

Federal Court



Cour fédérale

Date: 20171108

Docket: IMM-1811-17

Citation: 2017 FC 1014

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, November 8, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SERAPHINE KANZIGA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on March 27, 2017, by the Refugee Protection Division [RPD] of the Immigration and Refugee Board. In that decision, the RPD concluded that the applicant is neither a Convention refugee nor a person in need of

protection under section 96 and subsection 97(1) of the IRPA. Consequently, her refugee claim was denied.

II. Facts

[2] The applicant, age 66, is a citizen of Rwanda.

[3] She allegedly lost her spouse and one of her sons in the Rwandan genocide of 1994. She subsequently sought refuge in Zaire (now the Democratic Republic of the Congo) with her three daughters before returning to Rwanda in 2002. When she returned to Rwanda, the applicant apparently took her niece and nephew into her family.

[4] The applicant alleges that she is a teacher who was on the electoral committee responsible for the referendum on December 17 and 18, 2015. She states that she was recruited to the committee in question for the 2017 elections to help President Kagamé win a third presidential term.

[5] Opposed to such a referendum, the applicant apparently expressed her opinion to her colleagues on the electoral committee and to her teacher colleagues. She also allegedly revealed to them her ties to Reverend Nahimana.

[6] Prior to her husband's death, he and the applicant apparently took in a young student named Thomas Nahimana, the son of some friends. That young man would later become a

well-known political opposition leader. Reverend Nahimana reportedly left for France in 2011. However, the applicant apparently remained in contact with him until September 2015.

[7] According to the applicant, one of her daughters became a member of the Kizito Mihigo Foundation, like other youth her age who advocated for peace and social justice in Rwanda. Kizito Mihigo is a Rwandan gospel singer and an activist for peace and reconciliation.

[8] On September 6, 2015, the Rwandan police reportedly questioned the applicant not only about her ties to Reverend Nahimana, but also about Kizito Mihigo, who was accused of conspiracy against the Rwandan State. The police apparently let the applicant go because she denied everything.

[9] Following that incident, unidentified civilians apparently came to get the applicant at her home every Friday to bring her to the police station for further questioning.

[10] Despite those incidents, the applicant allegedly continued to hold her position on the electoral committee until the referendum on December 18, 2015.

[11] Following the referendum, the applicant and her children were apparently followed and watched by Rwandan authorities. In addition, in January 2016, the authorities allegedly even accused the applicant of having encouraged the population to vote against President Kagamé.

[12] On July 2, 2016, the applicant was allegedly taken to the police station again, where she was reportedly sexually assaulted by two police officers, then released the next day.

[13] On July 8, 2016, police officers apparently forcibly entered the applicant's home while her daughter, the two orphans and friends were talking about Kizito Mihigo. The police allegedly took the children, and the applicant states that she has not seen her daughter or her niece and nephew since that day.

[14] On July 12, 2016, the applicant allegedly went to the home of one of her daughters in Kigali, and her daughter took her to the hospital.

[15] On September 15, 2016, the applicant was granted a visa for the United States to attend a wedding. On October 6, 2016, the applicant arrived in the United States but did not attend the wedding, alleging that she was exhausted from the trip.

[16] On October 12, 2016, the applicant arrived at the Canadian border and claimed refugee protection.

III. Decision

[17] In light of all the evidence on record, the panel was not of the opinion that the applicant was wanted by the Rwandan government. The panel also did not believe that Rwandan authorities had arrested the applicant twice. The applicant did not indicate on her form that she had been arrested twice. The panel considered that omission to be significant, as the applicant

had alleged that she feared being arrested again by Rwandan authorities if she were to return to her country. The panel also gave no weight to the documents the applicant submitted regarding her mental health to demonstrate the truthfulness of her allegations. The panel instead found that the applicant was not credible and that her documents were based primarily on her own testimony.

[18] Furthermore, after submitting a certificate of appreciation for her work during the August 2010 elections and after having been questioned about it, the applicant failed to convince the panel that she worked on the electoral committee for the referendum in late 2015. The panel also noted that the applicant had difficulty answering simple questions that were central to her refugee claim. In the panel's opinion, the applicant is not politically active, and her form does not contain any political references.

[19] For these reasons, the panel drew a negative inference regarding the applicant's credibility because, based on the decision cited by the panel, the applicant failed to produce "evidence that could reasonably be available and was an important and relevant piece of information" (*Toure v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1388, at paragraph 11). The refugee claim was therefore denied. That decision is the subject of this application for judicial review.

IV. Issue

[20] The Court raises just one issue: is the RPD's decision regarding the applicant's credibility reasonable?

[21] The Court considers the standard of review applicable to findings on a refugee claimant's credibility to be that of reasonableness. The RPD is a specialized tribunal and is in the best position to assess the credibility of refugee claimants and the plausibility of their accounts. Consequently, the Court must not reassess the evidence, given that the panel's credibility findings should be given significant deference (*Seenivasan v. Canada (Citizenship and Immigration)*, 2015 FC 1410, at paragraphs 14–15; *Lin v. Canada (Citizenship and Immigration)*, 2008 FC 1052, at paragraph 13; *Saleem v. Canada (Citizenship and Immigration)*, 2008 FC 389, at paragraph 13). To assess reasonableness, the Court must therefore determine whether the RPD's decision falls 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 paragraph 47 [*Dunsmuir*]).

V. Relevant provisions

[22] The following provisions of the IRPA are relevant in this case:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne

the inability of that country to provide adequate health or medical care.

résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Decision on Claim for Refugee Protection

Décision sur la demande d'asile

107 (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.

107 (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.

VI. Submissions of the parties

A. *Submissions of the applicant*

[23] The applicant essentially argues that the RPD's conclusion is unreasonable. The RPD allegedly erred in disregarding the applicant's testimony, as she is presumed to be telling the truth in a refugee claim. For example, the RPD should have believed the applicant regarding her involvement in the 2015 elections by considering the certificate of appreciation for her work during the August 2010 elections to be evidence submitted.

[24] Regarding the omissions in the applicant's Basis of Claim [BOC] form that were raised by the panel, she explains that the form does not state to detail or clarify specific points of her refugee claim. The applicant also mentions that her niece helped her complete her BOC form and that her niece could not really help her with filling out the immigration form. The applicant thus submits that it was unreasonable for the panel to give weight to the BOC when it contains errors and crossed-out information.

[25] According to the applicant, it is true that she had difficulty answering questions at the hearing before the RPD. However, it is important to know that the RPD nonetheless obtained a clear response from the applicant. The applicant reiterates that her psychological condition could explain her hesitations or comprehension difficulties. The RPD therefore erred in its decision because it allegedly should have considered her post-traumatic stress disorder and explained in its decision how the applicant's condition was not a valid justification for the inconsistencies in her testimony. The RPD therefore allegedly erred in finding that the applicant was not credible based on her account (*Belahmar v. Canada (Citizenship and Immigration)*, 2015 FC 812, at paragraph 8).

[26] Lastly, the RPD also allegedly erred in its decision regarding the applicant's arrest. Even though the applicant had not remained in contact with Reverend Nahimana after September 2015, it was not implausible for Rwandan authorities to arrest the applicant again on July 2, 2016. According to the applicant, Reverend Nahimana had plans to return to Rwanda to take part in the elections.

B. *Submissions of the respondent*

[27] First, the respondent maintains that the RPD's decision is reasonable. After analyzing all the evidence, including the medical evidence on record, the panel concluded that there were inconsistencies in central aspects of the applicant's refugee claim. Given the significant gaps in the evidence submitted by the applicant, it was open to the panel to deny the refugee claim.

[28] Second, the respondent notes that the burden was on the applicant to establish the elements on which her refugee claim is based and that she did not discharge that burden. The respondent therefore submits that the panel could draw a negative inference regarding the applicant's credibility based on the contradictions and inconsistencies noted between her documents from the port of entry, in her testimony, on her BOC, and in the documentary evidence on record (*George v. Canada (Citizenship and Immigration)*, 2014 FC 535, at paragraph 11; *Yakoub v. Canada (Citizenship and Immigration)*, 2012 FC 1188, at paragraph 3).

[29] Moreover, the panel could also base its findings on omissions at the port of entry because they were related to elements that were central to the applicant's refugee claim (*Eze v. Canada (Citizenship and Immigration)*, 2016 FC 601, at paragraph 20). Third, the respondent submits that the RPD is "entitled to assess a claimant's credibility based on a single inconsistency where the impugned evidence is a significant aspect of the claim" (*Garay Moscol v. Canada (Citizenship and Immigration)*, 2008 FC 657, at paragraph 21).

[30] Fourth, the respondent submits that the panel was justified in requiring evidence to corroborate elements that were central to the applicant's refugee claim. The lack of evidence corroborating a central element of a refugee claim can affect a claimant's credibility if the panel has concerns in that regard (*Ortiz Sosa v. Canada (Citizenship and Immigration)*, 2009 FC 275, at paragraph 19).

[31] Lastly, contrary to the applicant's arguments, the respondent submits that the letter from Dr. War submitted into evidence indicated that the applicant was fit to testify. The panel did consider the medical evidence on record.

[TRANSLATION]

As for the medical certificate, none of the participants at the hearing could accurately read what was written on it with any certainty. This certificate also refers to a hospital visit on July 11, 2016, nine days after the sexual assault that allegedly occurred at the police station on July 2, 2016. The panel also notes that the applicant alleges in her narrative that she arrived in Kigali on July 12, 2016, and that her daughter took her to the hospital on July 13, 2016. Thus, the applicant could not have been admitted to hospital on July 11, 2016, and released on July 13, 2016, as is indicated on the certificate. The panel cannot give it any probative value.

(Reasons for Decision, at paragraph 30.)

[32] The respondent submits that, in any event, the panel could first conclude that the applicant's account was implausible before considering the medical evidence (*R. v. Abbey*, [1982] 2 SCR 24, 1982 CanLII 25 (SCC), at page 42). It was a piece of evidence like any other in this case, and it was up to the panel to determine the weight to be given to each piece of evidence the applicant submitted (*Diaz Serrato v. Canada (Citizenship and Immigration)*, 2009 FC 176, at paragraphs 21–22 [*Diaz Serrato*]).

VII. Analysis

[33] For the reasons that follow, this application for judicial review is dismissed.

A. *Was the RPD's decision regarding the applicant's credibility reasonable?*

[34] "A story steeped in a lack of credibility dissolves layer by layer into its own nothingness" (*Oukacine v. Canada (Citizenship and Immigration)*, 2006 FC 1376, at paragraph 1).

[35] The RPD's findings refer to contradictions, inconsistencies and implausibilities regarding the evidence on record, the applicant's BOC and her testimony, including:

- The lack of evidence to corroborate the allegation that the applicant worked on the electoral committee during the 2015 referendum. The applicant had submitted only a certificate of appreciation for her work on the 2010 elections (Reasons for Decision, at paragraph 21);
- The lack of evidence to corroborate the allegation that the applicant was a teacher in Rwanda until July 2016;
- The lack of evidence to corroborate the applicant's relationship with Reverend Nahimana and her failure to obtain confirmation of that relationship (Reasons for Decision, at paragraph 28);
- The implausibility of the applicant's account that she retained her position on the electoral committee, when Rwandan authorities suspected her of being opposed to the government of President Kagamé and regarding her ties to Reverend Nahimana and her arrests (Reasons for Decision, at paragraph 23);
- The implausibility of the applicant's account that she is still wanted by Rwandan authorities, when they did not try to find her at her daughter's home in Kigali or to reach members of her family (Reasons for Decision, at paragraph 26);
- The applicant's failure to mention at the port of entry that she had been arrested twice by Rwandan authorities (Reasons for Decision, at paragraph 27);
- The contradiction noted between the BOC and the medical certificate on record that [TRANSLATION] "refers to a hospital visit on July 11, 2016, nine days after the sexual assault that allegedly occurred at the police station on July 2, 2016" (Reasons for Decision, at paragraph 30);

- The applicant's difficulty answering questions during her testimony that were simple and related to important elements of her refugee claim. Her responses could have been clear, straightforward and accurate, without the possibility of divergence, regarding a very recent matter seen as being important to her claim.

For example, [TRANSLATION] "the panel had to repeat the question four times about what her exact role was on the electoral committee before obtaining a clear answer" (Reasons for Decision, at paragraph 24).

[36] The RPD subsequently considered the applicant's explanations for those contradictions, inconsistencies and implausibilities. However, it deemed them to be unsatisfactory. Based on the applicant's explanations following her account and an analysis of the entire record, the Court is satisfied that the panel did not err in finding that the applicant was not credible. The discrepancies in the applicant's own account showed a lack of inherent logic in her story.

[37] The RPD was also entitled to give no probative value to the medical report regardless, since it was based in part on the applicant's own allegations (*Diaz Serrato*, at paragraph 21). After considering the medical evidence on record regarding post-traumatic stress, the panel concluded that the applicant's difficulty answering questions that were central to her refugee claim was not the result of memory problems or difficulty understanding, but rather of inconsistencies (*Diaz Serrato*, at paragraph 22). Thus, the contradictions, inconsistencies and implausibility noted in the applicant's testimony were not related to the applicant's alleged disorder (*Diaz Serrato*, at paragraph 24).

[38] Lastly, the Court is not of the opinion that the applicant discharged her burden related to the refugee claim. The inadequacy of the evidence on record and the implausibility of her own

account led the panel to find that the applicant was not credible. The Court reiterates that “[t]he Board is an independent tribunal which has jurisdiction to assess and determine the credibility of evidence submitted. The Board’s jurisdiction as a first-level specialized tribunal must be respected unless it exceeds its functions in a capricious, malicious, or inherently illogical manner, which is not the case here” (*Oukacine*, at paragraph 36).

[39] Consequently, the Court is satisfied that the RPD’s decision is reasonable and that it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at paragraph 47).

VIII. Conclusion

[40] This application for judicial review is dismissed.

JUDGMENT

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

There is no question of importance to be certified.

OBITER

Following the disclosure of the account with a number of credibility flaws, it falls to the relevant authorities to instead review the case based on humanitarian and compassionate considerations in due course, if it is appropriate to do so.

“Michel M.J. Shore”

Judge

Certified true translation
This 21st day of October 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

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