

Federal Court



Cour fédérale

Date: 20161108

Docket: IMM-2233-16

Citation: 2016 FC 1247

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 8, 2016

PRESENT: The Honourable Justice Martineau

BETWEEN:

DIENEBA KOITA alias ALIMA DIAWARA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

DECISION AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] rendered on May 10, 2016, dismissing the applicant's application and confirming the Refugee Protection Division's [RPD] decision that the applicant is not considered a Convention refugee or a person in need of protection under Sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA].

[2] The applicant, who is originally from Mali, left her country to seek refuge in Canada on March 22, 2015. On June 4, 2015, she filed an application for refugee protection on the grounds that her life would be in danger if she were forced to return to Mali. The applicant, who was forced to be married at 15 years of age, fears that her father will kill her for having left her husband. Neither the RPD nor the RAD believed her story or her subjective fear of persecution.

[3] There is no need to revisit the detailed grounds of the RPD's rejection, but the following important elements should be emphasized. First, the RPD pointed out that throughout all her testimony, the applicant gave evasive answers, in particular regarding the reason that drove her to flee her marital home in June 2013. The member also found that the applicant's testimony was sometimes vague, imprecise and lacking in depth. For example, the RPD revisited the fact that the applicant erred several times in her testimony about the address where she had lived with her husband, even after the member had told her she was mistaken. The applicant's contradictions were all the more surprising because the address of her marital home appeared on her identity card, which was filed in the Court record. It became clear to the member that the applicant tended to adjust her testimony depending on the circumstances and the questions she was asked. Also, the member was not convinced that the applicant had taken appropriate steps to leave Mali or that she even had a subjective fear of being persecuted by her father. The member found it difficult to understand why the applicant, who said she feared for her life, willingly decided to return to live in Bamako, the very city where her father lived, to complete an eight-month internship. When asked whether it was more important for her to save her life or to learn, the applicant was unable to provide a clear and consistent answer. Finally, the member found that the testimonies provided by her mother, her friend and even the letters of the doctors were not

sufficient to allay significant doubts raised as to the applicant's credibility. Although the RPD does not doubt that the applicant had to deal with very troubling incidents involving her father and her husband, her general testimony and all of her evidence were not deemed sufficiently credible to grant her refugee status.

[4] After reading the file and listening to the recording of the hearing, the member of the RAD essentially confirmed all of the RPD's findings on the applicant's lack of credibility and her testimony's weak probative value. Furthermore, the member noted an additional contradiction in the applicant's testimony. At the hearing before the RPD, the applicant said that she had left her marital home in June 2013 following several years of physical and psychological abuse from her husband, after which she never heard from him again. However, based on the information on her national identity card issued September 1, 2014, he appears to have remained in the marital home. The member then considered this contradiction as major and sufficient to reject the entire application for refugee protection. Although it was keenly aware that the applicant found it difficult to testify about her violent conjugal past, the RAD confirmed the RPD's decision and dismissed the applicant's appeal.

[5] In light of the evidence and the submissions of the parties, I am of the opinion that this application for judicial review of the RAD decision on appeal is without merit and must be dismissed, the applicant not having convinced me in this case that the decision under review is unreasonable or that the RAD has otherwise breached a principle of procedural fairness.

[6] First, we should bear in mind the applicant's arguments regarding procedural fairness. She contests the fact that the member of the RAD raised a new ground attacking her credibility, without giving her the opportunity to respond. Insofar as the contradiction regarding the registration of her identity card had not been formally accepted by the RPD, the member of the RAD breached the principles of procedural fairness by citing it as an additional ground to dismiss her appeal. In my view, this argument is without merit.

[7] According to case law, only a new issue can infringe upon procedural fairness, i.e. an issue that "raises a new basis for potentially finding error in the decision under appeal" (*Sary v. Canada (Citizenship and Immigration)*, 2016 FC 178, [2016] FCJ No. 182 at para 30 [*Sary*], citing *Kwakwa v. Canada (Citizenship and Immigration)*, 2016 FC 600, [2016] FCJ No. 619 at para 25 [*Kwakwa*]). In this case, the place and time where the applicant resided with her spouse and where she resided after she had left the marital home were at the heart of the RPD's concerns. In the decision under review, the member referred to the Research Directorate's report in the National Documentation Package for Mali, a document that is part of the Court record, as is any document that could provide the administrative decision-maker with information on the situation in Mali. There is no question here of a new argument or review of extrinsic evidence. Consequently, the member is not referring to a "new issue" when he notes the contradiction in the applicant's testimony regarding Mali's particular identity card registration process. The member of the RAD was therefore under no obligation to challenge the applicant regarding this matter. I believe that by acting in this manner, the member of the RAD complied with the rules of procedural fairness.

[8] In terms of the reasonableness of the RAD's decision, the applicant essentially raised the same arguments that were raised in the appeal of the RPD's decision. Firstly, the applicant attributed all her contradictions to her nervousness. She maintained that addresses had no real importance in Africa, so much so, that some cities did not have any. The errors in her testimony were at most minor and simply occurred because she was nervous. Consequently it was unreasonable for the RPD and the RAD to grant them so much importance and to conclude that she lacked credibility.

[9] Secondly, the applicant contested the negative inferences drawn by the RPD and the RAD on her subjective fear or her behaviour based on the simple fact that it took her several years to leave Mali. On this point, the applicant noted that after having left the marital home, she repeatedly attempted to obtain a visa to go live in France. Unfortunately, all her visa applications were rejected, which explained why she remained in Mali for several years. When she met a woman from Nigeria at the end of her internship in Bamako, she was finally able to obtain a false passport and a visa to come to Canada. Consequently, the RPD and the RAD erred in considering that she was voluntarily postponing her attempts to leave Mali in order to complete her internship. Although the applicant greatly valued the experience acquired during her internship, this did not change the fact that she never ceased to seek a way to escape her father.

[10] Finally, in response to the new contradiction raised by the member, the applicant explained that when she renewed her identity card on September 1, 2014, she simply returned her old card which indicated her former address where she used to live with her husband.

Consequently, it was unreasonable for the RAD to find that there was a new contradiction in her testimony.

[11] Based on all the arguments mentioned above, I am of the view that there is no reason to intervene.

[12] Firstly, at the RPD hearing, the member tried to make the situation more comfortable and reassured the applicant whose nervousness was apparent. Nevertheless, the applicant repeatedly contradicted herself during her testimony. Having listened to the audio recording of the hearing, the member of the RAD never perceived that the applicant had difficulty providing her testimony due to her nervousness or emotions. He noted the same contradictions as the RPD did and came to the same conclusions regarding the applicant's lack of credibility. This Court recognized that even if some elements raised by the RPD or the RAD do not appear to be sufficient when taken individually or in isolation, the accumulation of contradictions, internal inconsistencies or omissions pertaining to crucial elements of a refugee claimant's story may serve as a basis for a negative credibility finding (*Sary* at para 20). In light of the applicant's testimony, which was, to say the least, nebulous on several aspects of her past, the RAD could therefore reasonably confirm the findings of the RPD regarding her lack of credibility.

[13] Secondly, the conclusions of the RAD regarding the evaluation of the evidence and facts in this case appear to me transparent and intelligible in all regards. We must bear in mind that the applicant, who was then living in a secure location with one of her friends in Koulikoro, voluntarily chose to return to Bamako where her father lived, the very man who was threatening

her life. The evidence and her testimony therefore tend to demonstrate that she gave precedence to her eight-month internship over her security. This Court recognized that the lack of a convincing or reasonable explanation as to why the applicant postponed leaving the country can negatively affect the credibility of her application for refugee protection (*Rivera v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1292, [2003] FCJ No. 1634 at paras 29 and 30). In this case, the applicant merely provides the same reasons that she presented to the RAD to explain why she was unable to leave the country before the end of her internship. However, these explanations have already been rejected by the member of the RAD, and the applicant has not convinced me that her findings were tainted by any reviewable errors.

[14] Neither do I see any grounds that would allow me to question the member of the RAD's reasoning concerning the applicant's contradictions regarding the renewal of her identity card. The applicant maintains that her card was simply renewed based on her old identity card, whereas the evidence on the record clearly shows that she needed to report to her commune office and submit a statement of the complete address. In short, the applicant did not raise any reviewable errors that could taint the reasonableness of the decision rendered by the member of the RAD. Rather, the applicant is basically expressing her disagreement with the assessment of the evidence made by the decision-maker. However, the findings of the RAD are intelligible, transparent and within a range of possible acceptable outcomes given the evidence on the record and applicable law.

[15] This application for judicial review is therefore dismissed. No questions of general importance were raised in this case.

JUDGMENT

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

No question is certified.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2233-16

STYLE OF CAUSE: DIENEBA KOITA alias ALIMA DIAWARA v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: MARTINEAU J.

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