Federal Court  Cour fédérale

Date: 20150319

Docket: IMM-3976-14

Citation: 2015 FC 346

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 19, 2015

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

BINTOU WANN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND RESONS

[1] This is an application for judicial review of the decision of a senior immigration officer (the officer) of Citizenship and Immigration Canada, dated March 25, 2014, rejecting the application for permanent residence on humanitarian and compassionate grounds of the applicant, Bintou Wann. The applicant, an unsuccessful refugee protection claimant, was seeking an exemption from the regulatory requirements to be able to make her application from Canada,

mainly on the grounds that she is suffering from severe depression with risk of suicide and would not have access to care in her country of origin.

[2] For the reasons that follow, I find that this application for judicial review must be dismissed.

I. Facts

[3] The applicant, a citizen of Guinea, arrived in Canada on August 9, 2010. Upon her arrival, she claimed refugee protection on the grounds that her father wanted to force her to marry her cousin, who was already married. She also claimed that she was no longer a virgin and that she therefore risked being repudiated by her future husband and ostracized from her own family.

[4] The refugee protection claim was rejected by the Refugee Protection Division (RPD) of the Immigration and Refugee Board on February 11, 2012, on the grounds that the applicant was not credible because she had given different versions of her story to Canada Border Services Agency (CBSA) officers, on her Personal Information Form and during her testimony before the RPD. In particular, there were contradictions in her story about her name, her date of birth, her father's job, and the reason she came to Canada originally. In her original refugee protection claim, she had mentioned that she came to Canada from Guinea, but the CBSA discovered that she came from Spain, where she had been studying for at least a year, and that she had a valid three-year study permit for Canada. She had also omitted to report at the outset that her mother had been driven out of the family home for refusing to marry. The RPD found this forced

marriage story to be implausible, given that her father had given her freedom to study abroad at his expense, that he was himself a university professor, and that there was no objective evidence to corroborate her story. Moreover, the applicant had told the CBSA that her forced marriage story was made up. For all these reasons, the RPD rejected her refugee protection claim, and leave to file an application for judicial review of that decision was denied by this Court on June 7, 2012.

[5] The applicant then applied for permanent residence in Canada on humanitarian and compassionate grounds on July 5, 2012. In support of that application, she provided several documents to show her establishment in Canada (certificate of employment, letter confirming her volunteer work, bank statements, electrical and Internet bills, notice of assessment) and several medical letters and documents to show that she is suffering from depression requiring care and medication that will not be available to her in Guinea. Lastly, the applicant also filed several reports concerning practices of polygamy, arranged and forced marriages, and genital mutilation that take place in Guinea, as well as a handwritten letter dated May 8, 2012, allegedly from her mother, that mentions her being expelled from the family home.

[6] At the same time as her application for an exemption on humanitarian and compassionate grounds, the applicant also filed an application for a pre-removal risk assessment (PRRA), which the officer rejected on March 24, 2014. No application for leave and for judicial review was filed in respect of that decision.

II. The impugned decision

[7] The officer rejected the application for permanent residence on humanitarian and compassionate grounds on March 25, 2014. She first considered the proof of establishment and concluded that despite the applicant's efforts to establish herself in Canada, her establishment was nothing exceptional and did not show that a return to Guinea would present any unusual and undeserved or disproportionate hardship. The officer noted that the applicant had spent most of her life in Guinea with her family and that she had no family ties to Canada.

[8] The officer then reiterated the conclusions of the RPD with respect to the three versions of events presented by the applicant and the resulting lack of credibility. As for the notes from Dr. Billon (emergency room doctor at the CHUM), Ms. Montesino (intervention officer at the Program for the Settlement and Integration of Asylum Seekers, or PRAIDA) and Dr. Beauregard (doctor at PRAIDA), the officer concluded that far from supporting her forced marriage story, they merely added to the contradictions already raised by the RPD. She noted in particular the following contradictions:

- The applicant allegedly told Dr. Billon that her mother, brothers and sisters were deprived of food and beaten by her father, an element that she never mentioned before and which is unlikely since her father invested considerable funds in her education and accepted her choice to continue her education in Canada.
- The applicant allegedly told Ms. Montesino that her mother was a victim of domestic violence and had left the home because of a dispute with his other wife, when previously she had said that her mother had been turned out because of her refusal to marry.

- The applicant allegedly told Dr. Beauregard that she came to Canada to avoid a forced marriage when she had always said that she came to Canada to study and that it was only on arriving in Canada that her father asked her to return to Guinea.

[9] As for evidence of her depression, the officer concluded that it had little probative value. The applicant had claimed that she would not have access to the care required by her condition in Guinea. However, the officer pointed out that the applicant was not very cooperative with respect to the care she was obtaining here since the letter from Dr. Beauregard indicates that the applicant is "unresponsive to treatment", and the notes in the file show that she admitted not taking her medication and had missed several appointments. In addition, the officer believes that the findings of her doctors are based on a story of forced marriage that she admitted to the CBSA to having made up. Accordingly, the officer ascribed no weight to them.

[10] The applicant had also submitted a letter from Dr. Jarvis from the Montréal Jewish General Hospital in which he reported that the applicant had been diagnosed with major depression including suicidal thoughts, and that she had attempted suicide by taking a lethal dose of acetaminophen in early 2013. In this regard, the officer noted that the blood and urine tests done in the emergency room by Dr. Billon had proven to be negative, that the applicant had been released the same day and that she had come to the emergency room on her own, not by ambulance. Accordingly, the officer ascribed no weight to Dr. Jarvis' statement that the applicant had attempted suicide.

[11] As for what the applicant submitted as being a letter from her mother, the officer found that there was no way to verify the identity of the letter's author and that, in any event, the letter had little probative value given that her mother is an interested party.

[12] Lastly, with respect to the documentary evidence regarding the conditions facing women in Guinea, the officer observed that such evidence does not explain the many contradictions between the different versions given by the applicant. Furthermore, the applicant does not have the profile of a person at risk of being forced into a marriage, as this phenomenon generally happens to minor girls living in families with conservative values and little education. This is not the case for the applicant whose father is a relatively wealthy university professor who allowed his daughter to study abroad at his expense. The officer therefore believed that the applicant did not have the profile of a girl mistreated by her parents who has no say in her future.

[13] For all these reasons, the officer concluded that the applicant did not demonstrate that her return would represent unusual and undeserved or disproportionate hardship and therefore rejected her application.

III. Issue

[14] The only issue in this instance is whether the decision made by the officer is reasonable given the evidence in the record.

IV. Analysis

[15] There is no dispute between the parties that the applicable standard of review is that of reasonableness. The related case law leaves no doubt in this regard: see for example *Bah v Canada (Minister of Citizenship and Immigration)*, 2014 FC 345 at para 19; *Daniel v Canada (Minister of Citizenship and Immigration)*, 2011 FC 797 at paras 11-12; *Sabadao v Canada (Minister of Citizenship and Immigration)*, 2014 FC 815 at para 19.

[16] Moreover, I agree with the respondent that the letters attached to Exhibit "B" of the applicant's affidavit (except for the letter from Dr. Jarvis dated November 19, 2013) constitute new evidence and must be removed from the applicant's record. It is well established that the evidence before a reviewing court is limited to that which was before the administrative tribunal; in other words, evidence that was not before the officer and that goes to the merits of the application on humanitarian and compassionate grounds is not admissible in the application for judicial review in this Court: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at paras 19-20. The only exceptions to this principle relate to situations where receipt of evidence would not be inconsistent with the differing roles of the reviewing court and the administrative tribunal, for example, when it is a matter of identifying procedural unfairness. That is not the case here. The documents in question are dated at least two months after the impugned decision and essentially seek to show the excessive hardship the applicant would face because of her mental health issues should she return to Guinea.

[17] Counsel for the applicant argued that a letter from the Donka University Hospital Centre to the effect that the applicant could not receive care for her depression in Guinea had been submitted in support of the PRRA application. That letter was similar to but predated the letter of May 27, 2014, filed as part of this application. According to counsel, the officer erred in not taking that letter into consideration when reviewing the application on humanitarian and compassionate grounds. In the absence of evidence that such a letter was indeed part of the PRRA file, I granted the applicant's counsel additional time to provide that evidence. Mr. Sangré took advantage of this opportunity and sent the Court and the respondent a letter from the University Hospital Centre, dated February 1, 2013, which is essentially to the same effect as the letter dated May 27, 2014. However, Mr. Sangaré did not provide any evidence that this document had actually been submitted to the officer responsible for examining the PRRA application. Indeed, the affidavit from Ketsia Dorceus, a legal assistant at the Quebec Regional Office of the Department of Justice Canada, indicates that no letter from the Donka University Hospital Centre exists in the CBSA file. In these circumstances, the applicant cannot claim that this letter should have been considered by the officer as part of her application on humanitarian and compassionate grounds and must therefore be removed from her file before this Court.

[18] After carefully considering the arguments of both parties, I conclude that the officer did not commit a reviewable error in considering the evidence of establishment. The officer acknowledged that the applicant had demonstrated some establishment and that her job constituted a positive factor. However, she considered that this was not sufficient to establish that she would experience disproportionate hardships if she returned, given that she had spent most of her life in Guinea with her family and had no family ties to Canada. It was up to the officer to

weigh the relevant factors, and this Court may not intervene solely because it would have weighed those factors differently. Furthermore, it must always be remembered that the issue is not whether the applicant would make a positive contribution to Canadian society or would integrate well into Canada. Rather it is the applicant's responsibility to prove that the rule requiring her to apply for a visa from outside Canada would result in her experiencing unusual and undeserved or disproportionate hardship. The officer could conclude that the start of the applicant's establishment in Canada was not sufficient in itself to meet this burden of proof.

[19] The applicant argued that the officer read her medical file in a selective, if not biased, manner. I consider this claim to be unfounded. On the contrary, the officer spent considerable time reviewing the evidence submitted in this regard and explained why she had given it little weight. The officer essentially had three reasons for her conclusions:

- The applicant was not very cooperative, admitted not taking her medication, missed several appointments and in some cases arrived very late, according to Dr. Beauregard's notes;
- No weight can be ascribed to the psychological assessments, given that the applicant changed her story based on the person she was speaking with, and she was deemed not to be credible by the RPD in this regard;
- The applicant's suicide attempt must be considered with circumspection, given that the notes of the doctor who saw her in the emergency room reveal that the blood and urine tests were negative. Furthermore, she went to the hospital herself and was released the same day.

[20] It is clearly the officer's responsibility to assess the probative value of medical reports, as is the case for any other evidence. As part of that exercise, she could rightly take into consideration the applicant's lack of credibility: see *Mpia-Mena-Zambili v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1349 at para 60; *Palka v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 165 at para 17 [*Palka*].

[21] The officer did not err in finding that the evidence was insufficient to establish that the applicant had ingested a lethal dose of acetaminophen in March 2013. The notes in her CHUM file of March 4, 2013, indicate that she arrived at the emergency room herself and that she was released the next day when the doctor found that her acetaminophen level was "OK". It is true that the doctor who received the applicant at the emergency room noted her passive suicidal thoughts and gave the opinion that she was perhaps suffering from post-traumatic stress disorder, with probable evolution to major depression and chronic suicide risk that is no longer active. He also noted that the applicant was very stressed, notably because of matters relating to her status in Canada. However, these observations are based on a single interview with the applicant, and the officer's reasons for giving little weight to the other psychological assessments are just as valid for this very preliminary opinion by the emergency room doctor.

[22] As for the assessment of the evidence with respect to the applicant's cooperation with treatment, it also seems completely reasonable to me. Dr. Beauregard's progress notes reveal that the applicant showed up late and postponed or cancelled several of her appointments. It is true that Dr. Beauregard, in writing that the applicant was [TRANSLATION] "treatment resistant" no doubt wanted to indicate that the treatments did not appear to have an impact on the illness and

not that the applicant herself was not submitting to the treatments, as the officer implies. It does not change the fact that Dr. Beauregard encouraged the applicant to TRANSLATION] "[remain compliant with her Rx" (Tribunal Record, p. 126) and noted a bit later that [TRANSLATION] "Major depressive disorder improved, possible effect of better compliance with [treatment]" (Tribunal Record, p. 129). On this basis, the officer could conclude that the applicant had not always cooperated in the treatment of her illness.

[23] There is no question that the applicant suffers from psychological problems, but it is difficult to determine the exact extent of them, given the low probative value of the medical reports submitted in support of her application. However, these problems seem to result more from her fear of having to leave Canada than from the risks she might face in Guinea. It is well established that the depression or stress caused by the prospect of removal from Canada would not be sufficient to establish the existence of unusual and undeserved or disproportionate hardship. These are the consequences inherent in the enforcement of the *Immigration and Refugee Protection Act*, SC 2001, c. 27; if it were otherwise, section 25 of the Act would open the door to numerous abuses and would make it possible to easily circumvent the requirements imposed by Parliament to obtain permanent residence in Canada: see *Palka*, above at para 17.

[24] Furthermore, the applicant did not provide evidence that she would be unable to obtain the care, treatment and medication that her condition may require in her country of origin. As mentioned previously, the letter from the Donka University Hospital Centre was not submitted to the officer, and there is nothing to prove the authenticity of the two versions of that letter. The burden was on the applicant to establish that her removal presented unusual and undeserved or

disproportionate hardship for her, notably because of her state of health. In the absence of evidence that the social and health system in Guinea cannot deal with her, her application for permanent residence on humanitarian and compassionate grounds could not be accepted.

[25] For all these reasons, I find that the application for judicial review must be dismissed. The parties did not submit questions for certification, and none will be certified.

JUDGMENT

THE COURT'S JUDGMENT is that the application for judicial review is dismissed**.**

No question is certified.

"Yves de Montigny"

Judge

Certified true translation
Michael Palles

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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