

Federal Court



Cour fédérale

Date: 20191010

Docket: IMM-5954-18

Citation: 2019 FC 1283

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 10, 2019

PRESENT: The Honourable Madam Associate Chief Justice Gagné

BETWEEN:

MAIMOUNA MAHAMAT HAROUN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Nature of the matter

[1] Maimouna Mahamat Haroun is seeking judicial review of a decision of the Refugee Protection Division [RPD] refusing to grant her refugee status. This matter was heard together with Ms. Haroun's application to overturn an enforcement officer's decision refusing to delay her removal from Canada (IMM-6542-18). However, since the Court granted a stay of this

removal order in January 2019, the parties agreed at the hearing (and I concur) that this latter application is now moot, since Ms. Haroun can no longer be returned to her country of origin without the benefit of a pre-removal risk assessment.

[2] Therefore, the reasons set out herein only concern the decision of the RPD, which essentially found that Ms. Haroun lacked credibility. Nevertheless, a copy thereof will be included with docket IMM-6542-18.

II. Facts

[3] The following account was obtained from Ms. Haroun's Basis of Claim Form and her testimony before the RPD.

[4] Ms. Haroun is a citizen of Chad who alleges that she was forced to marry in 2010, with her father's consent. She had a child in March 2011, and her husband died in June 2012.

[5] In September 2012, her in-laws took her child away from her and in November 2012, her late husband's brother, uncle and father paid a visit to her father to demand that Ms. Haroun respect the customary practice of her in-laws' ethnic group, whereby a widow is required to marry one of her deceased husband's brothers, particularly when a child has been born as a result of the union.

[6] Since he was not from the same ethnic group, Ms. Haroun's father refused to follow this tradition. He was then informed that if he maintained his position, Ms. Haroun would never see her son again.

[7] Subsequently, SB, the brother of Ms. Haroun's late husband who had been chosen to marry her, left for an assignment abroad.

[8] During this period of calm, Ms. Haroun met and fell in love with Lamba Kamssouloum. Her father advised her to marry him quickly in order to convince SB to leave her alone and she did so on September 28, 2014.

[9] On June 10, 2015, when SB returned, he went to the home of Ms. Haroun's parents to demand that she marry him. Her father responded that she was already married, but SB told him that she would need to get a divorce. Since he refused to provide Ms. Haroun's address, Ms. Haroun's younger brother was beaten by SB and other members of his family.

[10] However, SB and his henchmen found Ms. Haroun's address and went to her home while she was with her husband. They assaulted her husband but spared her because she was one month pregnant at the time, demanding that she get a divorce and terminate the pregnancy. When she refused, they kidnapped her husband and threatened to torture and kill him if she continued to refuse to get a divorce and terminate the pregnancy. She initially alleged that she had not seen her husband since that date.

[11] Ms. Haroun sought refuge with friends living in a small village outside N'Djamena. She obtained a visa for the United States on December 30, 2015, and left Chad on January 22, 2016. She arrived in the United States on January 24, 2016, and entered Canada at Saint-Bernard-de-Lacolle on February 13, 2016. She completed her refugee protection claim on February 26, 2016.

[12] In the first update of her Basis of Claim Form, she added that her husband had been able to leave Chad to seek refugee protection in Canada on August 7, 2016. She also added that SB had gone to her friends' home to look for her and had continued to pay visits to her father to threaten him.

[13] The hearing before the RPD was held on April 29, 2016, and January 30, 2018 (the RPD summoned Ms. Haroun again for an explanation of certain irregularities in the documentary evidence).

III. Impugned decision

[14] The RPD initially focussed on the evidence concerning the existence of Ms. Haroun's first husband and the son she allegedly had with him. The only document produced was the son's birth certificate. However, it appears from the stamp and signature affixed to this document that it is a colour photocopy rather than an original. Ms. Haroun could not explain this irregularity and stated that she had never seen the document before the hearing. Consequently, the RPD did not ascribe any weight to it.

[15] Since this was the only documentary evidence of the existence of the husband and son who are central to Ms. Haroun's refugee protection claim, the RPD found that it undermined her credibility. Ms. Haroun did not have any document confirming her marriage or the death of her first husband, and the RPD did not consider the explanations that she provided in this regard to be spontaneous.

[16] There were also several contradictions in the story she gave at the point of entry, the one in her Basis of Claim Form and her testimony before the RPD with respect to her first husband's date of birth and date of death and her son's date of birth. Since these were important dates for her, the RPD did not believe that she would have confused her son's date of birth with her husband's date of death simply because she had been ill when she arrived in Canada. The RPD also did not believe that these contradictions resulted from errors by government officials or interpreters.

[17] The RPD summoned Ms. Haroun for a second day of hearing in order to explain the apparent irregularity in her son's birth certificate and the lack of any other documentary evidence. This was when Ms. Haroun filed her son's birth record. However, the RPD drew a negative inference from the fact that Ms. Haroun was not able to credibly explain why she did not have this document when she filed her refugee protection claim.

[18] Consequently, the RPD found that Ms. Haroun failed to credibly establish the existence of her first husband and of the son she allegedly had with him.

[19] The RPD then focussed on the documentary evidence concerning Ms. Haroun's pregnancy at the time of the facts alleged in her Basis of Claim Form and at the time of her arrival in Canada.

[20] Ms. Haroun alleged that she was eight months pregnant when she left Chad in January 2016, but claimed that because she had feared that this would prevent her from boarding an airplane, she had asked the doctor who had completed her ultrasound report to indicate that she was only six months pregnant. However, she also produced a letter from a doctor in Montréal who had conducted a prenatal examination in February 2016, and who had found that she was not pregnant and was probably experiencing pseudocyesis (a false pregnancy).

[21] The RPD found the theory that Ms. Haroun had lost her baby in early pregnancy to be implausible, given the ultrasound report filed into evidence and her testimony indicating that she had asked the doctor consulted before her departure to alter the number of weeks of her pregnancy.

[22] In light of this, the RPD found that Ms. Haroun had faked this pregnancy to make her account more dramatic.

[23] With respect to the letters from the doctor and social worker in Montréal, the RPD considered that they essentially reiterated Ms. Haroun's story and that they determined that a false pregnancy was consistent with post-traumatic stress syndrome, without mentioning the basis for making such diagnosis.

IV. Issues and standard of review

[24] This application raises only one issue:

Did the RPD err in concluding that the applicant's allegations were not credible?

[25] Findings by the RPD are subject to the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47), and the Court must show considerable deference in its analysis of RPD findings concerning the credibility of a refugee protection claimant.

V. Analysis

[26] Ms. Haroun reproached the RPD for

(i) failing to consider the letters from the doctor and the social worker who expressed the opinion that Ms. Haroun was suffering from post-traumatic stress and that she had probably experienced a false pregnancy consistent with this syndrome;

(ii) discrediting the additional documentary evidence supporting the existence of the son born from her first marriage, after the RPD itself had requested this information; and

(iii) failing to consider the fact that the contradictions in her testimony, throughout the process for claiming refugee protection status, could be explained by her state of mind and by her post-traumatic stress.

[27] First and foremost, it is important to clearly understand what the RPD had in the record before it concerning Ms. Haroun's alleged pregnancy at the time of her arrival in Canada, which was the following:

- The photo from an ultrasound carried out on **January 16, 2016**, together with an examination report signed by a doctor from the Hôpital de la mère et de l'enfant de N'Djamena, which confirmed a pregnancy of 22 weeks and 2 days, as well as a normal anterior placenta.
- The letter from the doctor in Montréal indicating that during the initial prenatal visit on **February 25, 2016**, it was noted that Ms. Haroun was not pregnant and that there was no trace of a fetus. It was therefore concluded that she must have experienced a false pregnancy.
- The Basis of Claim Form signed on **February 26, 2016**, in which Ms. Haroun indicated that she was **one month pregnant** at the time of the events that occurred in her home in **June 2015** and that she feared for herself and for her baby if she were to return to Chad.
- Ms. Haroun's testimony during the hearing on **April 29, 2016**, when she explained, for the first time, that she had asked the doctor who signed the ultrasound report to indicate that she was six rather than eight months pregnant so that she could travel.

[28] After reading the letters forwarded by the doctor and the social worker in support of Ms. Haroun's refugee protection claim, it seems clear that neither was informed of the report on the ultrasound carried out in Chad or of Ms. Haroun's explanation that she was one month pregnant in June 2015 and eight months pregnant in January 2016, but had asked to have the report indicate that she was six months pregnant. If the doctor had been given this information, I believe that she would have investigated further before diagnosing a false pregnancy. I also believe that she would have questioned the authenticity or veracity of the ultrasound report. It is a well-known fact that an ultrasound is one of the most effective ways of confirming a pregnancy

and determining the stage of the pregnancy with the utmost precision. An ultrasound report is very much inconsistent with a false pregnancy.

[29] If Ms. Haroun was not eight months pregnant when she arrived in Canada, and this clearly appears to have been the case, the entirety of her testimony becomes invalid and one must conclude that the ultrasound report filed as Exhibit P-8 does not concern Ms. Haroun. This finding is also consistent with the part of the story added at the hearing on April 29, 2016. Since the ultrasound report is dated January 16, 2016, and indicates a pregnancy of 22 weeks and 2 days, it is inconsistent with the fact that she was pregnant in June 2015. She therefore explained that she had asked the doctor to indicate six months rather than eight months, which the doctor allegedly agreed to do.

[30] It was not the RPD's role, no more than it is this Court's, to explain such contradictions in the evidence of a refugee protection claimant. The RPD therefore had good reason to disregard the letters from the doctor and the social worker, whom Ms. Haroun obviously did not tell everything.

[31] I also believe that it was open to the RPD to find as it did regarding the birth record for Ms. Haroun's son, produced over two years after her refugee protection claim and in reaction to the RPD's negative findings with respect to the irregularities noted in the birth certificate. It is not because the RPD required additional documentary evidence that it should consider this evidence to be credible. It was open to the RPD to reject the explanations provided to explain why this document was not filed earlier.

[32] Lastly, Ms. Haroun argued that her post-traumatic stress syndrome should have been taken into account to explain all the contradictions raised throughout the process for claiming refugee protection. However, this diagnosis came from a doctor and a social worker who were only privy to part of the relevant information concerning Ms. Haroun, and neither explained the basis for reaching this diagnosis, other than the version of facts reported by Ms. Haroun. I would add that in assessing all of the evidence presented by Ms. Haroun, the RPD considered the fact that she is an educated woman and has an undergraduate degree and a diploma in accounting and finance.

[33] It is therefore my opinion that in light of all the evidence before it, the RPD was justified in rejecting Ms. Haroun's refugee protection claim.

VI. Conclusion

[34] For these reasons, the application for judicial review is dismissed. The parties did not submit any question of general importance for certification and I do not believe that the facts in this case raise any.

JUDGMENT

THIS COURT ORDERS that:

1. The application for judicial review is dismissed;
2. No question of general importance is certified;
3. A copy of this judgment and reasons shall be included with docket IMM-6542-18.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
This 17th day of October 2019

Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5954-18

STYLE OF CAUSE: MAIMOUNA MAHAMAT HAROUN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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**REASONS FOR JUDGMENT
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