

CANADA / JUDGMENT

TB9-02812

COURT

Refugee Appeal Division

DECIDED

6 January 2020

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RAD File No. / No de dossier de la SAR : TB9-02812 TB9-02813 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit /
entendu à Date of decision January 6, 2020 Date de la décision Panel H. Shepherd Tribunal
Counsel for the persons who are the subject of the appeal Victor E. Pilnitz (counsel for the
principal appellant) Conseil des personnes en cause Designated representative XXXX XXXX
Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR
DECISION OVERVIEW

- [1] The principal appellant, XXXX XXXX, and the minor appellant, XXXX XXXX, citizens of Georgia, are appealing against the decision of the Refugee Protection Division (RPD) dated January 2, 2019.
- [2] XXXX XXXX agreed to be appointed as a designated representative in accordance with subsection 167(2) of the Immigration and Refugee Protection Act (IRPA) on November 10, 2019. Determination of the appeal
- [3] The appeal is allowed. The Refugee Appeal Division (RAD) refers the matter to a differently constituted panel of the RPD with a direction. New evidence
- [4] The appellants filed two pieces of evidence by citing the criteria set out in subsection 110(4) of the IRPA. Given that this evidence was received after the appeal was filed, it is not admissible without authorization pursuant to subrule 29(3).1 Although they cited the criteria set out in subsection 110(4) of the IRPA, no application was submitted under rules 37 and 29, as required. These documents are not admissible.
- [5] There was no application for an oral hearing. Allegations
- [6] The appellants allege that they risk being attacked by the principal appellant's former boyfriend, who is a high-ranking XXXX XXXX XXXX The complaints made to the police and the appeal of those decisions were dismissed. Moreover, the principal appellant states that she is at risk because of her job as a XXXX XXXX; she filed a complaint with the police that her former employer had asked her to sign fraudulent documents. Refugee Protection Division decision

- [7] The RPD rejected the claims for the sole reason that the appellants' identities had not been established. Grounds of appeal
- [8] The RPD misunderstood the principal appellant's testimony about fraudulent passports and whether the agent/smuggler had accompanied them.²
- [9] An original copy of the minor appellant's birth certificate was seized by the Canada Border Services Agency (CBSA).³ The RPD erred by failing to provide reasons for having rejected that it was authentic. The RPD did not question the document's authenticity during the hearing either. This led to a breach of procedural fairness, which denied the appellants an opportunity to request a forensic analysis.
- [10] The CBSA seized an original copy of the appellant's identity card. The RPD erred by failing to provide reasons for rejecting its authenticity.⁴
- [11] The RPD erred by refusing to accept many supporting documents that establish their identities.⁵
- [12] The RPD erred by refusing the lawyer's request to call witnesses.
- [13] The RPD erred by failing to consider the principal appellant's explanations and by not providing complete reasons. In addition, its negative credibility findings are unreasonable.⁶
- [14] The minor appellant agrees with her mother that the RPD erred with respect to the identity documents.
- [15] The minor appellant also submits that she should not be penalized for the acts or omissions of her designated representative whom the RPD had imposed on her. She did not even attend the second sitting and did not have an opportunity to testify. This submission is without merit. I note that the minor appellant was born in February 2009 and was nine years old at the time of the hearing. Her account is dependent on her mother's. The designated representative had the legal authority to make all the decisions on her behalf during the hearing.

ANALYSIS

- [16] During the first day of the hearing, the RPD asked a few routine questions about the identity documents before asking the principal appellant about the merits of the claims. This questioning was put on hold when the panel realized that an amended version of the Basis of Claim Form (BOC Form) had neither been received nor read. The questioning on the second day of the hearing focused exclusively on identity issues.
- [17] The CBSA seized the original copies of the minor appellant's birth certificate and a copy of the principal appellant's identity card. The notes taken at the port of entry indicate that the officer was satisfied that their identities had been established. The RPD did not check the originals and a forensic analysis was not requested.

- [18] The principal appellant stated that she did not have a genuine Georgian passport and that she had never examined the fraudulent one that the agent gave her. The RPD made a negative credibility finding because of a contradictory testimony about whether the agent had accompanied the principal appellant to Canada and the colour of the passport. In addition, her testimony failed to clearly explain the passport that she had used to travel.
- [19] In response to the RPD's challenge of the identity documents that were accepted by the CBSA, but not contested during the first sitting, the lawyer asked for the right to question the proposed witnesses. This request was refused because, at the beginning of the hearing, identity had been deemed to be an issue. The RPD erred by failing to consider all the relevant factors, including the fact that the appellants were caught by surprise by the RPD during the second sitting with respect to the authenticity of the documents.
- [20] The RPD ignored a significant number of documents on the record that would help to confirm their identities. Among the supporting documents, the principal appellant's father submitted his Georgian identity card to the CBSA, which helped the officer to accept their identities. The principal appellant provided a copy of her birth certificate, her community college diploma, a letter of employment from the hospital where she had worked, the birth certificate of her husband, XXXX, a statement from XXXX with his identity card, police reports on the attacks that occurred on May 5, March 10 and April 23, 2013, hospital reports that corroborate the attacks, a notice from the police about the three complaints that were dismissed, a reply from the chief prosecutor, a review by the public defender, statements from neighbours who had witnessed the attacks and their identity documents as well as other documents.
- [21] The RPD did not take any of this evidence into account. The problems faced by the principal appellant in response to questions about how the smuggler had brought her to Canada do not support an overall lack of credibility finding that could cast doubt on the authenticity of the supporting documents. The RPD erred by ignoring this evidence.
- [22] The RPD postponed the questioning on the merits for reviewing an amendment to the BOC Form, but did not take it up during the second sitting. The RAD is unable to correct the errors and substitute its determination because questions must be asked about the record that was before the RPD. The appeals must be referred to the RPD for re-determination. Country of reference
- [23] According to the BOC Form, the principal appellant's father is a citizen of Greece. His birth certificate confirms it. The National Documentation Package (NDP) on Greece was filed. According to the Greek Citizenship Code in the NDP, a child who is born to a father or mother who is a Greek national obtains Greek citizenship at birth.⁷ The RPD ignored this evidence. Given that the country of reference issue against which the risk must be assessed is a fundamental legal requirement, it is a significant error that requires the RPD to identify it on its own initiative. This issue must be addressed by the RPD.

CONCLUSION

[24] The appeal is allowed. Under subsection 111(1) of the IRPA, the RAD refers the matter to a differently constituted panel of the RPD.

[25] The RAD asks the RPD to determine whether the appellants are citizens of Greece. (signed) "H. Shepherd" H. Shepherd January 6, 2020 Date 1 Refugee Appeal Division Rules (SOR/2012-257). 2 Exhibit P-2, the appellant's record, p. 21, para. 28. 3 Ibid., para. 29. 4 Ibid., para. 30. 5 Ibid., para. 31. 6 Ibid., paras. 33-34. 7 Exhibit RPD-1, Refugee Protection Division record, Exhibit 5, National Documentation Package on Greece, June 30, 2017, Tab 3.1: Greek Citizenship Code. 2010.

RAD File No. / No de dossier de la SAR : TB9-02812 TB9-02813 RAD.25.02 (April 4, 2019) Disponible en français 6 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (April 4, 2019) Disponible en français

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