

Federal Court



Cour fédérale

Date: 20150312

Docket: IMM-4713-14

Citation: 2015 FC 314

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 12, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

RANIA BELLA INARUKUNDO

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada, in which it determined that the respondent was a Convention refugee.

[2] The respondent is a citizen of Burundi. She alleges a number of incidents justifying a subjective fear.

[3] In his submissions, the applicant raises the following problems:

- a. The applicant did not discharge the burden of establishing her identity.
- b. The panel failed to observe the principles of natural justice when it allowed a psychological report to be filed on the morning of the hearing.
- c. The decision is unreasonable because it did not consider the possibility of a scam orchestrated by Burundi refugee claimants, as described in the information briefs prepared by the Canada Border Services Agency (CBSA), and it concluded that there was no internal flight alternative.

I. Standard of review

[4] In this case, the appropriate standard of review is reasonableness except for the procedural fairness issue, which must be decided on a correctness standard.

II. Respondent's identity

[5] The applicant submits that the respondent failed to establish her identity. This is even more apparent when one considers the possibility that a scam exists in Burundi involving the obtaining of American visas. As part of this scam, refugee claimants obtain an American visa,

stay in the United States for a few days and seek refugee protection in Canada. That is exactly what the respondent did in this case.

[6] The respondent's identity documents, such as her passport, birth certificate and identity card were analyzed. Following these analyses, the CBSA concluded that the passport was genuine. However, the analysis of the other documents was [TRANSLATION] "inconclusive". The applicant submits that, because the passport was obtained on the basis of documents found to be [TRANSLATION] "inconclusive", the respondent's identity was not established and therefore the panel's decision is unreasonable.

[7] In my opinion, this point of view is incorrect. See *Masongo v Canada (Citizenship and Immigration)*, 2008 FC 39 at para 12:

Rather, Mr. Masongo's case is in line with those which have held that a document purportedly issued by a foreign authority is presumed to be valid unless there is evidence to the contrary (*Ramalingam v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 741 (FC), [1998] F.C.J No. 10, 77 A.C.W.S. (3d) 156; *Osipenkov v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 59, 120 A.C.W.S. (3d) 111 and *Sitoo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1513 (CanLII), [2004] F.C.J. No. 1850).

[8] Based on the facts in this case, the onus was on the applicant to present evidence to the contrary to rebut the presumption of the validity of the passport. However, the applicant failed to rebut the presumption. With respect to the fraudulent activity in Burundi concerning the issuance of false documents, Mr. Justice von Finckenstein concluded in *Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 at para 7:

The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. As the Respondent noted evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

See *Jiang v Canada (Citizenship and Immigration)*, 2006 FC 499, [2006] FCJ No 621 (QL).

[9] Considering the facts in this case, I am of the opinion that the decision with respect to the respondent's identity is reasonable.

III. Procedural fairness

[10] The panel allowed a psychological report to be filed as evidence on the morning of the hearing, despite the opposition of the applicant, who was given only a few minutes to review it. The applicant contends that the panel must have considered the contents of the report because it referred to the respondent's rape in the reasons for its decision. However, there is no explicit mention of the report in the panel's reasons for decision. Furthermore, there is a contemporaneous medical report regarding the rape incident that confirms the respondent's physical condition.

[11] Despite the fact that the report was filed outside the time limits contemplated by rule 34 of the *Refugee Protection Division Rules*, the panel had the discretion under rule 36 to accept the filing of a document after the deadlines had expired. In any event, the report only confirms the respondent's subjective fear, a fear that was proved in another manner.

[12] The applicant also argues that the Burundi medical report is a forgery because it contains grammatical errors. However, the description of the respondent's injuries in the report is clear, and there is no indication that the physician's mother tongue is French. In my view, this argument is tantamount to speculation pure and simple on the applicant's part.

IV. Reasonableness of decision

[13] Last, with respect to the reasonableness of the decision, the fact that the respondent obtained an American visa under false pretences, because she was not intending to study there, does not support the applicant's argument that she was not a victim of persecution. In fact, since the respondent's subjective fear was proven, the panel's decision is reasonable.

[14] Therefore, the application for judicial review must be dismissed.

JUDGMENT

FOR THESE REASONS,

THIS COURT ORDERS AND ADJUDGES as follows:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

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