant without Identification

Credibility

106. The Refugee Protection Division 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 the documentation.

Étrangers sans papier

Crédibilité

106. La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

Refugee Protection Division Rules

Documents

11. The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

Documents

11. Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

[35] The issue of identity is fundamental to a refugee claim pursuant to either section 96 or section 97 of the IRPA and the determination of identity is at the core of the expertise of the

RPD. The deference owed by this Court on review of the RPD's identity findings is succinctly described by Justice Gleason, as she then was, in *Rahal* (at para 48):

[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.

[36] In the present case, there is no glaring inconsistency between the RPD's findings and the weight of the evidence in the record. The panel considered the Applicant's documentary evidence and his explanations for the absence of other identity documents thoroughly and reasonably. As a result, I find that the Decision was reasonable.

A. The RPD's Implausibility Findings

[37] In considering the Applicant's testimony describing his voyage to Canada using a non-genuine passport, the RPD made several related findings of implausibility. These findings were secondary to the panel's assessment of the Applicant's documentary evidence but I address them in response to the Applicant's specific submissions.

[38] During the hearing, the RPD questioned the Applicant at some length regarding his use of the passport. The Applicant testified that the smuggler retained possession of the passport but would hand it to the Applicant to show to immigration authorities in each country. The Applicant

did not consider looking inside the passport as it was only very briefly in his possession each time. He did not know the name used in the passport or its country of issuance. The Applicant also stated that he did not speak to any of the immigration authorities with whom he came in contact. The RPD found it implausible that the Applicant would not have been required to respond to a single immigration officer given he had to exit Sudan, transit through Egypt and France, and gain entry to Canada. The panel stated that it was reasonable to expect the Applicant would have been required to answer one or two questions in these countries, particularly upon entry to Canada.

[39] The RPD drew no adverse inference from the use by the Applicant of a non-genuine passport, as it is not unexpected for a refugee to use such documentation to travel to safety, but stated:

It is the claimant's implausible ignorance of basic information that was both readily available to him, and to his benefit to become familiar with, and the implausibility of being able to travel through multiple countries without speaking to a single immigration authority, that leads me to draw a negative inference regarding the claimant's credibility and the credibility of his allegations regarding his identity documentation and his travel to Canada.

[40] The RPD asked the Applicant what information he would have given if asked by an immigration officer for his name. The Applicant stated that he would have given his own name but acknowledged that such a response would probably have led to his detention. In light of the risk of detention, the RPD found it was "reasonable to expect the claimant to have made a greater effort to familiarize himself with the most basic of information necessary to answer potential questions from immigration authorities about his name and citizenship".

[41] The Applicant argues that implausibility findings must be made sparingly and not as an exercise in speculation. I agree. However, the RPD's findings of implausibility in this case were not based on mere speculation.

[42] In the context of the multi-country journey the Applicant and his smuggler had to undertake to arrive in Canada, it was reasonable for the RPD to expect that the Applicant would have taken the minimal effort required to know the name under which he was travelling and the country of issuance of his passport. The severe consequences that would befall both the Applicant and the smuggler if an immigration officer asked basic questions of the Applicant necessitated such knowledge. It was also reasonable for the RPD to consider the normal practices of immigration officers when a traveller presents them with a passport and seeks entry to their country. The panel referred particularly to the well-developed immigration system and trained immigration authorities in Canada in this regard.

[43] Justice Muldoon in *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776 at paragraph 7, articulated the circumstances in which a tribunal may reasonably make a finding of implausibility as circumstances in which "the facts presented are outside the realm of what could reasonably be expected". I find Justice Muldoon's statement apt in the present case. The Applicant's testimony does not make sense when assessed against the evidence before the RPD. His complete lack of knowledge of the basic information required to safeguard his journey through multiple countries to arrive in Canada is outside the realm of what could reasonably be expected.

B. The RPD's Findings regarding the Applicant's Documentary Evidence

[44] I now turn to the Applicant's submission that the RPD made unreasonable findings regarding the authenticity and weight of his evidence. The documentary evidence submitted by the Applicant consists of one core identity document, his birth certificate, two documents which contain his name and some personal information, a driver's license and school certificate, and other documents. The documentary evidence before the RPD was as follows:

- the Applicant's birth certificate, issued in 2007;
- the Applicant's driver's license;
- an identification card alleged to be that of the Applicant's wife;
- a witness statement from an Eritrean citizen living in Canada, given under solemn affirmation;
- four photographs, entitled family photos; and
- a copy of the Applicant's secondary school certificate.

[45] The RPD provided detailed analyses of each of the documents submitted by the Applicant. I will address the Applicant's submissions and the RPD's analysis and conclusions relating to each document.

Applicant's Birth Certificate

[46] The RPD analysed both the provenance and appearance of the Applicant's birth certificate. The Applicant obtained his birth certificate in 2007. In his PIF, the Applicant stated that he used his birth certificate and a non-genuine passport to travel to Canada. At the hearing, he testified that he did not have any identification documents from Eritrea as the Eritrean

authorities had taken everything from him other than his driver's license. The RPD found that the Applicant's testimony contradicted the information in his PIF and the fact that the Applicant had the birth certificate with him when he arrived in Canada.

[47] The RPD then analysed the birth certificate itself against the examples of birth certificates contained in the NDP for Eritrea. The panel identified a number of material discrepancies between the Applicant's birth certificate and the example birth certificates. The panel also reviewed the information in the NDP which indicated that the format of birth certificates varied region to region in Eritrea. However, the Applicant's birth certificate was issued in the same region and broadly within the same time period as the example certificates. When the discrepancies were raised with the Applicant at the hearing, he was unable to explain why his birth certificate differed from the example certificates. The RPD emphasized that it did not require complete consistency with the examples provided in the NDP but concluded:

The total number of unexplained inconsistencies, particularly when viewed cumulatively, along with the availability and prevalence of fraudulent Eritrean identity documents, negatively affects the reliability of the birth certificate provided by the claimant at this hearing and gives rise to concerns regarding the genuineness of the birth certificate such that I find it to be unreliable and I give it little weight as it pertains to establishing the claimant's identity.

[48] I find that the RPD's conclusion was reasonable. The panel reviewed the Applicant's birth certificate in detail and set out its review of the NDP information. It allowed for minor discrepancies and provided the Applicant the opportunity to explain why his birth certificate differed from the examples contained in the NDP. Contrary to the Applicant's submission, the panel did not place undue weight on the prevalence of fraudulent Eritrean identity documents. It

is clear in the Decision that the RPD was focused primarily on the evidence before it and not on generalities.

[49] The RPD's findings regarding the Applicant's birth certificate were critical to the Decision. The birth certificate was the only formal identification document submitted by the Applicant. The remainder of the documentation was secondary in nature as the existence or issuance of that documentation was not predicated on any formal verification of the Applicant's identity.

Applicant's Driver's License

[50] The RPD gave little weight to the Applicant's driver's license in establishing his identity for three reasons. First, the RPD noted inconsistencies in the Applicant's testimony as to whether or not the Eritrean authorities confiscated all of his identity documents when he was detained. The RPD also noted that the Applicant did not include the driver's license in his list of documents in his PIF which he completed several months after leaving Eritrea. The Applicant's inconsistent testimony and failure to include the driver's license in his PIF raised concerns regarding his credibility.

[51] Second, the RPD found that there was no evidence that the issuance of a driver's license in Eritrea required proof of the Applicant's identity. The license was issued to approve the Applicant as a driver and not primarily as proof of identity. The Applicant was asked in the hearing to explain the process involved in obtaining his driver's license. His evidence was

consistent with the process described in the NDP, neither of which indicated that the issuance of a license required any documentation or verification of the Applicant's identity.

[52] Third, the RPD identified concerns with the license itself. The expiration period of the Applicant's license was not consistent with information provided to the RPD from the Eritrean consulate in Toronto. The license had little in the way of security features and the information in it was handwritten. Further, the picture of the Applicant on the driver's license appeared to be a hand-cut photograph that was pasted onto the license.

[53] The Applicant submits that the RPD drew negative inferences regarding his driver's license without asking him for an explanation. However, the transcript of the hearing demonstrates that the panel asked the Applicant to explain the process for obtaining his driver's license. The Applicant argues that, if he had been asked specifically what was required of him to obtain the license, he would have stated that he showed his national identification card. In my view, the Applicant is seeking a level of specificity in the questioning of the RPD that is not warranted. The issues identified by the RPD in the Decision with respect to the license were a result of its analysis of the document before it. Its finding that the issuance of the driver's license did not require proof of identity coupled with its concerns with the appearance of the license reasonably led the RPD to accord the license little weight in establishing the Applicant's identity. The Applicant's argument that the RPD's "failure to accept a driver's license as a reliable identification document is unreasonable" is a request that this Court reweigh the probative value of the particular driver's license in evidence.

The Identification Card of the Applicant's Wife

[54] The Applicant submitted to the RPD an Eritrean identification card alleged to be that of his wife together with an envelope that appears to have been sent to the Applicant by the woman named in the identification card. The Applicant provided no documentary evidence establishing his relationship with the woman named in the card. The RPD noted that the Applicant had not called his wife as a witness nor did he provide an affidavit from her regarding their relationship. In the absence of such documentation, I find that the RPD's conclusion that it could give little weight to the identification card of a third party in establishing the Applicant's identity was reasonable.

Identity Witness Statement

[55] The RPD considered the information in the written statement of the Applicant's identity witness but gave the document little weight. The witness indicated that he was a professional soccer player in Eritrea and knew the Applicant as a supporter of his team. Although the witness stated that he knew the Applicant to be a citizen of Eritrea, the RPD found that the letter provided no indication of the witness's source of such knowledge in light of the social nature of their association. The witness signed the statement and provided a copy of his driver's license. The RPD found that the signature on the statement and the signature on the driver's license bore "almost no resemblance to one another". The Applicant submits that the RPD erred in its assessment of the two signatures.

[56] A review of the documents in the record leads me to the conclusion that the RPD did not err in noting differences between the two signatures. Whether the signatures bear no resemblance to each other is a subjective evaluation which falls in the first instance to the RPD. As long as the panel's finding is not obviously inconsistent with the evidence in the record, it is owed deference. The Applicant's contrary opinion is not sufficient for the Court to substitute its finding for that of the panel. In any event, the RPD's conclusion that it could give little weight to the witness statement as it pertained to the Applicant's identity or citizenship was reasonable given the lack of detail in the letter regarding the witness's knowledge of the Applicant's citizenship.

Family Photographs

[57] The Applicant provided four photographs. Two of the photographs are of the Applicant and a woman and two of the photographs depict two children. The Applicant did not provide evidence of the identities of these individuals. The Applicant argues that the issue of his identification of and relationship with the individuals in the photographs should have been put to him by the RPD but, in my view, the necessity for such information was self-evident. Otherwise, the photographs provide no evidence of the Applicant's identity. It was the Applicant's obligation to explain the photographs and their relevance to him. I find that the RPD made no reviewable error in ascribing little weight to the photographs.

Applicant's Secondary School Certificate

[58] The RPD also gave little weight to the Applicant's secondary school certificate in establishing his identity. The certificate contained no date of birth or statement of nationality and had few security features. The fact that the Applicant provided only a copy of the certificate precluded a close examination of the document. I find that the RPD's decision to accord the school certificate little weight was not unreasonable as the certificate itself contained little formal information regarding the Applicant's identity.

Summary

[59] As stated in *Rahal* (at para 48), "[t]he 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 the present case, I find that the RPD reasonably reviewed each document submitted by the Applicant. The panel provided detailed reasons for each of its findings and drew reasonable conclusions based on the nature and content of each document, any flaws evident on the face of the document, its status as a formal identity document or as a secondary document, and the panel's analysis of the Applicant's testimony. In my opinion, any intervention in the RPD's findings would in fact be a reweighing of the evidence by this Court.

C. The RPD's Consideration of the Applicant's Evidence in its Totality

[60] The Applicant submits that the RPD was required to consider cumulatively the documentary evidence presented by the Applicant, the fact that he testified at the hearing in Tigrinya, the most widely spoken language in Eritrea, and the Applicant's testimony

demonstrating his spontaneous knowledge of Eritrea. The Applicant argues that the RPD's failure to mention either the Applicant's testimony in Tigrinya or his knowledge of Eritrea renders the Decision unreasonable.

[61] In assessing this third submission of the Applicant, it is necessary to return to section 106 of the IRPA and Rule 11 of the RPD Rules. Together, they require that a claimant submit to the RPD acceptable documentary evidence of his or her identity or a reasonable explanation for the absence of such documentation. In the present case, I find no reviewable error with respect to the RPD's consideration of the Applicant's documentary evidence either individually or in its totality. The Applicant's explanations of the issues identified by the RPD with his evidence were not persuasive. The RPD's findings regarding the flaws inherent in each of the documents before it, whether patent flaws on the face of the particular document or a lack of connection of that document to the establishment of the Applicant's identity, were reasonable.

[62] The question raised by the Applicant's submission is whether the failure by the RPD to consider the Applicant's language of testimony and his knowledge of Eritrea are sufficient to render the Decision unreasonable. The Applicant cites jurisprudence of this Court in support of his position that the RPD's failure to take into account the Applicant's knowledge of Tigrinya results in an unreasonable decision. He cites the case of *Kebedom v Canada (Citizenship and Immigration)*, 2016 FC 781 (*Kebedom*). The issue before Justice Heneghan in *Kebedom* was whether the RPD had committed a reviewable error in finding that the claim before it had no credible basis pursuant to section 107(2) of the IRPA. She stated (*Kebedom* at paras 30-31):

[30] A finding of no credible basis may only be made where there is no trustworthy or credible evidence that could support

recognition of the claim; see the decision in *Rahaman v. Canada (Minister of Citizenship and Immigration) (C.A.)*, [2002] 3 F.C.R. 537 at paragraph 28. Since I have found that the RPD's assessment of the Applicant's birth certificate was unreasonable, I conclude that the finding of no credible basis is also unreasonable.

[31] In my opinion, the RPD's no credible basis finding is also flawed since the Applicant's knowledge of Tigrinya, the most widely spoken language in Eritrea, is credible evidence that could support the recognition of his refugee claim; see the decision in *Tran v. Canada (Citizenship and Immigration)*, 2013 FC 1080 at paragraph 8.

[63] A finding of no credible basis for purposes of subsection 107(2) of the IRPA can only be made where there is no credible evidence before the RPD that could support recognition of the refugee claim before it. The threshold for determining whether such a finding is reasonable is very low. Evidence of knowledge of the language, geography, history, political landscape and public affairs of a country may be sufficient to defeat a finding of no credible basis. The review of an RPD decision regarding the establishment of identity differs due to the relevant legislative provisions and the burden of proof on a claimant to establish his or her identity through sufficient, acceptable documentary evidence or reasonable explanation. In my view, the RPD's failure to take into account the Applicant's language of testimony is not fatal to the reasonableness of its Decision where there is little credible documentary evidence in support of the Applicant's identity.

[64] Having regard to the deference owed to the findings of the RPD in matters of identity, document authentication and credibility, I find that the Decision was reasonable. The Applicant did not establish his identity with documentary evidence or reasonable explanation as required by section 106 of the IRPA and Rule 11 of the RPD Rules. The RPD's failure to consider the

Applicant's knowledge of Tigrinya and Eritrea, while relevant to the assessment of his identity as a citizen of Eritrea, is not alone sufficient to render the Decision unreasonable.

VI. Conclusion

[65] The application is dismissed. The RPD reviewed in detail the documentary evidence submitted by the Applicant. The panel also considered the Applicant's explanations for various flaws in his documentary evidence, the manner in which the documents came into his possession and the absence of other possible identification documents. The RPD's review of the Applicant's evidence was transparent and justifiable. In addition, the RPD's finding of implausibility regarding the Applicant's lack of knowledge of the information contained in the non-genuine passport supplied to him by the smuggler was not speculative. Rather, it was based on a reasonable assessment of the story against the common and expected process inherent in transiting through multiple countries. While it would have been preferable for the RPD to note the Applicant's testimony in Tigrinya in particular, the fact that the Applicant's use of the language was not considered does not render the Decision unintelligible. The conclusions of the panel set forth in the Decision fall within the possible and reasonable outcomes for the case based on the particular facts and evidence before the RPD.

[66] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-4821-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4821-17

STYLE OF CAUSE: IBRAHIM OMER AHMEDIN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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