

Federal Court



Cour fédérale

**Date: 20140514**

**Docket: IMM-5460-13**

**Citation: 2014 FC 471**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, May 14, 2014**

**PRESENT: The Honourable Mr. Justice Shore** [AuthorLongF]

**BETWEEN:**

**MAMADOU SAIDOU DIALLO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Preliminary remarks

[1] In this case, the Refugee Protection Division of the Immigration and Refugee Board [RPD] determined that the applicant's identity documents did not conclusively establish his identity. The identity documents had been obtained in an irregular manner and contained

significant inconsistencies. Furthermore, the documents did not include any security features.

The RPD therefore found those documents to be unreliable.

[2] Considering these factors, the Court finds that it was entirely open to the RPD to find as it did. The applicant has not shown that the RPD's main finding is unreasonable. The onus was on the applicant to establish his identity through acceptable documents. He did not succeed in doing so.

## II. Introduction

[3] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the RPD, dated July 22, 2013, rejecting the applicant's claim for protection as a refugee or a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

## III. Facts

[4] The applicant, Mamadou Saidou Diallo, declares himself to be a citizen of Guinea.

According to the birth certificate in the record, he was born in 1995.

[5] The applicant states that on January 3, 2011, his parents, Mamadou Bella Diallo and Aisata Baldé, died in an automobile accident. After his parents died, the applicant lived with his step-mother, Kadiatou Bah, with whom his father had three children. She soon started

mistreating him. She prevented him from going to school, stopped feeding him and forced him to do housework.

[6] With the help of his half-brother, Aliou, the applicant obtained fake identity documents to leave his country.

[7] The applicant entered Canada on May 8, 2011, with a visa issued in the name of Ahmed Tidiane Bangoura, as an employee of Guinea's ministry of the economy and finance, to take part in a training session from May 7 to 21, 2011. Ten days later, he made a refugee protection claim under the name of Mamadou Saidou Diallo.

[8] On July 22, 2013, the RPD rejected the applicant's refugee protection claim. That decision is the subject of this judicial review in this Court.

#### IV. Decision under review

[9] First, the RPD concluded that the applicant had not established his identity because of a lack of probative evidence substantiating his alleged name, Mamadou Saidou Diallo. The RPD found that the only pieces of identification filed by the applicant, a birth certificate and a student identity card, contained multiple inconsistencies which the applicant had been unable to adequately explain.

[10] The RPD also concluded that the applicant was not credible. In its reasons, the RPD pointed out multiple contradictions in the applicant's story which, taken as a whole, undermined

his credibility. Moreover, it noted that, despite having been assisted by a representative from PRAIDA and having been represented by experienced legal counsel, the applicant had not provided any evidence corroborating the existence of his persecutor and had given very little evidence corroborating the death of his parents. This further undermined his credibility. The RPD also noted that the applicant had made no attempt to seek refuge elsewhere in his country of origin or to ask the authorities or other members of his family for protection.

[11] Considering these unfavourable findings regarding the applicant's credibility, the RPD dismissed the applicant's refugee protection claim.

#### V. Issue

[12] Did the RPD err in making an unfavourable finding regarding the applicant's credibility?

#### VI. Relevant statutory provisions

[13] Sections 96 and 97 of the IRPA apply in the present case:

Convention refugee	Définition de « réfugié »
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and	a) soit se trouve hors de tout pays dont elle a la

is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;

or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont

from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

## VII. Standard of review

[14] This Court has held that the RPD's findings on credibility are questions of fact and thus reviewable on a standard of reasonableness (*Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)).

VIII. Analysis

[15] The applicant submits that the RPD made numerous unreasonable and capricious errors in its assessment of his credibility. He also alleges that the RPD imposed too heavy a burden on him by demanding extrinsic evidence to corroborate his allegations.

[16] In this case, the Court admits having reservations about certain findings of fact made by the RPD: for example, the RPD's finding that the applicant was not credible because he could not identify the exact location where his parents died. However, considering the other grounds raised by the RPD in finding that the applicant was not credible, the Court concludes that the RPD's decision was reasonable. The Court is of the opinion that, when taken together, the other contradictions, omissions and inconsistencies noted by the RPD were sufficient to justify finding a lack of credibility.

[17] However, the Court notes that the refugee protection claim could have been rejected at the identification stage, without going any further. It is therefore unnecessary to analyze the rest of the evidence to reject the claim. The Court refers to *Uwitonze v Canada (Minister of Citizenship and Immigration)*, 2012 FC 61:

[32] In a situation where an applicant has not established identity, a negative conclusion ensues as to credibility and a disposal of a claim is usually the norm. As stated by this Court in *Najam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 425:

[16] The proof of a claimant's identity is of central importance to his or her claim. I agree with the Respondent that if the identity of the claimant is not proven, the claim must fail; that means the Board need not pursue an analysis of the evidence in

relation to other aspects of the claim. . . . [Emphasis in original.]

[18] In the present case, the RPD determined that the applicant's identity documents did not conclusively establish his identity. The identity documents were obtained in an irregular manner and contained significant inconsistencies. Furthermore, the documents did not have any security features. The RPD therefore found these documents to be unreliable.

[19] Considering these factors, the Court finds that it was entirely open to the RPD to find as it did. The applicant has not shown that the RPD's main finding is unreasonable. The onus was on the applicant to establish his identity through acceptable documents. He did not succeed in doing so.

[20] It is not for the Court to reassess the evidence or to substitute its own assessment for the one made by the RPD (*Martinez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 441), nor may the Court dissect the reasons of the RPD (*Borate v Canada (Minister of Citizenship and Immigration)*, 2005 FC 679).

[21] The Court finds that, when considered as a whole, the RPD's finding fell within the range of possible, acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

## IX. Conclusion

[22] For all the reasons set out above, the application for judicial review is dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the applicant's application for judicial review be dismissed, with no question of general importance to be certified.

"Michel M.J. Shore"

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Judge

Certified true translation  
Michael Palles

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

**DOCKET:** IMM-5460-13

**STYLE OF CAUSE:** MAMADOU SAIDOU DIALLO v THE  
MINISTER OF CITIZENSHIP AND  
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**JUDGMENT AND REASONS:** SHORE J.

**DATED:** MAY 14, 2014

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