

Federal Court



Cour fédérale

Date: 20160229

Docket: IMM-2891-15

Citation: 2016 FC 256

Toronto, Ontario, February 29, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

AMUDAT OLAYEMI ADESIDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision made by the Refugee Appeal Division (“RAD”) of the Immigration and Refugee Board of Canada, dated May 22, 2015, dismissing the Applicant’s appeal of the decision of the Refugee Protection Division (“RPD”), dated December 15, 2014.

[2] The Applicant claims she is a citizen of Nigeria and that she fled to Canada because she feared the Boko Haram and her parents, who sought to compel her to enter into an arranged marriage.

[3] The RPD rejected the Applicant's claim finding that the Applicant had failed to establish her identity, which is a pre-requisite to a claim for refugee status (*Su v Canada (Citizenship and Immigration)*, 2012 FC 743). In support of her claim, the Applicant had provided a Nigerian passport as her sole identity document. The RPD found that discrepancies in the Applicant's testimony regarding how she obtained her passport suggested that the passport was obtained fraudulently. It also noted that the objective evidence found in the National Documentation Package ("NDP") states that use of fraudulent documents is common and that it is easy to obtain such documents in Nigeria. The RPD concluded that the Applicant had failed to provide acceptable documentation establishing her identity or a reasonable explanation for the lack of trustworthy documentation or for not having taken reasonable steps to obtain it as required by Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 and s 106 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 ("IRPA"). The RPD then went on to make brief, negative credibility findings.

[4] The RAD limited the appeal to the identity issue which it found to be determinative. The Applicant sought to submit new evidence before the RAD, pursuant to s 110(4) of the IRPA. It is of note that the Applicant testified before the RPD that her passport was her only form of identification and that she had never had a driver's license, a birth certificate, a national identity card or a declaration of age. When asked how she obtained her passport, she indicated that in

fact she had used a birth certificate for that purpose, but that she did not know where that document was now. When the RPD pointed out that this contradicted her previous statement that she did not have a birth certificate, the Applicant stated that she had not understood the question. The Applicant also stated that the birth certificate was the only document she used to obtain her passport, however, the RPD noted information from the NDP which stated that several documents in addition to a birth certificate are required to obtain a passport in Nigeria, including photographs, a guarantor's form and a letter of identification.

[5] The new evidence that the Applicant sought to submit was comprised of three documents intended to establish her identity: a certificate of registration of birth; a certificate of origin; and, a notification of national diploma. Although the RAD referred to s 110(4) of the IRPA and noted that the Applicant had not explained why the documents were not available earlier, it did not conduct a threshold analysis of admissibility. Instead, it addressed each of the documents, ultimately affording them no weight.

[6] The RAD then reviewed the RPD's decision, agreeing with the RPD's conclusion on identity. The RAD found that, since identity was an issue, it was reasonable for the RPD to question the Applicant regarding identity documents and the procedure she followed to obtain her passport. The RAD also noted that her passport had been issued the year before the Applicant left Nigeria and it would therefore be reasonable to expect that the Applicant could provide a straightforward answer as to how she obtained it. Further, that a review of the hearing record indicated that the Applicant understood the questions being asked, and was aware that she could say if she did not understand or could not remember, therefore her explanation was not

satisfactory. The RAD agreed with the RPD that the discrepancies between the Applicant's testimony and the NDP information regarding the documents needed to obtain a passport provided grounds to find that it was more likely than not that the passport had been obtained fraudulently.

[7] The RAD also noted that the information relied on by the RPD regarding the application process for Nigerian passports came from the National Immigration Service of Nigeria and, therefore, was not based on Canadian standards or expectations as the Applicant had submitted. The RAD noted the Applicant's testimony that she had never worked in the health sector, but that she had provided a National Hospital employee photo identification card at the port of entry. She explained that it had been obtained by the same person who had also assisted the Applicant in procuring a Canadian visa in Nigeria. On this basis, the RAD found that she had access to and a willingness to use fraudulent documents. This supported the RPD's finding concerning the passport.

[8] The RAD also addressed the jurisprudence submitted by the Applicant which stated that documents issued by a foreign government are presumed valid unless evidence is produced to prove otherwise. In this case, it found that evidence was available to find, on a balance of probabilities, that the Applicant's passport was fraudulent. The RAD also referred to *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 which indicated that the RPD was under no duty to submit documents for expert assessment unless there is sufficient evidence to cast doubt on their authenticity.

[9] The RAD also considered the RPD's brief reasons regarding the credibility of the Applicant's claim of subjective fear, including the supporting evidence, but, as noted above, it concluded that the identity issue was determinative.

[10] In my view, the issue in this matter is whether the RAD erred in its assessment of the new evidence and, therefore, of the Applicant's identity.

[11] Accordingly, I agree with the parties that the decision should be reviewed on the reasonableness standard (*Malambu v Canada (Citizenship and Immigration)*, 2015 FC 763 at para 25; *Cabdi v Canada (Citizenship and Immigration)*, 2015 FC 26 at para 16; *Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at paras 27-33; *Tota v Canada (Citizenship and Immigration)*, 2015 FC 890 at para 19).

[12] On appeal, when considering the new identity evidence, the RAD referenced s 110(4) of the IRPA which addresses the admissibility of new evidence. Section 110(4) states that the only admissible evidence is that which arises after the rejection of an applicant's claim or that was not reasonably available, or that the claimant could not reasonably have been expected in the circumstances to have presented at the time of the rejection. However, having referenced s 110(4), the RAD does not appear to have then conducted an admissibility analysis based on that provision. Indeed, had the RAD refused to admit the documents based on the explicit statutory requirement in s 110(4) of the IRPA, in my view, that decision would likely have been reasonable as the Applicant provided no explanation why she could not have obtained the

documents prior to her RPD hearing. In the absence of that analysis by the RAD, difficulty arises from its assessment of the new documents.

[13] With respect to the certificate of registration of birth ("birth certificate") the RAD noted that its date of issuance was after the rejection of the Applicant's claim and that, other than stating in her appeal that it was not available earlier, no explanation was offered as to why it had not been previously produced. Regardless, the RAD stated that because identity was at issue, it considered the document and it then listed five reasons why it afforded the document no weight.

[14] The first reason was because the Applicant was in Canada when the document was issued and there was no information regarding how the document was issued and to whom. Given the Applicant's prior contradictory evidence before the RPD when she stated she did not have a birth certificate and, later, that she did have a birth certificate but did not know where the document was, the RAD may well have wanted an explanation as to how the Applicant acquired the document. However, it admitted the document and did not convene a hearing pursuant to s 110(6) of the IRPA to address credibility concerns. Nor does the RAD point to any evidence contained in the NDP that suggests that Nigerian birth certificates are not issued to citizens who are outside of that country. It may also be that the RAD was questioning the genuineness of the document, as the circumstances surrounding its origin were not explained, but this is unclear. The RAD's next reason for affording the birth certificate no weight was that it was issued long after the Applicant's birth. However, the RAD does not explain why this would negatively impact the weight it afforded to the document. Indeed, replacement birth certificates would necessarily be issued after a person's date of birth and this alone would not suggest that the

document was inauthentic. The RAD's third reason was that the document was issued after the Applicant made her claim for refugee status. Again, the RAD could have declined to admit the document on the basis that no explanation was given as to why it was issued after her refugee claim, but it did not do so. Having admitted the document, the RAD does not explain why the fact that it was issued after the Applicant made her refugee claim brings the validity or credibility of the document into question or why it otherwise justifies affording it no weight.

[15] The RAD also gave no weight to the birth certificate because the document was issued by the Owo local government and the NDP states that Nigerian birth certificates contain no hidden or security features to identify the issuing local government. However, the RAD did not comment on the stamp and watermark that appear on the face of the copy of that document contained in the record.

[16] Finally, the RAD stated that the birth certificate included an "inexplicable stamp" that stated "International Passport Only". Again, it is entirely unclear why this would be the basis for affording the document no weight. The RAD did not refer to documentary evidence that indicated that such stamps are not normally found on a birth certificate or any other basis for taking issue with the stamp. Put otherwise, the existence of the "International Passport Only" stamp on the birth certificate is, by the RAD's own admission, inexplicable. Without evidence that such a feature is irregular, as opposed to merely inexplicable, this cannot be grounds for questioning the document's genuineness or affording it no weight.

[17] As to the certificate of origin, the RAD again afforded it no weight for the first and third reasons above and because it had no security features. My comments above are equally applicable to these two reasons. As to the lack of security features, the RAD refers to no evidence that security features are to be expected nor does it comment on what appears to be a stamp and watermark to explain if these are security marks and, if so, why they have been discounted in assessing the document.

[18] As to the diploma, this was afforded no weight because no explanation was given as to why that document, which was issued over two years before the Applicant entered Canada, was not available at the RPD hearing. While it is true that the document pre-dated the hearing, the RAD appears to have admitted it into evidence rather than challenging it on this basis pursuant to s 110(4) of the IRPA. Thus, the RAD's reason appears to speak to admissibility, not weight. However, if this reason was intended to justify the weight afforded by the RAD, it is unclear why or how the age of the document provides such justification, although the RAD does also state that the document provides no information regarding the Applicant's date of birth or nationality. Lastly the RAD notes that the document has no security features.

[19] Jurisprudence establishes that there must be some reason or evidence to rebut the presumption that government-issued documents are valid. As Justice Zinn stated in *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 [*Chen*]:

10 This Court has consistently held that documents issued by a foreign authority are presumed to be valid: *Ramalingam v. Canada (Minister of Citizenship & Immigration)*, [1998] F.C.J. No. 10 (Fed. T.D.), at para 5, and *Manka v. Canada (Minister of Citizenship & Immigration)*, 2007 FC 522 (F.C.) at para 8. Accordingly, in the matter before the RPD one must ask: What

evidence was there to rebut that presumption of validity? The only observations made by the RPD were that fraudulent official documents are available in China and that the summons “contains no security feature other than a red stamp.”

[20] Further, to rebut the presumption of validity, the evidence or reason for doubting the documents must be more than statements in the NDP that fraudulent documents are generally available in Nigeria (*Chen* at paras 12-13; *Cai v Canada (Citizenship and Immigration)*, 2015 FC 577 at para 17; *Lin v Canada (Citizenship and Immigration)*, 2012 FC 157 at paras 53-54; *Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 at para 7).

[21] In *Chen*, Justice Zinn also found that the tribunal must provide some reason or evidence for questioning the absence of security features before finding that the presumption of validity is rebutted:

11 With respect to the issue of security features, there is no evidence in the record, nor does the RPD cite any, that indicates that the document should have any additional security features. From this I infer that the RPD surmised that the document could be more easily forged than one with greater security features. However, even if true, that is not evidence that this document was fraudulent.

[22] In this matter the RAD admitted the documents. While it is not clear from its reasons it appears that, to some extent, the RAD may be questioning their genuineness. However, if that is the case, it provides no reason or evidence to rebut the presumption that the new evidence, government-issued documents, are not valid. Nor does it address what appears to be security features on the birth certificate and certificate of origin. This Court has previously held that the existence of official stamps constitutes a security feature for the purposes of evaluating

authenticity (*Dai v Canada (Citizenship and Immigration)*, 2015 FC 723 at para 27; see also: *Elhassan v Canada (Citizenship and Immigration)*, 2013 FC 1247 at para 22; *Ru v Canada (Citizenship and Immigration)*, 2011 FC 935 at para 21; *Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 at para 18).

[23] I would also note that this is not a case where the RAD determined, based on its examination of the Applicant's testimony before the RPD, that the new evidence had no probative value in light of contradictions and inconsistencies in the Applicant's testimony (see *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at para 24).

[24] It is clear that the adequacy of reasons is not a stand-alone basis for quashing a decision on judicial review and a reviewing court must first seek to supplement reasons before seeking to subvert them (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 12-17 [*Newfoundland Nurses*]). However, there must be a reasonable basis upon which the decision-maker could have decided as it did (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 53, 55-56).

[25] In this case, the reasons provided by the RAD in its assessment and weighing of the new documents do not permit me to understand why, in these circumstances, the RAD afforded them no weight. Accordingly, its treatment of them was unintelligible and, therefore, unreasonable. The RAD's finding that that Applicant failed to establish her identity was based on its assessment of, and her evidence concerning, her passport, the sole identity document that it

assessed. It is impossible to know if that assessment would have been different if the other identity documents had been properly assessed. Therefore, the RAD's assessment of the Applicant's identity is also necessarily unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision of the RAD is set aside and the matter is remitted for redetermination by a different panel;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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