

Federal Court



Cour fédérale

Date: 20181121

Docket: IMM-627-18

Citation: 2018 FC 1173

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 21, 2018

Present: The Honourable Mr. Justice Shore

BETWEEN:

**FRANCE STEPHANIE EMAC SONKOUÉ
CORLYNE RICKELLE NCHINDA FOFIE**

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 under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], of a decision rendered by an officer of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [the Board],

on January 16, 2018, under subsection 111(1) of the IRPA. In that decision, the RAD confirmed the decision of the Refugee Protection Division [RPD], concluding that the Primary Applicant and her minor daughter were not recognized as “Convention refugees” under section 96 of the IRPA, or “persons in need of protection” under section 97 of the IRPA.

II. Facts

[2] The Primary Applicant (or the Applicant), is a 36-year-old citizen of Cameroon. Her 6-year-old daughter is also a citizen of Cameroon. The Primary Applicant acted as the Designated Representative of her minor daughter before the Board. Both are requesting Canada’s protection under sections 96 and 97(1) of the IRPA.

[3] The Primary Applicant is the mother of three children born in 2002, 2007 and 2011. She has been in a relationship with F.N., the father of her children, since 2001 and introduces him as either her common law spouse or her fiancé. However, they have never lived together, since F.N. has been living in the United States since their relationship started. According to the Applicant, in January 2012, her uncles allegedly forced her to marry another man, referred to as P.M., in order to honour a promise her father made before his death in 2000. P.M. was allegedly a notable gentleman in his 70s from the village of Bangang where her father lived. The Applicant was allegedly held captive for a year and was allegedly raped by P.M. and his guards. In January 2013, the Applicant was allegedly able to escape from the village with her minor daughter. On May 27, 2013, the Applicant and her daughter left Cameroon and entered Canada with a visa they had obtained after making false statements and purchasing false documents. Their goal was to claim refugee protection in Montréal, which they did on June 26, 2013.

[4] On October 23, 2013, the RPD [RPD1] held an initial hearing and on January 27, 2014, it rejected the refugee claim because the Principal Claimant lacked credibility. This decision was appealed to the RAD [RAD1], which confirmed the decision rendered by RPD1 on May 29, 2014. On February 24, 2015, the Federal Court allowed the application for judicial review, setting aside the decision rendered by RAD1 and referring the matter back to the Board.

[5] On May 29, 2015, the RAD [RAD2] referred the Applicant's file back to the RPD [RPD2] for re-determination by another Member, who rendered a decision on June 28, 2016.

A. *RPD Decision of June 28, 2016*

[6] RPD2 found that the refugee claimants were not recognized as refugees within the meaning of the Convention or persons in need of protection. RPD2 therefore rejected the refugee claim because it did not believe the Applicant's story that she had been a victim of a forced marriage. It was RPD2's opinion that the Applicant was not able to provide details about this man in the village of Bangang (i.e., details about his property, age and role in the village); she was also unable to provide a description of the village in which she alleged she was held for an entire year. RPD2 concluded, in part, that the Applicant lacked credibility in general and that she had provided unclear and very vague testimony throughout the hearing.

[7] The Primary Applicant appealed this decision, but did not file new documents in support of her appeal.

B. *RAD decision*

[8] In its decision dated January 16, 2018, the RAD [RAD3] dismissed the appeal and confirmed the decision rendered by RPD2. This is the decision that is subject to the present judicial review.

[9] Considering that the Principal Claimant's credibility was the determinative issue, the following are a number of key reasons that prompted RAD3 to render its negative decision:

(i) The alleged marriage: the Applicant's credibility was called into question when she stated, during the hearing in October 2013, that before her father's death, in 2000, he had promised her hand in marriage to P.M. The RAD concluded that it was not credible that the Applicant's uncles would have waited twelve years after the death of her father before coercing her into a forced marriage.

(ii) The age of her alleged husband: In her refugee protection claim form, the Applicant stated that she had been forced to marry a "septuagenarian". However, during the hearing, when questioned on this very subject, the Applicant responded that P.M. was instead in the same age group as her father, who would have been in his 80s at the time of the hearing.

(iii) Details about the village of Bangang: After listening to the recording of the hearing before the RPD, the RAD deemed that the Applicant's testimony was [TRANSLATION] "hesitant and laborious." The Applicant had not been able to provide details about her father's village, where she also claims to have been held against her will for a year.

(iv) Request for assistance: The Applicant contradicted herself a number of times. First, during the hearing in October 2013, she stated that she had not requested assistance.

However, during the June 2016 hearing, she indicated that she had requested assistance from a Social Affairs representative in order to try to resolve her situation.

[TRANSLATION] “When considered together, these elements raise doubts about the Appellant’s credibility.”

III. Issues

[10] The Court reformulates the Applicant’s questions as follows: was the decision rendered by the RAD reasonable?

[11] The Court applies the reasonableness standard of review in the context of a judicial review of a decision rendered by the RAD (*Ghauri v. Canada (Citizenship and Immigration)*, 2016 FC 548 at paragraph 22). However, the RAD must apply the correctness standard of review when it reviews a decision rendered by the RPD and conducts its own analysis. Nonetheless, the RAD must show deference when ruling on the Applicant’s credibility and the fact that the RPD had an advantage during this assessment (*Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 at paragraphs 2 and 35). Issues relating to procedural fairness are reviewed on the basis of the correctness standard of review (*Canada (Attorney General) v. Sketchley*, 2005 FCA 404 at paragraph 53).

IV. Relevant Provisions

[12] The following legislative provisions of the IPRA are relevant:

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

(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

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) 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

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

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Decision

111. (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

- (a) confirm the determination of the

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

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Décision

111. (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses

Refugee Protection
Division;

instructions, l'affaire à la
Section de la protection des
réfugiés.

(b) set aside the
determination and
substitute a determination
that, in its opinion,
should have been made;
or

(c) refer the matter to the
Refugee Protection
Division for re-
determination, giving the
directions to the Refugee
Protection Division that it
considers appropriate.

V. Parties' positions

[13] The Applicant claims that RAD3 Member erred by relying on issues of credibility or implausibility that had already been considered by the RAD2 Member in the context of a previous decision, dated May 29, 2015, confirming that *res judicata* should apply. Moreover, RAD3 allegedly raised a new issue (which was not reviewed before RPD2), by trying to find a contradiction between the Primary Applicant's testimony during her initial hearing before the RPD, and her testimony during her second hearing (Applicant's factum, paragraph 47).

Consequently, the Applicant submits that RAD3 violated the principle of procedural fairness and argues that it was [TRANSLATION] "unfair and unjust" for RAD3 to consider a new issue that had not been considered by the RPD and for RAD3 to not give the Primary Applicant an opportunity to respond to its concerns (*Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10) (Applicant's factum, paragraph 48).

[14] The Respondent feels that RAD3's findings were reasonable since the Primary Applicant's testimony was not credible on a number of issues, all of which were detailed by RAD3.

[15] Contrary to the Applicant's claim, the Respondent submits that RAD3 could reasonably and in fact should have conducted an independent analysis of the evidence, in order to make its own determination concerning the issue of credibility. According to the Respondent, RAD3 allegedly based its findings on the Applicant's credibility on the same elements considered by RPD2, because this evidence was from the record that RPD2 also had before it. Consequently, RAD3 did not raise any new issue and was therefore not required to request written submissions from the Applicant.

VI. Analysis

A. *Res Judicata*

[16] The applicants claim that RAD3 was required to adopt the findings of RAD2 concerning the Applicant's credibility. According to the Supreme Court of Canada, the three conditions required for the application of the legal doctrine of estoppel are the following:

- (1) that the same question has been decided;
- (2) that the judicial decision which is said to create the estoppel was final; and
- (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

(*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, 2001 SCC 44 at paragraph 25 [*Danyluk*]).

[17] In the present case, it is true that the RAD2 Member had concluded that the Applicant was credible and decided the issue before him on that basis. The first condition provided in *Danyluk* is therefore satisfied. However, the only option available to this Board Member was to refer the matter back to the RPD for re-determination. From that standpoint, one cannot claim that RAD2's decision was final, as required by the second condition. Therefore, *res judicata* does not apply in this case.

B. *Procedural fairness*

[18] The main issue in this case is to determine whether the Primary Applicant is credible. In order to answer this question, RAD3 conducted its own review of the file. In its analysis, it reiterated the arguments made by RPD2, thereby demonstrating the Primary Applicant's lack of credibility, while also highlighting other elements that had also damaged her credibility.

According to the Applicant, by adding its own analysis to the analysis conducted by RPD2, the RAD allegedly raised a new issue and should therefore have given her an opportunity to be heard. In the context of a similar issue in *Marin v. Canada (Citizenship and Immigration)*, 2018 FC 243 [*Marin*], the Court concluded that:

[27] In *Koffi v Canada (MCI)*, 2016 FC 4 [*Koffi*] at para 38, Justice Kane found that a RAD decision may be reasonable even where it had made independent findings of credibility against an applicant, without putting it before the applicant and giving him or her the opportunity to make submissions. This would be the case where “the RAD did not ignore contradictory evidence on the record or make additional findings on issues unknown to the applicant”.

(See also *Ortiz v. (Canada (Citizenship and Immigration))*, 2016 FC 180 at paragraph 22 [*Ortiz*].)

[19] In the case at bar, RAD3 made additional findings concerning the following evidence, when it had not been considered from that standpoint by the RPD: (1) the fact that it was not very credible that the Applicant's uncles would wait twelve years before forcing the Applicant to marry P.M.; (2) the contradictions concerning whether the marriage to P.M. had been formalized; (3) the contradictory answers provided when the Applicant was required to indicate whether she had requested assistance in order to resolve the situation; (4) the information received from a representative of Cameroon's Ministry of Women's Empowerment and the Family, indicating that in general, a forced marriage would not be acceptable to an educated woman.

[20] Considering that all these elements were obtained from the evidence on record with the RPD and that they all concern the Applicant's credibility, the decision rendered by RAD3 will be considered reasonable as long as it "did not ignore contradictory evidence on the record" (*Marin*, supra, at paragraph 28; see also *Ortiz*, supra, at paragraph 22). With respect to the information received from a representative of Cameroon's Ministry of Women's Empowerment and the Family concerning forced marriages, the Applicant points out that RAD3 had selected only an excerpt of the text and had omitted the part that indicated that even educated women could be coerced into a forced marriage when the marriage had been planned well in advance. For this reason, the Applicant stated that RAD3 should have given her an opportunity to be heard (paragraphs 110(3) and (6) of the IRPA). However, RAD3 cited the following excerpt:

[TRANSLATION]

Generally speaking, it is impossible that a woman who is 18-years-old or older and who is educated or who enjoys a comfortable economic situation, would be the victim of a forced marriage, because she would have acquired the necessary skills to survive.

[Emphasis added by the Court, citation omitted.]

[21] This means that RAD3 recognized that there are situations where even an educated woman could be forced to marry a man against her will. Consequently, there is no indication that RAD3 ignored contradictory evidence on the record, quite the contrary. Therefore, RAD3 was not required to give the Applicant an opportunity to be heard.

[22] RAD3 did not commit any error reviewable by this Court.

VII. Conclusion

[23] For the reasons outlined above, this application for judicial review shall be dismissed.

JUDGMENT in docket IMM-627-18

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. There is no question of importance that needs to be certified.

“Michel M.J. Shore”

Judge

Translation certified true
on this 3rd day of December 2018.

Elizabeth Tan, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-627-18

STYLE OF CAUSE: FRANCE STEPHANIE EMAC SONKOUÉ, CORLYNE
RICKELLE NCHINDA FOFIE v. MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 14, 2018

JUDGMENT AND REASONS: SHORE J.

DATED: NOVEMBER 21, 2018

APPEARANCES:

Luciano Mascaro FOR THE APPLICANT

Éloïse Eysseric FOR THE RESPONDENT

SOLICITORS OF RECORD:

Arpin, Mascaro et Associés FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec