

Date: 20081117

Docket: IMM-1174-08

Citation: 2008 FC 1274

Ottawa, Ontario, November 17, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

MARIAM AHMAT MAHAMAT ALI

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated February 14, 2008, which determined that the applicant was neither a Convention refugee nor a person in need of protection.

I. Issue

[2] Did the Tribunal err by deciding that the applicant was not credible and that she did not demonstrate that she had valid reasons for fearing to return to Chad?

II. Facts

[3] The applicant, Mariam Ahmat Mahamat Ali, is a citizen of the Republic of Chad and was born on August 17, 1987, at N'djamena. She is the child of a patriarchal Islamic family strongly dominated by religious beliefs and traditions.

[4] On the evening of May 15, 2006, the applicant's father gave her in marriage to Mahamat Nour Idriss, without her consent or the consent of her mother, by carrying out Fathia. Fathia is a religious union before the marabouts, which took place in the mosque.

[5] Mahamat Nour Idriss is a polygamist and has a number of children, some of whom are the same age as the applicant.

[6] Despite the applicant's categorical rejection of the marriage, her father refused to reconsider his decision.

[7] After sunset on October 6, 2006, five months after the Fathia, a large delegation of Mahamat Nour Idriss' relatives went to the house of the applicant's parents bearing gifts. She was then taken by force to the home of Mahamat Nour Idriss. Over the next ten days, her husband insulted, beat and raped her.

[8] On October 26, 2006, the applicant fled her spouse's home and took refuge at the home of her maternal uncle Mbodou Adamou Mahamat.

[9] A few days later, her husband, accompanied by the marabouts and the applicant's father, burst into her uncle's house, and the applicant was taken back to her husband the same evening. She was again beaten by her husband.

[10] With the assistance of her uncle and her mother, the applicant left Chad fraudulently on March 11, 2007, and landed in the United States two days later. She arrived at the Lacolle border crossing on March 20, 2007, and claimed refugee protection in Canada.

III. Impugned decision

[11] The panel determined that the applicant was not credible or trustworthy because her testimony contained numerous omissions, contradictions and inconsistencies.

[12] By way of example, when the panel asked her if other members of her family had been forced to marry against their will, the applicant responded that most of them had. She gave as an example her aunt's daughter. She also stated that her sister Soureya had suffered the same fate. But this sister was not on the list in the applicant's narrative. The panel did not accept the applicant's explanation for the omission. The applicant said that she had omitted to mention her because she did not get along well with her.

[13] Another example involved her sister Fanna who was, the applicant said, an extra in the list because she did not have the same mother. However, a little later, she changed her testimony and said that Fanna did have the same mother as she did.

[14] The panel mentioned other examples. There were contradictions regarding the people whom she asked for help on May 15, 2006. The date of her engagement or wedding came under criticism by the panel. First, she said that the wedding was at the Fathia ceremony (May 15, 2006), but later she said that it was on October 6 when she was taken to her husband's home.

IV. Analysis

A. *Standard of review*

[15] Where credibility and the assessment of evidence are at issue, it is settled law, under subsection 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, that the Court will only intervene if the decision is based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[16] Assessing credibility and weighing the evidence is within the jurisdiction of an administrative tribunal, which must assess the refugee claimant's allegation of subjective fear (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, (1998) 157 F.T.R. 35 (F.C.T.D.), 83 A.C.W.S. (3d) 264 at paragraph 14).

[17] Before the decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the appropriate standard of review in similar circumstances was patent unreasonableness. Now, it is reasonableness.

Did the Tribunal err by deciding that the applicant was not credible and that she did not demonstrate that she had valid reasons for fearing to return to Chad?

[18] When dealing with similar facts, a reviewing court must ask the following question: “Is the inferior tribunal’s decision based on the evidence?”

[19] Without the benefit of having heard and seen the applicant, the Court analysed the documents that were filed as evidence as well as the transcript of the hearing. After that step, the Court could see whether the reasons that are the basis of the decision are supported by the evidence.

[20] The issue here is not whether the Court would have come to a different conclusion. In this case, and after analysing the above-noted documents, the Court is of the view that the panel’s decision contains all the elements of a reasonable decision.

[21] The omissions, contradictions and inconsistencies noted by the panel are supported by the evidence. Whether the issue was the date of the engagement or the forced marriage (pages 44, 135 to 153 and 160, tribunal record), the composition of the family (page 125, tribunal record) or the assistance requested by the applicant (pages 144 to 146, tribunal record), it was not unreasonable for the panel to doubt the applicant’s credibility.

[22] The Court cannot intervene unless a reviewable error has been demonstrated.

[23] The parties did not pose any question for certification and the record does not contain one.

JUDGMENT

THE COURT ORDERS that the application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1174-08

STYLE OF CAUSE: **MARIAM AHMAT MAHAMAT ALI
and
MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 28, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY :** Mr. Justice Beaudry

DATED: November 17, 2008

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