

Federal Court



Cour fédérale

**Date: 20190710**

**Docket: IMM-5672-18**

**Citation: 2019 FC 910**

**Edmonton, Alberta, July 10, 2019**

**PRESENT: Mr. Justice Lafrenière**

**BETWEEN:**

**IVY KAGERE**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated October 16, 2018 [Decision], dismissing the Applicant's appeal of the refusal of her refugee claim by the Refugee Protection Division [RPD]. The RAD confirmed the decision of the RPD that the Applicant was not a Convention refugee as set out in section 96, nor a person in need of protection within the meaning of subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

I. Background Facts

[2] The Applicant states that she is a citizen of Uganda. She entered Canada in early October 2016 on a visa application claiming to be the wife of James Mansa and the mother of Ajuna Rhonah. She made a claim for refugee protection in Canada on October 25, 2016 alleging fear of persecution in Uganda based on her sexual orientation as a lesbian.

[3] The RPD conducted a hearing of the Applicant's claim on October 19, 2017. The Applicant testified at the hearing that she was not married to Mr. Mansa and that she was not the mother of Ajuna Rhonah and had never even met her. The Applicant stated that the relationship was fabricated to secure a temporary resident visa and flee Uganda.

[4] According to the Applicant, she knew that she was a lesbian since high school. In 2007, she began a long-term relationship with a female colleague, named Angelina, at the bank where she worked. In 2009, the Applicant claimed to have been compelled to begin a common-law relationship with a man to disguise her sexual identity. In 2011, her relationship with Angelina was exposed to Angelina's husband, who reported it to the bank. The Applicant's employer suspended her for two weeks and transferred her to another location. Nonetheless, the relationship continued. In May 2015, the Applicant's common-law husband found out that she was a lesbian and left her, taking their children with him. In April 2016, the Applicant was tipped off that Angelina's husband was plotting to have her killed. The Applicant decided to flee the country.

[5] The Applicant testified that Mr. Mansa was a client at the bank where she was employed and that he assisted her in fleeing the country. Mr. Mansa completed and financed the visa application for her in August 2016. In the application, Mr. Mansa identified the Applicant as someone seeking to accompany her daughter Ajuna Rhonah, who had applied for study permit in Canada. He also listed himself as the Applicant's husband in the application. The Applicant explained that she was desperate to escape the danger of persecution and serious harm in the country and had accepted this false representation.

[6] The RPD allowed the Minister of Citizenship and Immigration [Minister] to admit into evidence certain documents intercepted by the Canada Border Services Agency [CBSA] pertaining to the refugee claim of another individual from Uganda who identified herself as Ajuna Rhonah. The documents, copies of which were provided to the Applicant in advance of the hearing, included Ms. Rhonah's Basis of Claim [BOC], a FedEx mailing envelope addressed from "Ivy Kagere" in Uganda to "Ajuna Rhonah" in Canada, blank letterheads with stamps on them of Ugandan police and local authorities and a Ugandan national identification card issued in the name of "Ivy Kagere". The photo in the identification card did not match the Applicant's facial appearance and the date of birth was significantly different.

[7] In her application for a study permit dated May 19, 2016, Ms. Rhonah declared that Ivy Kagere was her mother. Ms. Rhonah claimed in her BOC that she feared persecution due to her sexual identity and listed Ivy Kagere as her aunt who helped her flee from Uganda.

[8] The RPD found that the Applicant had not established her identity and refused her claim on October 19, 2017. The RPD concluded that the Applicant's testimony was not consistent in regard to her departure circumstances leading to her flight from Uganda, including why her girlfriend's husband would plot to have her killed five years after discovering their relationship. The RPD also concluded that there was unresolved conflicting evidence in regard to the identity and relationship of the Applicant and another refugee claimant, Ms. Rhonah, who also made a refugee claim in Canada based on sexual orientation. While conceding that it may be plausible that the Applicant and Ms. Rhonah used the same agent to assist them in leaving Uganda and this agent may have used different names, or that there may be other Ivy Kageres living in Uganda, the RPD held that the fact that two such people would be linked together by unrelated refugee claims in Canada is unlikely. The Applicant could not explain or resolve these discrepancies. The RPD also had doubts regarding the authenticity of the Applicant's passport, which was applied for under suspicious circumstances. The RPD concluded that overall there was insufficient evidence to prove that the Applicant was who she claimed to be.

[9] The RAD reviewed the RPD's decision on the standard of correctness and analyzed independently the evidence regarding the Applicant's credibility about her identity. The RAD confirmed that pursuant to section 106 of the IRPA, it is the person claiming refugee protection that bears the onus of establishing, on a balance of probabilities, that she is the person she claims to be. The RAD noted that the Applicant failed to provide clear and straightforward answers during her testimony regarding the circumstances of her departure and why her girlfriend's husband would have plotted to murder her only in 2016.

[10] Further, the RAD found that the lack of trustworthy, reliable evidence and reasonable explanation, along with the unresolved inconsistency between the Applicant's BOC and her testimony, undermined her allegation that she had to leave Uganda urgently and needed to utilize an agent. The RAD added that the RPD's concerns regarding the authenticity of the Applicant's passport were reasonable, given that the Applicant has not submitted either a birth certificate or any other photo identity card to establish her identity when applying for her passport, and in light of the identification card of another person bearing the same name seized by CBSA. Moreover, the RAD agreed that the RPD was correct in noting that it is not uncommon for fraudulent passports or other documents to be obtained in Uganda. The Applicant did not provide any other photo ID in support of her identity as a Ugandan. The RAD concluded that the passport and educational documents were contradictory and insufficient to establish the Applicant's identity. The RAD dismissed her appeal accordingly.

## II. Was the RAD's Decision reasonable?

### A. *Standard of Review*

[11] The RAD's factual findings and assessment of evidence in relation to the Applicant's credibility attract the standard of reasonableness (*Denis v Canada (Minister of Citizenship & Immigration)*, 2018 FC 1182 at para 5). Questions of identity of a claimant are within the RAD's expertise and the Court should give it significant deference. The Court will only interfere if the decision under review lacks justification, transparency or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

B. *Analysis*

(1) Apparent discrepancy in the Applicant's evidence

[12] The Applicant claims that the RAD erred in finding discrepancies in her evidence regarding the reason why Angelina's husband plotted to have her killed five years after discovering their relationship. She argues that her explanation was sufficiently clear, rational and plausible, given that she believed that together with Angelina, they had been discreet about their romance. The Applicant further submits that the RAD erred by drawing an adverse credibility inference from the absence of any corroboration from Angelina on the issue of her husband's murder plot, finding the evidence "easy" for the Applicant to provide, all the while noting that the Applicant had fallen out of contact with Angelina. The Applicant argues that she could not have easily provided this evidence from someone with whom she was no longer in contact.

[13] I can find no reviewable error in the RAD's assessment of the evidence offered by the Applicant. A reading of the transcript shows that the Applicant was vague in explaining why Angelina's husband plotted to kill the Applicant five years after discovering the relationship. It was not until the RPD member confronted the Applicant about her contradictory explanations that the Applicant sought to give further clarification. It was open to the RAD to conclude that the Applicant failed to explain the discrepancies in her evidence.

[14] Further, it was reasonable to conclude that corroborating evidence from Angelina could have been easily provided by the Applicant at the time she made her refugee claim given that the

Applicant had already provided letters Angelina wrote in 2016 in support of the Applicant's refugee claim.

(2) The Applicant's failure to establish her identity

[15] The Applicant argues that the RAD was unreasonable in disregarding or neglecting to apply the well-established principle that where claimants resort to presenting false information to immigration authorities and traveling on false documents in order to flee persecution, it is "peripheral and of very limited value as a determination of general credibility" (*Rasheed v Canada (Minister of Citizenship & Immigration)*, 2004 FC 587 at para 18). The Applicant submits that the RAD erred in taking issue with the false statements in the Applicant's visa application and using those statements to impugn her credibility.

[16] The Applicant also submits that the RAD erred by expecting her to explain away the use of her name in someone else's visa application, given that she could not possibly explain something she had no knowledge of or over which she had no control. She maintained that Ms. Rhonah was a complete stranger and that it was Mr. Mansa who filled out this information in her visa application.

[17] This is not a case, however, where the RAD gave no credence to the Applicant's evidence or unreasonably discounted her explanations. In fact, the RAD took into account the Applicant's explanation that she did not know Ms. Rhonah and that a smuggler prepared her visa application. The RAD considered this explanation within the context of the information in the package seized by CBSA, the Applicant's high level of education, and the inconsistencies in her

evidence regarding basic elements of her claim. Given the timing and contents of the Applicant's and Ms. Rhonah's visa applications, it was open to the RAD to question how and why the two applicants were linked in such a way that each identified the other as family members without knowing one another. Of note, Ivy Kagere is identified as Ms. Rhonah's mother in Ms. Rhonah's study permit application completed almost three months before the Applicant claimed to have first met Mr. Mansa (exhibit 6.2 of the Certified Tribunal Record, page 340). There are several pieces of evidence that call the Applicant's identity into question. The Applicant is simply asking the Court to reassess the evidence and substitute its own reading of it for that of the RAD.

(3) The Applicant's passport

[18] The Applicant asserts that the RAD made flawed and unsubstantiated speculation about the authenticity of her passport, simply because her educational papers stated her middle name, Doreen, while her passport did not. The Applicant explained that her teachers in school preferred to call her Doreen given that her first name, Ivy, was more difficult to pronounce. After graduating, she dropped her middle name and decided to go only with her first name Ivy. The Applicant submits that the RAD failed to provide any reasons why the Applicant's explanation was not satisfactory. This is not a fair characterization of the RAD's findings.

[19] The RAD did not have doubts about the genuineness of the Applicant's passport solely because the Applicant's middle name Doreen was missing. At the hearing before the RPD, the Applicant testified that to obtain her passport, she provided two passport-size photos, letters from the local council chairman and a copy of her certificate of education, to a woman named Susan Mirembe, who filled out her passport form. When asked how she found this person, the



Applicant responded after an “uncomfortably long silence” that her girlfriend referred her. The RAD found the explanation that the Applicant was not required to present any photo identification or a birth certificate to obtain her passport most unusual. The RAD also wondered why the Applicant, who has an undergraduate degree and was employed for many years at a bank, would need assistance to complete a passport form.

[20] Given the circumstances in which the Applicant obtained her passport, how her name was linked to Ms. Rhonah’s application, how the CBSA found an identity card issued under her name that did not match her facial appearance and date of birth and the general evidence about the ease of obtaining identity documents through fraud in Uganda, there were valid reasons to doubt the genuineness of the Applicant’s passport and hence the Applicant’s identity.

### III. Conclusion

[21] I can find no fault in the RAD’s analysis of the evidence or credibility findings. On the basis of the evidence adduced, it was reasonable for the RAD to conclude that the Applicant did not provide sufficient credible and trustworthy evidence to establish her identity. The conclusion that the Applicant is neither a Convention refugee nor a person in need of protection falls within the range of possible justifiable outcomes.

[22] The parties did not raise any question for certification, therefore none is certified.

**JUDGMENT IN IMM-5672-18**

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

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

"Roger R. Lafrenière"

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Judge

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

**DOCKET:** IMM-5672-18

**STYLE OF CAUSE:** IVY KAGERE v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** JULY 9, 2019

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** JULY 10, 2019

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