

Federal Court



Cour fédérale

Date: 20180918

Docket: IMM-1245-18

Citation: 2018 FC 929

[ENGLISH TRANSLATION]

Montréal, Quebec, September 18, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

VERONIQUE DEKO OTSHUMBA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of the Democratic Republic of the Congo [DRC]. On February 4, 2016, she arrived in Canada with a Canadian visa to help her daughter, who was about to give birth. A few weeks later, she indicated her intention to claim refugee protection.

[2] This is an application for judicial review of a decision dated February 21, 2018, by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB], upholding a decision by the Refugee Protection Division [RPD] dated August 22, 2016. The RPD found that the applicant is neither a “Convention refugee” within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor a “person in need of protection” under subsection 97(1) of the IRPA, and therefore rejected her claim for refugee protection.

I. Applicant’s allegations

[3] The applicant’s allegations are set out in her Basis of Claim Form [BOC].

[4] The applicant and her spouse, Lomenge Omba, own two stores, one of which is a clothing and accessories boutique in Kinshasa’s central market. Her son, Albert, has been working at the boutique since he finished school.

[5] Albert has always been interested in politics but never became an official party member. He participated in demonstrations and protests against the current government. On January 19, 2016, Albert was arrested by police and detained by the National Intelligence Agency while in the company of peaceful protesters. According to Albert, he was questioned for a long time, hit multiple times and finally released from custody the next day.

[6] On February 16, 2016, opposition parties in the DRC declared a “dead city” day, calling upon the public to stay home in protest against President Kabila’s regime. Albert heeded the opposition’s call and did not open the family business.

[7] On February 17, 2016, police officers came to the family home to arrest the applicant and her spouse. The police officers said that they had to arrest them because Albert had apparently told them that the store belonged to his parents. They therefore concluded that the parents had asked Albert to respond to the opposition’s call. The police had reportedly also arrested Albert earlier that day. The applicant states that she does not know where Albert or her husband are detained and even fears that they were killed to deter other Congolese people from following their example.

[8] On April 25, 2016, the applicant filed her claim for refugee protection, alleging that her safety would be greatly compromised if she returned to the DRC because of Albert’s not opening the store on February 16, 2016. She fears being arrested, persecuted, mistreated or even killed.

II. The RPD’s decision

[9] On August 22, 2016, the RPD rejected the applicant’s claim for refugee protection. The RPD did not believe that the police had gone to the applicant’s home to arrest her and her spouse because she was the owner of the boutique. The RPD noted that the applicant’s profile is no different from that of thousands of merchants in Kinshasa who did not open their stores on February 16, 2016. The IRB Research Directorate found that many Kinshasa residents had stayed home and that Kinshasa’s central market—where the applicant’s boutique is located—had

been deserted that day. Moreover, the documentary evidence is silent with respect to potential consequences for the many merchants who chose to keep their stores closed.

III. The RAD's decision

[10] The applicant appealed to the RAD, arguing that the RPD had ignored her argument that she is allegedly wanted by the Congolese authorities because of her son's political involvement and because she is a merchant who did not open her boutique on February 16, 2016. The RAD dismissed the appeal on February 21, 2018, finding that the applicant's testimony was not credible since she was unable to provide direct and specific responses to the RPD's questions about her narrative. In particular, the RAD rejected her argument about her son's political activities because, even though the applicant had indicated her son's political involvement in her BOC, [TRANSLATION] "[the applicant] barely addressed the topic of her son" during the hearing before the RPD. The RAD noted that it is very surprising that the applicant raised that argument only after having received a negative response from the RPD.

[11] The applicant argues that the RAD erred in fact and in law because it did not conduct an independent analysis of the claim for refugee protection, instead basing its findings on the RPD's decision. She alleges that her family was targeted, not because she was a merchant, but because of her son's political activities. According to the applicant, the RAD refused to analyze this key and critical element of her claim for refugee protection, just as the RPD had ignored it.

IV. Standard of review

[12] The standard of review that applies to RAD decisions for questions of fact and mixed questions of fact and law is reasonableness, which includes determinations on credibility. When a decision is reviewed on a standard of reasonableness, the analysis is concerned with “the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir v New Brunswick*, 2008 SCC 9, at paragraph 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at paragraph 59).

V. Analysis

[13] The applicant is very laconic with regard to the grounds cited in support of her claim. She flatly argues that the RAD failed to analyze the basis of her claim for refugee protection, that is, her son’s political activities, which were problematic for the entire family. However, the record shows that the RAD carefully reviewed the applicant’s claim for refugee protection. Note that its decision is not a simple rejection of the appeal. It must be noted that the RAD thoroughly examined all the evidence in the record, both testimonial and documentary.

[14] The record before the RAD lacks evidence corroborating the essential facts of the applicant’s narrative, namely that Albert allegedly participated in political activities that caused problems with the Congolese government prior to February 16, 2016. In her BOC, the applicant makes no connection between her claim for refugee protection and her son’s political

involvement. Furthermore, she fails to demonstrate that her profile differed from that of the other merchants who participated in the “dead city” day, and never mentioned her son’s political involvement in her testimony before the RPD. The signed statement from her sister-in-law provides no additional information on this.

[15] The RAD analyzed the evidence before it and found that the applicant had not discharged her burden of demonstrating that she was wanted by the police. The decision is intelligible and the reasoning transparent. It seems obvious that the RAD’s conclusion is a possible outcome having regard to the facts and law.

[16] Moreover, it was reasonable for the RAD to find that the applicant’s testimony was not credible. The RAD analyzed her testimony and was unconvinced by her muddled, vague, incomplete and contradictory responses. On several occasions, the applicant was hesitant and evasive in her responses, and she contradicted herself when she was asked about what happened on February 16 and 17, 2016. The applicant was unable to provide a reliable description of the central market where her boutique was located, and she responded vaguely when the RAD confronted her about the contradictions in her narrative. All these circumstances led the RAD to conclude that the applicant’s testimony was not credible, independently from the RPD’s decision.

[17] The RAD correctly identified and explained its appellate role in its decision. Considering the reasons for the decision as a whole, it is clear that the RAD followed the principles set out in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 and conducted an analysis

independent of that of the RPD. The simple fact of the RAD confirming the RPD's observations does not undermine its independent analysis.

[18] This Court's intervention would be neither warranted nor appropriate under the circumstances.

[19] No certified question has been requested and none is formulated.

JUDGMENT in IMM-1245-18

THIS COURT'S JUDGMENT is that:

This application is dismissed.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1245-18

STYLE OF CAUSE: VERONIQUE DEKO OTSHUMBA v DEPARTMENT
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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