

CANADA / JUDGMENT

MB9-14167

COURT

Refugee Appeal Division

DECIDED

3 August 2020

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RAD File No. / No de dossier de la SAR : MB9-14167 Private Proceeding / Huis clos Reasons and Decision - Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX
Personnes en cause Appeal considered / heard at Montréal, QC Appel instruit / entendu à Date of decision August 3, 2020 Date de la décision Panel Me Alain Bissonnette Tribunal Counsel for the persons who are the subject of the appeal Me Meryam Haddad Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION

INTRODUCTION

- [1] Ms XXXX, you are a citizen of Djibouti. You have stated that you were forced by your family to marry a much older man, who raped you daily, and that you left this man without informing anyone, and flew to the United States.¹
- [2] After taking into consideration your profile, your testimony-which it found to be vague, hesitant and evasive-as well as inconsistencies which were not explained to its satisfaction, the Refugee Protection Division (RPD) found that your allegations were not credible and rejected your refugee protection claim.²
- [3] On appeal, you submitted that the RPD had erred in its analysis of your credibility, namely as regards your marriage certificate-in not taking into account all the documentary evidence-and as regards your testimony about your husband, the dowry he paid and the possibility of your consulting agencies working with abused women. You also submitted that, in reading its decision, you could not tell whether the RPD had considered the Chairperson's Guideline 4 in assessing your credibility.³
- [4] After analyzing your case, I have concluded that the RPD did not make the errors you allege it did. In the following paragraphs, I will explain how I arrived at this conclusion. In light of this conclusion, your appeal is dismissed. ANALYSIS OF THE APPEAL
- [5] The role of the Refugee Appeal Division (RAD) is not to carry out a de novo consideration of refugee protection claims, but to decide whether the RPD erred as alleged.⁴ I have conducted an independent analysis of the case in order to arrive at my own conclusions,⁵ namely by listening to the recording of the RPD hearing,⁶ reading the documentary

evidence, and taking into account the Chairperson's Guideline 4.7 I find that the correctness standard of review must be applied.⁸ The probative value to be given to the copy of the marriage certificate

- [6] In your memorandum, you referred to the presumption that sworn testimony is presumed to be truthful unless there is a valid reason to doubt it as well as to Federal Court teachings about hasty decisions as regards witness credibility.⁹ You also argued that the RPD's conclusions regarding the probative value to be given to the sharia marriage certificate and the truth of the facts established therein were not correct.¹⁰
- [7] In its decision, the RPD analyzed the copy of the marriage certificate you submitted into evidence. It noted that the document had not been signed by either you, your husband, or any witnesses. It also stated that the documentary evidence is not conclusive regarding whether the signatures of the spouses and witnesses are required for a marriage certificate to be valid. It then noted that the copy of the marriage certificate submitted into evidence did not seem to be a true copy or an official marriage certificate. Finally, it took into account your difficulties in replying to several of its questions about your husband and the dowry he supposedly paid to your family, and concluded that, on a balance of probabilities, you did not establish that you were married to this violent man.¹¹
- [8] In your memorandum, you criticize the RPD for citing a passage from the documentary evidence concerning the existence of a legal requirement to register a marriage in Djibouti and the possibility of obtaining a true certified copy of a marriage certificate, and for ignoring your testimony as well as another passage from the documentary evidence, which indicates that the lack of a signature on a marriage certificate is a possibility.¹² You also criticize the RPD for concluding that you had difficulty answering its questions about your husband and the dowry he paid to your family; in your view, this difficulty can be chalked up to the fact that you feared your husband, did not speak to him, did not ask him questions, had experienced violence, and were in a vulnerable position.¹³
- [9] With respect, I find your arguments to be unfounded.
- [10] First, it is important to recall that a decision-maker may draw a conclusion about the weight to give a document after assessing its credibility, probative value or both.¹⁴ Moreover, it is open to the RPD not to give evidentiary weight to assessments or reports based on underlying evidence that was found not to be credible.¹⁵ Finally, evidence is not assessed in isolation from the overall claim for refugee protection. When the refugee protection claimant's personal testimony is not credible, it is reasonable for the RPD to have concerns with the credibility of the documentary evidence supporting the claim, and the RPD may grant it minimal weight.¹⁶
- [11] I have consulted the copy of the marriage certificate you submitted to the RPD.¹⁷ I have carefully listened to the questions you were asked about this forced marriage, your departure from Djibouti, and your stay in the United States, as well as to your responses.¹⁸

- [12] According to my own independent analysis, you have not established that, on XXXX XXXX, 2015, you married a man who was rich and involved in the business world. The RPD's analysis of your answers is based on your testimony. In my opinion, the RPD did not err in concluding that your answers were vague and that they did not take into account the information included on the copy of the marriage certificate you yourself submitted into evidence. Moreover, you acknowledged in your memorandum that the copy of the marriage certificate stated that your husband was an employee and not a businessman. Finally, this document contains several errors. In the header, there are errors in the spelling of the French words "Ministère" (Ministry) and "chareé" (sharia). There are other French-language spelling errors in the body of the text, such as: "etablir" (establish), "saint de toute maladie pouvant les compromettre" (free from all disease that could undermine them) and "Cet acte est établi d'un orginal qui sera gardé dans le registre" (this certificate is issued from an original that shall be kept on the record.)
- [13] During the RPD hearing, you were asked why you had not taken steps to obtain a copy of the application you filed for a US B1/B2 multiple-entry visa valid until XXXX XXXX, 2016, which you were granted on XXXX XXXX, 2015.¹⁹ You answered that you had tried everything but could not get your hands on this application, which was not in the papers you brought with you. Asked to specify whether you had contacted the US Embassy in Djibouti in order to obtain a copy of this application, you answered that you had not thought of that.²⁰ This visa application is relevant as regards establishing your status at the time you submitted the application to the US authorities. The same goes for the form that was part of your US asylum claim.²¹
- [14] In your memorandum, you argued that your failure to submit these documents should not undermine your credibility and that a contrary finding is not correct.²² In my opinion, this argument is unfounded. According to case law, failing to file supporting documentation which it is reasonable to expect may have an impact on a claimant's credibility.²³ Rule 11 of the RPD Rules clearly states that the onus is on the claimant to provide documents and other evidence to support the claim. I am of the opinion that, in this situation, it was reasonable to expect you to have made efforts to obtain this US visa application as well as the US asylum claim you allege you submitted.²⁴ You did not do so; according to my own analysis, failure to do so undermines your credibility since, once you were in Canada, nothing prevented you from contacting the US authorities directly to obtain both of these documents.
- [15] I should add that, according to the documentary evidence, marriage in Djibouti is entered into with the consent of the two spouses and the woman's guardian.²⁵ Even if we accept your allegation that you were forced to consent to the marriage by your family in Djibouti, you stated at the RPD hearing that you would seek a divorce, from Canada, now that you had been informed that doing so was possible.²⁶ However, on appeal, you did not submit any documents that would make it possible to establish that you had sought a divorce; this is one more factor that casts doubt on the very existence of this marriage.

- [16] I believe that it is permissible for me to conclude that there are other credibility issues without giving you the opportunity to explain yourself, as your credibility does not constitute a new issue under this appeal.²⁷ Taking into account the Chairperson's Guideline 4
- [17] In your memorandum, you argued that the RPD was required to assess your credibility based on the Chairperson's Guideline 4 and that, in reading its decision, you could not tell whether the RPD had taken this Guideline into account in conducting your credibility assessment.²⁸
- [18] It is important for the RPD, just like for the RAD, to be sensitive and compassionate when hearing refugee protection claims alleging that a woman has been the victim of violence.²⁹ The RPD, just like the RAD, should avoid stereotypes when rendering a decision in such a refugee protection claim.³⁰ That said, these Guidelines cannot be used to rebut conclusions that are reasonable and based on evidence.³¹
- [19] The Chairperson's Guideline 4 specifies that victims of sexual or domestic violence may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome, caused by the rape or battery, and that they require extremely sensitive handling in order to facilitate their testimony.³²
- [20] You stated that you were the victim of repeated rapes at the hands of your husband. However, you did not submit any documents establishing that you were indeed the victim of rape and that you suffered as a result, either physically or psychologically. In any event, during the RPD hearing you did not state that you suffered from psychological issues that limited your ability to testify.
- [21] In its decision, the RPD concluded that the fact that you never consulted agencies whose mission in your country is to help abused women undermined your credibility as regards your allegations of domestic violence. Referring to the Guideline 4, it specified that you did not declare that you decided not to file a complaint against your husband for reasons of religion, means, or convictions. The RPD also concluded that there was no objective evidence supporting your allegations that the agencies that help abused women are obliged to summon their families against their will.³³
- [22] In my opinion, the fact that you never consulted agencies that help abused women in Djibouti may be explained in two completely contrasting ways: either because, as you stated, you were afraid that this information could get out and you would be ostracized by your community-a situation which is described in the Chairperson's Guideline 4;³⁴ or because, as the RPD concluded, you never experienced domestic violence.
- [23] For my part, after reading the documentary evidence, and especially the letter of recommendation you submitted into evidence, I am of the opinion that, if you had indeed been the victim of domestic violence, you would have taken steps to find help. The letter states that, as part of your work as a XXXX with the XXXX XXXX in Djibouti, you interacted

not only with the local population but also with government authorities in Djibouti, non-governmental organizations (NGOs), and intergovernmental organizations.³⁵ In short, even if we take into account the Chairperson's Guideline 4, the fact that you had the necessary knowledge to contact and consult the organizations that could help you as an abused woman and did not do so, undermines the credibility of your allegations. Consequently, I conclude that the RPD did not make the errors you allege it did. The delay in leaving Djibouti

- [24] In its decision, the RPD concluded that your delay in leaving your country was inconsistent with a fear of persecution. In this regard, it concluded that your explanations that you had to give most of your salary to your father and mother even after you were married and your husband had paid them a substantial dowry, were not acceptable.³⁶
- [25] In your memorandum, you argued that you had explained this delay in leaving your country by citing your cultural obligation to support your parents as long as they were living.³⁷
- [26] In my opinion, the RPD did not err in concluding that your delay in leaving your country was inconsistent with a fear of persecution and that your explanations were not acceptable. In your testimony, you stated that you saved up to pay for your plane ticket, and that you gave almost all your salary to your father and mother. You also stated that, with the dowry that your husband paid them, your father and mother changed their lifestyle, seemed happier, and gave money to family members who asked for it-something they had never done before.³⁸ In my opinion, if it is true that your father and mother received a dowry as substantial as you claim and that their lifestyle changed that much, you were no longer obligated to give them almost all your salary and you had a chance to leave Djibouti more quickly.

CONCLUSION

- [27] For these reasons, I confirm the RPD's decision that you are not refugees under section 96 or persons in need of protection under subsection 97(1) of the Immigration and Refugee Protection Act.
- [28] Your appeal is dismissed. (signed) Alain Bissonnette Me Alain Bissonnette August 3, 2020
Date IRB translation Original language: French 1 Your Basis of Claim Form is reproduced on pages 47 to 58 and the documents you submitted into evidence are reproduced on pages 106 to 121 of the digital version of the Refugee Protection Division (RPD) record. 2 RPD reasons and decision, June 10, 2019, pages 5 to 15 of the digital version of the RPD record. 3 Your memorandum, July 18, 2019, pages 20 to 43 of the digital version of the appeal record. 4 *Dahal v. Canada* (Minister of Citizenship and Immigration), No. IMM-330-17, Crampton, December 4, 2017; 2017 FC 1102, paragraphs 30 and 31. *Kanawati v. Canada* (Minister of Citizenship and Immigration), No. IMM-6486-18, Norris, January 3, 2020; 2020 FC 12, paragraphs 23 and 24. 5 *Gomez v. Canada* (Minister of Citizenship and Immigration), No. IMM-2283-19, Pamel, April 9, 2020; 2020 FC 506, paragraphs 48 to 52. 6 Recording of the RPD hearing of May 1, 2019, 00:01 to 02:04:38 (1 second to 2 hours, 4 minutes and 38 seconds). 7

Immigration and Refugee Board (IRB), Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, effective November 13, 1996. 8 Canada (Citizenship and Immigration) v. Huruglica, A-470-14, Gauthier, Webb and Near, March 29, 2016; 2016 FCA 93. 9 Your memorandum, supra endnote 3, paragraphs 2.5 and 2.6. 10 Ibid., paragraph 2.7. 11 RPD reasons and decision, supra endnote 2, paragraphs 8 to 13. 12 Your memorandum, supra endnote 3, paragraph 2.8. 13 Ibid., paragraphs 2.9 to 2.15. 14 Magonza v. Canada (Minister of Citizenship and Immigration), No. IMM-1506-18, Grammond, January 7, 2019; 2019 FC 14, paragraphs 16 to 26. 15 Lawani v. Canada (Minister of Citizenship and Immigration), No. IMM-21-18, Gascon, September 17, 2018; 2018 FC 924, paragraph 24. 16 Ogaulu v. Canada (Minister of Citizenship and Immigration), No. IMM-3862-18, McDonald, April 30, 2019; 2019 FC 547, paragraph 26. 17 This document (P-1) is reproduced on pages 107 to 110 of the digital version of the RPD record. 18 Recording of the hearing, 37:30 to 57:40, 01:08:00 to 01:23:00 and 01:25:30 to 01:36:30. 19 This visa is reproduced on page 94 of the digital version of the RPD record. 20 Recording of the hearing, 09:30 to 18:45. 21 Ibid., 18:45 to 21:00. 22 Your memorandum, supra endnote 3, paragraph 2.39. 23 Mercado v. Canada (Minister of Citizenship and Immigration), No. IMM-4493-09, Gauthier, March 12, 2010; 2010 FC 289, paragraph 32. Kallab v. Canada (Minister of Citizenship and Immigration), No. IMM-5130-17, Annis, May 16, 2019; 2019 FC 706, paragraph 150. 24 With respect to knowing when refugee protection claimants can be asked to provide documents corroborating their claims, a detailed analysis is provided in Luo v. Canada (Minister of Citizenship and Immigration), No. IMM-5059-18, Strickland, June 17, 2019; 2019 FC 823, paragraphs 18 to 22. 25 Research Directorate, IRB, National Documentation Package (NDP) on Djibouti, June 29, 2018, Tab 3.3: Djibouti: Appearance and information found on a sharia marriage certificate (acte charien de mariage), including language used; whether a signature of the spouses and witnesses is required for the document to be valid (2017-April 2018), reproduced on pages 39 to 46 of the digital version of the RPD record. 26 Recording of the hearing, 01:03:10 to 01:05:00. 27 Corvil v. Canada (Minister of Citizenship and Immigration), No. IMM-4055-18, LeBlanc, March 12, 2019; 2019 FC 300, paragraphs 13, 14 and 15. 28 Your memorandum, supra endnote 3, paragraphs 2.16 to 2.38. 29 Odia v. Canada (Minister of Citizenship and Immigration), No. IMM-1180-13, Gagné, July 8, 2014; 2014 FC 663, paragraph 9. Arachchilage v. Canada (Minister of Citizenship and Immigration), No. IMM-1179-18, Gleeson, October 4, 2018; 2018 FC 994, paragraph 29. 30 Velasco Chavarro v. Canada (Minister of Citizenship and Immigration), No. IMM-3453-19, Brown, February 26, 2020; 2020 FC 310, paragraphs 18 to 26. 31 Liang v. Canada (Minister of Citizenship and Immigration), No. IMM-3335-19, Russell, January 23, 2020; 2020 FC 116, paragraph 33. 32 Chairperson's Guideline 4, supra endnote 7, D. Special Problems at Determination Hearings, point 3. 33 RPD reasons and decision, supra endnote 2, paragraphs 14 to 22. 34 Chairperson's Guideline 4, supra note 7, C. Evidentiary Matters, point 2. 35 This letter (P-4) is reproduced on page 119 of the digital version of the RPD record. 36 RPD reasons and decision, supra endnote 2, paragraphs 24 and 25. 37 Your memorandum, supra endnote 3, paragraphs 2.37 and 2.38. 38 Recording of the hearing, 01:08:00 to 01:10:45 and 01:30:00 to 01:33:30.

RAD File No. / No de dossier de la SAR : MB9-14167 RAD.25.02 (April 4, 2019) Disponible en français 9 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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