Federal Court Cour fédérale

Date: 20221019

Docket: IMM-7255-21

Citation: 2022 FC 1425

Ottawa, Ontario, October 19, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

CHANTAL UWERA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Chantal Uwera, a 32-year-old citizen of Rwanda, seeks judicial review of a May 12, 2021, pre-removal risk assessment [PRRA] by a senior immigration officer [Officer] finding her not to be subject to risk of persecution or in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. Ms. Uwera claims to fear persecution by the Rwandan authorities, who falsely accused her of

being a member of an opposition group, the Rwanda National Congress [RNC]. For the reasons that follow, I would dismiss the present application; I have not been persuaded that the decision of the Officer was unreasonable.

II. Background and decision under review

[2] Ms. Uwera undertook post-secondary studies at the Bangalore Management Academy College of Arts, Science and Commerce in India from 2012 to 2015. In January 2014, she was elected as the Rwandan student representative for her school and reported to the president of the Rwandan Association in India. Although she had no interest in politics, Ms. Uwera asserts that the president of the Rwandan Association repeatedly questioned her about her political affiliations as well as the political views of other students. The president's interest in Ms. Uwera's political views was heightened by the fact that during her time in India, she dated the nephew of Mr. Kayumba Nyamwasa, a prominent Rwandan political figure and co-founder of the RNC. In fact, the president of the Rwandan Association inquired about the boyfriend on many occasions, prompting Ms. Uwera to resign from her position after only seven months. Eventually, Ms. Uwera ended her relationship with Mr. Nyamwasa's nephew and returned to Rwanda in June 2015. She spent the next three years precariously employed, but in July 2018, she was hired as a media buyer and planner at Blu Flamingo Digital, a private digital marketing agency, and was quickly promoted to account manager.

[3] According to Ms. Uwera, Blu Flamingo Digital had a contract with Akagera Aviation, a company that seemingly had close ties to the Rwandan government and the Rwandan Patriotic Front, the party in power. In January 2019, Ms. Uwera and her team were assigned to manage

Akagera Aviation's social media accounts. Ms. Uwera began working on Akagera Aviation's accounts the last week of January 2019; she and her team were asked to follow government officials, government institutions and social media influencers using the business social media accounts they were managing on Twitter and Facebook.

[4] Unbeknownst to Ms. Uwera, Akagera Aviation purportedly undertook a background check on her and discovered her history as the Rwandan student representative as well as her relationship with the nephew of an opposition leader. At a certain point, Ms. Uwera claims that Akagera Aviation advised her supervisor at Blu Flamingo Digital that she had been using its social media accounts to follow opposition members' accounts and to indirectly communicate with RNC members. On February 12, 2019, Ms. Uwera attended a disciplinary hearing, where she was supposedly confronted with these allegations and told that Akagera Aviation had requested her termination for tampering with its social media accounts. On February 15, 2019, Ms. Uwera's supervisor at Blu Flamingo Digital asked her to confess to her connections to the RNC, which Ms. Uwera denied. On the same day, Ms. Uwera was terminated from her position at Blu Flamingo Digital.

[5] According to Ms. Uwera, on her way home that evening, she was abducted by two men in a car and brought to an unknown location; her arms were tied behind her back and she was blindfolded. Ms. Uwera asserts that she was held for the next four days in a cold room, where she faced physical and emotional torture and was beaten every day, especially around her ankles and knees. Her head was shaved and she was nearly sexually assaulted, with only her screams having stopped the attack. Ms. Uwera was interrogated about her past relationship with her

former boyfriend, her educational history and her connections to Rwanda's opposition parties; during that four-day period, Ms. Uwera became dehydrated and sick. Finally, on February 19, 2019, Ms. Uwera was released near her home. She hid at her friend's place overnight and received treatment for her injuries the next day at Shyira Hospital, a small hospital outside of Kigali.

[6] Ms. Uwera claims that she thereafter hid for the next two months and left Rwanda on April 27, 2019, using a valid United States student visa that she had received in January 2019; Ms. Uwera had applied – presumably in 2018 – for a United States student visa as she was accepted to study at Wright State University in Ohio, where classes were to begin in May 2019. Ms. Uwera claims that she was able to get through airport security undetected by the Rwandan authorities with the help of a good friend "who worked for immigration" at the airport. Once in the United Sates, Ms. Uwera applied for asylum; she asserts that while in the United States, she learned from a friend that the police had gone to her aunt's house on April 22, 2019, a few days prior to her departure from Rwanda, looking for her and had left a summons to appear. In any event, Ms. Uwera never completed her asylum process in the United States, but rather travelled to Canada, entering on October 11, 2019, through Roxham Road. An exclusion order was issued against Ms. Uwera on October 18, 2019, and on November 8, 2019, she filed an application for a PRRA; she was ineligible to file for refugee protection in Canada as she had made an asylum claim in the United States. In accordance with section 113.01 of the Act, a mandatory hearing was provided to Ms. Uwera by the Officer.

[7] Following the PRRA hearing, the Officer rejected Ms. Uwera's application. The Officer accepted that Ms. Uwera had attended the Bangalore Management Academy, dated the nephew of a prominent opposition member, acted as a student representative and worked on contract for Blu Flamingo Digital at least until December 2018. However, the Officer discounted all of Ms. Uwera's key corroborative documents, including the medical and psychiatric reports, the police summons, the letter from the friend who had purportedly sheltered Ms. Uwera after she was released on February 19, 2019, as well as her termination letter from Blu Flamingo Digital. The Officer was also skeptical as to Ms. Uwera's allegation that she was perceived as a supporter of the RNC and noted that she did not fit the profile of someone who would be targeted by the Rwandan authorities as she is not a former government or military official, a dissident, an RNC member, a critic or an activist.

III. Issues and standard of review

[8] The issues raised in this case boil down to whether the decision of the Officer was reasonable. Moreover, there is consensus that reasonableness is the applicable standard of review and that none of the exceptions to the presumptive standard of reasonableness apply in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). To determine whether the decision as a whole is reasonable, the reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 99-101).

IV. Analysis

[9] Ms. Uwera argues that the Officer unreasonably assessed the corroborative documents and erroneously discounted the probative value of the various pieces of evidence. Furthermore, she argues that the Officer also made errors in the assessment of her political profile, including failing to address key evidence purportedly establishing that the Rwandan authorities suspected that Ms. Uwera had ties to an opposition group.

A. *Were the medical reports and other corroborative documents filed by Ms. Uwera unreasonably assessed?*

(1) Medical reports

[10] Ms. Uwera submitted the following medical evidence in support of her PRRA application:

1. A medical report from the Shyira Hospital dated February 20, 2019 – the day after Ms. Uwera was supposedly released by her abductors. The clinical information in the report states that Ms. Uwera was received in the emergency department complaining of acute onset of right ankle pain, swelling and function impairment, lower back pain and a couple of bruises on her right knee and left palm after losing consciousness and passing out on her way home; at the hospital, Ms. Uwera claimed that she was fine prior to having fainted. The report stated that Ms. Uwera looked anxious, was in pain, was suffering from dry buccal mucosa – a dry mouth – and was showing signs of mild to moderate dehydration. Her vital signs were normal. The doctor concluded that Ms. Uwera had suffered a right ankle sprain and a lower back muscle contusion, was iron deficient – which

Ms. Uwera admits suffering from – and was mildly to moderately dehydrated. The doctor recommended rest, hydration and iron-rich nutrition.

2. A medical report from Dr. Shoucri of the Côte-des-Neiges local community service centre dated May 11, 2020 – after Ms. Uwera's arrival in Canada – which stated that Ms. Uwera suffers from [TRANSLATION] "regular flashbacks, very frequent intrusive thoughts and severe insomnia with recurrent nightmares" and diagnosed her with severe post-traumatic stress syndrome, major depression and insomnia necessitating therapy.

3. A psychological evaluation from Dr. Sylvie Laurion dated June 30, 2020, setting out Ms. Uwera's claim in her PRRA application and revealing "numerous indicators" of post-traumatic stress disorder, generalized anxiety disorder and panic disorder as per the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

[11] As regards the medical report from the Shyira Hospital, the Officer found the report to be credible and accepted that Ms. Uwera had sprained her ankle during a fall that occurred on her way home after she felt dizzy and lost consciousness. However, the Officer afforded the report "low probative value" as "it does not speak to [Ms. Uwera's] risks under sections 96 and 97 of [the Act]". Ms. Uwera argues that the Officer misapprehended the role of medical evidence and that the Officer erred when she required the medical reports to (a) identify her political views and (b) illustrate the link between her medical conditions and the relevant provisions of the Act. Ms. Uwera cites this Court's decision in *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 at para 38 [*Khan*], where Mr. Justice Boswell found that a PRRA officer erred in expecting a

medical report to detail the circumstances of an applicant's injuries or the political motivations of an applicant's attackers and that medical reports should not speak to issues beyond the scope of an applicant's physical injuries and mental distress (see also *Kanto v Canada (Citizenship and Immigration)*, 2014 FC 628 at paras 13-14, 17 [*Kanto*]; *Al Mamun v Canada (Citizenship and Immigration*), 2022 FC 534 at para 20).

[12] As I put it to Ms. Uwera's counsel during the hearing, it seems to me that Ms. Uwera misunderstood the Officer's use of the expression "does not to speak to". In reading the Officer's decision, it seems to me that the Officer was simply stating that the description of Ms. Uwera's injuries and the findings of the doctor in the report did not connect with, or lend themselves to understanding or assessing – or "speak to" – the central claim of Ms. Uwera, i.e., that she spent four days in a cold room, where she faced physical and emotional torture, that she was beaten every day during her detention, especially around the ankles and knees, that her head was shaved, that she became very ill, and that her captors possibly feared that she would die in custody and thus released her.

[13] In addition, and unlike the situations in *Khan* and *Kanto*, the Officer was not looking for the medical reports to identify the reasons for the injuries, the authors of the injuries or the motivation underpinning those injuries, but rather was expecting to see that the nature of the injuries sustained was consistent with the narrative provided by Ms. Uwera; in the Officer's view, it was not. Having read the medical report from the Shyira Hospital and the evidence of Ms. Uwera, I find nothing unreasonable with the Officer's findings on this issue.

[14] As to the two medical reports prepared in Canada, the Officer found the reports to be credible and accepted that Ms. Uwera suffered from post-traumatic stress disorder. However, the Officer again gave the reports low probative value as they did not support the risk identified by Ms. Uwera, *to wit*, that she is at risk of persecution if she returns to Rwanda because of her perceived political opinion. Again, I have not been convinced of the unreasonableness of such a finding by the Officer under the circumstances.

(2) Police summons

[15] Ms. Uwera also asserts that it was unreasonable for the Officer to give no probative value and no weight to the police summons because it did not disclose why she was required to appear and thus did not speak to the applicant's political opinion or to her risks under section 96 or 97 of the Act; the summons simply stated that "the reason for the summoning will be disclosed to you on the spot". Ms. Uwera asserts that it was entirely unreasonable to have expected the agents of persecution to expressly state their suspicions about her political leanings in a summons. I disagree. I do not consider it unreasonable under the circumstances of this case for the Officer to have determined that without the reason compelling her appearance, the summons did not lend itself to assessing Ms. Uwera's claimed risk.

(3) Letter from her friend

[16] The Officer also found the letter from Ms. Uwera's friend who had supposedly harboured her the night that she was released by her captors to be not credible because the letter was not accompanied by any form of identification document to confirm the identity of the author. Ms. Uwera argues that this Court accepted the proposition that there is no requirement to attach

an identification document to a sworn affidavit (*Sunday v Canada (Citizenship and Immigration)*, 2021 FC 266 at para 21 [*Sunday*]) and that the same should be true of a letter. I disagree. When I issued my decision in *Sunday*, it was clear that we were dealing with a sworn affidavit, the identity of the affiant being confirmed by the person taking the affiant's oath. However, similar safeguards as to the identity of the author of a simple unsworn letter are not available. In this case, the Officer's rationale in finding that the lack of identification was fatal to the letter's trustworthiness is not unreasonable. Absent the identification, the existence of the friend was unproven and the letter's support to Ms. Uwera's narrative fell away.

(4) Termination letter from Blu Flamingo Digital

[17] Ms. Uwera provided a letter of termination dated February 15, 2019, from Blu Flamingo Digital stating that "effective immediately", her employment with the company was terminated because "management found it highly inappropriate [that she would] tamper with the client's account and [use] it for [her] own agenda". I find the Officer's treatment of the termination letter problematic, but, in the end, I do not believe that any failures in the manner that the letter was treated were determinative in the Officer's overall assessment of Ms. Uwera's claim.

[18] The Officer gave the letter "low probative value" as it contained no clear link to Ms. Uwera's claim regarding her involvement with Akagera Aviation, to her claim regarding the supposed background check that the company had undertaken on her, or to her claim that her dismissal was the result of Akagera Aviation pressing Blu Flamingo Digital to do so. I find nothing unreasonable with that aspect of the Officer's assessment of the termination letter.

[19] Where I find that the Officer failed in her analysis of the termination letter is in her determination that Ms. Uwera had not established, on the balance of probabilities, that she was even employed by Blu Flamingo Digital beyond the stated termination date of her employment contract of December 31, 2018, despite Ms. Uwera's testimony that she was in the process of renewing her contract but had not yet signed the employment extension by February 15, 2019. The Officer also noted that Ms. Uwera had not provided any email correspondence or letters from colleagues or her manager to corroborate that she had worked at Blu Flamingo Digital beyond December 31, 2018, and as a result, the Officer gave the termination letter "low weight". Finally, the Officer took issue with the fact that Ms. Uwera had no contact with the Rwandan authorities and was able to return to Rwanda from India in 2015 and reside without incident in Rwanda between June 2015 and January 2019, although fearing that she was being sought by those authorities on account of her suspected political ties.

[20] If the Officer determined that Ms. Uwera's employment with Blu Flamingo Digital actually ended on December 31, 2018, despite her testimony to the contrary, it would put the authenticity of the termination letter dated February 15, 2019, into question. However, the Officer did not explicitly state that the letter was not credible and was satisfied to only give the letter "low weight". Putting aside for the moment that the evidence also shows that Ms. Uwera had a United States student visa in hand as of January 2019, with classes set to begin in Ohio in May 2019, the fact remains that if immigration officers suspect the authenticity of documents, they should say so (*Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 20 [*Sitnikova*]). As stated by Madam Justice Mactavish (as she then was) in *Sitnikova*, "[d]ecision-makers should not cast aspersions on the authenticity of a document, and then endeavour to

hedge their bets by giving the document 'little weight'". I would add that the Officer unreasonably resorted to the fact that Ms. Uwera was able to freely return to Rwanda in 2015 and remain there without incident until January 2019 in discounting her assertions regarding her connection to Akagera Aviation and her present fear of the Rwandan authorities. The testimony of Ms. Uwera was that she had only been on the Rwandan authorities' radar as of January 2019 with the background checks purportedly undertaken by Akagera Aviation; there is no evidence to suggest that there was any reason for the Rwandan authorities to suspect Ms. Uwera prior to that point.

[21] That said, the fact remains that the Officer's determination that the termination letter is of little probative value in relation to the substance of Ms. Uwera's assertions regarding Akagera Aviation, its connection to the ruling party in Rwanda and whether the government was seeking Ms. Uwera, was not unreasonable, and thus I am not convinced that any singular failings in the analysis of the Officer would have changed the outcome of the Officer's analysis; in short, I am not convinced that the errors made by the Officer in her review of this piece of evidence went to the heart of the decision and affected the overall balance of the decision (*Williams v Canada (Citizenship and Immigration)*, 2018 FC 241 at para 26). The fact remains that the termination letter simply stated that Ms. Uwera had been let go for tampering in an unspecified way with an unspecified client's account, and it did not tend to show that she had been fired for perceived political opinion or on account of a background check, whether by Akagera Aviation or anyone else. It was not unreasonable for the Officer to find that the letter provided no insight into why Ms. Uwera was singled out for wrongdoing even though her colleagues also shared access to the account.

B. *Sufficiency of Ms. Uwera's assertion in her affidavit and testimony evidence*

[22] Ms. Uwera submits that the Officer failed to focus on how the documents that she submitted corroborated her oral and written testimony and in fact that the Officer did not come out and clearly state whether she believed or did not believe the affidavit and oral testimony of Ms. Uwera; she argues that although the Officer found the medical reports credible, the Officer fundamentally misapprehended the role of the medical evidence in the context of PRRA applications and that if the Officer did accept the testimony of Ms. Uwera in relation to the reasons for her dismissal from Blu Flamingo Digital and her abduction and detention for four days – the central elements of her claim – the Officer's overall analysis of the corroborative documents makes no sense.

[23] Ms. Uwera points to the fact that the Officer did not make any adverse finding of credibility regarding her affidavit or her testimony during the PRRA hearing, nor did the Officer ever state that she did not believe the version of events provided by Ms. Uwera. In fact, according to the notes taken by counsel for the applicant at the end of the hearing, the Officer admitted that the applicant had testified "spontaneously". Ms. Uwera cites this Court's decision in *A.B. v Canada (Citizenship and Immigration)*, 2020 FC 498 [*A.B.*], where Mr. Justice Boswell determined that an officer's conclusion of insufficiency of evidence to establish that an applicant had been tortured was "contradictive" and "unjustified" in light of the officer's failure to express disbelief of an applicant's sworn statement and acceptance of evidence substantiating the applicant's injuries. In addition, on account of the fact that the Officer did not make any adverse credibility findings concerning Ms. Uwera's affidavit or hearing statements, Ms. Uwera argues

that the Officer's finding that she did not "establish on the balance of probabilities that the authorities suspected that she had links or ties to the RNC" was not properly justified.

[24] First of all, I do not believe that the decision of *A.B.* assists Ms. Uwera. In that case, and unlike the situation here, the officer accepted the medical report which provided that the applicant's injuries were consistent with the narrative that he provided in his basis of claim form, particularly the pattern of injuries to his feet. Here, the problem for Ms. Uwera is that the Officer did not accept that the injuries described in the medical report from the Shyira Hospital in particular were consistent with the narrative as to how she had sustained those injuries; hence, the Officer gave low probative value to that report. The same seems to hold true for the other medical reports regarding Ms. Uwera's post-traumatic stress disorder affliction.

[25] In addition, I disagree with Ms. Uwera as I feel that she is confusing the presumption of truth with the requirement of sufficiency. I accept, as stated by Mr. Justice Gascon in *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paragraph 37 [*Huang*], that a "finding of insufficient evidence can sometimes be difficult to distinguish from a finding of credibility"; however, in the end, the decision of the Officer in this case made it sufficiently clear to me that her concerns went to the issue of the sufficiency of evidence to support the core of Ms. Uwera's claim for protection. As stated by Justice Gascon in *Huang*:

> [43] The trier of fact may decide to assign little or no weight to the evidence, and hold that the legal standard has not been met. <u>In the same vein, the presumption of truth or reliability of statements made by refugee applicants, as expressed in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA), cannot be equated with a presumption of sufficiency. Even if presumed credible and reliable, evidence from a refugee applicant cannot be presumed to be sufficient, in and of itself, to</u>

> establish the facts on a balance of probabilities. This is for the trier of fact to determine. When frailties have been highlighted in the evidence, it is appropriate for the trier of fact to consider whether the evidentiary threshold has been satisfied by an applicant. By doing so, the trier of fact does not question the applicant's credibility. Rather, the trier of fact determines whether the evidence provided, assuming it is credible, is sufficient to establish, on a balance of probabilities, the facts alleged (*Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at paras 17-18). In other words, not being convinced by the evidence does not necessarily mean that the trier of fact disbelieves the applicant.
>
> [Emphasis added.]

[26] In the end, it seems to me that the Officer's decision in relation to the assessment of the documentary evidence came down to an insufficiency issue, and I cannot find anything unreasonable with such a finding.

C. *Did the Officer misapprehend Ms. Uwera's profile as a perceived supporter of the Rwandan opposition?*

[27] Ms. Uwera notes that the PRRA Officer conceded that individuals suspected of ties to the opposition in Rwanda are subject to unlawful detention, but that Ms. Uwera did not fit the profile of a person who would be targeted by the Rwandan government. Ms. Uwera asserts that this conclusion was neither supported by the evidence nor adequately justified; she argues that it was clear from her affidavit and the hearing statements that she was in fact perceived to be an RNC supporter. Ms. Uwera stated in her affidavit and at the hearing that the accusations by Blu Flamingo Digital were that she was communicating with opposition members; she also indicated that she was interrogated about her ties to her former boyfriend and the opposition while being detained.

[28] In addition, Ms. Uwera asserts that the Officer unnecessarily narrowed the type of persons who would be at risk in Rwanda – restricting this to former senior government or army officials, RNC members or supporters, dissidents, outspoken critics, activists, or members of a politically active family. Ms. Uwera argues that, as she explained at the PRRA hearing, she felt that it was her past romance with the nephew of the RNC leader (discovered during a background check) that painted her as a potential government opponent. Ms. Uwera asserts that the Officer's silence is particularly concerning considering that her former counsel, in her submissions, highlighted that close ties to RNC members is a basis for persecution.

[29] Again, I think that Ms. Uwera is failing to appreciate that the concern of the Officer was one of sufficiency of evidence rather than one of credibility of her testimony. As stated by Madam Justice Roussel (as she then was) in *Blidee v Canada (Citizenship and Immigration)*, 2019 FC 244 at paragraph 16, "even if evidence is presumed credible and reliable, the affidavit evidence of a claimant seeking protection cannot be presumed to be sufficient, in and of itself, to establish the facts on a balance of probabilities." In the end, as found by the Officer, Ms. Uwera was simply unable to establish, on the balance of probabilities, that the Rwandan authorities suspected that she had links or ties to the RNC. Nor am I convinced that the Officer considered Ms. Uwera's profile too narrowly; the Officer undertook her assessment based upon the evidence before her, and I see nothing unreasonable with her findings.

V. Conclusion

[30] Under the circumstances, I would dismiss the present application for judicial review.

JUDGMENT in IMM-7255-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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