Federal Court  Cour fédérale

Date: 20170106

Docket: IMM-2968-16

Citation: 2017 FC 24

Ottawa, Ontario, January 6, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

YVONNE NIWAHERE JELE

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada, dated June 10, 2016, which determined that the Applicant was not a Convention refugee or a person in need of protection under ss 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

Background

[2] The Applicant is a citizen of Uganda. She claims to have been in a lesbian relationship with "Immy" from 1999 to 2013. When the relationship was discovered by her family in 2008, the Applicant was severely mistreated by her father. He then forced her to marry Patrick Jele, who physically and sexually abused her. She continued her lesbian relationship in secret, but in 2013 her husband discovered she and Immy kissing. He called the police, who arrested and detained the Applicant for three days, during which time she was tortured and raped. Upon her release, she again experienced physical and sexual violence at the hands of her husband.

[3] In 2016, the Applicant obtained a business visa allowing her to enter the United States, which she did in March 2016. She made a port of entry refugee claim in Canada on April 13, 2016. Her claim was an exception to the Safe Third Country Agreement, as she has a brother in Canada.

[4] The Applicant claims that she fears persecution on the basis of her lesbian sexual orientation and domestic violence by her husband.

Decision Under Review

[5] The RPD found the determinative issue to be credibility. It stated that documents submitted by the Applicant to support her claim contained inconsistencies and contradictions that were unreasonably explained, and her testimony regarding past contact with her lesbian partner

was inconsistent. It also drew a negative inference because her brother, who was present at the hearing, would not testify.

[6] More specifically, the Applicant testified that upon being released from police custody she walked to a nearby hospital for treatment. She provided a hospital medical form ("Medical Form") to substantial her claim; it indicated that she was treated for hypothermia and that that CPR was administered. The RPD found that the Applicant's account that she was severely beaten, raped and tortured in police custody and was able to walk herself to hospital, yet required CPR, highly unlikely.

[7] The RPD found that the affidavit provided by the Applicant's cousin, Mable, was inconsistent in material respects with the Applicant's testimony. Mable stated that the Applicant's husband found out about the lesbian relationship and that the Applicant was raped in police custody in 2014, but the Applicant's evidence was that these events occurred in 2013. The Applicant said that Mable made mistakes, but the RPD found it unreasonable for the Applicant to distance herself from evidence that she herself put forward in support of the claim. Mable also deposed that the Applicant fled to Mable's house because of a police search for the Applicant at the home where she lived with her husband, while the Applicant's testimony was that she had no knowledge of the police looking for her at that time.

[8] The RPD found Mable's affidavit to be lacking in credibility as a result of the inconsistencies. And, because of this, the Applicant's testimony that Mable obtained the Medical Form also lacked credibility. Further, there was no evidence as to how the Medical Form was

obtained or why it was dated 2013 when it was obtained in 2016. The RPD placed no weight on those documents to corroborate the relationship with Immy or the abuse suffered by the Applicant in police custody.

[9] The RPD also found that the Applicant was contradictory and changed her story about when she last contacted Immy. Initially, she stated that she had no contact with Immy after the Applicant's arrest in July 2013, except for one letter dated May 10, 2014. Only when confronted with a reference in that letter stating that it had been five months since Immy had last seen the Applicant, did the Applicant bring up Skype conversations. Her explanation for not previously providing this information to the RPD was that she was scared. The Applicant also could not give any information about the Skype account and said that she had deleted it before leaving Uganda. The RPD found that the Applicant's testimony continually changed and placed no weight on the letter as corroborative evidence of the same-sex relationship.

[10] The Applicant also submitted a letter from her brother in Canada corroborating her story and stating that he was willing to assist her. The Applicant's brother was present on the day of the hearing but did not appear as a witness. The RPD gave the letter no weight, and drew an adverse inference from the brother's unwillingness to speak to the letter that he had written.

[11] The Applicant testified that she was repeatedly raped and abused by her husband and experienced instances of gang rape instigated by him. The RPD asked why, in her Basis of Claim form, she made little reference to the type of abuse she endured and found her explanation that she "just forgot" not to be reasonable. Citing the numerous credibility concerns related to the

Applicant's testimony and the supporting documents, the RPD found the Applicant lacking in credibility with respect to her testimony of forced marriage and abuse.

[12] The Applicant also submitted a copy of a warrant for her arrest and an email from her lawyer explaining how he obtained the warrant. The RPD placed no weight on either document and also stated that, in considering the totality of the evidence, it found that those documents did not outweigh its numerous credibility findings.

Issues

[13] In my view, the issues arising in this matter are as follows:

1. Is the expert affidavit submitted by the Applicant admissible?
2. Were the RPD's credibility findings reasonable?

Standard of Review

[14] While the standard of review is not explicitly addressed by the Applicant, the Respondent submits that the standard of review is reasonableness. The Respondent further submits that credibility findings of the RPD should not be interfered with if the Court can ascertain any reasonable basis in the record to support those findings (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 41-46 ("*Rahal*"); *Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at para 34 ("*Kaur*")).

[15] It is well established that when reviewing the credibility findings of the RPD, the Court will apply a reasonableness standard and accord the RPD considerable deference (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 316 at para 4 (FCA); *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 46; *Rahal* at paras 22 and 60; *Rezmuves v Canada (Citizenship and Immigration)*, 2013 FC 973 at para 33). In judicial review, reasonableness is reviewed is concerned with the existence of justification, transparency and intelligibly within the decision making process as well as whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 ("*Dunsmuir*")).

Issue 1: Is the expert affidavit submitted by the Applicant admissible?

[16] The Applicant seeks to submit the Affidavit of Dr. Rouhani, sworn on August 7, 2016, ("Rouhani Affidavit") in support of her application for judicial review. Dr. Rouhani identifies herself as an attending emergency physician at Brigham and Women's Hospital in Boston and the co-chair of the Department of Emergency Medicine at L'Hôpital Universitaire de Mirebalais in Haiti. She states that she has extensive experience relating to the delivery of emergency medicine in developing countries.

[17] In her affidavit, Dr. Rouhani states that it is her expert opinion that the RPD's decision is not reasonable and lacks critical medical and contextual background information about the delivery of emergency medicine in Uganda, where it is quite common for CPR to be erroneously administered in situations where it is not required. Dr. Rouhani interprets the RPD's reasons as assuming that the Applicant was in a state of cardiac arrest that required CPR, which the RPD

found to be implausible. She describes the "fundamental flaw" in that assumption as being that the Applicant actually required CPR. She states, amongst other things, that it is unreasonable to discredit the Applicant's narrative simply because the Medical Form indicates that CPR was administered.

Applicant's Submissions

[18] The Applicant submits that while new evidence is not normally admissible on judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 ("*Access Copyright*")), in this case the Rouhani Affidavit is the only way to demonstrate that the RPD's implausibility findings were speculative and based on an erroneous apprehension of the facts. According to the Applicant, the RPD did not raise concerns about CPR during the hearing or give the Applicant the chance to provide evidence about it.

[19] As an exception to the general rule against allowing new evidence in judicial review proceedings, extrinsic evidence can be used to show the absence of evidence before the decision-maker on a particular point (*Re Keeprite Workers' Independent Union et al and Keeprite Products Ltd* (1980), 29 OR (2d) 513 (CA) ("*Keeprite*"); *Access Copyright*). The Applicant submits that the Rouhani Affidavit falls squarely within the *Keeprite* exception. It demonstrates the erroneous factual basis on which the RPD made its decision.

[20] Alternatively, even if the Rouhani Affidavit does not fall within the exception, it should still be admitted. The RPD's applied highly specialized medical knowledge to challenge the

presumption of truth. The use of such "specialized knowledge" without specifying its source is a breach of procedural fairness. And, in any event, the implausibility finding was made without an evidentiary basis and was the RPD's attempt at playing doctor.

Respondent's Submissions

[21] The Respondent submits that evidence not before the decision-maker should only be received by a reviewing court in situations that are not inconsistent with the differing roles of the judicial review court and the administrative decision-maker (*Access Copyright* at para 19). The Rouhani Affidavit purports to "review" the RPD finding and determines that it is "not reasonable." However, this is the function of the Court, not an expert. Further, the *Keeprite* exception applies only in cases where the complete absence of evidence arises to the level of jurisdictional error and should not allow the re-litigation of facts found by the RPD (*Keeprite* at 521).

[22] Even if the Rouhani Affidavit was admissible as new evidence, it is not free from argumentative materials and attempts to interpret evidence considered by the RPD and to draw legal conclusions. This is not an acceptable use of an affidavit on a judicial review (*Canadian Tire Corporation v Canadian Bicycle Manufacturers Association*, 2006 FCA 56 at para 10).

Analysis

[23] In my view the Rouhani Affidavit is not admissible.

[24] The general rule is that evidence that was not before the administrative decision-maker, in this case the RPD, is not admissible before the reviewing court (*Bernard v Canada*, 2015 FCA 263 at para 13 ("*Bernard*"); *Connolly v Canada (Attorney General)*, 2014 FCA 295 at para 7; *Access Copyright* at para 19).

[25] In *Bernard*, the Federal Court of Appeal recently revisited the three recognized exceptions to this general rule previously set out in *Access Copyright*, as well as the principles behind them, the most significant of which is the differing roles of the court and the administrative decision-maker. In this matter, the Applicant submits that she relies on the second exception. However, because she also makes a peripheral argument pertaining to the third exception, I set out the Federal Court of Appeal's comments on both:

> [24] The second recognized exception is really just a particular species of the first. Sometimes a party will file an affidavit disclosing the complete absence of evidence on a certain subject-matter. In other words, the affidavit tells the reviewing court not what is in the record—which is the first exception—but rather what cannot be found in the record: see *Keeprite Workers' Independent Union v. Keeprite Products Ltd.* (1980), 29 O.R. (2d) 513 (C.A.) and *Access Copyright*, above at paragraph 20. This can be useful where the party alleges that an administrative decision is unreasonable because it rests upon a key finding of fact unsupported by any evidence at all. This too is entirely consistent with the rationale behind the general rule and administrative law values more generally, for the reasons discussed in the preceding paragraph.
>
> [25] The third recognized exception concerns evidence relevant to an issue of natural justice, procedural fairness, improper purpose or fraud that could not have been placed before the administrative decision-maker and that does not interfere with the role of the administrative decision-maker as merits-decider: see *Keeprite* and *Access Copyright*, both above; see also *Mr. Shredding Waste Management Ltd. v. New Brunswick (Minister of Environment and Local Government)*, 2004 NBCA 69, 274 N.B.R. (2d) 340 (improper purpose); *St. John's Transportation Commission v. Amalgamated Transit Union, Local 1662 (1998)*, 161 Nfld. &

> P.E.I.R. 199 (fraud). To illustrate this exception, suppose that after an administrative decision was made and the decision-maker has become *functus* a party discovers that the decision was prompted by a bribe. Also suppose that the party introduces into its notice of application the ground of the failure of natural justice resulting from the bribe. The evidence of the bribe is admissible by way of an affidavit filed with the reviewing court.

[26] In the context of the second exception, it may have been permissible under the *Keeprite* exception for the Applicant to file an affidavit pointing out that there was no evidence before the RPD as to whether it was likely that CPR would be necessary or administered to a person in the condition asserted by the Applicant. But the Rouhani Affidavit does not address this. Rather, it presents entirely new evidence that was not before the RPD and which was intended to demonstrate that, in developing countries, CPR is often administered even when it is not required. The Applicant's premise appears to be that even if it is implausible for someone in her alleged condition to be capable of walking to a hospital but to also need CPR, as the RPD seemed to believe, the treatment could have been erroneously administered. Thus, the Rouhani Affidavit does not demonstrate that the RPD's conclusion was based on an evidentiary vacuum, but calls on the Court to conclude that the RPD's finding was in error based on the new evidence. In my view, this goes well beyond the second exception to the general rule and to accept it would be to place the Court in the position of making a decision on the merits of the claim, which is not its role (*Bernard* at para 17; *Access Copyright* at paras 17-19; *Connolly* at para 7; *Delois v Canada (Attorney General)*, 2015 FCA 117 at paras 41-42).

[27] Nor am I persuaded that the third exception has application in these circumstances. The onus was on the Applicant to establish her claim. In that regard, she provided the Medical Form, which indicated that CPR had been administered. It could reasonably be anticipated that she

would be asked by the RPD, as she was, about the content of the Medical Form including her account that she walked from the police station to the hospital where she required CPR. Thus, it was open to the Applicant to have provided the expert affidavit to the RPD to explain either why she may have needed CPR or, as she now suggests, that it was erroneously administered.

[28] For these reasons I do not find that the Rouhani Affidavit falls within the existing exceptions, and the Applicant does not suggest that a new category arises in these circumstances.

Issue 2: Were the RPD's credibility findings reasonable?

[29] As to the RPD's credibility finding concerning the Applicant's account of events after she was released by the police, I would point out that for the RPD the issue was whether the Applicant's account was credible:

> [12] To corroborate this incident the claimant presented a hospital medical form. The claimant was asked a number of questions regarding her treatment such as what she was treated for, how she managed to walk to the hospital on her own, and how she obtained the hospital record. The claimant's account was unreasonable. The claimant testified that she was "bleeding" and when asked what treatment she received she provided a cursory answer, she said she was cold, she said the hospital gave her an injection "to sleep", and she could not recall any other treatment. According to the medical form the claimant was treated for hypothermia and Cardiopulmonary Resuscitation (CPR) among other treatments that are difficult to read on the form. When the claimant was asked specifically about the CPR, she was unable to explain. When asked how she managed to walk to the hospital and yet was in such a state that required CPR [sic] the claimant could not explain. When the claimant was informed that CPR would indicated an emergency medical procedure used to resuscitate someone form cardiac arrest, the claimant could not explain when/how this was done. She testified that she was asleep and when she woke up she did not get any feedback from the doctors about her treatment due to the busyness of the hospital. The panel

> finds the claimant's account that she was severely beaten, raped, and tortured in police custody and was able to walk herself to hospital, yet required CPR, highly unlikely.
>
> (footnotes omitted)

[30] Plausibility findings by the RPD should only be made in the "clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7 ("*Valtchev*")).

[31] My concern is that the Applicant provided an explanation for why she could not provide details as to when or how CPR was administered. She stated that she had been given an injection to sleep. The RPD does not explicitly reject that evidence. It instead makes a plausibility finding that someone having suffered the abuse and being in the condition that the Applicant alleged, thus requiring CPR, could not have walked to the hospital. However, the RPD does not have medical expertise. Whether someone who has sustained such injuries could have walked to the hospital or not is a plausibility finding that is not based on any evidence that was before the RPD. In my view, this plausibility finding was therefore unreasonable.

[32] The RPD could have tested the Applicant's account of events in other ways, such as asking her why she was suffering from hypothermia in Uganda in August or why she testified that the reason she did not speak to a doctor before she was discharged from the hospital to address the administration of CPR was because she was in the free mass treatment section of the hospital where there was little contact with doctors or nurses, yet the Medical Form indicates that it is from Mulago Hospital Complex "Private Patients Services Scheme".

[33] However, regardless of the unreasonable implausibility finding, the RPD made other credibility findings which have not been challenged by the Applicant. These include the inconsistencies between the Applicant's evidence and that contained in in the affidavit provided by her cousin Mable, which caused the RPD to place no weight on the affidavit. Additionally, the inconsistencies in the Applicant's testimony as to when she last had contact with Immy, which resulted in the RPD affording no weigh to that letter to corroborate the relationship. Further, the RPD noted the lack of evidence to confirm her marriage to Patrick Jele and the fact that the Applicant had not mentioned in her Basis of Claim form the gang rapes that she testified were instigated by him. Based on its credibility concerns with the Applicant's testimony and the corroborating documents, the RPD found the Applicant to be lacking in credibility with respect to her testimony of forced marriage and abuse. The RPD also had concerns with the source of the Medical Form. The Applicant had no personal knowledge of how it was obtained. She testified that Mable provided it but Mable's affidavit did not speak to this and her affidavit was found to be lacking in credibility. In my view, these negative credibility findings were reasonably open to the RPD based on the evidence before it.

[34] This Court has previously held that where one of the RPD's findings supporting a negative credibility assessment is unreasonable, the Court should still uphold the decision if the RPD's assessment is sufficiently supported by other findings which can withstand reasonableness review (*Santillan v Canada (Citizenship and Immigration)*, 2011 FC 1297 at para 51; *Agbon v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1573 at para 10; also see *Kaur* at paras 14-18). Further, unchallenged credibility findings must be presumed to be true (*Liu v Canada (Citizenship and Immigration)*, 2015 FC 207 at para 28 ("*Liu*")). In my view, the

unchallenged findings of the RPD on the Applicant's inconsistencies, contradictions and omissions provided a reasonable basis to ground its conclusion that she was not credible (*Rahal* at para 60; *Kaur* at para 38).

[35] As to the failure of the Applicant's brother to testify, the Applicant submits that while it was open to the RPD to give her brother's letter little or no weight because he would not testify in support of it, that it was unreasonable to draw a negative inference against the Applicant in this regard. The Respondent submits that the taking of evidence under oath is an important safeguard of the truth seeking function of the adjudicative process. The suggestion that a witness will say something but refuses to did so under oath is an ample basis for drawing an adverse inference (*Nguyen v Canada (Citizenship and Immigration)*, 2012 FC 587 at para 31).

[36] In this matter the Applicant testified that she asked her brother to testify but he declined. This was because her brother "is a Born Again Christian and […] he says this goes against his faith." When asked why he wouldn't testify when he was willing to assist the Applicant with her claim, she said that, "[h]e's … I don't know but he … he said he has helped me all he can, but he will not make a … he chooses not to make a statement."

[37] The letter from the Applicant's brother states that he found out that his sister was a lesbian in 2008. When she called him from the United States, he agreed to help her because he knew the situation that she had left was not good and he was no longer in danger if he now provided her with assistance. When she arrived in Canada, she relayed to him her whole story

and he agreed to help her so that she could start a new life and that she deserved to be able to make a choice, rather than being forced to live a life she does not want.

[38] In my view, it was open to the RPD to afford the letter no weight given that the Applicant's brother was in attendance at the hearing and able to testify to its content but refused to do so. It was also open to the RPD to reject the Applicant's explanation for her brother's refusal to testify, instead inferring that he was unwilling to repeat the statements under oath or be subject to questioning, and to draw an adverse inference from this. Where a party or witness fails to give evidence that is in the power of the party or witness to give, a tribunal may be justified in drawing the inference that the evidence of the party or witness would have been unfavourable to the party to whom the failure was attributed (*Lévesque v Comeau et al*, [1970] SCR 1010 at 1012-13; *Canada (Minister of Citizenship & Immigration) v Malik* (1997), 128 FTR 309 at para 4 ("*Malik*"); *Ma v Canada (Citizenship and Immigration)*, 2010 FC 509 at paras 1-7; *Shen v Canada (Citizenship and Immigration)*, 2016 FC 70 at para 37).

[39] While an adverse inference should not be drawn against a party if there is a reasonable explanation for failing to call a witness (*Malik* at para 4), the RPD found that the Applicant's explanation- which is unclear but appears to be that her brother's faith precluded him from confirming her sexual orientation with sworn testimony— was unreasonable. In my view, this conclusion was open to the RPD. The brother's letter stated that after his sister's forced marriage, their father warned his family not to contact her, and, that they did not want to get in trouble with the law or the police. The letter made no reference to religious opposition by the brother to his sister's sexual orientation. Accordingly, it was open to the RPD to determine that

the failure to testify was because he would give unfavorable evidence. Moreover, I would point out that a qualification by her brother had he testified, such that, because of his faith, he personally did not support his sister's sexual orientation, would not have undermined the facts which he stated in his letter being that she is a lesbian and was subject to a forced marriage by their father.

[40] Finally as to the warrant, the Applicant submits that this was a critical piece of evidence as it illustrated that the police sought her for committing illegal lesbian acts. The Applicant submits that the RPD unreasonably gave the warrant no weight because it lacked letterhead and had few security features. She submits that there was no evidence to support that the warrant should have a letterhead and the RPD did not specify what security features it expected to see. Foreign documents purporting to be issued by a competent foreign public officer should be accepted as evidence of their content unless the RPD has some valid reason to doubt their authenticity (*Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at para 19 ("*Rasheed*")). Further, the RPD erred in stating that it had no way to verify that the individual who states he is the Applicant's lawyer and provided the warrant, as the email from that person explained the relationship and the RPD gave no reason why this should be doubted. The Applicant says she was surprised by the RPD's finding and, had it been put to her, she could have provided further verification (*Rojas v Canada (Citizenship and Immigration)*, 2011 FC 849 at para 6).

[41] The Respondent points out that the warrant was provided as an attachment to an email from a yahoo.com email address and there was nothing to indicate if the person who sent the

email was with a law firm or was a lawyer. The warrant itself did not display any official insignia or seal and showed an illegible signature. The Respondent submits that the RPD is able to draw negative inferences for irregularities apparent on the face of a document (*Cao v Canada (Citizenship and Immigration)*, 2015 FC 1254 at para 36 ("*Cao*")). Given the Applicant's lack of credibility and the lack of indicia of reliability in either the warrant or the email, the RPD found the document to be unpersuasive.

[42] It is true that the warrant is a significant document. This is because, had the RPD found the arrest warrant to be a credible indicator of its content, it would have established government persecution of the Applicant on the basis of sexual orientation.

[43] In discussing the weight to be given to the warrant and the letter, the RPD noted that the warrant contained few security features and no letterhead and there was no way to verify the identity of the individual who stated that he was the Applicant's lawyer. The warrant, in fact, contains no insignia of any kind; it is a simple typed document with no apparent security features. When appearing before me, counsel for the Respondent noted that there are errors on the face of the document such as the misspelling of "Magistate" in the heading "In the Chief Magistate's Court of Nakawa at Nakawa". This is true, however, it was not the reason given by the RPD in affording the warrant no weight. Further, *Cao* does not assist the Respondent. In that case, an arrest warrant was rejected by the RPD because there was ink on top of the seal, indicating that the document had been signed after the seal was applied. This was an indicator that the document could be fraudulent, which was sufficient for the RPD to reasonably displace

the presumption of authenticity. Here the RPD makes no suggestion that the document is fraudulent.

[44] Further, in *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133, Justice Zinn found that the presumption of authenticity applied in the absence of any evidence as to what security features should exist on the document and that the RPD cannot simply reject its authenticity on the basis that forgeries are available to the applicant (paras 10 – 11).

[45] In this case, if the RPD had rejected the warrant solely on the basis that it lacks security features, then this may have been unreasonable. The RPD cannot reject the authenticity of a document in the absence of some evidence that indicates that the document is not genuine, such as irregularities on the face of the document itself (*Jacques v Canada (Citizenship and Immigration)*, 2010 FC 423 at para 16), or the document differs from what an authentic example should look like (*Liu* at paras 22-24).

[46] However, the RPD is entitled to give little weight to documents that corroborate an allegation it finds not to be credible without making any explicit finding as to their authenticity (*Rasheed* at para 24; *Singh v Canada (Minister of Citizenship and Immigration)*, 2004 FC 333 at paras 43-45; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 23; *Berhane v Canada (Citizenship and Immigration)*, 2011 FC 510 at paras 33-34; *Liu* at para 30).

[47] In this case, while the wording of the RPD's decision is not as clear as it could be, I am not satisfied that it rejected the arrest warrant on the basis of it lacking security features as in the following paragraph the RPD states:

> [25] In considering the totality of the evidence the Panel finds these two documents do not outweigh the numerous credibility problems with this case. The Panel finds that the warrant for the claimant's arrest is lacking in credibility as the circumstances leading to her arrest have been lacking in credibility.

[48] It appears that the warrant was not afforded no weight because it lacked security features—indeed the RPD made no authenticity finding—but because it did not outweigh the RPD's other negative credibility findings. Put otherwise, this is a situation where the RPD examined the Applicant's testimony and determined, in light of the contradictions, inconsistencies and omissions and other concerns which it identified, no probative value should be afforded to this documentary evidence.

[49] As stated by Justice Gleason in *Rahal*:

> [60] None of these points warrants intervention by the Court. In matters of credibility, as with identity findings, it is my view that intervention by the Court is not warranted if there is some evidence to support the Board's conclusion, if the RPD offers non-generalized reasons for its findings (that are not clearly specious) and if there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record. It does not matter if the RPD's reasons are not perfect or even if the Court agrees with the conclusion, let alone each step in the RPD's credibility analysis. As the case law establishes, matters of credibility are at the very heart of the task Parliament has chosen to leave to the RPD.

[50] Viewed in whole, although the RPD's implausibility finding concerning the Applicant's account of events upon her release from prison was unreasonable, the remaining inconsistences, contradictions and omissions were sufficient to ground the RPD's adverse credibility findings. Accordingly, the decision falls within the range of acceptable outcomes defensible in respect of the facts and the law and the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2968-16
STYLE OF CAUSE:	YVONNE NIWAHERE JELE v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 19, 2016
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	JANUARY 6, 2017

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