Federal Court  Cour fédérale

Date: 20191126

Docket: IMM-2121-18

Citation: 2019 FC 1506

Ottawa, Ontario, November 26, 2019

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

YONNA SAYBAH KRAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the fact- and credibility-based determination of evidence related to a person's identity.

[2] The Applicant, Yonna Saybah Krah, seeks judicial review of an Immigration Appeal Division [IAD] decision, dated April 13, 2018, that upheld the refusal of a permanent resident visa as a member of the family class for her husband, Kenny Edo Alohan [husband].

[3] The key issue in this case is the husband's failure to establish his identity. The IAD found the husband to be in breach of subsections 11(1) and 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] The Applicant submits that the IAD erred in its analysis of certain pieces of evidence pertaining to the husband's identity and further submits that the IAD should not have drawn adverse inferences from the Applicant's failure to attend the IAD hearing.

[5] The Respondent submits that it was reasonable for the IAD to dismiss the Applicant's sponsorship application because it was replete with factual inconsistencies, contradictions, and irregularities related to her husband's identity. The Respondent further submits that the Applicant should not benefit from evidentiary presumptions regarding the authenticity of documents because the Applicant lacks credibility.

[6] I would dismiss the application for judicial review. A claimant has the onus of proving his or her identity. The Applicant has failed to show how the IAD erred in harbouring serious doubts as to the credibility, authenticity and veracity of the evidence provided by the Applicant's husband pertaining to his identity.

II. **Background**

[7] The Applicant was born in Nigeria and became a Canadian citizen in 1999. She has been living in Canada ever since, and has a child from a previous union.

[8] The Applicant's husband, on the other hand, has somewhat of an eventful history in Canada.

[9] The Applicant's husband was born in Nigeria in 1965. He arrived in Canada in April 2000 on the strength of a fraudulent British passport (which he disposed of prior to embarking on the flight to Canada) and sought refugee status. His refugee claim was denied by the Immigration and Refugee Board (Refugee Division) [IRB] in a decision dated January 19, 2001 [Refugee Decision]. In its decision, the IRB found that the Applicant's husband had not provided credible and trustworthy evidence to meet his burden of establishing that he had a well-founded fear of persecution if he were to return to Nigeria.

[10] About two weeks prior to the Refugee Decision, on January 6, 2001, the Applicant's husband married his first Canadian wife, who, on April 2, 2001, filed a spousal application for a permanent resident visa for the Applicant's husband as a member of the family class [the First Family Class Application].

[11] The Applicant's husband failed to attend a meeting with Citizenship and Immigration Canada [CIC] to arrange for his departure from Canada on April 4, 2001 following the Refugee

Decision. A warrant for his arrest was issued on April 11, 2001, however he was released pending the determination of the First Family Class Application.

[12] The Applicant's husband continued to fail to attend regularly scheduled meetings with CIC, and there was some issue as to whether he even continued to live with his first Canadian wife. A subsequent warrant for his arrest was issued on July 18, 2001. He was finally apprehended on April 1, 2002, and released on bail.

[13] The First Family Class Application was denied by the IRB on June 21, 2002, primarily because the IRB found the marriage to be one of convenience.

[14] Following the denial of the First Family Class Application, the Applicant's husband was to be removed from Canada on June 26, 2002. However, he did not show up at the scheduled meeting with CIC. Consequently, on July 2, 2002, a further warrant was issued for his arrest.

[15] Leave to file an application for judicial review of the IRB decision to deny the First Family Class Application was itself denied by this Court for procedural reasons on September 12, 2002.

[16] On September 20, 2003, the marriage between the Applicant's husband and his first Canadian wife was dissolved; a certificate of divorce was accordingly issued.

[17] The Applicant and Mr. Alohan were married on April 25, 2009, and on September 2, 2010, the Applicant made a spousal application for permanent residence status for her husband [the Second Family Class Application].

[18] As part of the Second Family Class Application, the Applicant and her husband said they first met at a nightclub on June 12, 2007. However, the certified tribunal record contains a copy of a lease for an apartment in Montréal on which both the Applicant and her husband are identified as tenants. The lease started July 1, 2006. No issue was made of this at the hearing, therefore I mention it only in passing.

[19] While at a spousal interview with CIC on November 18, 2011 in respect of the Second Family Class Application, the Applicant's husband was detained by the Canada Border Services Agency for removal from Canada based on the 2002 warrant of arrest. He was again released on bail.

[20] On December 13, 2011, an immigration officer denied the Second Family Class Application primarily because the Applicant and her husband did not provide sufficient evidence to satisfy the officer that their marriage was genuine.

[21] In his report to file, the immigration officer expressed doubts as to the parties' credibility. He noted that the Applicant's husband had provided a statutory declaration that he had never in the past had a legitimate passport. Yet while in Canada in 2010, the husband applied for and obtained a document entitled "Nigerian Police Character Certificate" [the 2010 Police

Certificate], which referenced a number for a Nigerian passport issued to him on May 16, 2001. The immigration officer was not satisfied with the husband's explanation regarding this contradiction. The importance of the 2010 Police Certificate will be dealt with below.

[22] Leave to file an application for judicial review of the IRB decision to deny the Second Family Class Application was itself denied by this Court on May 17, 2012 without reasons.

[23] The Applicant's husband subsequently filed for permanent residence status on humanitarian and compassionate grounds. His application was denied, and leave to file an application for judicial review of that decision was itself denied by this Court on March 7, 2014.

[24] On April 11, 2014, the Applicant submitted a further sponsorship application for a permanent resident visa for her husband [the Third Family Class Application].

[25] In addition, on May 7, 2014, the Applicant's husband requested a pre-removal risk assessment pursuant to Division 3 of Part 2 of the IRPA. That application was rejected on January 30, 2015 because the Applicant's husband was found to not be subject to persecution or to a risk to his person if he was returned to Nigeria.

[26] On September 19, 2014, counsel for the Applicant and her husband responded to a request made by the Canadian High Commission in Accra, Ghana [CHC Ghana] for documents in support of the Third Family Class Application. Additional documents were sent to CHC Ghana on December 4, 2014.

[27] On December 10, 2014, CHC Ghana sent the Applicant's husband what was in essence a procedural fairness letter. The immigration officer advised the Applicant's husband that his application for permanent resident status did not meet the requirements of the IRPA. On the basis of the evidence provided, the immigration officer was not satisfied with (1) the genuineness of the marriage between the husband and the Applicant, (2) the genuineness of the documents submitted, and (3) the evidence of his identity. However, the immigration officer provided the Applicant's husband with 30 days to provide additional information to support the genuineness of the marriage and his identity.

[28] Additional documents were sent to CHC Ghana in January 2015.

[29] On February 20, 2015, CHC Ghana denied the Applicant's Third Family Class Application on the grounds that the officer was not satisfied that the Applicant's husband had disclosed his true identity, and because the documents provided to establish his identity were not found to be genuine.

III. **The Decision Under Review**

[30] The Applicant filed an appeal of the denial of the Third Family Class Application before the IAD on March 23, 2015.

[31] Following exchanges between the parties and the IAD as to how the appeal was to proceed, the IAD determined that the appeal was to continue in accordance with the regular

hearing process, and a hearing was eventually scheduled for December 5, 2017. A notice to appear was issued by the IAD to all of the parties, including the Applicant.

[32] On the date of the hearing, the Applicant did not attend, nor did any of her husband's siblings or any of the individuals who submitted attestation letters and affidavits in support of the Applicant and her husband. The only witness was the husband himself.

[33] Counsel for the Applicant advised the IAD that the Applicant had to work. In any event, counsel had also advised the Applicant that as the only issue before the IAD was the identity of her husband, her presence would be unnecessary as she only met him in 2007 and could therefore not provide any assistance as to his identity before then.

[34] The IAD then proceeded *in absentia*, without the presence of the Applicant and despite the objection raised by the representative of the Minister. Following the hearing, and given that the decision denying the Third Family Class Application only mentioned the identity of the husband as grounds for refusal, the IAD asked the Minister's representative to confirm whether the Minister wished to add the issue of the genuineness of the marriage as a ground of refusal.

[35] On December 19, 2017, the Minister's representative advised the IAD that although the Minister was not satisfied with the genuineness of the marriage, the Minister would not be adding the marriage as a ground of refusal for the Third Family Class Application.

[36] Following written submissions by the parties, on April 13, 2018, the IAD rendered its decision dismissing the appeal. The IAD found that the husband's testimony lacked credibility and that he failed to establish his identity with reliable documentation. As the issue of his identity put into question the genuineness of his marriage and thus his status as a member of the family class, the Applicant's husband therefore did not meet his burden of showing why he was not inadmissible to Canada. The IAD also drew adverse inferences from the Applicant's failure to attend and give testimony.

[37] The Applicant seeks judicial review of the IAD decision.

IV. **Preliminary Issue**

[38] The present application for leave and judicial review was filed on June 7, 2018.

[39] On July 4, 2018, the Respondent sought to strike the application as well as the Applicant's motion record and the supporting affidavit which was executed by an articling student working at the Applicant's counsel's law firm rather than the Applicant herself.

[40] On March 22, 2019, Mr. Justice Pentney refused to strike the application for leave and judicial review (*Krah v Canada (Citizenship and Immigration)*, 2019 FC 361 at para 24 [*Krah No 1*]). He also mentioned that it was premature to seek to strike all or portions of the affidavits filed by the Applicant and left the matter to the hearing judge.

[41] Having now heard the matter, I agree with Mr. Justice Pentney that it is not an absolute requirement that an application for leave and judicial review be supported by an affidavit of the applicant (*Krah No 1* at para 16). Here the affidavit of the articling student simply sought to introduce documents, most of which were already included in the certified tribunal record, without any further assertion of facts or arguments. I see no point in striking it.

[42] As to the affidavit of the previous counsel for the Applicant, appended as an exhibit to the affidavit of the articling student, I think the decision of Mr. Justice Pentney fully addresses the problems with that affidavit (*Krah No 1* at paras 16–23). I find that it is replete with opinionated and argumentative commentary. The content of the affidavit is better suited to written representations (*Canada (Citizenship and Immigration) v Huntley*, 2010 FC 1175; *Canada (Attorney General) v Quadrini*, 2010 FCA 47; *Duyvenbode v Canada (Attorney General)*, 2009 FCA 120). I give it no weight.

[43] On June 6, 2019, this Court gave leave for the application for judicial review to continue.

V. **Standard of Review**

[44] This application for judicial review raises three issues:

(1) Did the IAD err in giving little weight to documents which purportedly demonstrate the identity of the Applicant's husband?

(2) Did the IAD draw unreasonable credibility findings from the testimony of the Applicant's husband and the failure to call witnesses to attest to his identity?

(3) Did the IAD err in its analysis of the husband's identity?

[45] Both counsel confirmed at the hearing before me that the only issue before the IAD was that of the identity of the Applicant's husband, and not the genuineness of their marriage.

[46] Because of the fact-based nature of the inquiry and the IAD's function as an expert tribunal (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 58 [*Khosa*]; *El Assadi v Canada (Citizenship and Immigration)*, 2014 FC 58 at paras 20–21), it has been established that the IAD's identity findings are to be reviewed on a standard of reasonableness (*Liu v Canada (Citizenship and Immigration)*, 2012 FC 377 at para 8). The reasonableness standard of review requires that administrative decisions be justified, transparent, and intelligible, and fall within the range of acceptable outcomes defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Khosa* at para 59).

VI. **Analysis**

[47] In support of the Third Family Class Application, the Applicant's husband had filed the following documents to establish his identity:

(i) National Birth Certificate issued by the National Population Commission of Nigeria;

(ii) Nigerian Police Character Certificate;

(iii) Confirmation of Primary School Certificate Examination;

(iv) Primary School Testimonial;

(v) Leaving Certificate/Testimonial from Benin Technical College;

(vi) a letter from the Government Science and Technical College;

(vii) an affidavit from Jude Woghiren, purportedly his cousin, dated April 20, 2010; and

(viii) an affidavit from John Alohan, purportedly his brother, dated January 7, 2015.

[48] Before the IAD, the Applicant's husband filed the following additional documents, which he did not have prior to the denial of the Third Family Class Application on February 20, 2015:

(i) Nigerian passport issued by the Embassy of Nigeria in Ottawa on August 31, 2015;

(ii) Canadian Temporary Resident Permit issued on January 5, 2016; and

(iii) Quebec driver's licence.

(1) Did the IAD err in giving little weight to documents which purportedly demonstrate the identity of the Applicant's husband?

[49] The Applicant submits that the IAD overlooked and neglected to analyze the Nigerian Police Character Certificate as evidence of the husband's identity, and argues that the IAD, although it mentioned the document in passing, selectively chose to disregard it in the analysis undertaken as to the husband's identity.

[50] I find that the IAD did not overlook the Nigerian Police Character Certificate, but rather found it to have no credibility.

[51] It turns out that the Nigerian Police Character Certificate filed in support of the Third Family Class Application was not the 2010 Police Certificate filed in the context of the Second Family Class Application, but rather a new one, issued on February 14, 2014 [the 2014 Police Certificate], just two months prior to the filing of the Third Family Class Application.

[52] Unlike the 2010 Police Certificate, the 2014 Police Certificate did not contain any inconvenient references to a prior Nigerian passport that may have been issued to the Applicant's husband in 2001.

[53] The 2010 Police Certificate was not before the immigration officer in the Third Family Class Application, nor before the IAD, and did not form part of the certified tribunal record before me. The IAD was aware of the existence of the 2010 Police Certificate because of a reference to it in the immigration officer's notes to file in relation to the decision to deny the Applicant's Second Family Class Application.

[54] During the hearing before the IAD, the Applicant's husband was asked questions about the 2010 Police Certificate that referenced a passport issued to him in 2001. The IAD stated the following at paragraph 13 of its decision:

> During his interview at the embassy in 2011 the applicant [the husband] testified he did not have a passport previously. He also deposed this in his affidavit (2014). However the visa officer noted that a passport number from a 2001 passport appears on the applicant's police certificate (filed in the course of his application). The applicant was asked to explain this at his hearing and he testified he forgot he had applied for a passport before. He further testified he did not know he had a passport in 2001 when he was asked about this by the visa officer in 2011. He explained he applied for a passport in 2001 when he was being deported from Canada but he claims he never received this passport. His explanations around the 2001 passport were convoluted, not cogent and not credible. I give the applicant's explanations very little weight. [Footnotes omitted.]

[55] The Applicant submits that there is no evidence that her husband was not telling the truth about never having received a passport in 2001, and that the credibility assessment is couched in

vague and general terms. She adds that the fact that a passport number may appear on the 2010 Police Certificate is not evidence that her husband actually received a passport at that time.

[56] I accept that a reference number to a 2001 passport appearing on the 2010 Police Certificate is not necessarily proof that the Applicant's husband received that passport, but that is not the point. The relevant issue is not whether he did or did not receive a passport in 2001, but rather his contradictory evidence as to whether he did or did not apply for one, or did or did not receive one, and what documents he may have sent had he applied for one.

[57] On account of what the IAD found to be convoluted evidence by the Applicant's husband as to the discrepancy between the 2010 Police Certificate and the 2014 Police Certificate, as well as what the IAD found in the evidence with respect to the existence or not of a passport issued to him in 2001, the IAD elected to give little weight to the 2014 Police Certificate. I find nothing unreasonable about that finding.

[58] As to the remaining documents, the IAD commented that the immigration officer had serious issues with the two affidavits.

[59] In his affidavit, John Alohan describes himself as the husband's brother. However, in his testimony, the Applicant's husband stated that John Alohan was his uncle, although "like a brother" to him. It was John Alohan who had obtained the document entitled "Confirmation of Primary School Certificate Examination". More disturbing to the immigration officer and the IAD was the fact that the signature of John Alohan was remarkably similar to that of Jude

Woghiren, another affiant, who had applied for and obtained the National Birth Certificate of the Applicant's husband, which was, incidentally, issued in 2010.

[60] The IAD found the affidavits to be unreliable and gave no weight to the two affidavits, which, although from different people, bore similar signatures; it also gave no weight to the documents to which those affidavits attested. I see nothing unreasonable about that.

[61] In addition, the IAD expressed doubts about the authenticity of the other school documents, namely the letter from the Government Science and Technology College [College letter], the Leaving Certificate/Testimonial, and the Primary School Testimonial. The College letter bears the date December 13, 2014, and mentions the husband's attendance at the College from 1977 to 1982. The College letter describes the husband in the following manner:

> . . . respectful honest and intelligent student very lively and academical [*sic*] excellent. A devour [*sic*] Christian who never compromise [*sic*] indiscipline [*sic*] he was highly respected by his fellow students and teachers while in Benin Technical College.

[62] The IAD noted that the husband could not explain how the current College principal had such a clear recollection of him 35 years after his graduation. The IAD also identified a discrepancy between the College letter, which states that the Applicant attended the College between 1977 and 1982, and the Leaving Certificate/Testimonial, which states that the Applicant attended the College between 1978 and 1982. Moreover, according to the IAD, the College letter appears to be altered, as the reference line appears "partially covered."

[63] The IAD asked the husband to explain the discrepancy with respect to the years of attendance. He explained that the school year began in 1977 and ended in 1978, which accounts for why the College letter mentions the beginning of the school year whereas the Leaving Certificate/Testimonial mentions the end of the school year.

[64] Although the IAD recognized that bureaucratic errors are possible, it did not accept this explanation. For my part, I find such explanation by the husband to be entirely plausible, and find that the IAD was overly critical on this issue. I find that the IAD's finding on the issue of the discrepancy in dates on the school records to be unreasonable. However, this issue alone is not determinative of the case.

[65] The IAD also noted that the husband "deposed in affidavits that his school records could not be found, yet records were found." The IAD also noted that the husband "did not explain how the current school principal has such clear recall of [him] 35 years later." I find that the IAD's findings on these issues, given the unconvincing explanation of the husband, are not unreasonable.

[66] Regarding the Nigerian Passport issued in 2015 from the Nigerian Embassy in Ottawa, the IAD attributed little weight to the document primarily on account of the problems with the underlying documents the husband used to obtain the passport and because of the husband's general lack of credibility.

[67] In his testimony before the IAD, the husband indicated that the documents that were submitted in support of his application for the passport were the 2014 Police Certificate and the National Birth Certificate.

[68] The appearance of authenticity of a document issued by a foreign state carries a rebuttable presumption of validity, and Canadian authorities may always challenge the truthfulness of the entries in a foreign passport (*Azziz v Canada (Citizenship and Immigration)*, 2010 FC 663).

[69] The Respondent submits that the validity of a passport may be compromised if its issuance was predicated upon documents which are unreliable or doubtful. I agree.

[70] Here, the documents that have been submitted by the Applicant's husband to establish his identity, in particular those used to obtain his Nigerian passport in 2015, have been determined by the IAD to be unreliable and to carry little weight. As the findings regarding the underlying documents go, so goes the finding by the IAD as regards the passport.

[71] In light of the husband's general lack of credibility and the concerns expressed as regards the documents submitted to establish his identity, including the documents used to acquire his passport, the IAD concluded that the passport does not establish the husband's identity in this case. I find nothing unreasonable regarding that determination.

(2) Did the IAD draw unreasonable credibility findings from the testimony of the Applicant's husband and the failure to call witnesses to attest to his identity?

[72] In its reasons, the IAD found that the Applicant's husband lacked credibility. This credibility finding was based on a discrepancy as to the cause of his mother's death, the husband's implausible account of his estrangement from his family, and a negative inference from his failure to call witnesses to support his identity claim. I will address each ground in turn.

a) *Discrepancy as to the cause of his mother's death*

[73] The IAD determined that the husband provided contradictory evidence as to the circumstances of his mother's death. In his Personal Information Form (signed on May 17, 2000), the husband claimed that his mother was kidnapped, raped and killed, writing that she "was kidnapped by the muslims because she was Ibo, they raped, tortured and killed her, that was it for me, at that point I was ready to take matters into my own hands in order to defend myself and my siblings" [emphasis in original]. This was allegedly the basis for his fear when he sought refugee protection. However, in an affidavit (dated December 30, 2013), the husband affirms the following: "In 1999, my mother passed away, taken by a disease". The husband tried to explain the discrepancy by saying his mother suffered an illness following the rape, and eventually died from her illness. The IAD found that the husband's attempt to reconstruct his evidence was simply an attempt to reconcile two contradictory versions.

[74] After reviewing the transcript of the IAD hearing, I conclude that it was not unreasonable for the IAD to doubt the husband's credibility on this issue.

b) *Estrangement from his family*

[75] The issue of the husband's estrangement from his siblings is important as it may explain why no one from the husband's family was available to testify before the IAD as to his identity. We must keep in mind that the affidavit of John Alohan, a person who attested to being the brother of the husband but later became the husband's uncle, was found to be of little weight.

[76] According to the IAD, the husband did not give a reasonable explanation as to why he was estranged from his siblings. When asked about the source of the rift, the Applicant's husband gave as an example that his siblings used his shoes without his permission when he was young.

[77] That may be so, but according to the transcript, the husband stated that he stopped communicating with his family because they kept pressuring him for money:

> Q. How would you describe the relationship with your brothers and sister since your arrival in Canada?
>
> A. Well, when I came to Canada, I was in touch with them, but, you know, coming here wasn't easy. When I got here, I didn't have a place of my own, I didn't have money, at first, I was staying in a YMCA, but each time I called, they were always asking for money. And…
>
> . . .
>
> Q. Why were they asking for money?
>
> A. Guess they needed it for whatever problems they were going through. Financial problems.
>
> Q. Did they contact you for any other reason?
>
> A. Well, at times, they want to know how I'm doing, but it was all about what I can send to them, or what they can get from me.

> Q. Okay. So, then, how would – what did you – what did you – has this been going on? Has this relationship been going on? Just, describe in detail please, when did this happen, and what did you do afterwards?
>
> A. Because of the pressure I had on me, trying to find my feet on the ground here, and they pressuring me for money, so I just, stopped contacting them. I lost, you know, stopped calling, and lost contact with them.

Later in the transcript, the husband mentions that he stopped contacting his siblings sometime between 2000 and 2001.

[78] The husband's answers provide a fuller explanation for the estrangement than what the IAD described. The testimony supports the Applicant's argument that her husband's family kept asking for money. On this issue, I find that the IAD concentrated too heavily on select portions of the transcript while ignoring a plausible explanation for the estrangement. I find that the IAD's conclusion on this issue was not reasonable. That said, I do not believe that its finding on this issue alone is determinative of the matter.

c) *Negative inference from the husband's failure to call witnesses on the issue of his identity*

[79] At paragraph 8 of its decision, the IAD noted that "it is concerning the [husband] did not call any witnesses to establish his identity", and at paragraph 14 of its decision, the IAD noted that the Applicant "did not testify in her appeal to establish the identity of her husband".

[80] The Applicant argues that the IAD erred in drawing a negative inference from the fact that she did not attend the hearing because the Applicant could not speak to her husband's pre-2000 identity as they only met in 2007. Counsel for the Applicant had apparently told her that it

was unnecessary for her to attend because she could not provide any relevant information in respect of that point of contention.

[81] The Respondent submits that the IAD justifiably drew a negative inference from the Applicant's lack of testimony and argues that testimony from the Applicant could have helped resolve certain evidentiary discrepancies related to her husband's identity. The Respondent also argues that the IAD did not have all available evidence because the Applicant had failed to testify in support of her husband's assertions.

[82] It is a general principle of evidence that an adverse inference may be drawn against a party who fails to call a material witness (as explained in *Berhad v Canada*, 2004 FC 501 at paras 217–222; *R v Jolivet*, 2000 SCC 29, [2000] 1 SCR 751 at paras 25–28; *Lévesque v Comeau et al*, [1970] SCR 1010, 1970 CanLII 4 (SCC) at pages 1012–13). In the immigration context, a tribunal may draw an adverse inference from a witness who makes certain representations but refuses to do so under oath (*Canada (Minister of Citizenship and Immigration) v Malik* (1997), 128 FTR 309 at para 4). Similarly, the IAD may draw an adverse inference from a witness who may be able to provide evidence to resolve the material issues of credibility, and yet chooses not to do so (*Ma v Canada (Citizenship and Immigration)*, 2010 FC 509 at paras 29, 33–34).

[83] In *Nguyen v Canada (Citizenship and Immigration)*, 2012 FC 587 [*Nguyen*], the fact pattern is similar, although somewhat distinct from the present case. In *Nguyen*, the IAD determined that the applicant's wife was excluded from membership in the family class because

their marriage was not genuine. The IAD had many doubts as to the genuineness of the marriage. In light of these doubts, the IAD determined that Ms. Nguyen's refusal to testify suggested indifference on her part to the outcome of the appeal. The Federal Court accepted that "[i]t was entirely reasonable for the [IAD] to draw an adverse inference against Ms. [Nguyen] in these circumstances" (at para 31).

[84] I accept that the Applicant may have had to work. People are not always fortunate to find employment that allows them time off for personal or family needs. They are often left to rely on the understanding and generosity of their employer.

[85] However, here, the appeal before the IAD was brought in the Applicant's name. She had received the notice to appear that was sent to her by the IAD. If she was not able to attend, she, or her lawyer, should have advised the tribunal and the other party in advance.

[86] The Minister's representative before the IAD took exception to the Applicant not attending the hearing without any prior notice. He prepared his case on the expectation that the Applicant would be present to answer questions, and he may possibly have sought a postponement had he had advance warning that she would not attend on account of work commitments. Instead, he was presented with a *fait accompli* the morning of the hearing.

[87] I understand the Applicant's counsel's point that the issue of the genuineness of the marriage was not in play, and that the only live issue was the husband's pre-2000 identity, something of which the Applicant would have no knowledge. However, it seems strange to me

that nowhere along the process before the IAD or before this Court do I find sworn testimony from the Applicant on any issue, even if it was simply to corroborate the efforts that her husband had been making since they first met in establishing his identity.

[88] The Applicant did not provide an affidavit in support of the present application for judicial review, nor did she file an affidavit in reply to the Minister's motion to strike her application.

[89] She was, of course, under no obligation to do so, but I can certainly see the Minister's point in this case, given the history, suggesting that the Applicant is avoiding giving sworn testimony or putting herself in a position where she can be cross-examined.

[90] As was the case in *Nguyen*, and given the background to this case, the circumstances of the Applicant's failure to attend in support of her own application and to show even a willingness to give testimony may leave one to conclude that the Applicant has manifested her disinterest in the case. I therefore cannot say that the adverse inference drawn by the IAD is unreasonable.

(3) Did the IAD err in its analysis of the husband's identity?

[91] The identity of the Applicant's husband has been a critical issue from the time he arrived in Canada. This Court has consistently held that identity is "the cornerstone of the Canadian immigration regime" (*Bah v Canada (Citizenship and Immigration)*, 2016 FC 373 at para 7 [*Bah*]; *Canada (Public Safety and Emergency Preparedness) v Gebrewold*, 2018 FC 374 at para 21 [*Gebrewold*]). This is because identity is "the basis for issues such as admissibility to

Canada, assessment of the need for protection, assessment of potential threats to public safety, and the risks of a subject evading official examination" (*Bah* at para 7; *Canada (Minister of Citizenship and Immigration) v Singh*, 2004 FC 1634 at para 38; *Canada (Citizenship and Immigration) v X*, 2010 FC 1095 at para 23).

[92] The onus is on a claimant to establish his or her identity with documentary evidence, and if no such documents are provided, to explain what steps were taken to obtain them (*Elhassan v Canada (Citizenship and Immigration)*, 2013 FC 1247 at para 20 [*Elhassan*]; *Qiu v Canada (Citizenship and Immigration)*, 2009 FC 259 at para 6; *Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 at para 14). If the claimant fails to establish his or her identity, the IAD need not assess the substance of the claim (*Flores v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1138 at paras 7, 9; *Husein v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 726 (QL) at para 13; *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at para 26; *Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 296 at para 8).

[93] The Applicant submits that the school documents and the 2015 Nigerian passport are sufficient to establish the identity of her husband, that the IAD failed to look at all of the evidence before rendering a decision and that there is insufficient evidence to rebut the presumption of validity of the husband's passport, a government-issued document.

[94] The Respondent relies on *Gebrewold* at paragraphs 21–28, to argue that the Applicant should not be given the benefit of the doubt because she failed to provide all of the evidence required to support her claim.

[95] After reviewing the record, I believe that the IAD was not unreasonable in doubting the authenticity of the submitted documentary evidence pertaining to the husband's identity. In its capacity as an expert tribunal, the IAD assessed the credibility of the evidence provided and paid careful attention to the documentary evidence before it. The IAD had serious concerns about the genuineness of the National Birth Certificate, the affidavits, the Nigerian passport, and the school documents. The assessments were based on discrepancies with the documents themselves or the way in which they were produced. In accordance with this Court's case law, the IAD dismissed evidence that it deemed to lack credibility (*Elhassan* at para 23; *Williams v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 917 at para 14).

[96] In essence, the Applicant seeks to relitigate the issues that have been addressed by the IAD. However, the Court is not here to conduct a *de novo* appeal of evidentiary matters already addressed by the IAD. Under a reasonableness standard, the Court must assess whether the IAD's decision was unreasonable, not whether the Court would have settled the issues in a manner that is distinct from that of the IAD (*Ma v Canada (Citizenship and Immigration)*, 2010 FC 509 at para 32).

VII. **Conclusion**

[97] I would dismiss the application for judicial review.

JUDGMENT in IMM-2121-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2121-18
STYLE OF CAUSE:	YONNA SAYBAH KRAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 4, 2019
JUDGMENT AND REASONS:	PAMEL J.
DATED:	NOVEMBER 26, 2019

APPEARANCES:

Me Marie-Maude R. Beauvais	FOR THE APPLICANT
Me Mario Blanchard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ferdoussi Hassa Attorneys Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT