

Federal Court



Cour fédérale

Date: 20140915

Docket: IMM-7762-13

Citation: 2014 FC 878

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 15, 2014

Present: The Honourable Mr. Justice Martineau

BETWEEN:

AMADOU DIAROUGA DIALLO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant challenges the lawfulness of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) determining that he is not a refugee or a person to protect under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act).

[2] The applicant is a Guinean citizen of Peul origin. He alleges that his father was close to the former president of Guinea and in January 2007, his father, uncle and he were arrested by the presidential guard under the pretext that his father had been involved in an attempted coup. At that time, the applicant was shot and wounded (left calf). The applicant and his uncle would be freed, but the applicant's father (who has since died) would stay under house arrest. The applicant arrived in Canada on August 25, 2007, with a student visa to study at the University of Moncton. He made a refugee claim on November 11, 2010, but his application was dismissed on October 21, 2013, because he was not able to establish his identity and, alternatively, because his story is not credible and he took too long to file his refugee claim.

[3] The standard of reasonableness applies in this case. The issue of identity is determinative, as the Board is not required to assess the merit of the refugee claim if the applicant cannot prove his identity. This application for judicial review appears to be unfounded.

[4] In particular, the applicant criticizes the Board of arbitrarily setting aside his father's death certificate and declaration of death, a medical certificate from the applicant and an arrest warrant issued against the father. The documents do not establish that the applicant is indeed the person that he says he is. The fact remains that all this evidence was reviewed and its probative value was discussed by the Board in its decision. Furthermore, the circumstances and location where the applicant's father died pose a problem. In any event, a declaration of death or a police report do not constitute primary or secondary identity documents, such as a passport or a driver's licence and are thus not sufficient in themselves to establish the applicant's identity (*Diarra v Canada (Minister of Citizenship and Immigration)*, 2014 FC 123 at paras 28-30).

[5] In this case, the applicant stated that he had already provided photocopies of his passport, his visa, his student card and his birth certificate to the Citizenship and Immigration Canada (CIC) office in Moncton, who was satisfied with his identity. Regardless, the Board is not bound by the determination of identity of the CIC office (*Jackson v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1098 at para 34; *Matingou-Testie v Canada (Minister of Citizenship and Immigration)*, 2012 FC 389 at para 27). At the first hearing, on May 23, 2013, the Board rightly granted the applicant a postponement to allow him to submit acceptable identity documents, although he stated that he had a driver's licence, a birth certificate and a photocopy of a lost passport that he could submit. However, during the second hearing, on September 5, 2013, the applicant merely filed an international driver's licence from Guinea (also issued after the hearing of May 23, 2013) and a letter from the embassy of Guinea to Canada indicating not to issue travel documents. Despite everything, the Board accepted the late filing of three new pieces of identification i.e. photocopies of a lost passport, the applicant's birth certificate and the student card, but did not give them any probative value. The driver's licence was not genuine on its face since the photo was affixed on the seal. The Board also did not believe that the applicant had lost his passport. The birth certificate did not contain any security features, while the photocopy of the student card did not help distinguish the photo. The applicant did not persuade me of the capricious or otherwise unreasonable nature of these reasons.

[6] Further, the Board is better placed than the Court to determine whether the explanations given for not producing acceptable documentation to establish his identity are reasonable.

Section 106 of the Act provides:

106. The Refugee Protection Division must take into

106. La Section de la protection des réfugiés prend

account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[7] Section 11 of the *Refugee Protection Division Rules*, SOR/2012-256 (Rules), relies on the same principles:

11. The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

11. Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

[8] In addition, a refugee claimant who has submitted a photocopy must generally send the original of the document to the Board at the latest by the start of the proceeding during which the document will be used (paragraph 42(1)(b) of the Rules; *Hernandez Flores v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1138 at para 7 (*Hernandez Flores*)). In this case, the originals of the identity documents raised in this case were not submitted by the applicant.

[9] The applicant alleges that the Board did not respect the presumption of validity of the identity documents issued by foreign authorities, by arbitrarily finding that the driver's licence

was not genuine. The respondent retorts that the Board had no obligation to have the driver's licence subjected to expert analysis since it had good reasons to find that the document was not valid, because the applicant's photo was affixed on the seal and not below. I agree with the respondent. In *Diarra*, above, at para 24, the Court notes that when an alteration appears on the face of the document, the Board cannot give it any probative value.

[10] According to the applicant, by not giving any probative value to the photocopy of the passport and the applicant's Canadian visa, the Board rejected the genuineness of the visa and arbitrarily insinuated that the Canadian consulate of Abidjan issued false visas. The respondent alleges that the Board could not give probative value to this photocopy since it is incomplete and only contains four pages of the passport. I agree with the respondent. Contrary to what is advanced by the applicant, the Board did not rule on the genuineness of the passport or the visa. Rather, the Board did not give any probative value to the document submitted, which is not an original, but a photocopy, since it is incomplete and since the Board did not believe the applicant when he said that he lost his passport in circumstances justifying a legitimate question of the Board. It was open to the Board to make a negative finding from the absence of the originals and from the applicant's lateness and not to give any probative value to an incomplete photocopy (*Hernandez Flores*, above, at para 10).

[11] In considering the reasons for the decision as a whole, the Board's finding that the applicant did not demonstrate his identity is transparent, intelligible and falls within fall within the range of possible, acceptable outcomes in respect of the applicable facts and law (*Dunsmuir v*

New Brunswick, [2008] 1 SCR 190, 2008 SCC 9 at para 47). Therefore, this application for judicial review must be dismissed.

[12] Counsel did not raise any question of law of general importance and no question will be certified by the Court.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7762-13

STYLE OF CAUSE: AMADOU DIAROUGA DIALLO v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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**REASONS FOR JUDGMENT
AND JUDGMENT:** MARTINEAU J.

DATED: SEPTEMBER 15, 2014

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