

Federal Court



Cour fédérale

Date: 20170515

Docket: IMM-4848-16

Citation: 2017 FC 499

Toronto, Ontario, May 15, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**NIVEN ABDELWAHAB SALIH OSMAN
KHALID MAHMOUD ABDELGADIR
SULIMAN**

Applicants

and

**MINISTER OF IMMIGRATION, REFUGEES
AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns a decision of the RAD dated October 31, 2016, which upheld the decision of the RPD that found that the Applicants, a husband and wife from Sudan, are neither Convention refugees nor persons in need of protection.

[2] The principal Applicant, Niven Abdelwahab Salig Osman, fears persecution by government forces due to her work in Sudan with Medecins Sans Frontiers [MSF], “an organization that has been in Sudan since 1979...providing medical care to conflict affected populations” (RPD Decision, para. 12). In particular, Ms. Osman claims that MSF sent her to West Darfur, where she recorded “cases of rapes and the implications of violence on women’s health” (RAD Decision, para 4) and, as a result, was arrested and interrogated by security forces and warned that she could be harmed (RAD Decision, para. 5).

[3] The RPD rejected the Applicants’ claim on March 16, 2016 on the following findings:

The principle claimant further has no corroborative evidence for her alleged employment with an international recognized medical non-governmental organization. She testified that she somehow had brought the identity card from MSF in 2013, when she had originally planned on making a refugee claim...

The principle claimant could not further explain why she had made no further efforts, since being in Canada in corroborating her employment or issues as an employee with MSF as she alleges...

I do find that the lack of any corroborating documentations without reasonable explanation, seriously impugns her credibility as having been employed or targeted as she alleges.

(RPD Decision, para. 15)

[Emphasis added]

[4] Before the RAD, the Applicants argued that corroborative documentary evidence was available to be filed before the RPD but their immigration consultant advised them not to do so. Thus, aside from an expired MSF identity card to substantiate Ms. Osman’s work with MSF, the evidence was not filed. The RAD was advised that the Applicants had submitted a complaint

dated April 20, 2016, to the Immigration Consultants of Canada Regulatory Council [ICCRC] given the negative impact of their consultant's advice (Applicant's Record, p 51).

[5] On appeal to the RAD, the Applicants attempted to submit the following corroborative evidence as new evidence:

- (1) The ICCRC complaint;
- (2) An e-mail dated April 18, 2016 attached with a letter from Dagemlidet T. Worku, Medical Coordinator of MSF France;
- (3) A letter dated October 31, 2013 addressed to Ms. Osman, from Dr. Lashitew Gedamu, University of Calgary;
- (4) A letter dated September 20, 2013, from Yolanda Muller Chabloz, epicentre MSF in Paris;
- (5) A letter dated March 1, 2016, addressed to Ms. Osman, from the University of Calgary

[6] Before the RAD, Counsel for the Applicants argued that the new evidence was:

...extremely probative...had these documents been submitted, the hearing would have taken on a whole different tenor and atmosphere, and much of the Member's admonishment directed to the Appellants for not providing corroborating documents would have been minimized.

(Applicant's Record, p. 136)

[7] The RAD further admonished the Applicants with the following statement:

The Appellant cannot simply blame her counsel for any problems arising from the decision made by the RPD...

The instructions in the Appellant's BOC form advises the claimant to **"INCLUDE EVERYTHING THAT IS IMPORTANT FOR YOUR CLAIM"** and **"attach two copies of any documents you have to support your claim"**

(RAD Decision, para 19)

[8] Thus, the new evidence was rejected. Even though the evidence was not admitted to the record it was considered with the result that, apart from the ICCRC complaint, "the RAD would assign the documents little evidentiary weight" because they evidenced her academic qualifications or work in Eastern Sudan for MSF, but not "her claim that she worked for MSF in West Darfur gathering data [sic] on sexually abused women" (RAD Decision, paras. 20 and 21).

[9] Counsel for the Applicant argues that the RAD made an unreasonable finding by dismissing the evidence out of hand without fully considering the reason why the evidence was not produced before the RPD, and, nevertheless, went on to make perfunctory findings on the quality of the evidence not admitted to the record. I agree with this argument.

[10] Upon considering the admonishment expressed by the RAD as quoted above, I find that an unfounded inference with respect to the Applicant's credibility played an unfair role in the RAD's rejection of the new evidence to the record. As a result, I find that the decision under review is unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4848-16

STYLE OF CAUSE: NIVEN ABDELWAHAB SALIH OSMAN, KHALID MAHMOUD ABDELGADIR SULIMAN v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 9, 2017

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 15, 2017

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