Federal Court  Cour fédérale

Date: 20190808

Docket: IMM-5815-18

Citation: 2019 FC 1058

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, August 8, 2019

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

PRICYLLE LAMBERTINE OTOU NDZANA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Pricylle Lambertine Otou Ndzana is seeking judicial review of the decision rendered by the Refugee Appeal Division [RAD] which, on October 17, 2018, dismissed her appeal of the negative decision by the Refugee Protection Division [RPD]. The judicial review of the decision made by the RAD is sought in accordance with section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "Act"].

[2] For the reasons that follow, the judicial review application must be dismissed.

I. Facts

[3] Ms. Otou Ndzana left her country of citizenship, Cameroon, in September 2008 to begin post-secondary studies in Tunisia. The applicant is now 33 years old. Having completed her business studies in Tunisia, she continued her education in Winnipeg where, on a student visa, she enrolled in the Technical and Professional School of the University of St. Boniface. Her studies in Winnipeg lasted until August 2013. She since held two jobs in Winnipeg until February 2016, when she arrived in Montreal. The refugee claim followed on December 2, 2016.

[4] It is the applicant's family situation, in fact, that is at the root of her refugee claim and as a person in need of protection (sections 96 and 97 of the Act). Indeed, the applicant claims to have been born on May 8, 1986. In her Basis of Claim (BOC) form, the applicant described the angry character of her father. Without ever giving a precise date, she stated that, [TRANSLATION] "In 2003, at the age of 15, when I was in the fourth year of high school, I was told that on the weekend there would be a ceremony to dedicate this customary marriage" (narrative of the BOC, p. 1, certified court record, p. 163). It was to be a marriage to her father's cousin for which the family of the applicant had already received a portion of the dowry. This was apparently only a part of the dowry since the wedding ceremony was to take place later. The BOC spoke more in terms of having been given in marriage whereas the ceremony would be celebrated later. It is at that time that the dowry was to be paid in full.

[5] A first incongruity, which does not seem to have been noted elsewhere, appears from the BOC. I'm only noting it. Indeed, the applicant said she was born in 1986 and that the ceremony took place when she was 15 years old. But in 2003, the year of her customary marriage, she would have been 17 years old. However, letters of support from the applicant's family members refer to her as [TRANSLATION] "barely 15 years old" in the letter from the applicant's mother, while the younger sister spoke of a party in May 2003.

[6] Following this promise to be given in marriage, the applicant claims to have been raped in the night that followed. According to the applicant, the tradition required her to spend a night at her in-laws, but the person to whom she was promised allegedly perpetrated the rape.

[7] Returning to her parents' home the next day, the applicant stated that [TRANSLATION] "my father tried to convince me that the cousin to whom he gave me away in marriage would only take me home when I completed my university studies, especially since he gave only part of the dowry. He even told me that this man was in favour of me going to university because, although well off, he had not done any studies himself" (narrative of the BOC, p. 2, certified court record, p. 164).

[8] The applicant was required to complete high school and went to live with a maternal aunt. In her search for an enrollment in a foreign university, she was admitted to a university in Tunisia. Thus, in September 2008, she began her stay in Tunisia. She studied business and accounting, which she completed in July 2011. It is from there that she ended up in Winnipeg in August 2011. Her BOC form states that she apparently started receiving messages from her

father in 2012 asking her to return to the country [TRANSLATION] "for the marriage to ABANDA" (narrative of the BOC, p. 3, certified court record, p. 165). She states that the father being insistent, [TRANSLATION] "for my part, I began to refuse his offer of a husband" (narrative of the BOC, p. 4, certified court record, p. 166). The relationship with her father appears to have broken down for good in 2013.

[9] It appears from her narrative that the applicant's mother and aunt funded her studies abroad to some extent. It is unclear where these amounts came from, but the applicant insists that her father did not provide any assistance.

[10] Although the relationship had broken down, the applicant added that [TRANSLATION] "since this month of June 2016, my father has asked me to return home for this marriage. According to my father, this wedding ceremony is due to take place in December of this year, because this man now wants to finish paying his dowry and take back his wife" (narrative of the BOC, p. 4, certified court record, p. 166). I note that the stamp indicating receipt of the BOC form is dated December 2, 2016.

[11] The applicant claimed having to marry the cousin of her father as the reason for her refugee claim. She indicated that she attempted 5 times to obtain her permanent resident status in Canada. This too is somewhat surprising since the application for permanent residence must be made from outside the country, unless other considerations, such as humanitarian considerations, are invoked. There is no such indication in the record, nor is there any for the five requests that

had allegedly been made. In fact, the applicant complained that she does not understand why she was not granted permanent residence. She even wrote to the minister in that regard.

[12] According to the BOC, the applicant does not know when she left her country (she says in question 2(e), "2008-09-10"). On the other hand, the incongruities do not stop there since the applicant says to have arrived in Montreal in February 2016, whereas she gave Toronto as her address between February 2016 and July 2016.

II. The decision of the Refugee Appeal Division

[13] The refugee claim was denied by the RPD. But the judicial review can only be sought for the Refugee Appeal Division's decision which upheld the RPD's decision and also dismissed the applicant's refugee claim. We must therefore focus on this last decision. Essentially, the request was rejected by the RAD because the applicant was not credible. No new evidence was presented to the RAD and there was no need to hold a hearing. The RAD noted the late submission of a refugee claim made in December 2016, whereas the applicant had been in the country since August 2011. For the RAD, it is not a determining factor, but it will not be ignored because it is important.

[14] With respect to seeking assistance in her country of nationality, a factor that could have been considered in all of the evidence, the RAD noted the abusive behavior of the applicant's father who, according to the RAD, was not sufficiently taken into account by the RPD. The RPD should have taken greater account of the social context in Cameroon. However, in the end, that

was not sufficient according to the RAD to overturn the other elements to be weighed in determining whether the refugee claim should be granted.

[15] The applicant's credibility was seriously tainted when she alleged that she would be detained at the airport if she were to return to her home country. While she claims that documents were signed at the public meeting of her "marriage", which might attempt to justify an intervention at the airport, no such document corroborating the promise of marriage ceremony was produced. It is unclear how the authorities would know about the upcoming marriage and why they would intervene. The national documentation package on Cameroon contains no indication justifying such a claim. In fact, the only relevant element in this aspect of the case is article 356 of the *Code pénal du Cameroun* (No. 67/LF/1) which prohibits forced marriage and makes it punishable by imprisonment ranging from 5 to 10 years. This makes it unlikely that authorities in Cameroon would intercept the applicant to commit her to the forced marriage prohibited under the *Code pénal*. For the RAD, this allegation of forced marriage was central to the refugee claim and, as such, the applicant's credibility in relation to an improbable intervention was greatly affected.

[16] The RAD also concluded that women of legal age, those aged 18 and over, who are in a good economic situation or who have advanced education, are aware of their rights, are independent and have therefore the opportunity to choose their spouse. Although this does not apply everywhere and there are educated women who may be victims of forced marriage, the RAD notes that the general rule is that these women have acquired the necessary skills to survive without submitting to this kind of abuse. For the RAD, "the dominant theme of the objective

evidence is that educated women 18 years of age and over cannot be subjected to forced marriage" (RAD decision, para 22). The conclusion in this regard is found in paragraph 24, which states that "this evidence shows that a woman with the profile of the applicant, that is, a woman over 30 years of age who has had five years of post-secondary education, can oppose a forced marriage, and that forced marriage is now a criminal offence in Cameroon".

[17] The question of the financial support that the applicant received from her family also remains unclear. In fact, the applicant indicated in her student visa application that she received $12,000, but the source of this amount has not been clearly established. It appears that the applicant's father did not help, and her mother would hardly have been able to raise such an amount. But even there, there could have been some contribution from the father since the applicant claimed to be financially independent in Canada, yet apparently received only $500 from her father during her first semester in Canada. This indicated to the RAD that the explanations given about the financial contribution of her family were contradictory and inconsistent. Moreover, such a question was not decisive according to the RAD.

[18] Probably the most decisive element is related to the existence of a person to whom the applicant was promised in marriage. For the RAD, there was no objective and independent documentary evidence confirming the existence of this person. In fact, the applicant claimed that there was a document signed by the village chief and other [TRANSLATION] "high ranking persons" who would have been present at the public meeting. This evidence was never produced. We do not even know the precise date of this ceremony. The absence [TRANSLATION] "of any independent objective or documentary evidence regarding the alleged marriage of the applicant

and the alleged spouse is at the heart of the refugee claim and is a determinative issue" (RAD decision, para 34).

[19] There was a psychological report made at the request of the applicant's then lawyer. It is claimed that the psychological report was downplayed and its importance denied. The RAD noted that the psychological report essentially repeated the allegations presented in the BOC form, nothing more. It noted that the applicant had symptoms of acute anxiety and severe depression. Indeed, we note that there were other recent stressors, including the fact that the applicant did not obtain permanent residence in Canada and suffered from poor health. In agreement with the RPD, the RAD found little probative value in the report that could have established the truthfulness of the applicant's allegations.

[20] There are three letters in the file: one from the applicant's mother, one from the brother and one from the younger sister who lives in Chicago. Contrary to the allegation that these documents had not been considered by the RPD, the RAD found instead, in the reasons given by the RPD, evidence that those elements were considered and therefore were not arbitrarily excluded.

[21] The RAD therefore concluded that the Refugee Protection Division had correctly decided the request made. Paragraph 45 of the RAD decision reads as follows: [TRANSLATION]

> [45] . . . I further find that the RPD did not err in finding that the Appellant was not credible on fundamental aspects of her refugee claim, in particular the following: the existence of her alleged husband, the fact that she would be detained on her return to Cameroon, and the fact that, as an educated woman over 30, she

> would be obliged to respect the customary marriage she had contracted at the age of 15. I conclude that the Appellant has not demonstrated that she is exposed to a serious possibility of persecution in Cameroon or, on a balance of probabilities, a threat to her life, the risk of cruel and unusual treatment or punishment, or the risk of being subjected to torture.

III. Standard of Review and Analysis

[22] It is not disputed that the standard of review in this case is that of reasonableness (*Aguebor v The Minister of Employment and Immigration*, 1993, 160 NR 315 (FCA), at para 4; *Mavangou v Canada (Citizenship and Immigration)*, 2019 FC 177, at para 1, *Arafa v Canada (Citizenship and Immigration)*, 2019 FC 6, at para 28, *David v Canada (Citizenship and Immigration)*, 2019 FC 755, at para 9).

[23] The applicant's proposal that the decision under review is unreasonable is based on three alleged errors that would constitute erroneous findings of fact made in an abusive manner and without regard to the evidence. The three so-called defective proposals relate to:

- the existence of her husband;
- documentary evidence of forced marriage for women with education;
- her fear of being arrested at the airport.

[24] With respect to educated women who may be forced to fulfill a promise of marriage, the applicant submits that the administrative court could not ignore the evidence that it could happen that educated women could also be victims of forced marriage. But this exception is only a possibility without it being the rule. Moreover, the RAD recognized that there may be

exceptions. However, there is no reason to believe that the applicant could be one of those people.

[25] In any event, what is striking is that the applicant, through the BOC narrative, did not consider herself to be actually married to this person since she indicated that her father and this cousin [TRANSLATION] "would be able to change their minds about the marriage plans" (narrative of the BOC, p. 3, certified court record, p. 165). She added that [TRANSLATION] "as the days went on, my father insisted more and more on this marriage. On my end, I began to refuse his offer of a husband" (narrative of the BOC, p. 4, certified court record, p. 166). Further on we read, [TRANSLATION] "since this month of June 2016, my father is asking me to return home for this marriage. According to my father, this wedding ceremony must take place in December of this year, because this man now wants to pay his dowry and take back his wife . . . . There are many reasons why I do not want to be this man's wife" (narrative of the BOC, p. 4, certified court record, p. 166). In other words, the applicant was at best betrothed to this man, but she was not married to him. The evidence therefore does not support the allegation that she is bound by customary marriage or that the applicant considers herself bound by this promise. And, clearly, she does not want to marry him. We do not know how, on the basis of the file, she could be forced into it.

[26] At the time the refugee claim was made in December 2016, the applicant was already 30 years old and had left Cameroon since many years (even though the applicant cannot specify when). Thus, one can hardly criticize the RAD for observing in the documentary evidence that women educated in Cameroon are no longer forced to marry because of the paternal pressure

exerted. The applicant may not agree with the conclusion drawn, but it is based on sound evidence presented to the RPD and considered by the RAD. If the applicant was betrothed when she was 15 or 17, it is clear that she did not consider herself married. Documentary evidence confirms that educated women no longer feel pressured by paternal or even family pressure. It is hard to see where the absence of a reasonable decision would be.

[27] The fear of arrest if the applicant were to return to her country is not any more convincing. Indeed, this fear of arrest upon arrival at the airport is not supported by any evidence. In fact, the RAD is not wrong to note that forcing someone into marriage is now an offence in Cameroon and, as noted above, it is unclear how and why the authorities would intercept someone upon arrival in the country because they are owed in marriage. For all intents and purposes, the applicant is seeking to reverse the burden of proof by indicating that there is no evidence that this law is actually enforced in Cameroon. Such an allegation cannot be considered without some kind of evidence. Speculation has no probative value. However, this is not the case. As for fear stemming from paternal pressure, even that of a father who is said to be violent, this topic has already been the subject of general comments on the knowledge that educated Cameroonian women now have and exercise pertaining to their rights. It may even be suggested that the applicant herself is proof enough, having been out of her country of nationality throughout all of her adult life. Here again, proof of the lack of reasonableness was not made.

[28] Finally, the applicant is faced with the conclusion that it has not been established that there was a promise of marriage and that a spouse existed. It should be noted that what is central to this claim is an event about which we know very little. In this matter, the applicant relies on

the statements from the members of her family. A review of these three statements does not support the conclusion that there is confirmation of a marriage that the applicant herself states did not occur. Moreover, the reading of these statements does not reveal more details with regard to the ceremony which seemingly took place in 2003, but of which we know neither the date nor the ins and outs. The story in this respect is far from being cohesive. This single obvious deficiency made the applicant's allegations very doubtful. The Court cannot see how the conclusion of this promise of marriage could be characterized as unreasonable.

[29] At best, one could say that the applicant disagrees with the conclusions that were drawn by the RAD. But that does not constitute a demonstration of the unreasonableness of the decision rendered. Given the lack of evidence offered by the applicant, both about the promise to marry someone who we know very little about, and about her fear of being arrested at the airport even though she claims that there is no evidence of a promised marriage and that she herself indicated in her refugee claim form that she was unmarried, the Court can only find that the decision of the RAD was reasonable. As a result, the application for judicial review shall be dismissed. There is no serious question of general importance that must be certified. Both the parties and the Court agree.

JUDGMENT in IMM-5815-18

THE COURT ORDERS THAT:

1. The application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
This 21st day of August, 2019.

Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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