

Federal Court



Cour fédérale

Date: 20191122

Docket: IMM-2974-19

Citation: 2019 FC 1490

Ottawa, Ontario, November 22, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

JANE HARRIET MULIISA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of both Uganda and Rwanda. In June 2017, she came to Canada via the United States and made a refugee claim. Her claim was denied by the Refugee Protection Division (RPD). Her appeal to the Refugee Appeal Division (RAD) was also denied. The RAD found that she was not a Convention refugee or a person in need of protection pursuant to section 111(1)(a) of the *Immigration and Refugee Protection Act SC 2001, c 27 (IRPA)*.

[2] For the reasons that follow, this judicial review is dismissed. The RAD reasonably assessed the risks claimed by the Applicant as well as the availability of state protection.

Background

[3] The Applicant was in an abusive relationship for many years with her common law partner while living with him and their two children in Uganda. She says that her ex-partner is wealthy and well-connected in Uganda.

[4] In 2015, the Applicant went to Rwanda to stay with her mother's family, but she says her family rejected her, so she returned to her partner in Uganda. In 2017, her partner sent her to the United States (US), telling her he would join her later. After she arrived in the US, he told her he was in another relationship and that she was not to return to Uganda.

[5] In her refugee claim, the Applicant says she fears her former partner will have her harmed or killed if she returns to Uganda or Rwanda. She believes she will not be able to return to Rwanda without her ex-partner knowing, and she is therefore not safe in Rwanda.

[6] The Applicant also claims that she will not be supported by her family in Rwanda, and she believes her family will tell her former partner of her whereabouts if she returns.

RAD Decision

[7] Before the RAD, the Applicant raised two grounds of appeal: (1) the RPD's credibility finding contradicts its decision and (2) the RPD erred by failing to assess the risks posed by her own family.

[8] In its decision, the RAD concluded that there was no contradiction in the RPD's findings.

The RPD found the Applicant's evidence to be credible, but insufficient to establish her claim.

The RAD agreed with this finding at para 17 of its Reasons and Decision [RAD RD]:

There is no contradiction in the RPD member's findings. To find that the Appellant's accounts and beliefs are credible...is not equivalent to finding that the Appellant has established her claim...The argument fails to reflect that credibility is but one of the two components involved in the process of assessing evidence properly...The weight to be given to any evidence depends on its credibility and its probative value.

[9] The RAD also found that the RPD "correctly assessed state protection in Rwanda and properly weighed the relevant and probative evidence related to that element of the claim" (RAD RD at para 22). This included the potential risk posed by the Applicant's family.

[10] With respect to state protection, the RAD concluded at paras 26-27:

The law regarding state protection in the context of the RPD claim was correctly stated by the RPD member... "A state in control of its territory is presumed to make serious efforts to protect its citizens; it is up to the claimant to rebut this presumption with clear and convincing evidence that the state cannot or will not protect them." The RPD member cited a relevant part of the Chairperson's Gender Guidelines: "Decision-makers should consider evidence indicating a failure of state protection if the state or its agents in the claimant's country of origin are unwilling or unable to provide

adequate protection from the gender-related persecution.” The RPD member went on to conclude that, in the Appellant’s case, (and taking “country of origin” to mean “country of nationality”), Rwanda is willing and able to provide adequate protection from gender-based persecution. He concluded that the Appellant had not provided clear and convincing evidence that the Rwandan state cannot or will not protect her, should the need arise. I concur with the RPD member’s statement of the law and assessment of the evidence.

The presumption in this case is that Rwanda can protect its citizens. The test is adequacy. It is a rebuttable presumption so the onus was on the Appellant to show, with clear and convincing evidence, that the RPD member erred in finding that there is adequate protection for a woman in her circumstances in Rwanda.

Issues

[11] On this judicial review, the Applicant raises the following issues:

- A. Did the RAD err in its analysis of the RPD decision?
- B. Did the RAD err by failing to assess the Applicant’s risk in relation to her own family?
- C. Is the RAD’s state protection determination reasonable?

Standard of Review

[12] The parties agree that the standard of review of the RAD decision is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35 [*Huruglica*]).

[13] With respect to RAD's determination of state protection, the standard of review is also reasonableness (*Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1157 at para 23).

Analysis

A. Did the RAD err in its analysis of the RPD decision?

[14] The Applicant submits that the RAD did not undertake the appropriate review of the RPD decision. She argues that pursuant to *Huruglica* (para 103), the RAD is to review RPD decisions applying the correctness standard and the RAD is to carry out its own analysis of the record to determine if the RPD erred.

[15] The Applicant argues that the RAD simply deferred to the RPD's findings and did not properly engage with the evidence and evaluate the merits of her claim. Her submissions on this point relates to the fact that the RAD agreed with the RPD's finding that her evidence about her history of abuse was credible. The RAD, like the RPD, accepted the Applicant's evidence of abuse. The RAD states at paragraph 21: "[t]he RPD member accepted what was in the BoC concerning events and circumstances of the past and advised that it was not necessary to recount those same events at the hearing."

[16] The Applicant argues it was not possible for the RAD, on a proper analysis of the evidence, to have accepted the history of abuse but then conclude that she has not established a well-founded fear of persecution in Rwanda. In essence, the Applicant argues that the RAD failed to properly consider the evidence and recognize that her ex-partner could and would

pursue her in Rwanda considering his wealth, power, influence, and the fact that Rwanda was a neighbouring country to Uganda.

[17] The RAD's finding on this issue is outlined at para 23:

The Appellant argues that her ex-spouse 'will not tolerate the Appellant being that closed to him', i.e. in Rwanda, and that he will 'take revenge'. She submits that her ex-spouse, the agent of her persecution, has connections at the highest levels in Uganda and it is reasonable to expect that he will use his connections to find her and harm her in Rwanda. She argues that, once she is harmed or perhaps dead, the shelters and the women centres in Rwanda will be of little help. She submits that state protection will not be available to her in Rwanda primarily because she will be harmed and possibly killed before she asks for help. These are, in essence, the same arguments that were presented to the RPD member and that the RPD member characterized as speculative. As indicated...above, the RPD member points out that the Appellant's belief of her ex-spouse's influence in Rwanda is not supported with evidence. A personal belief of her ex-spouse's likely influence in Rwanda is not supported by the evidence. A personal belief of her ex-spouse's likely influence is not sufficient...to show a likelihood of her ex-spouse pursuing her in Rwanda. I concur with the RPD member's finding.

[18] It was not unreasonable for the RAD (or the RPD) to accept the Applicant's history of abuse as credible, and accept that she "believes" that her ex-partner will pursue her in another country, while disagreeing with the Applicant's interpretation of this history and her prediction about the future. The Applicant's "belief" is not sufficient to establish that she will be at risk from her former partner in another country. This is especially true given that there was no evidence that her ex-partner pursued her in Rwanda in the past, or attempted to pursue her in Canada. In fact, the evidence was that he did not want her to return to Uganda.

[19] Although the Applicant submits she was prevented from giving evidence about her abuse by the RPD, that is not an issue that can be considered here, as this is a judicial review of the RAD decision. Nonetheless, this assertion is not borne out by the record, and there was no request by the Applicant to file new evidence before the RAD.

[20] A plain reading of the RAD decision demonstrates that the RAD properly considered the issues.

B. Did the RAD err by failing to assess the Applicant's risk in relation to her family?

[21] The Applicant argues that if she goes back to Rwanda, she would have to rely on her family and they would inform her ex-partner of her whereabouts.

[22] The RAD addressed this argument by noting that the Applicant did not provide any objective evidence to support this claim. The RAD noted the Applicant's issues with her family in Rwanda, specifically that they refused to support her when she asked for help in 2015.

[23] The RAD also noted the RPD's finding was that although the Applicant believes her ex-partner gave her family money, she has no evidence this happened (RAD RD at para 22). The evidence that the Applicant gave to the RPD about her family was that they were neglectful and would not help her. There is no specific mention of them actively causing her harm, nor was there any evidence that her ex-partner exerted influence over her family in the past (or at

present). Therefore, the RAD determined that the risk she faced from her family was largely speculative.

[24] The fact that the RAD came to the same conclusion as the RPD on this issue does not suggest the RAD did not consider the evidence. The RAD states that it examined the evidence and found that the Applicant's fear of her family is an extension of her fear of her ex-partner, which was the same finding the RPD made. The RAD then balanced this against the presumption of state protection, as did the RPD, and came to the same conclusion that her evidence was insufficient to rebut the presumption of state protection. In conducting the analysis, drawing its own conclusion, and then stating whether or not it agreed with the RPD's conclusion, the RAD conducted a correctness analysis, which was reasonable.

[25] This case is similar to *Olivares Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 443 at para 20 [*Sanchez*], where the Court dismissed the judicial review because Applicant could not provide objective evidence that her alleged persecutor had any interest in finding her. The Court found it even less likely her alleged persecutor would look for her because he had already "obtained what he wanted" (*Sanchez* at para 20).

[26] Here, the Applicant's ex-partner specifically asked her "not to disturb his peace," which she will not be doing if she goes to Rwanda (RAD RD at para 22). The Applicant has not demonstrated that her ex-partner would be motivated to pursue her in Rwanda, or that her family would help him if he were. In the absence of evidence, the RAD's finding is reasonable. It applied the correct legal test to its analysis of the RPD decision.

C. *Is the RAD's state protection determination reasonable?*

[27] The RAD considered the RPD's country condition assessment and acknowledged that while "there are still significant social barriers impeding Rwandan women's complete enjoyment of all their legally protected rights...Canadian refugee law does not require state protection to be perfect" (RAD RD at para 32). The RAD found that even though the Applicant believes the state will not help her until it is too late, this is not sufficient to rebut the presumption of state protection.

[28] Although the RAD found that the situation in Rwanda is not perfect, the Applicant failed to rebut the presumption that state protection would not be forthcoming (RAD RD at para 27). The RAD considered and evaluated the county condition evidence and determined that there was adequate state protection (RAD at para 29). The RAD's determination is consistent with the evidence, therefore the determination was reasonable.

[29] This judicial review is dismissed.

[30] There is no question for certification.

JUDGMENT in IMM-2974-19

THIS COURT'S JUDGMENT is that the judicial review is dismissed and there is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: JANE HARRIET MULIISA v THE MINISTER OF
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