

Federal Court



Cour fédérale

Date: 20161027

Docket: IMM-1481-16

Citation: 2016 FC 1198

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 27, 2016

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

AWA DIEDHIOU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Awa Diedhiou is applying for judicial review of a decision rendered by the Refugee Appeal Division (RAD), by which the RAD rejected her appeal of a negative decision rendered by the Refugee Protection Division (RPD). Both divisions determined that the applicant's refugee protection claim was not credible, but the RAD also determined that the applicant had

failed to demonstrate that no state protection would be available to her if she were to return to her country, Senegal. The RAD refused to allow fresh evidence and to hold a hearing. The RAD therefore rendered its decision based on the RPD's record.

II. The facts

[2] The applicant is a 34-year-old citizen of Senegal. Her father died in 2006, and she claims that in January 2014, she was informed by her mother that she would be forced to marry her mother's cousin—a 69-year-old man—and that she would become his third wife.

[3] In shock, the applicant apparently informed her mother that she would rather die than marry this man.

[4] In February 2014, the applicant allegedly attempted suicide by ingesting several medications. She was reportedly treated by Dr. Nouha Sonko of the Service d'assistance médicale d'urgences de la commune de Grand-Yoff, in Senegal.

[5] Despite her suicide attempt, the applicant was informed by her mother that she would have to marry her cousin, as he had already paid her dowry. Since the wedding was scheduled for June 21, 2014, the applicant allegedly fled her family home on June 20, 2014. She hid at the home of an aunt until this aunt informed her mother. Her future husband then allegedly contacted and threatened her.

[6] The applicant apparently fled again, this time to the home of her female friend, Astou.

[7] She received her Senegalese passport on August 18, 2014, and, two days later, she applied for a Canadian visitor visa.

[8] While she was awaiting an answer regarding her visa application, her family found her at her friend's home in November 2014. A new wedding date was allegedly set for February 14, 2015.

[9] On November 19, 2014, the applicant received her Canadian visitor visa.

[10] The applicant's sister made efforts to get her a plane ticket, but, lacking sufficient funds, was unable to buy one until February 4, 2015, for a departure date of February 8, 2015.

[11] The applicant arrived in Canada the following day, and filed for refugee protection in Canada on March 31, 2015, claiming that since she had refused to marry the man whom her family had chosen for her, she feared for her life, her safety, and for her physical and psychological integrity, if she were to return to Senegal.

III. The RPD's decision

[12] The RPD denied the applicant's claim for refugee protection on the grounds that it was not credible and that the applicant had not demonstrated a subjective fear of returning to her own country.

[13] Firstly, the RPD found that the applicant's delayed departure from Senegal undermined her credibility. If she had had a real fear of persecution, she would have taken steps to leave the country much sooner after obtaining her visa.

[14] Secondly, regarding the medical certificate filed by the applicant in corroboration of her suicide attempt, the RPD determined that it was forged. The document bears a logo that is of poor quality and that includes the word "solidarité" written backwards. The applicant testified that she had received this document on February 17, 2014, whereas it is dated May 22, 2015. When confronted with this discrepancy, she explained that her mother had the original and that she had been unable to get it back. Therefore, she had to obtain a copy from the hospital. The RPD did not accept this explanation and held that this document negatively impacts the applicant's credibility. The RPD does not believe that the applicant attempted suicide.

[15] Thirdly, the RPD found that the applicant's failure to include, in her immigration form IMM-5669, her address while living with her aunt also impacts her credibility.

[16] Fourthly, the RPD wondered about the fact that the applicant's sister, who lives in Canada and who could have corroborated a number of the applicant's allegations, neither testified nor provided a written account of the facts before the RPD. The RPD voiced its concerns at the hearing, but the applicant replied that her sister had to go to an appointment with her lawyer.

[17] Lastly, regarding the other documents submitted into evidence by the applicant, the panel granted them very little weight. The applicant's work certificate is in no way related to her allegations of persecution and is from a previous job. The emails produced by the applicant do not indicate from whom they are sent and, worse still, the sender's email address is none other than the applicant's.

[18] After having examined all of the evidence submitted by the applicant, and consequently the negative conclusions regarding her credibility, the RPD concluded that she is neither a "Convention refugee" nor a "person in need of protection" and denied her claim for refugee protection.

IV. Impugned decision

A. *The admissibility of the documents presented as part of the appeal*

[19] Before the RAD, the applicant attempted to submit two documents that had not been before the RPD:

- A letter from Dr. Nouha Sonko, dated August 5, 2015, in which he addresses the RPD's allegations that the medical certificate he prepared was forged;
- A letter from the applicant's sister, dated July 25, 2015.

[20] Citing subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), the RAD reiterated that an appellant may present before the RAD only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person

could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. The RAD recalled that since subsection 110(4) uses the date on which the refugee protection claim was denied as the cut-off date, an applicant generally has some time to perfect his or her case before the RPD, by making an application to this effect (*Refugee Protection Division Rules*, SOR/2012-256, section 43).

[21] The RAD first ruled on the admissibility of Dr. Sonko's letter.

[22] In this letter, Dr. Sonko contests each of the RPD's arguments alleging that the medical certificate he issued was a forgery. The RAD is of the opinion that although this letter was written after the applicant's refugee claim was rejected, it does not meet the criteria set out in subsection 110(4) of the IRPA.

[23] Firstly, the letter does not address events that have arisen since the refugee claim was rejected by the RPD.

[24] Also, the RAD concluded that this letter is neither relevant nor credible (*Olowolaiyemo v. Canada (Citizenship and Immigration)*, 2015 FC 895).

[25] It is not relevant since it serves only to counter the RPD's determination that the medical certificate was forged, and since it does not address the fundamental aspects of the refugee claim. The RAD added that [TRANSLATION] "whether or not the appellant tried to take her own life, as

sad as such a prospect is, and whether or not she was consequently treated by a doctor, sheds no light on her fear of being forced to marry against her will."

[26] The letter is not credible either; it cannot [TRANSLATION] "as its first objective, attempt to contradict the RPD's findings."

[27] Although the RAD also ruled on the inadmissibility of the applicant's sister's letter, it is not necessary to present the reasons here, since this aspect of the decision was not contested by the applicant.

B. *A hearing before the RAD*

[28] The applicant requested a hearing before the RAD, but since the criteria set out in subsection 110(6) of the IRPA were not satisfied, the RAD rejected this request and made its decision based on the RPD's record.

C. *Analysis of the merits of the appeal*

[29] The RAD held that, on the whole, the RPD had not erred in its determination regarding the applicant's subjective fear and her credibility.

[30] Regarding subjective fear, the RAD noted that [TRANSLATION] "remaining longer than necessary in a country where one fears persecution is a behaviour that is indicative of an absence of subjective fear." The RPD was therefore justified in ruling as it did, even in light of the

applicant's explanations. The RPD was well-founded in not believing that the applicant's delay in leaving Senegal was due to financial troubles, given the work certificates and pay stubs in the RPD's file.

[31] Regarding the fact that the applicant's sister did not offer to corroborate the main allegations in the refugee claim, the RAD is of the opinion that the RPD did not err in determining that this negatively affects the applicant's credibility. Even if the applicant's sister was unable to attend the hearing, there was nothing preventing her from issuing a written testimony in the form of an affidavit, either prior to the hearing, during the hearing, or within the seven days following the hearing before the RPD had rendered its decision.

[32] Regarding the work certificates and emails submitted into evidence by the applicant, the RAD shared the RPD's opinion that these should be granted very little probative value. The work certificates [TRANSLATION] "contain no information regarding the appellant's fear of being forced to marry" and [TRANSLATION] "there is no evidence that these emails are in fact from a sister of [the applicant]."

[33] The RAD therefore upheld the RPD's decision that the applicant's testimony is not credible. It also found, after analyzing the documentary evidence, that the applicant would have access to state protection if she were to return to her country. It therefore denied the appeal.

V. Issues and standard of review

[34] The applicant raises a number of concerns, of which, in my opinion, two are determinative in this case:

- A. *Did the RAD err in determining that the applicant would have access to state protection in Senegal?*
- B. *Did the RAD err in its analysis of the applicant's credibility?*

[35] The standard of review applicable to these two matters is the standard of reasonableness (*Alyafi v. Canada (Citizenship and Immigration)*, 2014 FC 952 at paragraph 4).

VI. Analysis

- A. *Did the RAD err in determining that the applicant would have access to state protection in Senegal?*

[36] The applicant argues that the RAD erred in its analysis of state protection. The RAD considered only a portion of an official report by the Immigration and Refugee Board of Canada and did not consider the documentary evidence contradicting its conclusion that the applicant would be protected in Senegal. The applicant argues that this infringes on her right to a decision based on the body of evidence and documentation available to the RAD and that, therefore, the decision is unreasonable.

[37] The RAD also allegedly erred in stating that the laws protecting women in Senegal are generally respected. The applicant points out that the RAD should have applied the criterion of adequate operational level protection, as was applied in the case of *Beri v. Canada (Citizenship*

and Immigration), 2013 FC 854 at paragraphs 35–37, which would not exist in Senegal. This conclusion, the applicant tells us, is supported by the statement made by the United Nations Committee Against Torture, which is "deeply concerned about the persistence" of forced marriages in Senegal.

[38] In addition, the RAD needed to consider the applicant's individual situation in assessing this matter (*Troya Jimenez v. Canada (Citizenship and Immigration)*, 2010 FC 727 at paragraph 4; *Gonzalez de Rodriguez v. Canada (Citizenship and Immigration)*, 2013 FC 486 at paragraph 29). The RAD's failure to assess the applicant's specific circumstances, as well as her personal and family circumstances, renders its decision in this regard unreasonable.

[39] With respect, there is nothing to support the assumption that the RAD did not evaluate all of the evidence before it. The RAD noted that the phenomenon of arranged marriage exists in Senegal, but that a law prohibiting this practice also exists, as do a number of organizations that aim to protect women's rights. The RAD also noted that the laws protecting women are generally applied in urban areas.

[40] Absent a complete breakdown of state apparatus, states are presumed to be capable of protecting their citizens (*Canada (Attorney General) v. Ward*, [1993] 2 SCR 689).

[41] This Court has affirmed on several occasions that a refugee claimant must take all reasonable measures to allow the state an actual chance to protect him or her (*Ward*, above; *Campos Navarro v. Canada (Citizenship and Immigration)*, 2008 FC 358 at paragraph 17;

Hernandez v. Canada (Citizenship and Immigration), 2007 FC 1211 at paragraph 21). "[A] refugee claimant does not rebut the presumption of state protection in a functioning democracy by asserting only a 'subjective [fear]'." (*Sanchez v. Canada (Citizenship and Immigration)*, 2008 FC 134 at paragraph 9).

[42] The applicant bore the burden of demonstrating that she fit the profile of a person who could not request or obtain protection from the authorities in Senegal. She did not do this. This state protection does not have to be perfect; it must be adequate (*Gomez Florez v. Canada (Citizenship and Immigration)*, 2016 FC 659 at paragraph 41).

[43] In my opinion, it was reasonable for the RAD to determine that the applicant could benefit from state protection, if she were to return to her country.

B. *Did the RAD err in its analysis of the applicant's credibility?*

[44] My finding with respect to state protection in Senegal is sufficient to dispose of this application.

[45] I would add only that the RAD made a number of determinations with respect to the lack of credibility in this refugee claim, which the applicant does not contest, that also allow me to find that the RAD did not err in analyzing this matter.

[46] The applicant did not contest the RAD's decision to grant little, if any, probative value to the emails she had submitted into evidence, which had allegedly been sent to her. Nor did she

explain why the sender's email address was her own email address. Not only was the RAD allowed to reject this evidence, but it was also allowed to determine that this documentary evidence had a negative impact on the applicant's credibility.

[47] The applicant also failed to explain why her sister did not offer her written account of the facts corroborating the applicant's allegations. She had several opportunities to do so before the RPD rendered its decision, especially since the RPD had raised this issue at the hearing.

[48] The RAD has a great deal of latitude in weighing an applicant's credibility, and the reviewing Court must respect certain parameters with regard to intervention.

[49] The RAD can cite contradictions, inconsistencies and omissions in an applicant's evidence to determine that it is not credible (*Linares Morales v. Canada (Citizenship and Immigration)*, 2011 FC 1496 at paragraph 21; *Onofre v. Canada (Citizenship and Immigration)*, 2010 FC 1219 at paragraphs 21–22; *Bunema v. Canada (Citizenship and Immigration)*, 2007 FC 774 at paragraph 1).

[50] This Court's role, within the context of an application for judicial review, is not to re-assess the evidence that was submitted before the RPD or the RAD. If this evidence can reasonably support the conclusions drawn with regard to credibility, then this Court must not intervene (*Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 470 (CanLII), [2003] FCJ No 629 at paragraph 4 FCTD (QL)).

[51] Consequently, I am of the opinion that the RAD's conclusion, regarding its analysis of the applicant's credibility, was also reasonable.

VII. Conclusion

[52] For the foregoing reasons, I am of the opinion that the RAD made no error requiring the Court's intervention and that the application for judicial review must be dismissed. The parties raised no questions of general importance for certification and this matter has not raised any.

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No questions of general importance are certified.

“Jocelyne Gagné”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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