

Federal Court



Cour fédérale

**Date: 20190325**

**Docket: IMM-4337-18**

**Citation: 2019 FC 370**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, March 25, 2019**

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

**BETWEEN:**

**SIDI MOHAMED SIDI ABOUBECK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, a citizen of Mauritania, is challenging a decision by the Refugee Protection Division [RPD] rejecting his claim for refugee protection on the grounds that it was not credible and finding, furthermore, that there was no credible basis for the claim under subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [Act]. He maintains that the RPD committed a reviewable error in its assessment of the credibility of his

claim and that there was no justification for the RPD's finding that there was no credible basis for the claim.

[2] The applicant arrived in Canada on July 20, 2016, from the United States, where he had been living since January 30 of that same year after leaving Mauritania. He filed a claim for refugee protection a few weeks after his arrival. The allegations underlying the applicant's claim can be summarized as follows. The applicant alleges that he was bullied throughout his childhood because he was considered to be a member of the "El Mo'almeen" caste, the majority of which are blacksmiths, like his father. He indicated that for this reason, he had found it difficult to make friends and meet girls his age, until 2013, when he met his future spouse. However, since his beloved came from a wealthy, well-known family, the couple chose not to reveal their relationship for fear that his wife's family would not accept him.

[3] The couple therefore married in a secret ceremony, in accordance with a customary rite, and then continued to see each other secretly, as they remained fearful of how the applicant's in-laws would react. On the night of November 15, 2015, the applicant's wife allegedly called the applicant and asked him to meet her at their secret meeting place because she wanted to see him. The applicant had found this request unusual. When he arrived at the designated location, he was allegedly attacked by four men, including his wife's brother, bearing sticks and knives. He allegedly lost consciousness and a friend reportedly came to his rescue and took him to the hospital where he spent three days in a coma. The police had apparently not wanted to intervene.

[4] As a result of this incident, the applicant decided not to return to his home and eventually decided to leave Mauritania for the United States after he was able to obtain an American visa, thanks to financial assistance from friends and his father, who was already in the United States. He fears that if he returns to Mauritania, some of his in-laws would want to kill him.

[5] The RPD did not believe his story, so much so that it found that there was no credible basis for his refugee protection claim. More specifically, it deemed the following contradictions and omissions to be fatal to the applicant's story:

- a. With respect to the incident that allegedly prompted his departure from Mauritania, that is, the incident of November 2015, the RPD criticized the applicant for failing to mention the threats allegedly made against him by his wife's brothers in the year preceding this incident, even though these threats allegedly culminated in a physical attack, according to his testimony at the hearing;
- b. With respect to what happened after the November 2015 incident, the RPD criticized the applicant for contradicting the information provided in his "Basis of Claim" [BOC] Form, in which he indicated that a friend had taken him to hospital after he was assaulted, while, at the hearing, he stated that he woke up in hospital after losing consciousness at the site of the attack;
- c. With respect to why he had been in possession of his passport allowing him to leave the country after the November 2015 incident if he never returned home after the incident, as he claimed at the hearing, the RPD did not believe his explanation that he always carried his passport on him, deeming it to be implausible;

- d. With respect to his marriage certificate, the RPD criticized him for contradicting himself by first stating that the certificate was in the possession of a friend because the union was a customary marriage, only to then change his version of the facts by stating that his wife's identity card was equivalent to that certificate, yet another claim which was deemed to be implausible by the RPD;
- e. With respect to his wife's age, the RPD criticized him for providing an approximate response even though he has known his wife for a few years; and
- f. With respect to the identity of his wife, as indicated on the U.S. visa obtained by the applicant for the purpose of leaving Mauritania, which differs from the identity provided in his refugee protection claim documents and which the applicant admitted was false, the RPD drew a negative inference regarding the applicant's general credibility therefrom given his history of false statements.

[6] The RPD also criticized the applicant for failing to seek asylum in the United States, despite living there for six months. The RPD believed that this conduct was inconsistent with that of someone who feared for his life, noting that the applicant's father had applied for asylum in that country. The RPD did not believe the applicant's explanation that he had not sought asylum in the United States because he had wanted to come to Canada first and foremost, but that his friends had advised him to complete his authorized stay of six months in the United States before travelling to Canada.

[7] Lastly, even though the RPD was not required to do so, it also considered the risks the applicant would face if he returned to Mauritania because of his membership in the “El Mo’almeen” caste, considered to be an inferior caste. The RPD concluded that the applicant had nevertheless been able to obtain an education and work in the car sales industry and that in any event, the documentary evidence made no mention of persecution or even discrimination against members of this caste. The RPD therefore rejected this ground of persecution as being unfounded.

[8] The applicant, who concedes that the documentary evidence does not mention persecution against individuals associated with the “El Mo’almeen” caste in Mauritania, criticized the RPD for erring in its assessment of his credibility. He explained that the contradictions could be explained by the fact that he had testified on the basis of his own personal perception of the events and that his version had sometimes been more detailed. Regarding the fact that he carried his passport on his person, that he had provided his wife’s date of birth instead of her age and that he had filed his wife’s identity card as a marriage certificate, he explained that the RPD did not take cultural differences into account. With respect to the delay in filing a claim, the applicant submits that this is a secondary criterion that the RPD should have treated as such.

[9] The issue here is whether the RPD committed an error justifying the intervention of the Court. It is well-established that the RPD’s findings concerning an applicant’s credibility are reviewed on a standard of reasonableness. The same is true of findings that a refugee protection claim lacks a credible basis (*Toussaint v Canada (Citizenship and Immigration)*, 2019 FC 267 at

para 5 [*Toussaint*]; *Rahman v Canada (Citizenship and Immigration)*, 2019 FC 71 at para 18 [*Rahman*]; *Joseph v Canada (Citizenship and Immigration)*, 2018 FC 638 at para 11 [*Joseph*]; *Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at paras 11–12 [*Eze*].

[10] In order to be able to intervene, the Court must be satisfied that the RPD's findings of facts, or findings of mixed fact and law, fall outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v Brunswick* 2008 SCC 9 at para 47).

[11] In my opinion, there are enough issues with the applicant's story to justify, on a standard of reasonableness, the RPD's finding that this story lacked credibility. Indeed, it is my view that his omission of the serious threats allegedly made against him by his wife's brothers prior to the November 2015 incident, his implausible, to say the least, version concerning the marriage certificate, his history of false statements, his delay in filing a claim and the lack of objective evidence of persecution suffered by members of the caste to which the applicant alleges to belong provide a rational basis for the RPD's decision that both the applicant and his narrative lacked credibility (*Rahman* at para 18).

[12] However, the finding that there was no credible basis for his refugee protection claim is problematic in my opinion.

[13] To begin with, a refugee protection claimant's lacking credibility does not necessarily amount to there being no credible basis for the applicant's claim (*Baradji v Canada (Citizenship and Immigration)*, 2017 FC 589 at para 21).

[14] Whether a refugee protection claim lacks a credible basis is governed by subsection 107(2) of the Act:

**Decision**

107 (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.

**Décision**

107 (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.

**No credible basis**

(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.

**Preuve**

(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.

[Emphasis added]

[15] The RPD can only make a finding that there was no credible basis for a claim where there was no credible or trustworthy evidence on which it could have made a decision to grant refugee protection status to the claimant (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51; *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 19).

[16] The threshold for reaching such a conclusion is high (*Joseph* at para 13; *Eze* at para 26; *Wu v Canada (Citizenship and Immigration)*, 2016 FC 516 at para 12), because such a finding has a significant impact on the rights of the refugee protection claimant, since it has the effect of depriving the claimant of the right to appeal to the Refugee Appeal Division (paragraph 110(2)(c) of the Act; *Eze* at para 26; *Toussaint* at para 22).

[17] In this case, the RPD's decision is partly based on peripheral factors, such as the applicant's wife's age and the fact that the applicant claimed to always have his passport on him, factors that on their own, in my opinion, could not justify a lack of credibility finding. More importantly however, there is no contradiction, in my view, between the BOC Form and the applicant's testimony concerning how he got to the hospital after the assault in November 2015. Indeed, in his BOC Form, the applicant explained that he was assaulted by four men, and that a friend came to his rescue and took him to hospital, where he had been in a coma for three days. On the fourth day after the attack, he regained consciousness and provided a statement to the police. His testimony before the RPD corroborates this: he lost consciousness for a few minutes after the attack, he asked a friend for help, and the friend took him to the hospital, where he was unconscious for three days. On the fourth day, he started feeling better and contacted the police. I do not see any contradiction or inconsistency in this part of the applicant's story.

[18] The RPD erred by concluding otherwise. In my opinion, the RPD could not conclude that there was no credible basis for the applicant's refugee protection claim without moving its decision on that point outside the range of possible acceptable outcomes which are defensible in respect of the facts and law.



[19] This application for judicial review will therefore be allowed in part. The parties agreed that no question of general importance emerges from the circumstances of this case. I share this opinion.

**JUDGMENT in IMM-4337-18**

**THIS COURT ORDERS AND ADJUDGES THAT:**

1. The application for judicial review is allowed in part;
2. The Refugee Protection Division's decision rendered on October 26, 2016, insofar as it concluded that there was no credible basis for the applicant's refugee protection claim, is set aside and the matter is referred back to another panel of the Refugee Protection Division for reconsideration;
3. No question is certified.

“René LeBlanc”

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Judge

Certified true translation  
This 2nd day of May 2019.

Johanna Kratz, Translator

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

**DOCKET:** IMM-4337-18

**STYLE OF COURSE:** SIDI MOHAMED SIDI ABOUBECK v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MARCH 7, 2019

**REASONS FOR JUDGMENT  
AND JUDGMENT:** LEBLANC J.

**DATED:** MARCH 25, 2019

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