

Federal Court



Cour fédérale

**Date: 20140715**

**Docket: IMM-5701-13**

**Citation: 2014 FC 697**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, July 15, 2014**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**MACOURA KOUI EPSE ADOU**

Applicant

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

Respondent

**JUDGMENT AND REASONS**

**I. Introduction**

[1] 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 rendered by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) on August 7, 2013, dismissing her claim for refugee protection in Canada.

[2] For the reasons that follow, the application is dismissed.

## **II. Facts**

[3] Macoura Kouï, the applicant, was born in the Ivory Coast in 1956. She gave birth to a daughter in 1976. She then had five children in 1979, 1980, 1983, 1986 and 1990 with Dédé Adou, whom she married in January 1987. The couple had another girl born out of wedlock in 1987 who was the child of Mr. Adou, but not of Ms. Adou, and a niece also lived with them. The couple resided in Abidjan.

[4] Her husband having been briefly detained in 2000 and then kept under surveillance by the authorities because of his political activities, Ms. Adou gradually started to send her children to different countries, a girl leaving for England in 2002 and a girl and a boy going to the United States in 2003. Her husband was arrested, interrogated and tortured for three days in 2004 and again in March 2006. The couple sent another girl to Ghana in 2006 and another one to the United States in July 2006. The applicant initially stated that she sent her children abroad to protect them, but at the hearing she explained that she did not flee the country herself at that time because the children were not involved, she held a well-paid job and did not feel threatened at the time, and schools elsewhere were more reliable during the political upsets in the Ivory Coast. In September 2006, Mr. Adou fled to the United States.

[5] Ms. Adou managed to travel a number of times with no problems, but in March 2007 she was stopped and questioned at the airport by police officers who were looking for her husband. She made a complaint, but her complaint was denied. She started to receive anonymous

telephone calls and verbal threats. She moved to another area of the city of Abidjan with her last daughter and her niece for nearly one year. After that, she returned to her original residence in January 2008. In March 2008, she received a new call asking that she reveal where her husband was. The next day, she made another unsuccessful complaint. The threatening telephone calls continued.

[6] On May 25, 2008, the applicant went to visit her brother in Canada. She did not make a refugee protection claim because of her family obligations: she had to return to the Ivory Coast because her son had stomach problems, although she did not remember the specific diagnosis, and her eldest daughter needed her. She also had investments in hair salons.

[7] On September 9, 2009, two police officers came to her home, pushed her around in front of her daughter, questioned her, and raped the two women. Ms. Adou was taken to hospital. She filed a medical certificate attesting that a medical examination dated September 11, 2009 had revealed symptoms including the following: ``In gynecological terms, detectable recent lesion, presence of spermatozoa.``

[8] She made a complaint, but the police refused to take her complaint. She stated that the police officer told her that if she did not leave the premises, he was going to arrest her for contempt of law enforcement representatives. She went to a police station in another borough. In the file before the Court, she submitted a statement given at the second police station on October 20, 2009.

[9] The threatening calls continued and she received a threatening letter. She left to hide with her family for a month and then made a complaint at another police station. She also called her husband, who became angry at her for having been so careless that she was raped, and who refused to receive her. Ms. Abdou's brother, a Canadian citizen, invited her to take refuge in Canada, and she arrived here on November 12, 2009. She made a claim for refugee protection on November 16, 2009.

[10] Ms. Adou indicated that some time after her arrival in Canada, she discovered that her husband had another woman in his life.

[11] In April 2013, she stated that after her departure from the country, there was an attempt to set fire to her home in 2010 and a national political crisis in 2011, during which the entire family was threatened and forced to live in secret. Her nephew had been taken and tortured by armed groups from April 14 to 27, 2011 but he ended up escaping.

### **III. Impugned decision**

[12] The panel reviewed the facts until the departure of the applicant for Canada in 2009. It then noted that during questioning at the hearing, the Member had observed that the applicant was in a position to file additional pieces of evidence. The panel accepted this evidence and evaluated it, but found too many inconsistencies, implausibilities and contradictions to consider the applicant credible.

[13] The Member noted that she had taken into account the Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution [the «Guidelines on Women»], showing sensitivity to the factors that can influence testimony and taking the necessary steps to facilitate them. She also took into consideration the recommendations of the applicant's psychologist. The psychologist had recommended avoiding direct questioning about the rape, and as a result the panel only questioned the applicant about the facts surrounding this event.

[14] The Member deemed that the applicant's testimony was not credible. The panel was surprised by the fact that the applicant's husband was persecuted as described when he was only responsible for a cell of about sixty persons in his political movement. In addition, she did not file a membership card in a political party for her husband. She then filed a copy of a simple attestation letter dated August 25, 2006, explaining that her daughter had searched her father's possessions in the United States to find the letter and send her a copy. The panel was surprised by the fact that she had not filed this exhibit earlier, when her refugee protection claim was based on the political involvement of her husband. The Member did not accord any probative value to the letter and found that the account of persecution was clearly exaggerated.

[15] The applicant only filed the medical certificates corroborating the torture suffered by her husband during the hearing. The panel, noting that she had very experienced counsel, did not accept her explanation that she did not think that this documentation would be relevant. The Member did not give any probative value to these documents.

[16] The member then did an overview of the events in the Ivory Coast during the 2000s and concluded that the allegations regarding the applicant's husband were not consistent with the documentary evidence concerning developments at the time. This inconsistency undermined the applicant's credibility on a point at the heart of her refugee protection claim.

[17] The panel then reviewed the applicant's reasons for not leaving her country in 2006 at the same time as her husband, especially when she had felt the need to send five of her children to safety. She had explained initially that she had a well-paid job; then that she was not really threatened and that her children were not really involved. These explanations were inconsistent. She was on the point of retiring in 2006 and did retire in 2007; she had written that she was kept under surveillance by the police as much as her husband; and she had sent her children out of the country. Therefore, the panel did not believe that her life was in danger, and this undermined her credibility.

[18] The applicant explained that the fact that she travelled to Canada in spring 2008 without claiming refugee protection was for family reasons. She indicated that her son was ill, but she no longer remembered the diagnosis, that her daughter lived with her, that she had invested a great deal in hair salons, and that she also looked after a niece (born in 1992) and her husband's daughter. The panel observed that the daughter in question was then 32 years of age and that her husband's daughter was 21 years old, and that these two women could have lived independently and taken responsibility for the young niece. The investments did not constitute a valid reason for staying if her life was threatened, which the panel did not believe. The panel found it

inconsistent that the applicant did not make a refugee protection claim in Canada if she was receiving threatening calls, making complaints to the police and hiding at that time.

[19] The Member reviewed the assault of September 9, 2009. Ms. Adou had filed a newspaper article dated June 11, 2010 referring to a victim, K.M.A., and her daughter, C.T., who had been raped and could not be located for nine months, and she stated that she and her daughter were the women mentioned. The panel questioned why the article referred to a husband who was a senior manager in the Houphouetist party, whereas Mr. Adou was a printing technician. Ms. Adou stated that her husband had worked at city hall as a cabinet attaché until 2002 or 2003, and after the adjournment, she filed a new exhibit to corroborate this fact. She explained the omission of this fact from her account by saying that she had told about the details that concerned her. The member noticed an anomaly in the professional information; the photograph of Mr. Adou seemed to be affixed over the city hall's seal rather than under it, but the authenticity could not be verified from a photocopy. Because of this and the last-minute filing, she did not give any probative value to these exhibits.

[20] The panel did not believe that the applicant's husband was a senior manager at city hall. Also, the narrative in the newspaper article did not correspond to the applicant's account; even the title did not match her story. The panel came to the conclusion that Ms. Abdou had selected the article and fabricated her account based on this story, especially since it seemed unlikely that her husband would still be sought three years after three years after he had left the country. The Member did not give the article any probative weight.

[21] However, the panel noted that the applicant had submitted a medical certificate to corroborate her allegation of rape. The member questioned her on where they had received medical care afterwards, and indicated that she was sceptical of the fact that her medical certificate came from a medical clinic that did not appear on the Internet on the map of her neighbourhood, whereas a hospital was located there. However, the medical certificate did attest to a recent lesion and the presence of spermatozoa. The panel concluded that there had possibly been an assault, but that it was not in the alleged circumstances.

[22] The panel also read the psychologist's report relating the treatment of significant post-traumatic symptomatology from February to July 2010. The panel observed that the applicant recovered from her problems quickly, but did not question the psychologist's conclusion that she had suffered significant distress. However, the member noted that this evaluation was based only on the applicant's statements, since the psychologist had not witnessed the events. Therefore, the panel did not give the article any probative value. The applicant had also mentioned during the hearing that she suffered from other problems. As a result, the panel did not believe that her problems were related to the alleged events.

[23] The panel concluded that the applicant was not credible with respect to the essentials of her allegations concerning her fears of persecution.

[24] Since the jurisprudence has confirmed that in the case of women, it is important to proceed with a careful analysis to verify if the particular circumstances and the documentation on the country indicate that they could be considered to be victims of persecution, the panel



analyzed the context in the Ivory Coast. The Member observed that women in the country were often victims of domestic violence, forced marriage, and genital mutilation; that rapes were more due to sporadic events during wars or elections, but it was difficult to make a complaint because complaints were often ignored, and that resources offering assistance were limited. The applicant is a mature woman (aged nearly 58 years) and educated, with a large family. She said at the hearing that several members of her family had left for Ghana in 2009 and 2010, but she did not file any evidence to that effect. She also had a number of adult children, although most of them lived outside of the country. She had retirement income and seemed to live well, being able to take a number of trips per year and stay in hotels. Since 2006, she had been managing without the support of her husband.

[25] The panel concluded that the evidence did not show a serious possibility that the applicant was a victim of persecution as a member of the social group of women.

[26] Since the applicant was not credible concerning the essentials of her allegations, the Member concluded that section 97 did not apply.

[27] Nonetheless, the panel did verify an internal flight alternative [IFA], considering the city of Yamoussoukro, four or five hours from Abidjan. It concluded that moving to this city would not place the applicant's life or security in danger and that she could re-establish herself there.

[28] The panel dismissed the claim for refugee protection.

#### **IV. Issues in dispute**

[29] This case raises the following issues:

1. Did the panel err in concluding that the applicant's narrative lacked credibility using conjecture or reaching implausible conclusions?
2. Did the panel err in concluding that the applicant would not have a fear of persecution as a member of the social group of women in the Ivory Coast?
3. Was there a violation of natural justice, legitimate expectations due to the fact that the panel gave no weight to documents filed late?
4. Did the panel err in its conclusion about internal flight?

#### **V. Standard of review**

[30] The standard of review for the issues in dispute is that of reasonableness.

## **VI. Analysis**

1. *Did the panel err in concluding that the applicant's narrative lacked credibility?*

[31] The applicant holds that the Member resorted to unfounded conjecture and stresses the inappropriateness of dismissing her claim on the basis that she was not credible. I agree that there are a certain number of conclusions drawn by the member that could be described as conjecture on the basis of the underlying facts. However, I find that there is sufficient evidence to support the panel's conclusion that the applicant was not credible and that her narrative lacked the air of reality required to support a serious fear of persecution linked to her husband's past political activities if she returned to the Ivory Coast.

[32] As for the political activities of the applicant's husband, I agree with the applicant that the Member initially could have ventured into conjecture by concluding that the relatively minor political role of the husband at the head of one of the cells of a political party could not explain his arrest and torture twice in 2004 and 2006.

[33] However, the most important aspect of this testimony was the applicant's lack of credibility in omitting to mention, during the first description of her husband's activities, that he was supposed to be a senior officer of the political party attached to the office of the Mayor of Cocody. This fact only came out when the applicant tried to explain a certain number of inconsistencies in the newspaper article dated June 11, 2010, which she had filed as evidence to try to corroborate her story of having been raped in 2009.

[34] Not only were the circumstances of the delay in revealing this important piece of evidence inexplicable, but the circumstances of how the document was presented raised uncertainty as to the nature of her husband's political activities.

[35] In addition to omitting to refer to her husband's important political position or presenting the attestation to support it, the documents were copies and therefore not likely to be authenticated. In addition, the business card seemed to raise questions given the fact that the photograph was affixed on top of (and therefore after) the seal and not under it (and therefore before it). I agree that the evidence did not allow the Member to grant any probative value to the attestation on the husband's political activities.

[36] Along the same lines, the evidence suffices to substantiate the conclusion that the applicant was not persecuted before the sexual assault incident in 2009. Her complaints about being questioned concerning her husband's whereabouts were minor incidents and she was not afraid to complain. She said that she stayed in the country because she had a well-paid job, but she was close to retirement in 2006 and was retired in November 2007. She made visits to Canada and the United States in 2008 and returned to her country despite her allegations of problems at that time. The panel did not find her explanations satisfactory that her son had stomach pain for which she did not remember the diagnosis, that her 32-year-old daughter needed her, and that she had investments in hair salons. A voluntary return to the country of origin is incompatible with a subjective fear of persecution. I consider these conclusions to be reasonable and substantiated by the evidence.

[37] Regarding the events surrounding the sexual assault of her daughter and herself in 2009, I also agree that the Member may conclude that the applicant tried to mislead the panel by introducing the newspaper article of June 11, 2010, with the goal of corroborating her version of events.

[38] The Member pointed out serious inconsistencies found in this newspaper article. Chief among them were the fact that the woman and daughter mentioned in the article had disappeared for nine months, their parents having heard nothing from them, and that recently their house had been vandalized and partly burned. This was incompatible with the evidence provided by the applicant to the effect that, following the sexual assault, a family member had taken her to hospital, and that afterwards she had gone to the police to complain. She also stated that she had then hidden with four of her children for a month before making another complaint to the police.

[39] Although I agree with the applicant that the Member erred in concluding that she had used the article to fabricate her story, I agree that the inconsistencies found in the newspaper article seriously undermined her credibility. I am also of the opinion that it was reasonable for the Member to conclude that the applicant tried to mislead her by stating that the article was about the sexual assault committed against her and her daughter.

[40] I also agree that it is implausible that the authorities continued to seek her husband three years after he left the Ivory Coast to live in the United States. In the same vein, it is frankly inconceivable that the applicant would be the subject of persecution owing to the political

activities of her husband, who left the Ivory Coast seven years earlier to live permanently in the United States.

2. *Did the panel err in concluding that the applicant would not have a fear of persecution as a member of the social group of women in the Ivory Coast?*

[41] The applicant holds that the Member ignored relevant pieces of evidence, concluding that there was not a serious risk of persecution based on the fact that she was a member of the social group of women.

[42] The Member recognized her obligation to proceed with a careful analysis to verify if, because of the particular circumstances and documentary evidence concerning sexual violence against women, the applicant could not be considered to be a victim of persecution.

[43] The applicant's main argument was that the member did not take into account all of the documentation on the situation in the country when she stated that violence against women was sporadic, occurring more frequently during wars or elections. She criticized the Member for having relied upon the Amnesty International report, which only covered a specific period of time in relation to this subject. Furthermore, she contested the statement that domestic assaults against women were the most frequent forms of rape, which was not mentioned in the U.S. Department of State report.

[44] However, the Member did cite documentation indicating that women in the Ivory Coast are often victims of domestic violence, forced marriage, and genital mutilation, although she did not provide statistics. She also mentioned documentation that supported the conclusion that these

incidents took place during elections, sometimes involving the complicity of government personnel, and that limited assistance was available to victims of domestic violence. Thus, I conclude that there was evidence to support these conclusions. The Member did not refer to the documents cited by the applicant, but after reviewing this documentation, I consider that it did not significantly contradict the general conclusions drawn by the Member.

[45] Moreover, the Member based her decision on the particular situation of the applicant. The applicant's particular circumstances were: she was 58 years of age and well-educated, with 18 years of schooling; had family members living in Abidjan; had done well-paid work in a bank for a certain number of years; was a businesswoman with investments in hair salons; and had sufficient resources to make frequent international flights. Based on the evidence, the Member concluded that the applicant's particular circumstances did not demonstrate a serious risk that she would be a victim of persecution by sexual assault by returning to the Ivory Coast.

[46] The Member acknowledged that the applicant could have been a victim of sexual assault, but not in the circumstances that she described. The Member did not raise other particular circumstances that would place her at risk of sexual violence upon her return to the Ivory Coast. In light of the evidence presented before the Member, no reviewing error came to the fore that would require the intervention of the Court with respect to these conclusions.

3. *Was there a violation of natural justice?*

[47] The applicant emphasized that, having allowed the introduction of a number of documents on the second day of the hearing, even when on the basis of the rules of procedure it

was not mandatory, the Member had created a legitimate expectation that these documents would be taken into consideration in the analysis of her case. She cited the decision *Bouasla v. Canada (MCI)*, 2005 FC 1544, in support of this argument.

[48] In the cited decision, there was an indication that certain procedural steps would be followed. These principles do not apply to a review of the importance to be given to documents entered as evidence. The Member has broad discretionary authority to take into account the circumstances in which documents were obtained and their appearance of authenticity in determining what weight to give them.

[49] Also, a reviewing court does not have the right to substitute its opinion on the weight given to a document unless it is manifestly unreasonable. This is not the case for the Member's conclusions in the present case based on her assessment of the evidence before her.

4. *Did the panel err in its conclusion about internal flight?*

[50] It is not necessary to review the possibility of internal flight for the applicant. Given my conclusion that the Member's decision is reasonable and sufficiently explained, dismissing a well-founded fear of persecution, either because of the applicant's husband's political activities or because of being a member of a particular social group, it is not necessary for the Court to consider this question.

## **VII. Conclusion**



[51] For these reasons, the application for judicial review is dismissed. There are no questions of importance to certify.

**JUDGMENT**

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

1. The application for judicial review is dismissed; and
2. There are no questions of importance to certify.

“Peter Annis”

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Judge

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

**DOCKET:** DOCKET: IMM-5701-13

**STYLE OF CAUSE:** MACOURA KOU I EPSE ADOU v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JUNE 26, 2014

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** JULY 15, 2014

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