

Federal Court



Cour fédérale

**Date: 20140205**

**Docket: IMM-2086-13**

**Citation: 2014 FC 8**

**Ottawa, Ontario, February 5, 2014**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**LAMA BARRY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**“AMENDED” REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] In situations where an applicant has not established identity, a negative conclusion as to credibility will almost inevitably be drawn, and can, in and of itself, be dispositive of the claim (*Uwitonze v Canada (Minister of Citizenship and Immigration)*, 2012 FC 61, 403 FTR 217).

## II. Introduction

[2] The Applicant seeks a judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated February 26, 2013, wherein, it was determined that the Applicant was not a Convention refugee under section 96 nor a person in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA].

## III. Background

[3] The Applicant, Mr. Lama Barry (a.k.a. Mohamed Barry) is a citizen of Guinea.

[4] The Applicant alleges he began facing serious mistreatment by his family in Guinea in late 2009 for his religious conversion to Christianity and mental illness. He explains he was chained to a tree in front of the family home for several months as a means of calming his mental illness, and was beaten and forced to take medication by his father.

[5] The Applicant explains he was eventually released from his father's confinement by men from a local church. He subsequently moved from Dalaba to Conakry, and then to a friend's residence until he left for Canada.

[6] In February 2010, the Applicant and his companion, Mrs. Agnes Haba, submitted an application for a temporary resident visa to come to Canada using false documents; documents which were allegedly obtained by Mrs. Haba's aunt without the Applicant's direct involvement. The application was refused.

[7] The Applicant finally left Guinea in October 2010 and travelled to France. In France, the Applicant made a second application for a temporary resident visa to come to Canada, again using false documents, and this time portraying himself as a government accountant performing an audit on the Guinean Embassy in Canada. The application was granted.

[8] The Applicant arrived in Canada on October 25, 2010, under the name “Mohamed” Barry.

[9] The Applicant subsequently made a refugee claim on November 15, 2010, under the name “Lama” Barry.

[10] The RPD heard the Applicant’s refugee claim on December 6, 2012.

[11] The Applicant’s refugee claim was denied on February 26, 2013.

#### IV. Decision under Review

[12] In its decision, dated February 26, 2013, the RPD concluded that the Applicant was not a Convention refugee or a person in need of protection. The RPD concluded that the Applicant did not prove his identity and, in addition, that his narrative and testimony, in and of themselves, were not credible due to significant implausibilities, contradictions and ambiguity as specified by the RPD.

[13] Relying on the Canada Border Services Agency expertise assessment that documents were counterfeit, the RPD determined that the identity documentation provided by the Applicant had

been altered, counterfeited or obtained through previously altered documents. Specifically, the RPD found that a number of the documents contained photo substitutions and important typographical alterations. The RPD rejected the Applicant's explanation that these irregularities were a consequence of poor government administration.

[14] Given the lack of probative value of any of the identity documentation provided by the Applicant and his lack of overall credibility, the RPD gave the other documentary evidence provided by the Applicant no weight in establishing his identity; these documents include a summons, a priest's letter, a newspaper article dated August 31, 2010, and a letter from the vicar of a Canadian parish.

#### V. Issue

[15] Was the RPD's conclusion on identity reasonable?

#### VI. Relevant Legislative Provisions

[16] The following legislative provisions of the *IRPA* are relevant:

Convention refugee	Définition de « réfugié »
<p>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,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of</p>	<p>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 :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du</p>

that fear, unwilling to avail themselves of the protection of each of those countries; or

fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(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.

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.

Person in need of protection

Personne à protéger

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

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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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 Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou

by other individuals in or from that country,

qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(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) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l’incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(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.

(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.

## VII. Standard of Review

[17] The RPD’s findings of fact on issues regarding identity attract a standard of reasonableness (*Liu v Canada (Minister of Citizenship and Immigration)*, 2012 FC 377; *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 969; *Najam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 425).

[18] The standard of reasonableness is termed as such, wherein, an analysis demonstrates “the existence of justification, transparency and intelligibility in the decision-making process” and,

wherein, the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

### VIII. Analysis

[19] This Court has found on numerous occasions that the issue of identity is at the very core of the RPD's expertise, and the Court should be cautious about second-guessing the RPD. As stated by Justice Mary Gleason in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319:

[48] ... In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly specious) and provided there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence. [Emphasis added].

[20] In its decision, the RPD based its identity finding on numerous false documents referring to the name Lama Barry, and on the Applicant's own admission of the falsehood of the identity documents in the name Mohamed Barry.

[21] This Court's jurisprudence clearly shows that failure by a refugee claimant to establish his or her identity is fatal to a claim (*Balde v Canada (Minister of Citizenship and Immigration)*, 2006 FC 438; also, more recently, *Yang v Canada (Minister of Citizenship and Immigration)*, 2009 CF 681).

[22] In situations where an applicant has not established identity, a negative conclusion as to credibility will almost inevitably be drawn, and can, in and of itself, be dispositive of a claim (*Uwitonze*, above).

[23] The Applicant principally argues that the RPD erred in failing to assess a number of documents provided by him because of its negative findings in regard to other [fraudulent] documents on the record. The Applicant states that each of the documents should have been assessed in its own right and not be limited to the problems regarding other documents; even if there was a link between the documents.

[24] The Court cannot agree with the Applicant's contention that the RPD erred in this regard. Firstly, in the circumstances, none of the documents to which the Applicant refers was "key" to the decision as to make the RPD's failure of assessment thereon in detail, an error. Not one of the documents was an identity document, nor could one be used to definitively establish the Applicant's identity. Each document simply mentioned the name "Lama Barry".

[25] Moreover, the Court must examine the overall reasoning with regard to the Applicant's identity in the RPD's decision. It cannot limit its review only to an assessment of the few documents highlighted by the Applicant. As stated in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, the evidence must be examined in its totality and in light of the record to evaluate whether the RPD's conclusion is reasonable.



[26] The Court finds that there was ample evidence before the RPD that supports its decision to reject the Applicant's identity documents and to conclude that his identity could not be satisfactorily established. The Court does not find that the RPD erred in limiting its assessment to only a portion of the documents submitted by the Applicant or in neglecting to review the other documents "in their own right". As the record of the RPD hearing, through the transcript, clearly demonstrates the evidence, through questioning was evaluated in its totality; and, it is thereby that the RPD reached its conclusion.

[27] In any event, as mentioned above, the documents, which were not identity documents, were by no means sufficient to cure the irregularities found in the specific identity documentation on record.

[28] The Court is of the view that the RPD's identity finding was reasonable.

#### IX. Conclusion

[29] For all of the above reasons, the Applicants' application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2086-13

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AND JUDGMENT:** SHORE J.

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