

CANADA / JUDGMENT

MB6-00933

COURT

Refugee Protection Division

DECIDED

6 February 2018

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RPD File No. / No de dossier de la SPR : MB6-00933

Client ID No. / No ID client : XXXX-XXXX

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Claimant(s)

XXXX XXXX XXXX

Demandeur(e)(s) d'asile

Date(s) of hearing

April 29, 2016, and January 30, 2018

Date(s) de l'audience

Place of hearing

Montréal, Quebec

Lieu de l'audience

Date of decision

and reasons

February 6, 2018

Date de la décision

et des motifs

Panel

Hai-Yen Pham

Tribunal

Counsel for the claimant(s)

Me Styliani (Stacey) Markaki

Conseil(s) du (de la/des)

demandeur(e)(s) d'asile

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

- [1] The refugee protection claimant, XXXX XXXX XXXX, was born on XXXX XXXX, 1988, in Chad and claims to be a citizen of that country. She is claiming refugee protection under section 96 and subsection 97(1) of the Immigration and Refugee Protection Act (IRPA).

ALLEGATIONS

- [2] In support of her refugee protection claim, the claimant alleges the following facts, summarized from her written account, which is appended to her Basis of Claim Form (BOC Form) and her amended BOC Form (Exhibit P-9).
- [3] On XXXX XXXX, 2010, the claimant got married for the first time, without her true consent, to a man named XXXX XXXX. She had a son with her husband named XXXX XXXX XXXX XXXX, born on XXXX XXXX, 2011.
- [4] Her husband died on XXXX XXXX, 2012.
- [5] In XXXX 2012, after the claimant's mourning period of 3 months and 15 days, her in-laws took her son from her and brought the claimant to her parents.
- [6] Around November 2012, XXXX XXXX, the younger brother of the claimant's late husband, came to her home with his father and uncle. They spoke to the claimant's father, explaining to him that, according to the custom of their people, a widow must go to one of the deceased's brothers, especially if she had a child from the marriage. XXXX XXXX had been chosen accordingly.

- [7] Although they insisted, the claimant's father refused, stating that there were no such practices in his custom, as the claimant was not of the Zaghawa people, but was Arab. Her late husband's family left the premises.
- [8] A few days later, they came back and told the claimant's father that if he did not give her in marriage to XXXX XXXX, she could never have her child. Her father again refused.
- [9] Shortly thereafter, the claimant heard that XXXX XXXX had gone off to war. He is a member of the military - a XXXX - and was deployed abroad.
- [10] In the meantime, while the claimant was at her parents' home, she met a man named XXXX XXXX, and fell in love with him. He was a distant cousin. The claimant's father advised her to marry him so that XXXX XXXX would stop bothering them. The claimant agreed.
- [11] On XXXX XXXX, 2014, the claimant's parents arranged her second marriage.
- [12] Unfortunately, when XXXX XXXX returned to the country, he started causing problems again.
- [13] On June 10, 2015, he and a few members of his family went to the claimant's parents' home and demanded to take her as his wife. When her father replied that she was already married, XXXX XXXX said that she had to divorce. The claimant's younger brother tried to intervene, but they beat him.
- [14] XXXX XXXX and his family managed to find the claimant's address and they turned up at her marital home. They hit her husband and told him to divorce her, but he refused. They took him with them. At the time, the claimant was one month pregnant. XXXX XXXX tried to hit her, but she told him not to hurt her because she was pregnant. He told her that they were going to torture her husband to get him to divorce her and that she had to have an abortion. If they refused, they would kill them. XXXX XXXX would come back to kill the claimant and abort her child.
- [15] Her husband's younger brother asked why they were leaving with him. They shot him and injured him.
- [16] To this day, the claimant has not heard from her husband and does not know where they took him.
- [17] Following this tragedy, the claimant's parents sent her into hiding at the home of some friends in XXXX.
- [18] Meanwhile, XXXX XXXX's parents went back to see her father to make threats and cause problems, saying that they would not leave them alone unless XXXX divorced the claimant. They asked about her whereabouts.

- [19] Following this incident, in an effort to save the claimant and the child she was carrying, her brother-in-law, who was employed by XXXX XXXX XXXX, made the necessary arrangements for her to flee the country with her father.
- [20] They obtained visas for the United States on XXXX XXXX, 2015, and left Chad on XXXX XXXX, 2016.
- [21] XXXX XXXX went to get the claimant in XXXX, but she had already left.
- [22] XXXX XXXX and members of his family continue to visit the claimant's father. They inquire about her whereabouts and sometimes make threats.
- [23] These are the facts the claimant alleges in her initial and amended BOC Forms (Exhibit P-9).
- [24] In January 2018, the claimant submitted an update to the written account in her BOC Form (Exhibit P-12), in which she states that her husband, XXXX XXXX, came to Canada on August 7, 2016, and claimed refugee status.
- [25] It should be noted that the claimant arrived in the United States on XXXX XXXX, 2016.
- On February 13, 2016, she arrived at the Lacolle border crossing and claimed refugee protection in Canada.

DETERMINATION

- [26] In assessing this claim, the panel took into account the Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution.¹
- [27] The panel determines that the claimant is neither a "Convention refugee" nor a "person in need of protection" for the reasons set out below.

ANALYSIS

Identity

- [28] The claimant's identity, including her citizenship, was established by means of the supporting documentation filed, in this case, a copy of her passport, the original having been seized at the Saint-Bernard-de-Lacolle border crossing, and a copy of her birth certificate.²

Credibility

- [29] The claimant is an educated person. At the hearing, she testified that after obtaining her bachelor's degree, she completed two years of study at XXXX XXXX XXXX XXXX and obtained a diploma in XXXX XXXX XXXX. The claimant also presented her XXXX XXXX XXXX course completion certificate (Exhibit P-5).

- [30] After the hearing on April 29, 2016, the claimant submitted a duplicate of the birth certificate for her alleged son, XXXX XXXX (Exhibit P-10). The panel had to summon the claimant again, as it had questions for her concerning this new document.
- [31] Furthermore, after the hearing on April 29, 2016, the claimant's husband (XXXX XXXX according to the claimant's BOC Form) arrived in Canada and claimed refugee protection at the border. As a result, the panel placed the BOC Form and the immigration documents, including the Minister's intervention, that were in the claimant's husband's file³ in the claimant's file as well. The Minister's representative intervened in writing (in the husband's case), submitting that the contradictions noted during the interview with the claimant and her husband upon his arrival at the border [translation] "seriously undermine the [male] claimant's credibility regarding a element central of his claim, namely, his marriage to XXXX XXXX XXXX."
- [32] At the hearing on January 30, 2018, the claimant and her husband, who was present as a witness, were asked about their marriage. Because the claimant's counsel still had a number of questions to ask about their marriage when the time allotted for the hearing expired, the panel was prepared to recall the claimant if, after assessing the evidence, it found that the marriage had not been established. However, having assessed all the evidence on the record, the panel finds that the issue of the claimant's marriage to Mr. XXXX is not relevant to determining the outcome of the refugee protection claim, as there are other determinative issues. Consequently, the panel will not address the issue of this marriage.
- [33] At the first hearing on April 29, 2016, the claimant submitted a birth certificate (Exhibit P-3) to establish the existence of the son (XXXX XXXX XXXX) she allegedly had with her first husband, XXXX XXXX. However, upon examining the original document, it is visible to the naked eye that the seal and the signature (on the seal) of the civil status officer at the bottom of the birth certificate are colour photocopies, not the original seal and signature. What is more, upon examination, there is no embossing on the reverse side of the birth certificate from the seal or the seal signature (on the front). Yet, one can see that the rest of the information on the birth certificate is original, and the handwritten information is clearly written in blue ink (such as with a pen). The areas on the reverse side of the birth certificate are raised where information was handwritten in blue ink (on the front).
- [34] When confronted with these significant irregularities in the birth certificate she had submitted, the claimant replied that she did not know why the document was the way it was. She claimed that she had asked her father to send the birth certificate to her in Canada. She had never seen the birth certificate in Chad because her late husband had been the one to declare the child's birth. When the claimant returned to live with her parents after mourning her husband, her father took the birth certificate from her husband's personal effects. The claimant explained that she had thought her father would send her the original birth certificate.

- [35] The fact that the claimant filed a birth certificate containing significant irregularities, seeking to pass it off as an original document, seriously undermines her credibility as to the existence of the child she claims to have had with her first and late husband. The panel gives no probative value to the son's birth certificate submitted as Exhibit P-3.
- [36] Furthermore, at the first hearing, other than the above birth certificate, the claimant submitted no evidence of the existence of her first husband or the child they allegedly had together.
- [37] When asked about the lack of evidence, the claimant acknowledged that she had no other proof regarding her former husband or her child. She testified that because she and her former husband had had a religious wedding ceremony, no marriage document was given to them.
- [38] When asked whether she had her former husband's death certificate, the claimant replied that she did not because he had died at home. When asked whether she or someone else had gone to declare his death, the claimant explained that even if they had done so, they would not have been given a piece of paper. When then confronted with the fact that the civil status office could have provided her with her husband's death certificate, the claimant responded that she had not gone there because she had always been afraid. When asked why she was afraid, the claimant replied only that yes, she had been afraid. When asked again what she feared, she stated only that she could not go to ask, that in Chad, she could not go to ask. When asked why she could not ask for the death certificate, the claimant replied that among the Zaghawa people, when the husband dies, the wife can do nothing, and it was up to the husband's family to do what they wanted.
- [39] The claimant's testimony was not spontaneous, and the panel had to ask her several questions before obtaining certain answers. Furthermore, she was unable to satisfactorily explain why she had no proof of her former husband's death. The claimant's credibility concerning the existence of her first husband and the child they allegedly had together is undermined.
- [40] In her BOC Form and at the hearing, the claimant stated that she had married XXXX XXXX on XXXX XXXX, 2010, and that her husband had died on XXXX XXXX, 2012.
- [41] However, at the port of entry, the claimant instead stated that she was married to him from XXXX XXXX, 2010, to XXXX XXXX, 2011.⁴
- [42] When asked to explain this contradiction, the claimant responded that she got married on XXXX XXXX, 2010; she gave birth to her child on XXXX XXXX, 2011; and her husband died on XXXX XXXX, 2012. She explained that, at the port of entry, she had been ill and had had a lot of things on her mind and had therefore mixed up the date of the child's birth and the date of her husband's death.

- [43] However, although the claimant alleged that, at the port of entry, she had confused the date of her child's birth with the date of her husband's death, she also stated at the port of entry that her child's date of birth was XXXX XXXX, 2011,⁵ which does not correspond to the date on which her husband died (XXXX XXXX, 2012) or, of course, to the date of birth that she declared for her child in her BOC Form and at the hearing.
- [44] When asked to explain this contradiction, the claimant responded that there were too many problems in Chad, that when she arrived in Canada, she was ill and did not know what she was saying in response to the questions she was asked.
- [45] At the hearing, the claimant alleged that upon arriving at the port of entry, she had vomited and fainted. When the panel asked her whether border officers had called an ambulance or whether she had been hospitalized, the claimant explained that she had not literally fainted, but had rather fallen down and vomited.
- [46] The panel is not satisfied with the claimant's explanations for the above-mentioned contradictions between her statements in her BOC Form and at the hearing and her statements at the port of entry. At the hearing, the claimant stated that her son's date of birth was a very important date for her, [translation] "that it is in her head" (expression used by the interpreter). The panel therefore has difficulty understanding how the claimant could have been so confused about a date that she alleges is very important to her and that she remembers. In addition, the date of her husband's death, and therefore the end date of a marriage she claims was her first marriage and which she was forced into, should be a significant date for her. She therefore should have remembered it, instead of declaring at the port of entry that her alleged child's date of birth was the date her marriage ended. Her credibility with respect to the existence of her former husband and their child is again undermined.
- [47] At the hearing, the claimant stated that her first husband was born in 1965, but she did not know how many years older than her he was. However, she knew that he was born in 1965: she remembered his birthday because, sometimes, on the telephone, he would mention that he was born in 1965.
- [48] However, the birth certificate for her son that the claimant submitted (Exhibit P-3) indicates that her husband was born around 1975.
- [49] When confronted with this contradiction, the claimant responded that she had made a mistake, that her husband was born in 1975. The panel does not accept the claimant's explanations, as she initially testified that her husband was born in 1965 and even explained why she remembered that date. When confronted with the different date of birth, she gave an easy answer, namely, that she had made a mistake. Moreover, at the port of entry, the claimant gave another date of birth for her husband, stating that he was born on XXXX XXXX, 1970.⁶ The claimant's explanations that she had been ill at the port of entry and that she had had much on her mind are not satisfactory. Once more, the claimant's credibility regarding the existence of her first husband is undermined.

- [50] After the first hearing, during which significant irregularities in the birth certificate for her alleged son (Exhibit P-3) were pointed out to her, the claimant submitted a duplicate of her son's birth certificate (Exhibit P-10). The panel therefore summoned the claimant again and the date of the second hearing was set for January 30, 2018. Two weeks prior to that date, the claimant submitted her son's birth record (Exhibit P-11).
- [51] At the second hearing, during which the claimant filed the originals of those two documents, she testified that because the panel had told her that the birth certificate she had presented at the first hearing was no good, she had called her father, who had gone to the maternity centre to ask for the birth record. With that document, her father was able to obtain a duplicate of the birth certificate (P-10).
- [52] When asked why she did not have the birth record in her possession after the birth of her son, the claimant alleged that they are not provided in Chad: the birth record is kept where the mother gave birth and then the birth certificate had to be prepared.
- [53] At the end of the hearing, when asked whether she had obtained a birth record or birth certificate from the hospital after the birth of her son, the claimant responded that she did not know because it had been in the hands of her first husband.
- [54] Thus, after the significant irregularities regarding her alleged son's birth certificate (Exhibit P-3), which she had attempted to pass off as an original document, were pointed out to her at the first hearing, the claimant then submitted other documents for that son, including a duplicate of the birth certificate (Exhibit P-10). Such behaviour is enough to raise serious doubts as to the claimant's credibility regarding the existence of this son. In addition, the claimant failed to satisfactorily explain why she did not already have in her possession the documents issued by the hospital or the maternity centre after the birth of her son.
- [55] Given all the above-mentioned shortcomings, including major contradictions, the panel does not believe that the first husband or the son the claimant allegedly had with him exist. The panel gives no probative value to the duplicate of the son's birth certificate (Exhibit P-10) or to the birth record (Exhibit P-11).
- [56] Given that the claimant's first marriage is the fundamental element of her refugee protection claim and, thus, the cause of the alleged persecution (threats from the late husband's family, who want the claimant to marry his brother), the panel does not believe her allegations that she would be persecuted by the members of her late husband's family if she returned to Chad.
- [57] As the panel does not believe the claimant regarding her first marriage and, therefore, the marriage that the members of her late husband's family are seeking to force her into, the panel attaches no probative value to her father's testimonial letter, which simply reiterates the claimant's allegations (Exhibit P-6).

- [58] (It should be noted that in her BOC Form and the refugee protection claim forms completed at the port of entry, the claimant states that her son's first name is XXXX. However, her son's name is written XXXX on the birth certificates and birth record submitted. The panel did not question the claimant about this. However, the rest of the above-mentioned issues with the claimant's evidence lead the panel to find that she is not credible with respect to her first marriage and, consequently, the persecution she claims to have been subjected to by her first husband's family.)
- [59] Another problematic issue in this case is the claimant's alleged pregnancy, the father being her second husband, XXXX XXXX. That pregnancy is relevant to the refugee protection claim because the claimant alleged that on XXXX XXXX, 2015, the members of her former husband's family, including his brother, XXXX XXXX, who wants to take her as his wife, turned up at her home. They hit her husband and told him to divorce the claimant. XXXX XXXX tried to hit her, but she told him not to hurt her because she was pregnant. XXXX XXXX then said that they were going to torture her husband to get him to divorce her and that the claimant had to have an abortion.
- [60] At the first hearing, the claimant testified that when she went to the travel agency to purchase the airline tickets, she was told that she might not be able to fly because of her pregnancy. In Chad, when a woman is seven months pregnant, she cannot fly. Therefore, the claimant had an ultrasound. She testified that she had in fact been eight months pregnant at the time of the ultrasound, but that the doctor had written that she was six months pregnant because her father had told the doctor about the claimant's problems. The doctor agreed to help her by reducing the number of months she was pregnant in his medical report. The claimant submitted the ultrasound report and ultrasound images (Exhibit P-8).
- [61] However, the claimant also submitted a letter from a Canadian doctor and a letter from a Canadian social worker (Exhibit P-7). The letters state that on XXXX XXXX, 2016, the claimant's prenatal examination revealed that she was not in fact pregnant and that there was no trace of a fetus. The claimant allegedly had a pseudocyesis (false pregnancy), a medical condition causing a woman to believe that she is pregnant and possibly even to present symptoms of pregnancy. In the claimant's case, she had a large, hard stomach and she reported that she had not menstruated in several months. According to the letters submitted, the claimant may have been pregnant and lost the baby early in her pregnancy.
- [62] Yet, the above facts are difficult to reconcile with the ultrasound report and images from Chad (Exhibit P-8) submitted by the claimant, which indicate that, in XXXX 2016, she was approximately six months pregnant (XXXX weeks and XXXX days). It should be noted that the claimant testified that she had in fact been eight months pregnant, but that the doctor had stated that she was less far along than she was in her pregnancy to help her leave the country.

- [63] When confronted with this at the second hearing, the claimant replied that the doctors in Chad had truly said that she was pregnant, that maybe those doctors were no good. She had not had her period for a while and she was constipated, so she had a large stomach. The claimant's counsel submitted that the letters from the practitioners in Canada also state that she had a large stomach.
- [64] While the claimant may have had a large stomach, it remains that the claimant's false or phantom pregnancy (that is, no trace of a fetus in XXXX 2016 and a hypothesis that she may have lost the fetus early in her pregnancy) is wholly inconsistent with the ultrasound submitted by the claimant, which had allegedly been done in Chad only a month earlier in XXXX 2016 and based on which the doctor had reportedly seen that she was eight months pregnant, but had noted in his report that she was six months pregnant.
- [65] Furthermore, during her interview with the immigration officer at the border on February 13, 2016, the claimant stated that she was six months pregnant.⁷ However, according to her BOC Form and her testimony at the hearing, in mid-XXXX 2016, she was already eight months pregnant.
- [66] The claimant's explanation for this contradiction was that the immigration officer may have been mistaken.
- [67] In light of the foregoing, the panel is of the opinion that the claimant likely invented her pregnancy to make her account more dramatic.
- [68] It should be noted that the letters from the Canadian doctor and social worker (Exhibit P-7) state that false pregnancies sometimes seem to occur in emotionally fragile women. The claimant's false pregnancy might be explained by her fear of a forced marriage, her fleeing the country, her separation from her husband and her desire to continue the lineage through a child. According to the letters, the claimant has post-traumatic stress syndrome as a result of events in her life in recent years, including the death of her first husband, the detention of her second husband and the pressure put on her by her former in-laws to marry.
- [69] However, the doctor and the social worker merely reiterated what the claimant told them she had experienced in her country. It is the panel's responsibility to assess the claimant's credibility. Furthermore, the letters from the doctor and the social worker are quite laconic and do not mention what tests they were relying on to conclude that the claimant suffers from post-traumatic stress syndrome. Consequently, the panel gives no probative value to these letters to establish the facts alleged by the claimant in support of her refugee protection claim.

CONCLUSION

[70] The panel determines that the claimant failed to establish that she would face a serious possibility of persecution, or that, on a balance of probabilities, she would be personally subjected to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment if she were to return to her country.

[71] Consequently, her refugee protection claim is rejected.

Hai-Yen Pham

Hai-Yen Pham

February 6, 2018

Date

IRB translation

Original language: French

1 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, Immigration and Refugee Board of Canada, effective November 13, 1996.

2 Document 2: Information package provided by the Canada Border Services Agency (CBSA) or Immigration, Refugees and Citizenship Canada (IRCC).

3 Exhibit A-3: Basis of Claim Form and immigration documents for file No. MB6-04335 (XXXX XXXX).

4 Document 2: Information package provided by the CBSA or IRCC, Generic Application Form for Canada (IMM 0008), questions 13 and 14, page 2.

5 Document 2: Information package provided by the CBSA or IRCC, Generic Application Form for Canada (IMM 0008); Personal Details, questions 1 to 10, page 3.

6 Document 2: Information package provided by the CBSA or IRCC, Generic Application Form for Canada (IMM 0008), questions 13 and 14, page 2.

7 Document 2: Information package provided by the CBSA or IRCC, interview on February 13, 2016, page 2.

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Immigration and

Refugee Board of Canada

Refugee Protection Division

Commission de l'immigration

et du statut de réfugié du Canada

Section de la protection des réfugiés

RPD.29.01 (May 12, 2017)

RPD File No. / No de dossier de la SPR : MB6-00933

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