

Federal Court



Cour fédérale

**Date: 20190121**

**Docket: IMM-2764-18**

**Citation: 2019 FC 86**

**Ottawa, Ontario January 21, 2019**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**NIMA MAHAMOUD DJAMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Ms. Djama, is a national of Djibouti who claimed refugee protection in this country. The Refugee Protection Division [the “**RPD**”] of the Immigration and Refugee Board of Canada rejected her claim on the basis that it had no credible basis.

[2] Ms. Djama submits that the RPD committed three errors in reaching its decision [the “**Decision**”] and that therefore it should be set aside. In particular, she asserts that the Decision

was made without regard to an important piece of evidence, namely, a letter that purported to corroborate the key elements of her claim. She further maintains that the RPD erred by failing to have regard to section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the “Act”] when it referred to the “personal documentation” that she adduced in support of her claim. Finally, she submits that the RPD failed to properly apply the “no credible basis” test set forth in subsection 107(2) and in paragraph 110(2)(c) of the Act.

[3] For the reasons that follow, this application for judicial review of the Decision is dismissed.

[4] The issues that Ms. Djama has raised are reviewable on a reasonableness standard of review because they are questions of fact or of mixed fact and law: *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 53 [*“Dunsmuir”*].

[5] In support of its conclusion that there was no credible basis for Ms. Djama’s claim, the RPD made five important factual findings. First, it found that the events upon which she based her claim “could not have happened as [she] described” because, according to the undisputed stamps in her passport, she was out of the country when those events occurred. Second, the RPD rejected her allegations that the Djibouti authorities inconsistently stamped her passport and that she was in Djibouti at the time of the events in question. Third, the RPD rejected her claim that the person who assisted her to complete her visa application form had erred in describing her clan/tribe as “Issak,” rather than as the Essa clan of Yonis Muse. In this regard, the RPD found that she had “misrepresented her actual tribal affiliation on her claim.” Fourth, the RPD found

that her lack of knowledge of basic facts pertaining to the opposition Union Pour le Salut National [the “USN”] party, of which she claimed to be a supporter, was “highly damaging to her credibility.” Finally, the RPD found that some of her replies to its questions were “off-topic” and that she had omitted to mention in her testimony at least two specific incidents and instances of harassment that were described in her written narrative.

[6] In the context of this application, Ms. Djama does not take issue with the foregoing findings, or with the RPD’s conclusion that she was an unreliable witness whose unverified statements merited no weight.

[7] I will pause to observe in passing that an unsupported claim that border authorities do not consistently stamp passports ought not to be *presumed* to be true. I recognize that *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302, at 305 (FCA) established a presumption of truthfulness for sworn statements made by an applicant for refugee protection. However, that presumption is subject to the proviso that “there be [no] reason to doubt their truthfulness.” In my view, the passport system is such a bedrock of international travel that in the absence of some objective evidence as to the existence of fraud or inconsistency in the stamping of passports in a particular jurisdiction, there is a valid reason to presume that passports have been properly stamped.

[8] After reaching its conclusion regarding the lack of credibility of Ms. Djama’s unverified statements, the RPD concluded that “her evidence provides no basis for a positive protection finding under either section 96 or 97(1) of the *Act*.” Ms. Djama claims that the RPD erred in

reaching this conclusion, because it failed to mention a letter written by a friend of hers (Ms. Nima Ahmed Said [the “**Said Letter**”]) that purported to corroborate several important aspects of her basis of claim.

[9] I disagree. The Said Letter was not *credible* evidence in support of Ms. Djama’s claim, because it purported to confirm the existence of at least one fact that the RPD explicitly rejected. In particular, that letter stated that Ms. Djama is a member of the “Yoonis Muuse” [*sic*] tribe. This contrasted with what Ms. Djama herself wrote on her application for a visa. The RPD specifically rejected her explanation for this inconsistency with her application for refugee protection, and further noted that she had replied “no” beside a question on the visa form that asked whether anyone had assisted her in preparing the application. Moreover, it found that she had misrepresented her actual tribal affiliation on her application for refugee protection, where she claimed to be a member of the Essa clan of Yonis Muse. Given that the Said Letter purported to confirm the existence of this fact that was found to have been untrue, its general credibility was seriously undermined. In my view, it was not unreasonable for the RPD to have failed to have referred to such a document.

[10] I recognize that in *Wu v Canada*, 2016 FC 516, at para 14 [“**Wu**”], Justice Diner held that “[i]n making a no credible basis finding, the RPD has an obligation to assess all the evidence and expressly state its reasons for its conclusion.” Justice Diner proceeded to find that it was unreasonable for the RPD to have concluded *in that particular case* that the Applicant’s claim lacked any credible basis, without rejecting or otherwise explicitly considering a letter that corroborated an important aspect of the Applicant’s claim for refugee protection.

[11] In my view, *Wu* is distinguishable, because the letter in question there was more objective than the Said Letter *and* it did not purport to confirm one or more facts that had been found to be untrue. Rather, it purported to confirm an allegation that the RPD had simply found had not been “sufficiently” established, namely, the applicant’s practice of Falun Gong. Thus, the credibility of the letter had not been vitiated. Indeed, it was *prima facie* credible and more objective than the letter upon which Ms. Djama relies, because it was allegedly written by a former employer who stated the applicant had been terminated due to her status as a Falun Gong practitioner. I agree with Justice Diner that it is unreasonable for the RPD to fail to explicitly consider such evidence in such circumstances.

[12] However, it is not unreasonable for the RPD to fail to explicitly assess a letter written by a friend that purports to confirm one or more important facts that have been found to be untrue. This is so regardless of whether the letter also purports to confirm other facts that have not been found to be untrue. Once a person has found to be untruthful, the credibility of the rest of what the person has to say is seriously undermined to the point the RPD has no obligation to explicitly mention it in its decision. Stated differently, even if a letter written by such a person contains alleged facts that are inconsistent with the conclusions reached by the RPD, the RPD is not obliged to explicitly address such a letter in its decision. In my view, it is reasonably open to the RPD to implicitly consider that such a letter does not provide a credible basis for an applicant’s claim.

[13] Ms. Djama also submits that the RPD erred by failing to consider section 96 of the Act when it assessed the “personal documentation” that she adduced in support of her claim. The relevant passage of the Decision is as follows:

[26] I find that the claimant is an unreliable witness and I place no weight on any of her unverified statements. Accordingly, her evidence provides no basis for a positive protection finding under section 96 or 97(1) of the *Act*.

[27] I also find that there is no credible and trustworthy personal documentation that makes her in need of protection under the *Act*.

[14] Ms. Djama asserts that the language “in need of protection under the *Act*” is language that is solely found in subsection 97(1). She maintains that that the RPD’s failure to indicate in any way in paragraph 27 that it considered section 96 in connection with her personal documentation demonstrates that it failed do to so.

[15] I disagree. It is settled law that, on judicial review, the Court must review a decision “as an organic whole, without a line-by-line treasure hunt for error”: *Irving Pulp & Paper Ltd v CEP, Local 30*, 2013 SCC 34, at para 54. In my view, it is clear from the last sentence in paragraph 26 of the Decision, as well as from several other paragraphs therein, including the opening words and the statement of conclusions in paragraphs 9 and 29 of the Decision, that the RPD was mindful of Ms. Djama’s claim under section 96 of the Act throughout its assessment. Moreover, given the foregoing, the words “in need of protection under the *Act*” can be construed as meaning in need of protection under either section 96 or section 97 of the Act.

[16] This conclusion is also relevant to the third issue raised by Ms. Djama, to the effect that the RPD misapplied the “no credible basis” test set forth in subsection 107(2) and in paragraph

110(2)(c) of the Act (which are reproduced in the Appendix below). In brief, Ms. Djama asserts that the RPD erred when it made the statement in paragraph 27, as quoted in paragraph 13 above. In this regard, Ms. Djama submits that the “no credible basis” test does not require that her documentary evidence must establish that she is “in need of protection under the Act,” as contemplated by section 97 and as stated by the RPD. She further maintains that documents may be insufficient on their own to establish a claim, while nevertheless providing some credible basis for a claim.

[17] I do not take issue with the latter proposition. It has been confirmed by this Court on multiple occasions, including in *Wu*, above, at paragraph 12. However, as noted above, it is clear from a reading of the Decision as a whole that the RPD was mindful of Ms. Djama’s claim under section 96 of the Act throughout its assessment. In my view, its use of language from section 97 of the Act in describing the absence of credible and trustworthy personal documentation does not demonstrate that it failed to consider to properly apply the “no credible basis” test. On the contrary, it is clear from the concluding words of the Decision that the RPD considered “that there is no credible basis for [Ms. Djama’s] claim” whatsoever.

I. **Conclusion**

[18] Given the conclusions that I have reached in respect of the three issues raised by Ms. Djama, this Application will be dismissed.

[19] At the end of the hearing in this proceeding, counsel to Ms. Djama and the Respondent each stated that this Application does not give rise to a serious question of general importance, as

contemplated by paragraph 74(d) of the Act. I agree. Therefore, no question will be certified pursuant to that provision.



**JUDGMENT in IMM-2764-18**

**THIS COURT'S JUDGMENT** is that:

1. This Application is dismissed.
  
2. There is no question for certification pursuant to paragraph 74(d) of the Act.

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"Paul S. Crampton"  
Chief Justice

## APPENDIX 1 — Relevant Legislation

<p><b>Decision on Claim for Refugee Protection</b></p> <p>[...]</p> <p><i>No credible basis</i></p> <p>107 (2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.</p> <p>[...]</p>	<p><b>Décision sur la demande d’asile</b></p> <p>[...]</p> <p><i>Preuve</i></p> <p>107 (2) Si elle estime, en cas de rejet, qu’il n’a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l’absence de minimum de fondement de la demande.</p> <p>[...]</p>
<p><b>Appeal to Refugee Appeal Division</b></p> <p>[...]</p> <p><i>Restriction on appeals</i></p> <p>110 (2) No appeal may be made in respect of any of the following:</p> <p>[...]</p> <p>(c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;</p>	<p><b>Appel devant la Section d’appel des réfugiés</b></p> <p>[...]</p> <p><i>Restriction</i></p> <p>110 (2) Ne sont pas susceptibles d’appel :</p> <p>[...]</p> <p>c) la décision de la Section de la protection des réfugiés rejetant la demande d’asile en faisant état de l’absence de minimum de fondement de la demande d’asile ou du fait que celle-ci est manifestement infondée;</p>

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

**DOCKET:** IMM-2764-18

**STYLE OF CAUSE:** NIMA MAHAMOUD DJAMA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** JANUARY 11, 2019

**JUDGMENT AND REASONS:** CRAMPTON C.J.

**DATED:** JANUARY 21, 2019

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