

Federal Court



Cour fédérale

Date: 20221117

Docket: IMM-8491-21

Citation: 2022 FC 1570

Ottawa, Ontario, November 17, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**AMINATA MIMI DEMBELEY DARAMIE
ABUBAKR AMIN DARAMIE
MUHAMMAD DARAMIE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated October 27, 2021 [the Decision]. In the Decision, the RAD confirmed a decision of the Refugee Protection Division [RPD], which determined that the Principal Applicant, Aminata Mimi Dembeley Daramie, lacked credibility and that the other Applicants [Associate

Applicants] did not make a claim against the United States of America [USA] as their country of citizenship. As such, the RAD confirmed the RPD's determination that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[2] As explained in greater detail below, this application is allowed in relation to the Principal Applicant, because the RAD erred in failing to adequately apply the *Chairperson Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution [Guideline]*. This application is dismissed in relation to the Associate Applicants, as these Applicants have advanced no arguments challenging the reasonableness of the finding in the Decision that the RPD correctly determined that they did not make out a claim against the USA as their country of citizenship.

II. **Background**

[3] The Principal Applicant is a citizen of Liberia, and the Associate Applicants, who are her minor sons, are citizens of the USA. She alleges in her Basis of Claim Form [BOC] that she fears persecution in Liberia from her husband's family, including relatives and the government of Liberia. Her BOC asserts that her husband's family disapproves of their marriage, as they wanted the husband to marry a first cousin. The following paragraphs summarize the Principal Applicant's allegations of specific events giving rise to her claim.

[4] After her marriage, the Principal Applicant was subjected to resentment, verbal attacks, and insults, which worsened after the birth of their first son and resulted in them moving to a

different neighbourhood. These verbal attacks at the hands of her husband's family later turned into threats.

[5] Unknown men broke into her house in January 2019, while she and her husband were out of town. While they reported the incident to the police, the Principal Applicant claims that the police did not assist them.

[6] As pressure from her in-laws escalated, the Principal Applicant and her family moved in with her mother for a period. However, her in-laws continued to call her and came to her mother's house to verbally and physically abuse the family.

[7] The family experienced a second break-in after returning to their own house. The Principal Applicant again called the police but was not offered any assistance. Following the second-break in, the Principal Applicant received a threatening note on her doorstep. This resulted in her again fleeing for another community.

[8] The Appellants left Liberia for Canada on June 2, 2019, and filed their claims for refugee protection on September 20, 2019.

III. **Decision under Review**

[9] The two issues before the RAD were the Principal Applicant's credibility and whether the Associate Applicants had made a claim against the USA as their country of citizenship.

[10] At the beginning of its analysis, the RAD identified that its role on the appeal was to conduct an independent assessment of the refugee claims to determine whether the RPD was correct in its findings and determinations. The RAD cited *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 as prescribing the standard of correctness to apply to the appeal.

[11] The RAD explained that, after considering the Applicants' arguments and conducting an independent review of the record, it agreed with the RPD that the Applicants were neither Convention refugees nor persons in need of protection. In the RAD's view, there were inconsistencies and contradictions in the Principal Applicant's evidence and omissions from the BOC that concerned central elements of her claim, which undermined her credibility. The RAD also agreed with the RPD that the Principal Applicant's failure to seek refugee protection in the USA, the UK, and France during her multiple visits there, as well as subsequent returns to Liberia, were inconsistent with her alleged fear and further undermined her credibility.

[12] While not specifically raised by the Principal Applicant, the RAD stated that it had considered the *Guideline*. However, the RAD did not find any of the credibility concerns attributable to any of the special problems that female refugee claimants often face in demonstrating that their claims are credible and trustworthy, as outlined in the *Guideline*.

[13] The RAD also concluded that the RPD was correct in determining that the evidence did not establish that the two American-born Associate Applicants faced a serious possibility of persecution or, on a balance of probabilities, a danger of torture, a risk to their lives, cruel and unusual treatment, or punishment if they were to return to the USA. Relying on the Supreme

Court's decision in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at p 752, the RAD noted that persecuted persons are required to approach their country of citizenship for protection before the responsibility of other states is engaged. While the presumption of state protection can be rebutted, the RAD observed that the Associate Applicants had not demonstrated that they face persecution or harm in the USA or that they could not avail themselves of the protection of the USA.

[14] The RAD therefore dismissed the appeal and confirmed the decision of the RPD that the Applicants were neither Convention refugees nor persons in need of protection under IRPA.

IV. Issues

[15] The Applicants submit that the following two issues are raised in this application:

- A. Did the RAD apply the correct standard of review?
- B. Did the RAD err by failing to adequately apply the Guideline?

[16] The parties agree, and I concur, that the applicable standard of review is reasonableness.

V. Analysis

[17] While the Applicants' written submissions focused principally upon the first issue articulated above (related to the standard of review applied by the RAD), their counsel's oral

submissions focused upon the second issue (whether the RAD erred by failing to adequately apply the *Guideline*).

[18] In support of their submissions, the Applicants drew the Court's attention to several sections of the *Guideline*, including the following:

7.3 An allegation of trauma does not prevent the member from making an adverse credibility finding. Members may draw a negative inference from material inconsistencies, omissions, or implausibility in the evidence that have no reasonable explanations. However, the principles from this Guideline should be considered when assessing the individual's credibility and not separately after the credibility assessment.

[Emphasis added]

....

7.5 An individual who has experienced trauma may have certain difficulties in presenting their case, including recalling specific times, dates, and locations, recounting events in chronological order, and recalling certain events fully. IRB members often must make credibility findings, including in cases where the individual may have experienced trauma. Trauma may impact memory, which can produce inconsistencies, omissions, and vagueness in the individual's testimony.

[19] I note the emphasized language in section 7.3, as it reflects the reasoning in the recent decision of this Court in *Okpanachi v. Canada (Citizenship and Immigration)*, 2022 FC 212 [*Okpanachi*], to which I will turn shortly in the analysis below.

[20] The Applicants note that the sole reference to the *Guideline* in the Decision is the following paragraph, which is situated immediately before the RAD's analysis turns from the claims of the Principal Applicant to those of the Associate Applicants:

[27] While not specifically raised by the principal Appellant, I have considered *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution*, in my independent assessment, but do not find that the credibility concerns outlined above can be attributed to any of the special problems that female refugee claimants often face in demonstrating that their claims are credible and trustworthy as outlined in the Guideline.

[21] The Applicants argue that the Principal Applicants' claim is clearly gender-based, as she alleges that the agents of persecution have consistently targeted her and blamed her for luring her husband away from his family and cultural obligations. The Applicants argue that the RAD therefore had an obligation to adequately and thoroughly consult the *Guideline* and that its brief conclusory statement, unsupported by any reasoning and inserted in the Decision after the RAD performed its analyses and stated its findings on the Principal Applicant's credibility, represents inadequate attention to the *Guideline* and therefore reviewable error.

[22] The Respondent notes that failure to specifically mention the *Guideline* does not necessarily mean that it was not considered and is not necessarily fatal to a decision, a proposition well-accepted in the jurisprudence (see, e.g., *Nsimba v Canada (Citizenship and Immigration)*, 2019 FC 542 at para 17; *Tovar v Canada (Citizenship and Immigration)*, 2016 at para 33-34). The Respondent also relies on authorities explaining that the *Guideline* is not intended as a cure-all for lack of credibility (see, e.g., *Correa Juarez v Canada (Citizenship and Immigration)*, 2010 FC 890 at para 17; *Manege v Canada (Citizenship and Immigration)*, 2014 FC 374 at paras 30-31).

[23] While I accept the principles identified in these authorities, my decision is guided significantly by the similarities between the case at hand and the recent decision in *Okpanachi*. In that case Justice Go held that it was an error for the RAD to separate its analysis of the issue of the RPD's credibility analysis from its analysis of the *Guideline* (at paras 22-23). To be clear, I would not conclude that it is necessarily an error for these analyses to be separated physically in a particular decision. Such a conclusion would focus unduly on form over substance. In my view, the error arises if the decision-maker fails to articulate, in sufficient detail for the Court to understand its reasoning, how it arrived at the conclusion that the factors underlying the *Guideline* do not impact its credibility analysis (see *Harry v Canada (Citizenship and Immigration)*, 2019 FC 85 at para 34, applied in *Okpanachi* at paras 26-27). Such articulation may be more challenging if the decision-maker does not engage with the *Guideline* at the same time it is setting out its credibility analysis.

[24] I read *Okpanachi* as an illustration of an error of this nature. Justice Go explains that the RAD did mention and analyse the *Guideline*, but only after it had already concluded that the RPD did not err in impugning the applicant's credibility based on omissions in her BOC narrative (at para 23). The applicant had argued that, although the RAD made its own assessment of the *Guideline*, it failed to turn its mind to how her experiences would have contributed to the omission and inconsistencies in her testimony, particularly in light of her explanation at the hearing that "[s]ometimes you do not remember everything to write down when you go through bad things." In its analysis of the omissions, the RAD did not refer to the *Guideline* (at paras 24-25).

[25] Similarly in the case at hand, in the course of arriving at its first adverse credibility finding, the RAD noted the Principal Applicant's assertion during the RPD hearing that an incident omitted from her BOC "was never omitted unconsciously, there was so much going on when I was writing my -- what I've been going through and there is some information that I must have left out that was not done in a conscious order". In finding that the Principal Applicant's explanation for the omission was not reasonable, the RAD did not refer to the *Guideline*.

[26] I appreciate the Respondent's argument that the Decision was based on adverse credibility findings related to a number of omissions or inconsistencies, as well as the Principal Applicant's failure to seek refugee protection in other countries and returning to Liberia. However, in the absence of well-articulated engagement with the *Guideline* in connection with any of these bases for the adverse credibility determination, I find that the Decision is unreasonable and, in so far as it relates to the Principal Applicant, this application for judicial review must be granted and the Decision returned to the RAD for re-determination.

[27] In relation to the other Associate Applicants, as the Respondent submits, no arguments have been advanced to challenge the reasonableness of the finding in the Decision that the RPD correctly determined that these Applicants did not make out a claim against the USA as their country of citizenship. I therefore agree with the Respondent's position that, in relation to the Associate Applicants, this application for judicial review must be dismissed.

[28] None of the parties proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-8491-21

THIS COURT'S JUDGMENT is that:

1. In relation to the Applicants, Abubakr Amin Daramie and Muhammad Daramie, this application is dismissed.
2. In relation to the Applicant, Aminata Mimi Dembeley Daramie, this application is allowed, the decision of the Refugee Appeal Division is set aside, and the matter is returned to a differently constituted panel for re-determination.
3. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8491-21

STYLE OF CAUSE: AMINATA MIMI DEMBELEY DARAMIE
ABUBAKR AMIN DARAMIE
MUHAMMAD DARAMIE V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 15, 2022

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: NOVEMBER 17, 2022

APPEARANCES:

Navis Askani FOR THE APPLICANTS

Andrea Mauti FOR THE RESPONDENT

SOLICITORS OF RECORD:

Navis Askani FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario