

Federal Court



Cour fédérale

Date: 20160420

Docket: IMM-3153-15

Citation: 2016 FC 446

Ottawa, Ontario, April 20, 2016

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

AICHA ABDILLAHI ISMAIL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ms. Aicha Abdillahi Ismail is seeking judicial review of a Refugee Protection Division [RPD] decision rendered on June 12, 2015, in which the RPD refused her claim for refugee and protected person status. The RPD found that the Applicant's testimony lacked credibility with respect to the salient aspects of her claim.

[2] The Applicant essentially argues that the RPD failed to properly consider the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guidelines] and that its credibility assessment was not reasonable.

II. Facts

[3] The Applicant, a 51-year-old Muslim woman, is a citizen of Djibouti. She fears her abusive second husband in Djibouti. She is afraid that if she returns, he will beat her, blame her for defaming him, and get her arrested and sent to prison.

[4] The Applicant divorced her first husband in 1985. Subsequently, she lived as a single woman and shared a house with other women. She began operating a clothing business in 2004, and did so until 2014. She testified that she once travelled to Dubai with another woman to obtain clothing textiles, and travelled a few times to Somalia as well. The Applicant states that she can do basic counting, but that she is illiterate.

[5] In May 2014, the Applicant married her second husband. Shortly thereafter, she learned that her husband was still married to a first wife. Shocked and angry, she went home and confronted her husband. She states that he hit her for the first time: he grabbed her by the head and violently pushed her. He later admitted it was true that he had another wife, but that he was in the process of divorcing her. Over the next few months, the Applicant regularly asked her husband if the divorce was complete; he would answer that his first wife was stalling the process.

[6] In September or October of 2014, the husband suggested that they take a vacation to the United States. He obtained visas for both of them, and they planned to travel in December 2014. However, when the Applicant asked him for money to buy travel necessities, her husband said that he would not go, and that he would not divorce his first wife. They did not make their trip to the United States.

[7] The Applicant contends that every time she mentioned the trip or his first wife to her husband, they would fight and he would sometimes hit her and insult her. He said he would never let the Applicant go and that she would suffer if she continued talking about divorce. At that point, the Applicant decided to leave. In February 2015, she secretly bought an airline ticket to the US with the help of her female cousin, and slowly brought her personal effects to her cousin's house so she could take them with her when she left. On February 25, 2015, the Applicant was leaving the house. Her husband asked her where she was going; she answered she was leaving him. She states that he grabbed her by the neck and pushed her to the ground face first. One of her top teeth was pushed backwards, her mouth was bleeding and her face was cut. The Applicant ran out of the apartment and fled to her cousin's house.

[8] The next day, her cousin brought her to the dentist. The dentist gave her medication and fixed her tooth. The Applicant took her flight to the US as planned that night. She went to stay with a friend of her cousin's in the suburbs of Washington, D.C., and then a few weeks later made her way to Canada where her brother lives. The Applicant testified that the woman with whom she stayed could not help her with claiming refugee status in the US, because she worked and had children; moreover, the Applicant preferred to claim in Canada where she would have

the support of her brother. She claimed refugee status on March 16, 2015, the day she was interviewed by the Canada Border Services Agency.

[9] While in Canada, the Applicant asked her cousin in Djibouti to obtain her marriage certificate, which is in her husband's possession. However, when her cousin tried to obtain the marriage certificate, her husband refused to hand it over, saying that the Applicant would use it to divorce him; he also threatened to call the police.

III. Impugned Decision

[10] The RPD began by stating that it had considered the Gender Guidelines. It then stated that the Applicant had not established that she was a refugee or person in need of protection. The RPD acknowledged that the Applicant had limited education and that women face discrimination in Djibouti. However, the RPD found that the Applicant "is an experienced, capable and independent person", and that her testimony was not credible for several reasons.

[11] First, the RPD did not believe that the Applicant was illiterate, because she had travelled internationally for business and had operated that business successfully for 10 years.

[12] Second, the RPD found that the Applicant had not made sufficient efforts to obtain her marriage certificate, a document that is central to her claim. Her explanation was unsatisfactory and it undermined her credibility. The Applicant had testified that it might be possible to obtain it from the sheik but she never attempted to do so. Also, the RPD noted that according to the

documentary evidence, Muslim marriage certificates could be obtained from the Khadi of the region or from the "*Tribunal du Charia*".

[13] Third, the RPD found that the Applicant's credibility was undermined by her testimony regarding the alleged threat from her husband to force her to return home or else he would beat her. The Applicant did not explain how her husband had not tried to prevent her from leaving or kept her passport away from her. The RPD did not believe that her husband had not known that she had travelled before. Thus, the RPD found it implausible that he would not have suspected that she may travel a long distance away from him and not come back.

[14] Fourth, the RPD found that the Applicant's explanation for not claiming refugee status in the US was both unsatisfactory and improvised during the hearing. Her behaviour was not consistent with someone seeking protection.

[15] Finally, the RPD noted that the document submitted from her dentist visit was not probative evidence showing that the cause of the dental problem was an attack from her husband.

[16] Given the Applicant's weakened credibility, the RPD concluded that she would not need state protection, whether to pursue her divorce or to live separately from her husband. The RPD found that her family and community would not likely force her to return to her husband.

[17] Finally, while the RPD acknowledged that the Gadabuursi ethnic group faces discrimination in Djibouti, the Applicant had not shown she was from that subgroup or that she suffered discrimination.

IV. Issues

[18] This application for judicial review raises the following issues:

A. *Did the RPD err by failing to consider the Gender Guidelines?*

B. *Was the RPD's credibility analysis reasonable?*

[19] I agree with the parties that the applicable standard of review is reasonableness (*Nour v Canada (Citizenship and Immigration)*, 2012 FC 805 at para 14; *Higbogun v Canada (Citizenship and Immigration)*, 2010 FC 445 at paras 21-23).

V. Analysis

[20] The Respondent raises a legitimate preliminary objection that the Applicant has not included an affidavit of her own in her application for leave, but rather only an affidavit from a legal assistant. The Respondent argues that an Applicant's affidavit is at the core of her application (*Muntean v Canada (Minister of Citizenship and Immigration)* (1995), 103 FTR 12, [1995] FCJ No 1449 (QL) at paras 11-12 (FCTD) [*Muntean*], cited with approval in *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at paras 7, 9 [*Dhillon*]). The Respondent also contends that the Applicant's Memorandum makes gratuitous allegations with respect to

what happened in the RPD hearing, which allegations are unsupported by the legal assistant's affidavit, and must therefore be disregarded by the Court.

[21] Although I agree that it is critical that the affidavit be sworn by the person who has personal knowledge of the decision-making process - usually the applicant him or herself (*Muntean*, above at para 11; see also *Dhillon*, above at para 9), I prefer to give no weight to the affidavit and to move on to the merits of this application (*Dhillon*, above at para 10).

A. *Did the RPD err by failing to consider the Gender Guidelines?*

[22] The Applicant argues that the RPD's decision was unreasonable because it failed to consider the Gender Guidelines in its assessment of the Applicant's testimony. The Gender Guidelines must be considered in appropriate cases (*Sy v Canada (Minister of Citizenship and Immigration)*, 2005 FC 379 at para 14), like the case at bar. The Applicant submits that there is no evidence that the RPD truly considered them. Moreover, the RPD never really assessed whether the allegations of violence themselves were credible, and these were at the heart of the claim. The RPD displayed a failure to understand domestic violence by stating that the Applicant and her husband were involved in a "confrontation", and by assuming that because the Applicant was "experienced, capable and independent" she would not be vulnerable to being a victim of domestic violence.

[23] In her memorandum, the Applicant alleges that the RPD did not even mention the Gender Guidelines in its decision. The decision clearly shows that on the contrary, the RPD expressly mentions the Gender Guidelines at the outset of its reasons. It then treats and assesses the

testimonial and documentary evidence accordingly. The Applicant, who was represented by counsel at the hearing, testified on the salient points of her claim. She had the opportunity to clarify inconsistencies and it was open to the RPD to find that her explanations were unsatisfactory. Moreover, the RPD's negative credibility findings were related to the central aspects of the Applicant's claim.

[24] I agree with the Respondent that the record does not show that the RPD would have misstated, misconstrued or misinterpreted the Applicant's testimony or that the Applicant or her counsel raised before the RPD, expressly or implicitly, that her personal situation or vulnerability had an impact on her testimony.

[25] The RPD did consider the Applicant's personal situation; she is a middle aged woman who has ran a small business and lived as a single woman for an important part of her life and who states that she had previously been divorced. It was reasonable for the RPD to find that those characteristics had an impact on the Applicant's level of vulnerability, when it made adverse credibility findings.

[26] The "Gender Guidelines, in and of themselves, are not intended to serve as a cure for all deficiencies in the applicant's claim or evidence" (*Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at para 5, cited in *Correa Juarez v Canada (Citizenship and Immigration)*, 2010 FC 890 at para 17.

[27] I do not think either that the RPD lacked sensitivity when it referred to the alleged confrontation between the Applicant and her husband. The RPD was clearly referring to the Applicant's testimony that for several months, she confronted her husband about getting a divorce from his first wife.

[28] Overall, the Applicant has not convinced me that the RPD has disregarded the Guidelines 4 in its assessment of the evidence.

B. *Was the RPD's credibility analysis reasonable?*

[29] I also find that overall, the RPD's credibility assessment is reasonable, keeping in mind that a finding that an applicant has no credibility can extend to all of the evidence she submits (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (FCA), [1990] FCJ No 604 (QL) at para 8).

[30] First, although I agree with the Applicant that it is not necessarily contradictory for an illiterate woman to run a small business in Djibouti, I do not think that the RPD's decision turns on that issue. Even though the Applicant is illiterate, she certainly has sufficient business skills and she is resourceful enough to have been able to run her small business and support herself.

[31] Second, it was open to the RPD to find that the Applicant did not take appropriate steps to obtain her marriage certificate, which was at the heart of her refugee claim. According to section 11 of the *Refugee Protection Division Rules*, SOR/2012-256, an applicant must provide acceptable documents establishing elements of her claim. Failing to file supporting

documentation may have an impact on an applicant's credibility (*Mercado v Canada (Citizenship and Immigration)*, 2010 FC 289 at para 32). The RPD reasonably found that the Applicant's answers concerning ways to obtain a copy of the marriage certificate in Djibouti undermined her credibility and led it to doubt that she was married and forced to remain married to an abusive husband. The Applicant testified that it could have been obtained from the sheik, whereas the documentary evidence shows that it could also have been obtained from the Khadi of the region or from the "*Tribunal du Charia*". The Applicant, who has been represented by counsel since she filed her refugee claim, admitted that she made no attempt to get it from any of those sources. It is possible that it could not have been obtained without being physically present in Djibouti but no such evidence was adduced - the burden of which lied on the Applicant. It was also reasonable for the RPD to consider the fact that the Applicant had been previously married and divorced, when assessing the steps, or lack thereof, that she took to obtain proper evidence of her current marriage.

[32] Third, the RPD understandably failed to grasp why the husband never imagined that the Applicant would leave the country, considering that not only the Applicant had traveled before but that she was in possession of a valid passport and an American visa obtained by her husband. In fact, the Applicant had only been married to that man for less than a year, during which she made it clear that she did not accept their bigamous marriage.

[33] Fourth, the Applicant argues that the RPD erred in finding that the Applicant did not have a subjective fear because she did not claim asylum in the US. The RPD noted that her explanation was insufficient, and was improvised during the hearing: this goes to her demeanour

during her testimony and is a valid consideration for doubting her credibility (*Akinlolu v Canada (Minister of Citizenship and Immigration)* (1997), 70 ACWS (3d) 136, [1997] FCJ No 296 (QL) at para 13). Even if the Applicant had valid status in the US and only spent three weeks there before coming to Canada, it was open to the RPD to consider this factor in its overall credibility assessment.

[34] Finally, the RPD reasonably concluded that the evidence concerning social pressure on women to return to dangerous domestic situations in Djibouti did not apply to the Applicant. The Applicant's family helped her obtain her first divorce and no evidence led the RPD to conclude that the Applicant's family was even involved in her second marriage. In addition, prior to being married for the second time, she did not live with her family and was in no way dependent on them. It was reasonable for the RPD to find that neither the Applicant's family nor her community would pressure her to return to her husband.

VI. Conclusion

[35] For the reasons discussed above, this application for judicial review is dismissed. The parties have not proposed any question of general importance for certification and none arise from this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;
2. No question of general importance is certified.

"Jocelyne Gagné"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3153-15

STYLE OF CAUSE: AICHA ABDILLAHI ISMAIL v THE MINISTER OF
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