

Federal Court



Cour fédérale

Date: 20170518

Docket: IMM-4439-16

Citation: 2017 FC 511

Ottawa, Ontario, May 18, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

DEBORAH OLI DIANDRA MUGISHA

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Deborah Oli Diandra Mugisha, seeks judicial review of a decision issued by the Canada Border Services Agency [CBSA] on October 14, 2016 that she is not exempt from the Safe Third Country Agreement [STCA], and is therefore ineligible under paragraph 101(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 to claim Convention Refugee status in Canada.

[2] The Applicant is a citizen of Burundi. She arrived in Canada from the United States on October 14, 2016 with the intent of claiming refugee status. She was met at the port of entry by her aunt [JSN] who is also a citizen of Burundi and a permanent resident of Canada since 2013.

[3] The Applicant presented not only her own identity documents, but also those of her father. The Applicant and JSN were both interviewed by a CBSA Officer.

[4] The Applicant and JSN claimed that JSN learned for the first time in late 2014 that JSN's mother had another son, who would be JSN's half-brother. JSN established contact with her half-brother in January 2015. He is the father of the Applicant.

[5] The CBSA Officer who interviewed the Applicant and JSN determined that the Applicant had not established that she had a relative in Canada and thus, found her to be ineligible to claim refugee status in Canada under the STCA. In reaching this conclusion, the CBSA Officer noted that when JSN came to Canada, she declared a sister named GN who was already in Canada and that neither sister declared the existence of the Applicant's father as their half-brother. He also noted that the Applicant knew nothing about her aunt, JSN.

[6] The CBSA Officer also commented on the Applicant's supporting identity documents, stating that they contained no security features and had been produced in the Applicant's absence and mailed to her while she was in the United States.

[7] The Minister's Delegate confirmed the CBSA Officer's decision for the same reasons, essentially copying most of the CBSA's Officer's notes with the exception of a reference to the Applicant's passport.

[8] In this application for judicial review, the Applicant advances a number of arguments, including that the CBSA Officer and the Minister's Delegate [Officers] ignored evidence corroborating that JSN is the Applicant's aunt.

[9] The Respondent submits that the Officers' decision is reasonable as the Applicant has the burden to establish that she has a family member in Canada in order to make a claim for refugee protection in Canada. The Respondent also contends that the Applicant's documents were considered by the Officers. However, they reasonably concluded that the documents were not reliable, for a number of reasons, including the absence of security features and the fact that they were issued in her absence.

[10] It is not necessary for me to summarize in more detail the submissions of the parties because I am of the view that the decision should be set aside for the following reasons.

[11] By noting that both JSN and her sister GN did not declare the existence of the Applicant's father in their immigration forms, the Officers mistakenly referred to GN as JSN's sister. It is clear from the Certified Tribunal Record [CTR] that GN was not JSN's sister but her half-sister. They share the same father (CTR, pp 37, 44, 55), unlike JSN and the Applicant's father who share the same mother (CTR, pp 37, 78, 80). Given that GN did not have any link

with the Applicant's father, she had no reason to include him as a member of her family when she completed her refugee forms in 2007. Moreover, it appears from the CTR that JSN applied for refugee protection in 2010. When she completed her forms, she was not aware of the existence of the Applicant's father as her half-brother. Since the Officers' clearly relied upon the alleged omission to report the existence of the half-brother to support their decision, the error is clearly determinative.

[12] I am also of the view that the Officers' decision is unreasonable as it does not satisfy the criteria of "justification, transparency and intelligibility" set out by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[13] Both Officers state that the documents adduced by the Applicant have no security features and were issued in the Applicant's absence. They provide no further comment or explanation and don't directly conclude that the adduced documents are not authentic or that they afford them little weight. It is also unclear from the decision what "security features" the Officers are referring to as all of the documents have what appear to be numbers, stamps and officials signatures. This Court has held that official stamps and signatures on identity documents are security features (*Adesida v Canada (Citizenship and Immigration)*, 2016 FC 256 at paras 19-22; *Elhassan v Canada (Citizenship and Immigration)*, 2013 FC 1247 at para 22; *Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 at paras 18-19).

[14] Additionally, the Officers refer to the documents in the plural with the exception of a National Identity Card to which they refer in the singular. I have reviewed the CTR and it

contains the National Identity Cards of both the Applicant and her father. It is unclear from the decision which identity card the Officers are referring to. The rationale behind their statement that the Applicant's documents were produced in her absence and were sent to her by mail is also unclear from the Officers' reasons.

[15] The Applicant adduced a number of documents that appear to establish her relationship with her father and her father's relationship with JSN in Canada. If the Officers believed that the documents of the Applicant were not authentic, they should have addressed the issue more fully.

[16] While I recognize that the decision of the Minister's Delegate attracts a significant degree of deference, I find that this decision is unreasonable as it lacks "justification, transparency and intelligibility" and that it must be set aside as it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

[17] Accordingly, the application for judicial review is allowed, the decision is set aside and the matter shall be remitted back to a different CBSA Officer and a different Minister's Delegate for redetermination. No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-4439-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision is set aside and the matter is remitted back to a different Canada Border Service Agency Officer and a different Minister's Delegate for redetermination; and
3. No question is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4439-16

STYLE OF CAUSE: DEBORAH OLI DIANDRA MUGISHA v THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

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JUDGMENT AND REASONS: ROUSSEL J.

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