

Federal Court



Cour fédérale

Date: 20160908

Docket: IMM-442-16

Citation: 2016 FC 1020

Ottawa, Ontario, September 8, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

NADIA HASSAN BABIKIR MAHMOUD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Mahmoud, a citizen of Sudan, came to in Canada in October 2015 from the United States. On arrival she claimed protection on the basis that she will be persecuted in Sudan as a result of her anti-government political opinions and her relationship with prominent human rights and political activists. Ms. Mahmoud had made a claim for protection in the United States but

considered the process unpredictable, lengthy and complicated so she decided to come to Canada where she also has relatives.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected her claim. The RPD noted inconsistencies in Ms. Mahmoud's documentary evidence and testimony, inconsistencies that it concluded undermined her claim of subjective fear and overall credibility. The RPD also placed no weight on photos, a support letter and a proof of relationship document tendered in furtherance of the claim. The RPD noted specific concerns with some of the documentation and highlighted that country conditions documentation indicates a serious problem with untrustworthy persons in or from Sudan generating fraudulent documents. As a result the RPD found insufficient credible or trustworthy evidence to support the claim and concluded that Ms. Mahmoud was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] respectively.

[3] Ms. Mahmoud asks this Court to quash the RPD decision and return the matter for reconsideration by a differently constituted panel. Specifically she argues that the RPD unreasonably rejected her explanations for discrepancies in the documentary evidence she had tendered and the reasons she had initially applied for a travel visa to the United States. She also submits that the RPD erred in ignoring a "Proof of Relationship" document generated in the United Arab Emirates, as this document did not originate in Sudan.

[4] The application requires that I address the following issues:

- A. Were the RPD's credibility findings unreasonable?
- B. Did the RPD err in giving no weight to the Proof of Relationship evidence?

[5] Having considered the written and oral submissions of the parties, I am satisfied that the RPD's decision is reasonable. The application is dismissed for the following reasons.

II. Standard of Review

[6] The reasonableness standard of review applies where this Court is considering questions of fact and mixed fact and law. The RPD's credibility or plausibility findings and the weight to be given to evidence are questions of mixed fact and law and will be reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 and, in particular *Soorasingam v Canada (Minister of Citizenship and Immigration)*, 2016 FC 691 at para 15 [*Soorasingam*]).

III. Analysis

- A. *Were the RPD's credibility findings unreasonable?*

[7] The RPD assessed the applicant's evidence against her Basis of Claim form [BOC] and her testimony, identifying a number of discrepancies. Specifically the RPD drew negative inferences as to the authenticity of a letter allegedly authored by Dr. Amin Mekki Medani. Dr. Medani is a human rights activist in Sudan who Ms. Mahmoud alleges is also her brother-in-law. The RPD noted two discrepancies in Dr. Medani's letter relating to the dates of incidents

relevant to Ms. Mahmoud's claim: (1) the date she alleges she was arrested by the Sudanese authorities; and (2) the date Dr. Medani himself was arrested. The RPD found Ms. Mahmoud's explanation that these errors were the result of innocent typographical errors implausible. Ms. Mahmoud included a letter in the application record that seeks to explain these discrepancies. This letter was not before the RPD and I have not considered it (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19).

[8] The RPD also drew a negative inference from Ms. Mahmoud's explanation of why she had applied for a United States visa. She alleged she applied for a visa after being arrested and tortured in Sudan in November 2014. However, the visa was issued approximately six weeks prior to the alleged arrest. When asked to explain the discrepancy, Ms. Mahmoud changed her explanation stating that she had applied for the visa to visit Disneyland.

[9] On the basis of these inconsistencies the RPD concluded that Ms. Mahmoud was not a credible or trustworthy witness.

[10] Ms. Mahmoud argues that the individual findings were unreasonable as was the RPD's conclusion that the cumulative effect of the findings undermined the credibility of all of the evidence advanced in support of the claim. I do not agree. The RPD's conclusions were reasonable.

[11] The RPD noted Ms. Mahmoud's explanation for the date discrepancies in Dr. Medani's letter. It further noted that these dates were critical to Ms. Mahmoud's claim and concluded that while one error of this nature might well be possible, two were improbable. While the facts might lend themselves to different reasonable outcomes this Court will only interfere where a conclusion fails to fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). This is not the case here.

[12] In regard to the United States visa, Ms. Mahmoud's counsel argued that the RPD decision did not accurately reflect Ms. Mahmoud's explanations in her BOC and her testimony at the hearing. While the testimony was somewhat confusing, it is clear that Ms. Mahmoud's explanation for having applied for the visa evolved from a response to her alleged arrest and torture to facilitating a visit to Disneyland. Again, the RPD's credibility findings made as a result of Ms. Mahmoud's evolving testimony on a key aspect of her narrative were reasonable.

[13] The RPD was also entitled to consider the impact of its negative credibility findings on all of the evidence advanced in support of the claim. The evolving testimony and discrepancies did not relate to peripheral issues but rather engaged facts that were central to Ms. Mahmoud's claim.

B. *Did the RPD err in giving no weight to the Proof of Relationship evidence?*

[14] In its submissions, the applicant states that: “[t]he RPD gave no weight to any documentary evidence submitted in support of her claim on the basis that the documentary evidence indicated that fraud and corruption were serious problems in Sudan ...”.

[15] Ms. Mahmoud does not challenge this conclusion as it relates to documents originating in Sudan. However, she argues that a “Proof of Relationship” document did not originate in Sudan but rather the United Arab Emirates. Ms. Mahmoud alleges that this document establishes that she is the mother of Nagal Kamal Mekki Madani. As the daughter’s name “Mekki Medani” is the name of Dr. Medani, who Ms. Mahmoud alleges is her brother-in-law, she argues that the document is central to her claim. She adds that by ignoring the document the RPD committed a reviewable error. I disagree.

[16] It is well-established in the jurisprudence of this Court that a decision-maker need not refer to every piece of evidence before it, (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 16 [*Cepeda-Gutierrez*]) and that it is presumed, unless the contrary is shown, that all evidence has been weighed and considered (*Boulos v Canada (Public Service Alliance)*, 2012 FCA 193 at para 11).

[17] In *Rahal v Canada (Minister of Citizenship and Immigration)*, 2912 FC 319 Justice Mary Gleason addresses the requirement for a tribunal to refer to all evidence before it and at paragraph 39 states that *Cepeda-Gutierrez* “actually says...that a tribunal need not refer to every piece of evidence; rather, it is only where the non-mentioned evidence is critical and contradicts

the tribunal's conclusion that the reviewing court may decide that its omission means that the tribunal did not have regard to the material before it." [emphasis in original]

[18] In this case the RPD did not ignore the document but rather makes specific reference to it when identifying the documentation to which it attaches no weight. Although the RPD did not address the source of the document as being a country other than Sudan, it was reasonably guided by its prior credibility findings, findings that I have concluded were reasonable. In addition, the document in question does not contradict the RPD's findings. At best all this document establishes is that Ms. Mahmoud has a daughter that shares a portion of her name with a human rights activist in Sudan. Finally, I note that the RPD's concern was not with documents originating in Sudan but with documents generated by persons "in or from Sudan". The concern was that documents could be staged by untrustworthy persons in or from Sudan.

[19] The RPD did not err in giving no weight to Ms. Mahmoud's documentary evidence in light of its credibility findings and the country condition documentation relating to the availability of false documents. The RPD reasonably concluded there was "insufficient credible or trustworthy evidence upon which to reach a positive determination".

IV. Conclusion

[20] For the reasons set out above, I conclude that the decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir* at para 47).

[21] The parties have not proposed a question for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-442-16

STYLE OF CAUSE: NADIA HASSAN BARIKIR MAHMOUD v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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