

Federal Court



Cour fédérale

Date: 20130725

Docket: IMM-11255-12

Citation: 2013 FC 816

Ottawa, Ontario, July 25, 2013

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

BENON BAGIRE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) on October 9, 2012. In its decision, the Board held that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act. The Board rejected the applicant's claim because he failed to establish his identity.

Facts

[2] The applicant claims to be Mr. Benon Bagire, a citizen of Uganda. He claims to be homosexual, and to be at risk in Uganda because of his sexual orientation. The applicant submits that on November 24, 2010, his uncle was attacked by a mob and accused of hiding homosexual individuals. The applicant claims to have been hiding at his uncle's house along with four (4) of his friends at that time. The applicant's uncle feared for the applicant's safety and allegedly helped him leave the country (Application Record, Affidavit of Benon Bagire, p 14).

[3] The applicant arrived in Canada on February 28, 2011 from the United Kingdom and claimed refugee protection on arrival (Applicant's Record, p 25). The applicant travelled to Canada with Mrs. Barbara Nyiraneza. The applicant used the travel documents belonging to Mrs. Nyiraneza's son, Mr. Paul Clement Milindi. The applicant was approached by immigration officers who boarded the plane on landing, at which time he presented a blank declaration card and indicated having flushed the passport with which he travelled (Tribunal Record, p 253). However, upon searching Mrs. Nyiraneza's luggage, a Rwandan passport and a Canadian Permanent Resident Card were found, both belonging to Mr. Paul Milindi (Tribunal Record, pp 274, 320-26). A résumé for Mr. Murangira John Bosco was also found, along with a letter from a psychiatrist in Kenya recommending that Mr. Bosco join his family in Canada (Tribunal Record, pp 328-29). The applicant was also carrying a student identity card and a card from a parish, both bearing the name of Benon Bagire (Tribunal Record, p 291). The applicant was detained on arrival until August 2011, when he was released from detention on condition, among others, that he has no contact with his alleged aunt and cousin, Mrs. Nyiraneza and Mr. Milindi. The applicant was arrested in October

2011 in the company of Mr. Milindi and was further detained until February 2012 for breaching this condition (Tribunal Record, pp 282, 432-38; Applicant's Reply, para 3).

[4] On March 15, 2011, the parish identity card bearing the name of Benon Bagire and issued on July 11, 2010 was analyzed by the Canada Border Services Agency. The results were inconclusive. The report noted that the document contained no security features, was laminated and hand cut, and was poorly aligned overall. The utilized printing methods were commercially available and highly subject to illegitimate production. The report indicated that there were no clear indications that the hand cut laminate and excess glue were caused by intentional alterations or tampering. In the absence of other specimens or samples of this document, the results remained inconclusive (Tribunal Record, pp 188-93).

[5] Also on March 15, 2011, a document analysis report indicated that the analysis of a student identity card bearing the name of Benon Bagire, issued on February 20, 2009 and valid until December 31, 2010, was inconclusive. The report stated that the card contained no security features, and that in the absence of other specimens, the analysis remained inconclusive. However, the report indicated that the entire document was printed by an ink jet printer, including the issuance stamp which was meant to resemble a rubber stamp impression, and that it was of poor quality with hand cut corners and misalignments. The report stated that this document was not issued by a competent issuing authority for identity or travel, and was not acceptable as evidence of identity, nationality or any other purpose (Tribunal Record, pp 194-96).

[6] In April 2011, a Ugandan passport issued on April 2, 2011 and numbered B0692009 (Tribunal Record, pp 199-203; the first Ugandan passport) and a Ugandan birth certificate issued on April 20, 2001, numbered A470781 (Tribunal Record, pp 204-05), were seized from the mail by immigration officials (Tribunal Record, pp 210-12). The package was addressed to the applicant's counsel (Tribunal Record, p 206). The analysis of the passport revealed that the substrate of the document was genuine, but that it had been altered by adding a counterfeit biographical data page over the original (Tribunal Record, pp 216-17). The analysis of the birth certificate was inconclusive as the document is not a secure one, was produced on commercial grade paper and did not display any security features. It was of overall poor quality and had signs of data alteration, such as fields which were printed over and correction fluid. The examiner also commented on the birth certificate being "tertiary", in that it contained no biometric information allowing the document to be linked to the bearer, nor did it attest to the bearer's nationality (Tribunal Record, pp 227-28).

[7] A copy of a Ugandan passport numbered B0883221 (the second Ugandan passport), issued on July 22, 2011 and bearing the name of Benon Bagire was analyzed on October 20, 2011 (Tribunal Record, pp 521-23). It was found to be genuine, but improperly obtained because a citizen of Uganda must present him or herself in person to apply for and pick up a Ugandan passport. At the time of issuance of this passport, the applicant was in Canada. The analysis report stated that when a passport is issued abroad, it would state the name and location of the foreign issuing office, and not Kampala, Uganda, as this passport indicates.

[8] A letter from the Uganda High Commission, dated October 6, 2011, indicated that Mr. Benon Bagire is a Ugandan national, born in Bujumbura County, Rukungiri District of the Republic of Uganda on November 25, 1991 (Tribunal Record, p 491).

[9] The dates set for the hearing were as follows: July 15, 2011; October 6, 2011; December 14, 2011; and September 10, 2012.

Decision under review

[10] The Board found the applicant to be neither a person in need of protection, nor a Convention refugee, because his identity could not be established, an element which is fatal to the claim.

[11] The Board first noted that the applicant lied to immigration officials on arrival in Canada and that he had identity documents from three (3) different people (Mr. Milindi's passport, the applicant's own alleged identity documents, as well as documents related to Mr. Bosco). Recalling that the applicant's alleged identity documents were analysed with inconclusive outcomes, the Board found that these facts led to a negative credibility inference with respect to the applicant's identity. The Board also drew a negative credibility inference on the applicant's identity from the fact that persons acting on his behalf sent a fraudulent passport (the first Ugandan passport) to his lawyer in Canada. The Board drew another negative credibility inference from the applicant's untrustworthy behaviour demonstrated by his disregard of his conditions of release after detention.

[12] The Board noted the applicant's testimony with regards to the second Ugandan passport, according to which he would have filled out an application form before leaving Uganda, and would

have asked an aunt to pick it up for him and mail it to him. The Board rejected this explanation since, according to the evidence before it, a Ugandan passport must be applied for and picked up in person. Furthermore, the second Ugandan passport states that the applicant is a businessman, while he is actually a student. The Board dismissed the applicant's explanation according to which he would have had difficulty obtaining a passport as a student because he adduced no objective evidence supporting this allegation. The Board also noted that the signature of the bearer on the second Ugandan passport is not that of the applicant.

[13] The Board considered a reply to a request for information by the Ugandan authorities which states that in exceptional circumstances, a passport can be issued to a proxy who has written authorization from an applicant and a valid reason why the said applicant cannot pick up the passport in person. The Board noted that the applicant produced no such authorization even though he claimed to have given such an authorization to his aunt. The Board found the passport to have been improperly obtained, tainted, and having little probative value in establishing identity.

[14] The Board also took note of the fact that during the October 6, 2011 hearing, the applicant was asked whether he had other documents to support his identity such as report cards. While the applicant stated that he thought he could obtain them, at the final hearing on September 10, 2012, he still had not produced any such documents, or affidavits from his aunt or uncle in Uganda. The Board gave little weight to an email allegedly sent by the applicant's uncle and filed at the final hearing because counsel for the applicant did not address it in questions to the applicant nor in his written submissions, and because it came from a Yahoo email address and could have been sent by anyone. The Board thought that since the applicant and his counsel were able to have both Ugandan

passports sent to Canada from Uganda, and since the applicant had almost a year since his first refugee hearing to adduce more evidence, they should not have had difficulty contacting individuals in Uganda in order to obtain additional evidence.

[15] The Board was of the opinion that the letter from the High Commission was insufficient by itself to establish the applicant's identity because it was based on the applicant's school identity card and his birth certificate (two (2) documents for which the authenticity analysis was inconclusive), and because of the fact that the applicant adduced a fraudulent Ugandan passport and an improperly obtained one was not before the Ugandan authorities. The Board recalled that the onus was on the applicant to establish his identity, and that he failed to do so. His claim was therefore rejected.

Issue

[16] The only issue in the present application for judicial review is whether the Board's conclusion that the applicant failed to establish his identity was reasonable.

Statutory provisions

[17] Section 96 and subsection 97(1) of the Act are relevant to the applicant's underlying claim for protection. However, the Board in this case did not examine the applicant's claim under these provisions, having dismissed the claim on the preliminary issue of identity. Section 106 of the Act and Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, which were in force at the time of the hearing, outline the importance of adducing proper documents to establish one's identity. They read, in relevant part, as follows:

*Immigration and Refugee
Protection Act*

*Loi sur l'immigration et la
protection des réfugiés*

PART 2

PARTIE 2

REFUGEE PROTECTION

PROTECTION DES
RÉFUGIÉS

...

[...]

DIVISION 2

SECTION 2

CONVENTION REFUGEES AND
PERSONS IN NEED OF
PROTECTION

REFUGIÉS ET PERSONNES À
PROTEGER

...

[...]

Claimant Without Identification

Étrangers sans papier

Credibility

Crédibilité

106. The Refugee Protection Division must take into 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.

106. La Section de la protection des réfugiés prend 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.

*Refugee Protection
Division Rules*

*Règles de la Section de la
protection des réfugiés*

Documents establishing identity and other elements of the claim

Documents d'identité et autres éléments de la demande

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres

claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

Standard of Review

[18] The standard of review to apply to the Board's findings on identity has been clearly established by the jurisprudence as that of reasonableness (*Zheng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 877 at para 12-13, 74 Imm LR (3d) 28 [*Zheng*]; *Wei v Canada (Minister of Citizenship and Immigration)*, 2012 FC 854, [2012] FCJ No 930 (QL)). Consequently, the Court will limit its review of the decision to "the existence of justification, transparency and intelligibility within the decision-making process", as well as "whether 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 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

Analysis

[19] The applicant argues that the Board erred by rejecting the documentation he provided to prove his identity. According to the respondent, the Board's decision was reasonable in concluding that the applicant had failed to establish his identity, a finding which is fatal to his claim.

[20] From the outset, the Court agrees with the applicant that the mere fact that he travelled with a passport that was not his should not, in itself, have a negative impact on his credibility as it is not uncommon for refugee claimants to flee a country with irregular documents (*Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587, 251 FTR 258; *Teneqexhiu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 397, [2003] FCJ No 560 (QL)). However, the

Court also notes that the Board drew a negative inference from the fact that the applicant was dishonest with immigration officials concerning the disposal of the travel documents he used. It was reasonable for the Board to take this element into account in its analysis.

[21] The Court also takes note of the applicant's reliance on *Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 10 (QL), 1998 CanLII 7241; and *Kathirkamu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 409, [2013] FCJ No 592 (QL) at para 34, to argue that "[i]t is an error of law to find that apparently validly issued identity documents are fraudulent if there is no evidence to establish this". However, in the present case, there were reasons to doubt the validity of the documents submitted by the applicant.

[22] Aside from Mr. Milindi's passport and permanent resident card, the applicant also arrived in Canada with a school identity card and parish card bearing the name of Benon Bagire. The analysis on both these documents was inconclusive (Tribunal Record, pp 188-96). While identity documents issued by a foreign government are presumed to be valid (*Ramalingam*, above), the expertise on the school identity card clearly states that it is not issued by a competent issuing authority. Furthermore, there were, in this case, reasons to doubt the validity of these two (2) documents. Both documents were of overall poor quality, and the parish card showed signs of hand cutting and re-gluing. It was therefore reasonable for the Board to give them little probative weight to establish the applicant's identity.

[23] The first Ugandan passport which bears Benon Bagire's name was determined to be altered: while the substrate of the passport itself was genuine, the biographical data page was counterfeit

(Tribunal Record, pp 216-17). Consequently, it was certainly open to the Board to reject this document as evidence of the applicant's identity. The birth certificate's authenticity analysis was inconclusive since it presented no security features and was printed on commercial grade paper. The alterations analysis was also inconclusive since the experts could not determine whether the alterations to the birth certificate (fields printed over and correction fluid) were intentional (Tribunal Record, pp 227-28). The birth certificate was also characterized as a tertiary document, as it lacked security features and basic biometric information allowing the document to be linked to the bearer. In light of this expertise report, it was open to the Board not to give much probative weight to this document.

[24] The Board observed that the second Ugandan passport, which was analyzed and deemed genuine, was improperly obtained. Contrary to the applicant's contention, this was not speculation on the Board's part since it had objective evidence from Ugandan authorities that passports must be applied for and picked up in person. While exceptions can be made with the authorization of a passport applicant to have someone else pick up a passport, the Board could reasonably reject this explanation from the applicant in the absence of corroborating evidence of this authorization allegedly given to his aunt. It is also noteworthy that the expert forensic report on this second Ugandan passport also concluded that it was improperly obtained (Tribunal Record, p 522). Other discrepancies with the document – namely, the name of Benon Bagire being written out and not signed, the alleged application having been made in January 2011 while the passport was only issued in July 2011 (well beyond ten (10) business days), and the occupation listed as businessman instead of student – could reasonably contribute to the Board's finding that this passport was improperly obtained and tainted.

[25] The applicant relied on *Ru v Canada (Minister of Citizenship and Immigration)*, 2011 FC 935, [2011] FCJ No 1158 (QL), to argue that background inconsistencies with regards to how an applicant obtained documents are insufficient to reject such documents as fraudulent if they appear authentic, referring in his case to the second Ugandan passport bearing the name of Benon Bagire.

[26] There are, on the face of the second Ugandan passport, reasons to doubt how it was obtained (namely, his name being written out instead of signed, the issuance date being well beyond the ten (10) business days necessary for processing, and his occupation being incorrect). While in the case of *Ru*, above, at paragraph 53, the Board's concerns over the authenticity of the document were solely driven by its perception that fraudulent documents are easily obtained, it is not the case in the circumstances at bar. The Board in *Ru* had also overlooked objective evidence which strongly supported the applicant's position. In this case, the information provided by Ugandan authorities on the process for obtaining a Ugandan passport was not overlooked by the Board, and does not support the applicant's position.

[27] The applicant submits that the Board unreasonably gave little weight to the letter from the Ugandan High Commission. The Board stated the following at paragraph 20 of its decision:

... First of all, Canadian forensic experts have deemed these two documents are inconclusive as to identity. Secondly, the claimant adduced a fraudulent Ugandan passport and an improperly obtained one – two salient facts which were not before Ugandan authorities. The proven ease with which one can obtain a false or even genuine, but improperly obtained, Uganda passport leads me to conclude that C-3 [the High Commission's letter] is insufficient by itself to establish the claimant's identity to my satisfaction.

[28] However, the Court is of the view that it was reasonable for the Board to give little weight to the Ugandan High Commission's letter. Indeed, the Ugandan High Commission's letter is based on

two (2) documents which have been found to be inconclusive. Furthermore, no evidence was provided which could lead the Court to conclude that the Ugandan High Commission examined a genuine passport or met with the applicant. The Ugandan High Commission's letter merely state that "Benon Bagire is a Ugandan national". However, this conclusion cannot conclusively establish, in and of itself, whether the identity of the individual before the Board was indeed Benon Bagire.

[29] The Court finds that, on the basis of the totality of the evidence before the Board and the lack of acceptable documentation, the Board's decision is reasonable (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708). The applicant's identity has been an issue since his arrival in Canada and the onus is on him to establish it using adequate documentation. The role of the Court is not to re-weigh the evidence already considered by the Board. The Board's conclusion is within the range of acceptable outcomes, having regard to the facts and the law (*Dunsmuir*).

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

“Richard Boivin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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