Federal Court  Cour fédérale

**Date: 20140409**

**Docket: IMM-6198-13**

**Citation: 2014 FC 345**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, April 9, 2014**

**Present: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**AMA BAH (ALSO KNOWN AS RAMATOULAYE BAH)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION OF CANADA**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), of a decision by an immigration officer of Citizenship and Immigration Canada made on September 10, 2013, rejecting the applicant's application for permanent residence based on humanitarian and compassionate considerations (H&C application) under section 25 of the Act.

**FACTUAL BACKGROUND**

[2] The applicant is a citizen of Guinea. She arrived in Canada for the first time on August 16, 1998, with a visitor's visa under the identity of Ramatoulaye Bah, born on January 1, 1977.

[3] On October 5, 1999, the applicant entered Canada a second time, again with a visitor's visa, but under the identity of Ama Bah, born on December 17, 1982.

[4] On October 12, 1999, the applicant claimed refugee protection under this second identity. On March 10, 2000, she obtained refugee status, and on June 13, 2000, she was granted permanent residence, again under the identity of Ama Bah.

[5] On March 23, 2007, following a denunciation made by a third party, the Immigration and Refugee Board vacated her refugee status on the ground that she had obtained it using a fraudulent identity. The applicant then lost her permanent resident status. The application for leave and judicial review of the Board's decision was dismissed by the Federal Court on July 26, 2007.

[6] On July 21, 2010, she submitted a Pre-Removal Risk Assessment (PRRA), which was denied on April 10, 2011.

[7] On June 26, 2012, the applicant gave birth to her son following a high-risk pregnancy. In order to bring the pregnancy to full term, she had to undergo four uterine surgeries because of uterine cysts and fibroids.

[8] On July 5, 2012, the applicant submitted an application for permanent residence based on humanitarian and compassionate grounds, which was rejected on September 10, 2013. It is the subject of this application for judicial review.

**PANEL'S DECISION**

[9] The officer first noted that the applicant did not submit any documentary evidence supporting her allegation that she always worked and paid her bills. However, he noted that working and not being a burden on the government is a normal and reasonable expectation.

[10] The officer then indicated that the applicant did not submit any documents indicating that she took client care attendant training. Even in giving the benefit of the doubt to the applicant, the officer was of the view that the applicant did not show that she would not be able to pursue this employment in her country of origin and that her skills would be a great asset.

[11] While the officer may have acknowledged that the applicant does volunteer work and that this is a positive factor in her establishment, the officer was of the view that such volunteer involvement is common for a foreigner living in another country.

[12] In addition, the officer pointed out the fact that the applicant established herself in Canada by fraudulently obtaining her permanent resident status. The officer noted that the applicant continues to benefit from social, medical and community services under her alias and that, since

2007, the date when she had to reveal her true identity; she has continued to use her alias for different administrative processes.

[13] Therefore, the officer was of the view that the factors relating to the applicant's establishment may be considered to be humanitarian and compassionate grounds.

[14] While the officer stated that he was sensitive to the best interests of the applicant's child, he found that no documented and factual information was submitted in support of the applicant's claim that her son would be ostracized and considered to be an illegitimate child in Guinea. Further, the officer considered that the applicant did not prove her allegations that it would be impossible for the father to take charge of his child. Therefore, the officer found that it was not proven to him that the child would experience unusual, undeserved or disproportionate hardship if he went with his mother to Guinea.

[15] The officer then addressed the issue of the applicant's high risk medical condition. On this topic, he referred mainly to the letter written by Dr. Marcoux, an obstetrician and gynecologist treating the applicant. The officer pointed out that these documents, while indicating that the applicant underwent surgical procedures and that there is a risk of recurrence, reveal that the applicant is in remission and that she is reticent to have a hysterectomy. Therefore, the officer was of the view that no probative evidence justifies that submitting her claim from outside Canada would be an unusual or undeserved hardship for the applicant.

[16] Moreover, the officer stated that he examined the documentary evidence submitted by the applicant on the medical situation in Guinea. In his finding, he gave it little weight since it did not contain any tangible, documented or objective data. Indeed, the officer doubts the authenticity of the titles and qualifications of the individuals who described the state of the health care system in Guinea. He also set aside the information submitted by certain community agencies since the reports cited and on which the claims about state of the health care system in Guinea are based were not submitted.

[17] Finally, the officer gave little weight to the applicant's argument that she would be ostracized as a single mother on the grounds that no impartial factual information was submitted. The officer was also of the view that the applicant could benefit from family support since her parents, three sisters and one brother still live in Guinea.

**ISSUE**

[18] The only issue in this case is whether the officer's findings were reasonable, specifically with respect to the applicant's establishment in Canada, her medical condition and the best interests of her Canadian child.

**STANDARD OF REVIEW**

[19] Section 25 of the Act grants the Minister broad discretion as to the assessment of humanitarian and compassionate considerations raised as part of a residence application based on such grounds and it is well-established law that the applicable standard in such a situation is that of reasonableness (see, generally, *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2

SCR 817 (*Baker*). See also *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18; *Thandal v Canada (Minister of Citizenship and Immigration)*, 2008 FC 489 at para 7; *De Leiva v Canada (Minister of Citizenship and Immigration)*, 2010 FC 717 at para 13; *Nsongi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1291 at para 8).

[20] Therefore, this Court must show deference and exercise great restraint in determining whether the findings are justified, transparent and intelligible and therefore fall 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).

**PARTIES' ARGUMENTS**

**Applicant's arguments**

[21] First, the applicant argued that although the officer stated that he was sensitive to the 14 years that the applicant has spent in Canada, his findings are unreasonable. Indeed, his reasoning with respect to the applicant's work and volunteer involvement is illogical. He supposed that, since it is normal for an individual to work and get involved in his or her community, these factors should not be considered. Moreover, it is exactly such factors that must be taken into account in assessing an individual's degree of establishment when analyzing an H&C application.

[22] The officer's findings that her skills as a client care attendant would be an asset in her country of origin are only speculations not supported by the evidence submitted. Further, it was unreasonable not to consider the circumstances that led the applicant to use a false identity when she arrived in Canada.

[23] As to the best interests of the child, case law sets out that it is one factor to be analyzed in an H&C application and that it must be granted significant weight (*Ribic c Canada (Ministre de l'Emploi et de l'Immigration)*, [1985] DSAI No 4; *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3; and *Baker*, above). The officer stated that he was sensitive to this factor, but his analysis does not show any sensitivity.

[24] Further, the officer erred in rejecting the documents filed by different community agencies indicating that the applicant's son would be ostracized since he was born outside of marriage, because these agencies are independent. The applicant was also of the opinion that it was unreasonable to reject her allegations as to the absence of the child's father simply on the basis that the father had not confirmed such allegations.

[25] With respect to the applicant's medical condition, the officer was selective in the evidence used from the applicant's medical record. The officer disregarded certain passages of the letter from Dr. Marcoux stating the seriousness of the illness, the high risk of recurrence, the strong possibility of surgery and the need for close medical monitoring.

[26] In addition, the applicant submits that it is false to claim that no evidence would help confirm the medical qualifications of the individuals who testified about the state of the health care system in Guinea, since a national identification card of Dr. Mathieu Loua, indicating that he is a doctor, was submitted to the officer.

[27] As to the information provided by the community agencies, they clearly made reference to reports describing the state of the health care system in Guinea and the officer could easily have accessed these reports. Similarly, the evidence submitted by the agencies on the situation of single mothers in Guinea should have been considered, since these agencies are serious and independent sources.

[28] Finally, the applicant points out that although certain members of her family live in Guinea, she does not have any connection with them and could not benefit from their support.

**Respondent's arguments**

[29] The respondent was of the view that the officer analyzed each of the applicant's claims and the evidence submitted and that the applicant did not prove that the officer's findings were unreasonable.

[30] Indeed, the officer considered the circumstances that led to the use of a false identity. However, given the fact that the applicant continued to use her alias even after the fraud was discovered, it was reasonable to consider this factor to be negative. In addition, it was open to the officer to find that the applicant's work and her volunteer activities were not in themselves sufficient to grant the exception.

[31] With respect to the best interests of the child, the officer's reasons show that he was receptive to this factor, but that the evidence submitted did not persuade him that the child would be ostracized if they were to move to Guinea. It was also reasonable not to give much weight to the

applicant's allegations of the father's absence since the evidence in support of such allegations was insufficient.

[32] With respect to the applicant's medical condition, the officer indeed considered the letter of Dr. Marcoux and reasonably pointed out that this letter stated that, at that time, there was no risk of recurrence and that the applicant had chosen not to go ahead with the surgery.

[33] The respondent submits that the applicant did not discharge the burden of proving that the care required for her condition would not be available in Guinea. The burden was also on her to provide the reports cited by the agencies if she wanted the officer to consider them.

[34] Finally, it was reasonable to state that no documentary evidence was submitted to corroborate the opinions expressed by the community agencies in their letters of support. It was also reasonable, in the absence of evidence to the contrary, to find that the applicant would allegedly be able to benefit from the support of her family members in Guinea.

**ANALYSIS**

[35] First, I will address the factor relating to the applicant's medical condition since the officer erred in the analysis of this factor and that this error is determinative in the outcome of the case.

[36] Although a decision-maker is not required to refer to all the evidence, substantial evidence supporting the contrary view cannot be ignored, as Justice John Evans stated in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No. 1425 at para 17:

> … Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact. …

[37] In this case, the letter of June 17, 2013, written by Dr. Marcoux only a few months before the officer's decision, clearly indicates uncertainty as to the applicant's medical condition and the need for close medical monitoring.

> [TRANSLATION]
> … Ama believes that her clinical condition is deteriorating. She has been complaining of chronic pelvic pain for several months.
>
> … Considering the little medical information published on this rare pathology, it is exceedingly difficult to predict the rapidity of growth or the likelihood that such a lesion will recur. Moreover, it is impossible for us to predict when a lesion may reappear: a few months after giving birth or could she remain in remission longer?
>
> …
>
> … a hysterectomy would certainly have to be done to treat a recurrence of her agiomyolipoma. However, one year after she gave birth, the fact is that her illness seems to be in remission. But for how long? She has already had at least three recurrences since 2008.
>
> … At this time, a hysterectomy does not seem indicated, as it is a radical surgery for a young woman … Also, in her case, I hesitate to go ahead immediately with this surgery, which will probably be very difficult considering her previous surgeries … although there does not seem to be **at this time** any evidence of recurrence. The risks of surgery at this time seem to outweigh the potential benefits of such an intervention. The patient is also very reluctant to go ahead with the hysterectomy without evidence of recurrence.
>
> Thus, I have agreed **not to go ahead with the hysterectomy** for now. However, close clinical monitoring is required for this illness that will probably recur and will then require a difficult surgery in a specialized centre.
>
> [Emphasis added]

[38] The letters from 2012 written by Dr. Lachapelle and Dr. Marcoux also emphasize the seriousness of the applicant's medical condition and the need for monitoring in Canada:

> [TRANSLATION]
>
> *Letter from Dr. Lachapelle of September 24, 2012*
>
> … The diagnosis of Ms. Bah is rare and requires monitoring in a University Health Centre by a Gynecologist specialized in oncology. The surgery will be very complex considering her five previous surgeries.
>
> In conclusion, Ama Bah needs specialized monitoring that is not available in Guinea.
>
> *Letter from Dr. Marcoux of October 30, 2012*
>
> … Her medical and surgical history is dramatic and complicated. I firmly believe that she requires surgical treatment that is essential to her survival and that it cannot be proven safely in her country of origin.
>
> …
>
> … Ama Bah is now waiting for surgery that will be complicated by the fact that she has recently undergone several surgeries … . I firmly believe that it would be dangerous for her health to have her leave the country. She would be deprived of essential care that, in my opinion, may be provided only in a health care system like ours. … she may have to wait more than six months for her surgery, she will be monitored closely until then. …
>
> [Emphasis added]

[39] The medical letters must be viewed as a whole and it was unreasonable to conclude that the applicant's medical condition is stable, but to ignore the uncertainty related to this stability and the need for monitoring in Canada.

[40] As for the evidence submitted by the applicant on the state of the health care system in Guinea, although it would have been diligent for the applicant to provide more documentary evidence, it was unreasonable to reject the letter of Dr. Mathieu Loua on the ground that the authenticity of his qualifications and professional status could not be verified. His medical profession is proved by the note that he is a doctor on his national identity card, which was attached to his letter. The doctor practicing in Guinea could offer credible evidence on the reality of the medical facilities in Guinea and the available care.

[41] Therefore, the medical evidence submitted clearly shows that the applicant would face unusual, undeserved or disproportionate hardship because of her high-risk medical condition if she had to return to Guinea to submit her application for permanent residence. It was therefore unreasonable for the officer to disregard the evidence as a whole in finding that the applicant's medical condition was stable. This ground is alone sufficient to set aside the decision. Therefore, it is not necessary to analyze the merit of the officer's findings as to the factors of establishment and the interests of the child. However, I would add with respect to the best interests of the child that the officer could not ignore, without valid reason, the evidence submitted by the applicant composed of letters from credible independent agencies that would confirm that the applicant's son, born outside marriage, would be highly ostracized.

[42] For these reasons, the application for judicial review is allowed and the matter is referred back for redetermination by a new officer.

## JUDGMENT

**THE COURT ORDERS AND ADJUDGES that**

1. The application for judicial review is allowed;

2. The officer's decision is set aside;

3. The matter is referred back for redetermination by a new officer; and

4. No question of general importance is certified.

"Danièle Tremblay-Lamer"
Judge

Certified true translation
Catherine Jones, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-6198-13 |
| **STYLE OF CAUSE:** | AMA BAH (ALSO KNOWN AS RAMATOULAYE BAH) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | APRIL 7, 2014 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | TREMBLAY-LAMER J. |
| **DATED:** | APRIL 9, 2014 |

**APPEARANCES:**

| | |
|---|---|
| Vincent Desbiens | FOR THE APPLICANT |
| Suzanne Trudel | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Vincent Desbiens<br>Counsel<br>Montréal, Quebec | FOR THE APPLICANT |
| William F. Pentney<br>Deputy Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |