

Federal Court



Cour fédérale

**Date: 20190829**

**Docket: IMM-73-19**

**Citation: 2019 FC 1109**

**Ottawa, Ontario, August 29, 2019**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**RITA ENJOH TATAH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of a decision of the Refugee Appeal Division, dated December 3, 2018, upholding a decision of the Refugee Protection Division, dated May 23, 2018, which rejected the Applicant's claim for refugee protection. The RAD found that the RPD had made some errors, but had correctly determined that the Applicant was not credible.

[2] For the reasons that follow I will grant the application.

I. Preliminary Issue

[3] The Applicant attached to her Affidavit (June 25, 2019) a *Toronto Star* article showing her political involvement in the Southern Cameroons National Council (SCNC) activities in Canada.

[4] However, this article post-dates the RAD's decision and does not fall within the exceptions for allowing new evidence on judicial review (see for e.g. *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20). As such, it will not be considered on judicial review.

II. Facts

[5] The Applicant was born in the Northwest region of Cameroon in 1990. She claims that in 2011, she became a member of an Anglophone activist organization called the Southern Cameroons National Council (SCNC) due to her "experiences of Francophone marginalization and oppression." She alleged that she was a member of the SCNC publicity team and that she attended meetings and distributed flyers, newsletters, and other materials.

[6] The Applicant alleged that on May 13, 2013, she was stopped by police on her way home from an SCNC meeting with three other members. Her evidence is that the others escaped, but the police took her into their van and drove her to an isolated area where they sexually assaulted

her and threatened to kill her. She passed out and woke up at a hospital, where she was treated for three days. On May 17, 2013, she filed a police complaint but nothing happened.

[7] After this incident, the Applicant continued her political activities, but on a smaller scale. Her evidence is that, on the night of January 21, 2015 she was arrested in her home for distributing SCNC materials and was then detained for two weeks. On February 5, 2015, her father bribed a police officer to facilitate her escape. Following her escape from prison, she went into hiding.

[8] The Applicant applied for a student visa and arrived in Canada on October 31, 2015 on a two-year visa. Her claim for refugee protection was received on January 14, 2016.

[9] On May 23, 2018, the RPD rejected the Applicant's claim for refugee protection, finding the Applicant was not credible. The RPD concluded that the Arrest Warrant and Letter from the SCNC (SCNC Attestation) that the Applicant submitted as evidence were fraudulent. The RPD doubted the veracity of all of the documents she submitted, including the Medical Certificate, SCNC Membership Card, affidavit from her lawyer (Lawyer's Affidavit), police complaint filed by her lawyer (Police Complaint) and affidavit from her father (Father's Affidavit).

[10] Further, the RPD found problems with the Applicant's testimony, namely a contradiction about the timing of her sexual assault listed on the Medical Certificate; that she would go out alone after dark to distribute flyers after her sexual assault; and that she would live in hiding with someone for months and not know their name.

[11] The RPD concluded the Applicant did not have a *sur place* claim because of her limited involvement with SCNC activism in Canada. The RPD concluded that her activism in Canada was to bolster her claim and that she had not established that she had a political profile such that the authorities in Cameroon would be aware of her identity.

[12] On December 3, 2018, the RAD upheld the RPD's decision. The RAD acknowledged that the RPD focused too strongly on spelling and grammar issues, so the RAD embarked on its own analysis. The RAD pointed out inconsistencies in the Arrest Warrant, including that it did not mention that the Applicant was charged with distributing SCNC materials and that it referenced the wrong Cameroonian statute (the RAD concluded that "CPC" on the Arrest Warrant stood for Criminal Procedure Code, rather than the Penal Code which the Applicant claimed she was charged under). The RAD also observed inconsistencies between the French and English in the Arrest Warrant as well as the fact that the bail process did not comply with the written laws for criminal procedure in Cameroon.

[13] In light of its finding that the Arrest Warrant was fraudulent, the RAD went on to independently assess the Applicant's other documents. Some of the RAD's conclusions were: that the SCNC Attestation used a handshake logo on the letterhead that had been phased out for membership cards and lacked standard security features; that the Applicant's father's claim that the police showed him pictures of his daughter protesting was not credible because Cameroon's internet was blocked at the time; that the timing of the sexual assault varied between the Applicant's testimony and the Medical Certificate; and that the Lawyer's Affidavit lacked standard security features.

[14] The RAD also noted an inconsistency between the Applicant's Father's Affidavit and her testimony in terms of whether her father has to report to Cameroonian police every month or every morning. The RAD echoed the RPD's finding that the Applicant's claim that she did not know the name of the woman whose house she hid in for nine months undermined her credibility. The RAD found her SCNC Membership Card to be authentic, but this was not enough to overcome these credibility issues. The RAD therefore dismissed her appeal.

### III. Issues

- 1) Did the RAD make unreasonable credibility findings?
- 2) Did the RAD error in its evaluation of the Applicant's *sur place* claim?
- 3) Did the RAD breach the Applicant's right to procedural fairness by failing to give her a chance to respond to items within the RAD's knowledge that led the RAD to find that the Applicant's documents were not credible?

### IV. Analysis

#### A. *Standard of Review*

[15] The appropriate standard of review for questions of mixed fact and law arising from the RAD's decision is reasonableness but it is correctness for the issues of procedural fairness (see e.g. *Denbela v Canada (Citizenship and Immigration)*, 2016 FC 1266 at para 10).

B. *Credibility*

[16] The Applicant submits that the RAD's credibility findings were based on a microscopic examination of the evidence and that the RAD did not pay adequate attention to the explanations provided by the Applicant (*Jamil v Canada*, 2006 FC 792 at para 24). The Applicant provided examples specific to each document that the RAD found to be fraudulent.

[17] In contrast, the Respondent argued that the RAD wrote a thorough decision, which reviewed each piece of corroborating evidence independently. The Respondent argues that there is no merit to the Applicant's submission that the RAD's findings were speculative. The Respondent submits that the RAD expressly considered objective documentary evidence – for instance, citing the Cameroonian criminal procedure as described in the National Documentation Package (NDP), in finding that the Arrest Warrant and the Lawyer's Affidavit were fraudulent.

[18] The Respondent points out that the Applicant lacks evidence concerning the use of the acronym CPC on the Arrest Warrant. The Respondent also suggests it "would be odd" for the SCNC to call its own materials "propaganda" on the SCNC Attestation, if the materials were authentic.

[19] The Respondent acknowledges that the RAD "slightly overstated" the evidence that the SCNC stopped using the handshake logo for membership cards, as the evidence did not show that the SCNC stopped using the handshake logo entirely. Yet, this was a small part of the analysis of just one document, and the Respondent emphasizes that there were a number of

documents which were held to be fraudulent. Further, the Respondent says this Court has held that a decision-maker is entitled to rely on its own knowledge and expertise when assessing evidence, including identity documents (*Merja v Canada (MCI)*, 2005 FC 73 at paras 44–48).

[20] In my opinion, the RAD’s credibility analysis was unreasonable, particularly in its treatment of the Arrest Warrant and the Father’s Affidavit, and though the RAD’s analysis of credibility was reasonable in two areas, the unreasonable findings were foundational and therefore may have tainted all of the credibility findings.

(1) Areas where the RAD’s analysis was unreasonable

(a) *Arrest Warrant*

[21] The RAD provides no explanation for why it determined that “CPC” on the Arrest Warrant must stand for Criminal Procedure Code, rather than Cameroon Penal Code. Either is possible. The RPD did not mention any concerns about the meaning of CPC, and it did not ask the Applicant about this. There is nothing in the certified tribunal record to point one way or another. Yet, when the RAD later decided to undertake its own review of the Arrest Warrant, it began by noting that the reference to “CPC” meant Criminal Procedure Code, rather than the Penal Code offence of escaping police custody.

[22] In this sense, the RAD’s analysis of the issue is not transparent or intelligible. There is no clear path for the RAD’s determination that CPC could only stand for the Criminal Procedure Code.

[23] I also accept the Applicant's argument that the RAD erred in basing a negative credibility finding on the fact that the Arrest Warrant does not mention that she was arrested for distributing SCNC materials. The Arrest Warrant is dated February 9<sup>th</sup>, 2015, two weeks after the Applicant's arrest, and therefore relates to her escape from prison, rather than her initial arrest. That is a reasonable explanation of why the document refers to the offence of escaping custody, rather than the distribution of materials. This also explains why the Applicant's counsel is not mentioned in the Arrest Warrant. It was an error for the RAD to impugn the document's credibility on these bases.

[24] I also accept the Applicant's argument that the RAD erred when it found that the events described by the Applicant and in the Lawyer's Affidavit did not accord with criminal procedure in Cameroon, albeit for different reasons than those the Applicant argues. The RAD made this finding about criminal procedure without considering the contradictory objective evidence before it. In discussing bail procedure, the RAD relied upon a document in the NDP by Human Rights Watch titled "Guilty By Association: Human Rights Violations in the Enforcement of Cameroon's Anti-Homosexuality Law" (March 21, 2013). The same report discusses instances of police not following criminal procedures enshrined in law. Similarly, the US Department of State Report relied on the RAD in this section of the decision states that police in Cameroon often exceed the detention periods set out in law and that although the law permits bail, it is seldom respected.

[25] I find it was an error for the RAD to rely selectively on the country condition documents to find that the Applicant's narrative was not credible, without addressing the sections of the



evidence which in fact supported her narrative (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17).

[26] The RAD had remaining concerns regarding spelling and grammar errors in the document and the differing French and English terms on the wet stamp. These issues were raised at the initial hearing before the RPD, and the flaws are difficult to explain. However, the several errors identified above are sufficient to conclude that the RAD's finding that the Arrest Warrant was fraudulent was unreasonable.

[27] The RAD's finding that the Arrest Warrant was fraudulent was central to its conclusion that the Applicant had not escaped custody. Given the significance of this finding to the RAD's decision and the errors identified above, this issue is sufficient to find the RAD's decision as a whole unreasonable.

(b) *SCNC Attestation*

[28] I agree with the Applicant's arguments that the RAD's findings regarding the use of the handshake logo in the letterhead and the apparent contradiction between "Mezam Division" and "Mezam County" are not supported by the evidence. These were therefore improper bases to impugn the Applicant's credibility.

[29] I agree that the Respondent's argument that the RAD is entitled to rely on its own expertise when assessing evidence. But with regards to the RAD's finding concerning "standard security features" missing from the letterhead, there is evidence that contradicts the RAD's

finding in the Specific Information Research Unit's documents about the SCNC. That evidence is that in the counties where the SCNC is most prominent, the organization does not have an email address in their letterhead because most members are not computer literate and/or cannot access the internet. The RAD's finding that there should have been an email address or website in the letterhead appears to be contradictory to this evidence.

[30] The Respondent claims that the description of SCNC materials as "propaganda" in the SCNC Attestation would be "odd". However, the context for this statement in the SCNC Attestation is that the SCNC Secretary is mentioning why the Applicant was arrested, which helps to explain why the materials are described this way.

[31] The RAD relied on the finding that the escape from custody did not occur, to impugn the credibility of the SCNC Attestation. As outlined above, this underpinning finding was based on an unreasonable analysis of the Arrest Warrant.

[32] The RAD also impugned the credibility of the document because it did not mention steps allegedly taken by the SCNC in May 2013 on behalf the Applicant. The errors identified above, however, are sufficient to find that the RAD's analysis of the SCNC Attestation was unreasonable.

(c) *Father's Affidavit*

[33] I accept the Applicant's arguments regarding the RAD's analysis of the Father's Affidavit. It is unclear why the Government of Cameroon would block its own police

department's access to the internet. The RAD pointed to no evidence to establish that it had done so. Further, as the Applicant argues, there is nothing in the evidence to indicate that the police were even accessing the internet at the time they showed the Applicant's father the pictures, as they could have been showing the father downloaded images.

[34] Furthermore, the transcript confirms that the Applicant is correct that she told the RPD that her father has to report every *month*, not every morning, as was alleged by the RAD. This means the Father's Affidavit is consistent with the Applicant's testimony. The RAD's analysis of the Father's Affidavit is therefore unreasonable.

(d) *Medical Certificate*

[35] I find that the RPD and RAD erred in impugning the credibility of the Medical Certificate and it should have been considered as evidence that the Applicant was sexually assaulted. The exact timing of when she was brought into the hospital unconscious after a sexual assault is not a reasonable basis on which to impugn her credibility.

(2) Areas where the RAD's analysis was reasonable

(a) *Lawyer's Affidavit and attached Police Complaint*

[36] The above analysis regarding the RAD's finding that the bail application procedures were consistent with the objective evidence also applies to the RAD's findings concerning the Lawyer's Affidavit. I find that it was improper to impugn the credibility of the Lawyer's Affidavit on the basis that he is described as a barrister in the letterhead and as a notary public in

the signature stamp, as it is possible for an individual to simultaneously occupy both those positions. The RAD was microscopic to impugn the document on the basis that the date stamp is in French on an English document, as that could occur in any bilingual setting.

[37] On the other hand, the RAD was entitled to rely on its expertise in evaluating the Lawyer's Affidavit, including that it lacked standard security features. The RAD identified "egregious" errors in the French in the Affidavit's letterhead, which the Applicant has not addressed.

[38] I find that it was open to the RAD to find that the police complaint attached to the Lawyer's Affidavit was not a genuine document based on its expertise of what should have been expected in the document, although this raises procedural fairness issues. I do not accept the Applicant's position that government documents should be presumed to be genuine, as this document was prepared by her lawyer, not the government.

(b) *SCNC Membership Card*

[39] The Applicant's arguments regarding the SCNC Membership Card amount to asking this Court to reweigh the evidence, as the RAD accepted it as genuine but found it did not outweigh the fraudulent evidence.

(3) Other credibility assessments

[40] The Applicant's not knowing the name of the woman with whom she lived for nine months arguably supported the RAD's finding that the Applicant was not credible. However, even if this undermines the Applicant's credibility, it is not enough to make the RAD's decision reasonable.

(4) Conclusion on the RAD's credibility findings

[41] In sum, although I do not accept all of the Applicant's arguments, the RAD's analysis of several important pieces of evidence submitted by the Applicant was unreasonable. In particular, the RAD's finding that the Arrest Warrant was not genuine, and therefore the Applicant did not escape from custody, underpinned its overall conclusion that she was not at risk. The SCNC Attestation, her Father's Affidavit, and the Medical Certificate were also scrutinized in a microscopic fashion, in light of the perceived fraudulence of the Arrest Warrant. In the case of the Father's Affidavit, the RAD pointed to an inconsistency between the Applicant and her father based on what seems to be a mistake (reporting every month vs. every morning, as noted above). These errors should be considered in light of the RAD's finding that the SCNC Membership Card was genuine, but not probative enough to overcome the credibility issues it found with the other documents. As such, the RAD's decision as a whole was unreasonable.

[42] I will not analyze the further issues raised by the Applicant as it is unnecessary.

[43] No question was presented for certification and none arose from the arguments.

I will send the matter back for redetermination before a different decision-maker.

**JUDGMENT in IMM-73-19**

1. The application is granted;
2. The matter will be sent back to a different decision maker to re-determine.
3. No question is certified.

"Glennys L. McVeigh"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-73-19

**STYLE OF CAUSE:** RITA ENJOH TATAH v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 20, 2019

**REASONS FOR JUDGMENT:** MCVEIGH J.

**DATED:** AUGUST 29, 2019

**APPEARANCES:**

SOLOMON ORJIWURU FOR THE APPLICANT

ERIN ESTOK FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

SOLOMON ORJIWURU FOR THE APPLICANT  
Toronto, Ontario

ERIN ESTOK FOR THE RESPONDENT  
Department of Justice