

CANADA / JUDGMENT

MB8-15979

COURT

Refugee Protection Division

DECIDED

27 February 2020

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RAD File No. / No de dossier de la SAR : MB8-15979

MB8-15980

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX

Personnes en cause

Appeal considered at

Montréal, Quebec

Appel instruit à

Date of decision

February 27, 2020

Date de la décision

Panel

Me Michel Colin

Tribunal

Counsel for the persons who are the subject of the appeal

Stéphanie Valois

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

OVERVIEW

- [1] XXXX XXXX XXXX XXXX (the male appellant) and XXXX XXXX (the female appellant) are citizens of Egypt and Morocco, respectively.
- a. The male appellant is an Egyptian citizen of Nubian ethnicity, discriminated against in that country. He fears the country's authorities, who suspect him of being a liaison officer for the Muslim Brotherhood since his return from Qatar on XXXX XXXX, 2017.
 - b. The associated female appellant is a citizen of Morocco. She fears attackers who stabbed her when she resisted having her purse stolen in 2013, as well as society in general, which holds her in contempt because she married a man of colour and was once a single woman who had spent time in a Gulf country.
 - c. The appellants submit that the Refugee Protection Division (RPD) erred in assessing their credibility. Since perfecting their appeal, they have applied to the Refugee Appeal Division (RAD) to accept new evidence.
 - d. The determinative issue for the RAD is whether there is sufficient credible evidence to conclude that the appellants are Convention refugees or persons in need of protection.
 - e. The RAD denies the application to accept new evidence, dismisses the appeal and confirms the RPD's determination, which is correct.

NEW EVIDENCE IS NOT ACCEPTED

The evidence submitted by the appellants is rejected because it is inadmissible pursuant to rules 29 and 37 of the Refugee Appeal Division Rules

- [2] The appellants did not submit any new evidence with their memorandum. However, since perfecting their record, they have applied to the RAD to accept the following three documents as evidence:
- a. A letter from the male appellant's brother that was sent electronically, undated and unsigned, explaining that initially his father and he did not inform him of the questioning by police in Egypt because they feared that their communications were being monitored. Later, they allegedly informed the male appellant of what occurred, but his father was still afraid to send documents confirming the events. It was not until after the RPD's refusal that he changed his mind.

- b. A letter from the male appellant's father, undated and unsigned, explaining that the police came looking for the male appellant four times and took his brother to the police station to question him.
 - c. A summons, undated and unsigned, bearing an XXXX police stamp, for the male appellant's brother to report to the police station on XXXX, XXXX XXXX, 2018.
- [3] Subrule 29(2) of the Refugee Appeal Division Rules (RAD Rules) states that the application to use documents submitted after the perfecting of the appeal must be made in accordance with rule 37, subrule 4 of which states that an affidavit or statutory declaration must accompany the application.
- [4] Pursuant to subrule 29(4) of the RAD Rules, it is necessary to consider the relevance and probative value of these submitted documents, any new evidence the documents bring to the appeal, and whether the appellants, with reasonable effort, could have provided them with the appeal record.

The affidavit (or statutory declaration) required under subrule 37(4) of the Refugee Appeal Division Rules was not provided

- [5] I would start by stating that the appellants did not submit the affidavit required under subrule 37(4) of the RAD Rules, which raises an initial obstacle to the admissibility of these documents.

I am of the opinion that it is necessary to consider the three documents together

- [6] Before examining the admissibility of these three documents, I am of the opinion that some clarifications are needed. The appellants did not state in their requests for authorization to use these three documents why the documents were not submitted with their memorandum. They state that the reasons are explained in document (a), the letter from the male appellant's brother. However, that document refers to the letter from his father, document (b), and the summons to report to the police station, document (c). Consequently, I deem it necessary to consider these three documents together, as the admissibility of one is sometimes explained in part in the other. I therefore considered the three documents against each of the criteria stated in subrule 29(4) before ruling on admissibility.

The three documents are relevant

- [7] At first glance, the three documents are relevant because their purpose is to establish a fourth incident where the police were looking for the male appellant after his departure. According to the RPD, this was not established in part because of the lack of evidence. Document (a) is especially important as it contains explanations that need to be considered regarding the reasons for which the other two documents were not submitted with the memorandum. Document (c) is a summons to report to the police station addressed to the male claimant's brother. If one believes that that purpose of that summons was to

interrogate him about the male appellant, as alleged in documents (a) and (b), document (c) then becomes relevant evidence of that fourth incident.

The documents have little probative value

- [8] With respect to document (a), it is a text message sent on a mobile telephone application. It is not a [translation] "letter" of which the original was produced. Moreover, this message is not signed by the sender, the male appellant's brother according to the text, and his identity cannot be confirmed otherwise. The telephone numbers of the sender and recipient are not visible. Since it is a text message, it goes without saying that the document does not have a header indicating the sender's contact information, it does not have any stamps or other security features, and the statements in it were not given under oath. Furthermore, the wording is vague and does not give any details as to the dates of the facts presented in it. For these reasons, I consider this document to have very little probative value.
- [9] Document (b) is handwritten. The author, the male appellant's father according to what is written, identifies himself in two sentences, but he did not sign it and his identity could not be otherwise confirmed. The document does not have a header indicating the contact information of its author, it does not have any stamps or other security features, and the statements in it were not given under oath. No evidence was provided of the transmission of this document from Egypt to Canada. Furthermore, the wording is vague and does not give any details as to the dates of the facts presented in it. For these reasons, I consider this document to have very little probative value.
- [10] Document (c), the summons for the male appellant's brother to report to the police station on XXXX, XXXX XXXX, 2018, does have a stamp. Nevertheless, its probative value is lessened by certain other features. It does not have a police header, or an address or telephone number. The document is not signed and the date of issuance is not present. There are no references to a law or penalty in case of a failure to appear. The entire wording was created from personalized word processing, meaning it is not a standard template to which information about the individual being summoned and the date was added. The document ends with [translation] "Sincerely yours." Given the lack of all these features, some of which are typically found in public administration documents around the world, it appears unlikely to me that this is an official document.
- [11] In addition, no evidence was provided of the transmission of this document from Egypt to Canada. For these reasons, I find that this document has little probative value.

These documents bring new evidence to the appeal

- [12] According to documents (a) and (b), the male appellant's brother received a summons to report to the police station on XXXX XXXX, 2018. Document (c) is the actual summons. Although that date precedes the RPD's determination, document (a) indicates that the male appellant's family was afraid to send these documents to him before the RPD's determination. I therefore consider these to be new evidence within the meaning of rule 29.

The appellants failed to demonstrate that, even with reasonable effort, they could not have provided this evidence with the appeal record

- [13] The male appellant's brother states in document (a) that his father was afraid that the family's communications were being monitored by the police and that this caused trouble. It was not until after the RPD's determination that his father agreed to send the documents. This is the only explanation given for the three documents. However, he does not state exactly when after the RPD's determination his father decided to take the risk. Two months passed between the RPD's determination and the perfecting of the appeal. The appellants therefore failed to explain why they were unable to obtain these documents during those two months in order to provide this evidence with the appeal record.
- [14] But there is more. Document (a) does not actually state that the male appellant's brother shared his father's fear with respect to sending this evidence. Therefore, no explanation was given as to why the male appellant's brother could not have provided this evidence with the appeal record. I also note that a letter from this same brother was filed before the RPD in February 2018 under Exhibit P-16. In it he states that he was brought to the police station on XXXX XXXX, 2017, to be questioned about the same matter. No explanation was given as to why the family apparently had reasons to fear that the authorities were monitoring their communications concerning the incident on XXXX XXXX, 2018, when they had sent communications with similar content the month before, enabling the submission of this new evidence prior to the hearing, prior to the RPD's determination and, more to the point for the purposes of applying rule 29, with the appeal memorandum.

The three documents are inadmissible

- [15] I am of the opinion that the lack of probative value and the failure to properly explain why this evidence could not have been submitted with the memorandum greatly outweigh the considerations that it is relevant and constitutes new evidence in the sense that its purpose is to establish a fourth interrogation by the police, which the male appellant was unaware of before the RPD's determination.
- [16] For these reasons, I find that none of these documents meet the requirements of rule 29, especially since the affidavit required under subrule 34(7) was not provided. These documents are inadmissible, and I do not need to examine their admissibility under subsection 110(4) of the Immigration and Refugee Protection Act (IRPA) and Singh.¹

ANALYSIS

[17] Contrary to what the appellants claim in their memorandum, the RAD does not have the jurisdiction to hear appeals de novo. Subsection 110(6) of the IRPA limits the RAD's capacity to hold a hearing, as well as the scope of hearings. As I did not identify any new admissible evidence, I cannot hold a hearing, pursuant to that subsection.

[18] My role is to examine all the evidence and establish whether the RPD made the correct determination.² After completing an independent assessment of all the evidence, including the records of the RPD and RAD, as well as listening to the audio recording of the RPD hearings and considering the Chairperson's Guidelines,³ I am of the opinion that the RPD's determination is correct.

The Refugee Protection Division did not err in drawing a negative inference regarding the male appellant's credibility based on his failure to indicate on his point of entry form that he is being sought by the authorities

[19] The male appellant stated that he fears returning to Egypt because the authorities arrested and questioned him on XXXX XXXX, 2017, and two days later (or as of XXXX XXXX, 2017, according to the version accepted between the testimony and the BOC Form) he knew they were looking for him because they suspect him of being a liaison officer for the Muslim Brotherhood. The RPD confronted the male appellant about the fact that he had failed to state on his immigration forms that he is being sought by the authorities.

[20] At the hearing, the male appellant replied that these contradictions occurred because he was stressed about crossing the border illegally with his spouse.

[21] On appeal, the appellants stated [translation] "[h]owever, there is no official or documented search warrant. The question was therefore not clearly understood by the male appellant, and he did not provide this information. Moreover, the male appellant was not questioned upon admissibility of his record and was unable to provide detailed explanations as to the reasons for his fear. His entire account in the BOC Form, which was submitted a few days later, is clear and detailed. The question is often very misunderstood by refugee protection claimants who do not know whether it refers to a criminal record or a documented search (arrest warrant). We submit that the panel should have given him the benefit of the doubt regarding this omission. In this case, we submit that the panel erroneously attached inordinate importance to this matter."

[22] I agree with the RPD that the stress of illegally crossing the border is not sufficient to explain this omission, for several reasons. First, as the RPD explained in its determination, the forms in question were completed two weeks after they had crossed the border under that stress. Second, this is the very heart of the refugee protection claim. The RPD had reason to expect that it would be mentioned as early as possible, not in the BOC Form five weeks after their arrival in Canada.

- [23] I would add that the fact that there was no arrest warrant for the appellant and that he was not questioned by an immigration officer about the reasons for his fear in no way diminishes the obligation to truthfully respond to the questions in the forms, especially when it comes to being sought by the authorities, a central element of the refugee protection claim.
- [24] The statement that refugee protection claimants do not understand that this question requires a response even in cases where there is no criminal charge is of little relevance in this case given that support for an organization such as the Muslim Brotherhood is criminal in nature.
- [25] The appellants had these forms for two weeks. They are both university educated. Looking at the last page of the forms, it is clear that they signed them, indicating that the information was complete and accurate. The forms do not contain a statement from an interpreter, which leads me to conclude that the male appellant understood English well enough to understand the questions and respond accordingly. The benefit of the doubt can be given only where appellants are generally credible, which is not the case here.
- [26] I disagree with the statement that the RPD attached inordinate importance to this matter because it is just one relevant fact among a multitude of other relevant reasons that the RPD considered in order to conclude that these facts were not credibly established.
- [27] This omission undermines the credibility of the male appellant's allegation that he is being sought by the Egyptian authorities.

The Refugee Protection Division did not err in drawing a negative inference with respect to the male appellant's credibility because of adjustments to his testimony when explaining why he would be arrested and tortured

- [28] The RPD states in its determination that, although he mentioned at the start of the hearing that he had been questioned about whether he had ties to the Muslim Brotherhood, the male appellant initially testified repeatedly that it was because of his ethnicity that he feared he would be arrested. It was only after repeatedly revisiting this answer that the appellant finally adjusted his testimony to state that he would be arrested because Nubians are regarded as having ties to the Muslim Brotherhood.
- [29] The appellants submit that [translation] ". . . from the start of the hearing, the male appellant stated that he feared the Egyptian police and security services for two reasons, namely, because of his work in Qatar and because of his Nubian minority status."
- [30] In my opinion, it is worthwhile here to refer to the transcript. On page 15, the male appellant's testimony does state that it is because of his ethnicity that the male appellant claims he would be arrested. The RPD goes on to ask why he would be imprisoned because he is Nubian, and it does so repeatedly. The male appellant replies that it is because the authorities are racist. He later expands on the fact that the authorities refuse to accept that a Nubian has risen to leadership positions in Qatar. It is not until after a break that the RPD

suggests in its question the second reason, namely, that he is suspected of having ties to the Muslim Brotherhood, that the male appellant testifies that Nubians are suspected of having ties to that group. The male appellant's insistence on ethnicity alone and jealousy on so many occasions, combined with the lack of spontaneity regarding the suspicion of ties to the Muslim Brotherhood, point to the conclusion that he adjusted his testimony.

- [31] But it is important to note that the RPD did not conclude in its determination that the male appellant adjusted his testimony merely because of the delay in testifying about his fear based on the fact that he is suspected of having ties to the Muslim Brotherhood. It refers to additional adjustments to the testimony before concluding. It explains that, when asked to state whether he knew of any cases where Nubians were suspected of having ties to the Muslim Brotherhood, the male appellant referred to a group of incarcerated individuals, one of whom allegedly died in prison. Initially, he stated that they had been imprisoned for singing songs with lyrics referring to Nuba migration. When the RPD asked about the connection between these imprisonments and the suspicion of ties between these people and the Muslim Brotherhood, the male appellant adjusted his testimony to state that they were not musicians, and ended up adjusting his testimony again to state that these musicians were suspected of sending money to the Muslim Brotherhood.
- [32] The RPD correctly found that all these adjustments to the male appellant's testimony undermine his credibility.
- [33] It must also be noted that the RPD did not state at this stage that the male appellant never alleged that he feared being accused of having ties to the Muslim Brotherhood or that his brother referred to this in his affidavit. It was the adjustments to his testimony when this question was addressed that undermined his credibility.
- [34] The appellants state at the end of their memorandum that the RPD analyzed the evidence based on peripheral elements. I therefore want to specify that the adjustments to the testimony as the panel tried to get clarification on the motives of the agents of persecution are relevant because the RPD has an obligation to consider all grounds in analyzing a refugee protection claim.

The Refugee Protection Division correctly concluded that the changes made to the account to state that it was not the male appellant, but rather one of his friends, who collected his passport undermines his credibility

- [35] The appellants' initial BOC Form stated [translation] "I found out from the officer himself that I was being investigated." They did not bother to correct this phrase in a subsequent amendment. It was not until later that the appellants changed this phrase to [translation] "[h]e found out . . ." but failed to indicate to whom "[h]e" referred.

- [36] At the hearing, the male appellant testified that he was not the one who went to get his passport. He sent one of his friends, who is a driver and has contacts at the airport, to get it. The male appellant himself was not there. It was therefore that friend who was informed by an officer that the male appellant was under investigation on suspicion of ties to the Muslim Brotherhood.
- [37] The male appellant initially explained that he had made this error in the first account because he was advised to be brief, but when he was preparing for his hearing with his counsel the error was pointed out.
- [38] I would start by specifying that the analysis of this issue is not [translation] "microscopic" despite appearances. Since the male appellant claims that changing the word [translation] "I" to "[h]e", without giving other details, is sufficient to modify an entire series of facts, it is necessary to examine whether this is indeed the case.
- [39] The RPD reasonably found that the explanation was not credible because the male appellant had stated that the facts in the first version of the BOC Form were true, complete and accurate, he had taken the time to submit a second version in which the error was not corrected, and it was not until later that he changed the word "I" to "[h]e" without giving details about the individual in question and without specifying that he was not there.
- [40] Despite all the amendments, I note that the final version of the account still indicates that it was at that time that the male appellant found out an investigation was under way to determine whether he had ties to the Muslim Brotherhood; however, according to his testimony, this interaction revealed only that there was an investigation and it was not until later, when his brother was approached, that he found out the investigation concerned his ties to the Muslim Brotherhood.
- [41] On appeal, the appellants submitted that this was an error made by the interpreter who helped prepare the forms. They added that the letter from the driver in question confirms the male appellant's testimony. However, I note that this submission contradicts the male appellant's testimony at the hearing, where he stated that he was the one who made this error in trying to be brief. This explanation is also not satisfactory for the following reasons: the claim that an error of such significance was committed and then not detected during the review for the purpose of making amendments, combined with the failure to provide more details about this friend when the amendment was made, and the ongoing contradiction as to the extent of what this friend learned (that there was an investigation versus that there was an investigation specifically pertaining to the ties to the Muslim Brotherhood); and, finally, the male appellant's failure to mention this interpretation error during his testimony. The late letter from this friend, who confirms the interaction with an officer at the airport, does not have enough probative value to offset all these errors.

- [42] Once again, I am of the opinion that the issue as to whether the male appellant went back to see the police authorities and how he learned that he was being sought, as well as the reasons he was being sought, are not peripheral matters.

The conduct of the Refugee Protection Division was correct and in no way reflects a breach of procedural fairness

- [43] In a section of the memorandum entitled [translation] "other considerations," the appellants refer to the RPD's "particularly inquisitive" conduct and its "attitude" at the start of the second day of hearing. It is unclear if they are attempting to claim that there was a breach of procedural fairness by demonstrating an appearance of bias or partiality.
- [44] With respect to this [translation] "particularly inquisitive" conduct, they state that the RPD carried out "extensive" questioning on the term "brother" used by the male appellant, when it was clear that this referred to the "Muslim Brotherhood." I am of the opinion that the RPD conducted itself appropriately in this regard. The term [translation] "brother" can cause uncertainty. It sometimes refers to siblings, and other times to peers who have a common vision or belief system. The RPD had an obligation to ask questions to ensure it clearly understood, which the RPD did correctly.
- [45] With respect to this [translation] "attitude" at the start of the second hearing day, the RPD conducted itself entirely appropriately. It ensured that it had as many details as possible from the appellants and from reception staff to understand the reasons for counsel's absence. As the facts were communicated to it, it shared them with the appellants and explained all the possible consequences, including the possibility of holding a special hearing. It chose not to rely on the message from reception that counsel had no objection to the abandonment, preferring instead to acknowledge the diligence of the appellants, which proved to be a wise and fair decision. It insisted on detailing to counsel everything that had happened, despite several interruptions, to ensure maximum transparency before getting explanations. It did not hear any evidence in counsel's absence and proceeded diligently as soon as counsel arrived so as not to penalize appellants who wanted to avoid postponements at all costs.
- [46] I carefully listened to the recordings of the three days of hearing in order to identify, where applicable, any breach of procedural fairness or other conduct that may have impaired the ability of the appellants to fully participate in the submission of their refugee protection claims. I did not identify any breaches made by the RPD.

Accumulation of discrimination correctly considered

- [47] The appellants also submit that the RPD failed to consider the accumulation of discrimination in examining the prospective fear, by failing to take into account the documentary evidence pertaining to the difficulties that Nubians face in Egypt. They do not specify which documents were ignored.

- [48] In order for discrimination against a person to amount to persecution, it must be serious and occur repeatedly, and it must have adverse consequences for the individual, for example, when an individual is denied a fundamental right such as the right to practise religion or earn a living. However, the appellants did not discharge the burden of proving that they or others in similar circumstances face discrimination with such consequences. For example, they did not allege that members of the male appellant's family still in Egypt face significant problems in attending school or work because of their ethnicity, with the exception of racist comments by other Egyptians.
- [49] I am of the opinion that the RPD correctly considered this matter, at paragraphs 33 et seq. of the decision. It considered the documentary evidence pertaining to the expulsion of Nubians from their lands, but correctly stated that the male appellant did not sufficiently explain or demonstrate what lands, properties or other specific claims he may have against the Egyptian government on his own, as opposed to the previous expulsion of certain members of his family who were not adequately compensated several years ago.
- [50] It correctly considered that the male appellant failed to demonstrate that he has a profile as an activist or protester for Nubian or other causes, similar to other Nubians who have experienced the discrimination amounting to persecution referred to in the documentary evidence. It stated that the male appellant did not indicate that he intended to join such movements in the future. It also stated that there is no information showing that ordinary Egyptian citizens have had serious difficulties with the Egyptian authorities on returning to Egypt simply because they travelled or worked in Qatar.
- [51] It correctly concluded that the way he was treated while being questioned at the airport did not reach the level of persecution and, in the section on credibility, it correctly addressed the credibility of the allegations relating to the perception that he or Nubians in general have ties to the Muslim Brotherhood.
- [52] I reviewed the documents in evidence, including the National Documentation Package (NDP). Some refer to the history of serious discrimination and persecution experienced by Nubians from 1912 to 1964. I did not find any documents supporting that Nubians are being persecuted or facing cumulative discrimination amounting to persecution today, unless they are activists or they are protesting for the return of their family lands. However, the male appellant never stated that he participated in such protests or had any intention of doing so in the future.
- [53] I would add that the male appellant has lived outside his country since 2003. He always had temporary statuses in Sudan and Qatar. He travelled numerous times to the United States, United Kingdom, and even Japan. He did not claim refugee protection in those countries based on an accumulation of discrimination and he even went back occasionally to visit Egypt. Having lost all his temporary statuses, he chose to return to Egypt even though he had a valid visa for the United States. He left his children there. I am of the opinion that these actions are not consistent with a fear of persecution, whether relating to an

accumulation of discrimination or otherwise.

The female appellant's credibility

- [54] The appellants submit that [translation] "[t]he panel recognizes that she was assaulted in 2013, but accuses her of not reporting the 2017 assault before filing an amendment. The panel does not accept her explanation because she disclosed the incident to other people, including her father."
- [55] Before going any further, I am of the opinion that a brief summary of the testimony and the RPD's determination is necessary. The explanation given by the female appellant at the hearing for failing to mention the 2017 attack in her initial BOC Form is that she did not want her husband to know that someone had touched her face and pulled her hair, which constitutes a sexual assault. She explained that it is shameful for a husband not to be able to protect his spouse from sexual assault, and she feared that he would seek vengeance, which could have made the situation worse. She intended to disclose the facts once she was before the panel. However, an interpreter informed her that it was important to put it in writing. So she decided to write an addition in French, a language that her husband does not know.
- [56] After stating that the female appellant completed postsecondary studies, living outside the family home before her marriage, and that the initial BOC Form had also been written by her in French without the help of an interpreter, the RPD stated in its determination that it considers this explanation to be insufficient because she does not explain anywhere why, once she came to Canada, where vengeance was no longer a concern, she failed to include it in her initial BOC Form. It goes to state that, although the Chairperson's Guidelines⁴ provide that women may be slow to disclose a sexual assault because of the shame they feel, even more so in certain cultures, shame did not stop the female appellant from notifying the police and her father of the assault on the very day it occurred, which leads to the conclusion that the female appellant did not establish that cultural shame was a barrier for her in disclosing the facts to her husband once they arrived in Canada.
- [57] I am of the opinion that the female appellant did not explain how shame stopped her from disclosing these allegations when preparing the initial version of the BOC Form, when she states that at the time she had already planned to disclose them at the hearing in front of her husband, which would have enabled her to abide by the commitment made under her signature to state that all the facts in the form were true, accurate and complete. For this reason, I am of the opinion that the finding that this omission undermines the female appellant's credibility is correct.

- [58] The appellants then add in the memorandum, [translation] "[h]owever, the female appellant was questioned at length about this incident, and her testimony was found to be credible. Moreover, she was able to corroborate this testimony with documentary evidence. We submit that the failure to disclose this incident at the outset can certainly be a consideration, but it is not sufficient to reject the truthfulness of the testimony on this matter."
- [59] I therefore consider that the subject of the appeal in this case is not that there is an error in what was written by the RPD, but rather an argument that it failed to consider all the evidence.
- [60] I would start by stating that I disagree with the claim that the female appellant was questioned at length about this incident. The bulk of the testimony concerned the 2013 attack and the reasons for which the female appellant did not disclose this 2017 attack in her initial form, rather than the incident itself.
- [61] With respect to the claim that the testimony was corroborated by documentary evidence, I am of the opinion that this is not the case. All the documents submitted as evidence from Morocco corroborate the 2013 incident, which the RPD believed, not the 2017 incident. A message from the female appellant's mother produced as evidence does not refer to this incident, and the other documents are essentially identity documents and proof of education and employment as a flight attendant.
- [62] The RPD is presumed to have considered all the evidence. Furthermore, it refers to this testimony in detail in its determination. The appellants therefore did not establish that the RPD failed to consider all the evidence regarding this 2017 incident. The RPD correctly concluded that the omission of these facts in the initial version of the BOC Form is an omission that undermines the appellants' credibility.
- [63] I would add that the omission of the only facts that establish the existence of a real fear regarding one of the agents of persecution is a major omission. The RPD's conclusion is therefore correct.
- [64] The appellants also submit that the failure to state in the amended BOC Form that the police had accused her of having an adventure with her attacker, deemed relevant by the RPD, is peripheral information. I find that the RPD did not err in considering these facts and that the determination is correct in this regard.
- [65] The failure by the police to give serious consideration to a complaint from the time it is filed is a relevant consideration that is part of a set of issues to be considered in relation to state protection. It is also a fact that is part of a set of issues to be examined in determining, for example, whether the delay in leaving a place is inconsistent with the alleged fear.

- [66] The appellants also submit that the RPD, without explanation, rejected the female appellant's testimony relating to the fact that she is a woman, she comes from a Gulf country, and her children are of mixed race.
- [67] I am of the opinion that the RPD clearly and correctly addressed most of these issues in paragraphs 43 to 53 of its determination. The appellants do not specify how these analyses are erroneous or lack explanation.
- [68] I note that the RPD addressed the allegation made by the female appellant at the hearing, supported by Exhibit P-24, that Moroccan women cannot transfer citizenship to their children. The RPD states that the document submitted as Exhibit P-24 has little probative value and that this information from an article found on the Internet from 2001 is erroneous in light of the response to information request in the tab of the NDP5 (from 2011) submitted as evidence. Upon examining the evidence, I have made the same conclusion.
- [69] I would add that the RPD had reason to assign more probative value to the NDP given that the information in it is based on more reliable sources than Exhibit P-24 because it is based on legislation.
- [70] The RPD then addresses the document filed as Exhibit 10 indicating that 70% of Moroccan woman who go to stay in the Gulf are regarded as prostitutes. The RPD notes that the sources of this information are unknown. More important, in my opinion, it notes that the article does not mention discrimination against or persecution of women in Morocco by the Moroccan population based on the fact that they have spent time in Gulf countries. I note that this is indeed the case, although the document states that people who go to Morocco to engage in sex tourism regard Moroccan women as such, without expressly stating that they are persecuted. The RPD adds that the documents in the NDP do not state that Moroccan woman who have stayed in Gulf countries face discrimination or persecution. I did not find any documents that indicate otherwise. I do not note any errors in this analysis.
- [71] The RPD continues with the documents pertaining to the persecution of women, correctly stating that these documents refer in particular to problems relating to family violence, which is not the case for the female appellant. I do not note any errors here.
- [72] It then reiterates that it did not find credible the allegation regarding the 2017 attack before concluding that the female appellant failed to demonstrate that there is a serious possibility that she would be persecuted on a Convention ground, for example, the fact that she is a woman or is married to a foreigner. I consider this analysis to be correct and not based on secondary evidence.
- [73] Despite the foregoing, I am of the opinion that the appellants have reason to submit that the RPD did not fully address the allegations that the female appellant faced discrimination because she was treated like a prostitute and has children of mixed race. This error is not fatal in that it is possible for me to analyze it in light of the allegations and the evidence.

- [74] I consider that such statements, though very unfortunate, are not sufficient to establish a reasonable possibility of persecution. For cumulative discrimination to be considered persecution, the appellants had the burden of establishing that such discrimination had adverse consequences for the individual, for example, when an individual is denied a fundamental right such as the right to practise religion or earn a living.
- [75] Simply stating in the memorandum of appeal that this discrimination [translation] "can" affect the search for housing or employment is insufficient to establish a well-founded fear of persecution on the basis of discrimination. The appellants have the burden of proving more than a mere possibility of persecution. The fact that people insult and denigrate them in the street does not amount to stopping them from earning a living. The burden of proof lies with the appellants and they did not refer to any documents indicating that women married to foreigners, or women who have children of mixed race, have a hard time earning a living. I also did not note any such documents in the evidence.
- [76] However, although the documentary evidence focuses mainly on domestic violence, it does include figures on employment rates and education levels of Moroccans, figures that I must consider as they may provide clues as to discrimination against women in general.
- [77] According to the documentary evidence, the unemployment rate for women in Morocco is available only for those 15 to 24 years of age,⁶ namely, 19.1% for women and 20.3% for men. Discrimination against women in this age group is therefore insignificant. The overall unemployment rate (all ages and genders combined) in the country is 9.9%.
- [78] It is stated that only 58.8% of women are educated and that the education level is now at 12 years of education for women versus 13 years for men. However, the female appellant is university educated. After obtaining her Bachelor of XXXX, she completed XXXX XXXX training during which she worked in customer service for two years for an XXXX company at the XXXX in Morocco. That company kept her on staff as a XXXX XXXX for the subsequent three years without significant interruption, until she left Qatar in 2017. She is most proficient in Arabic, but also proficient enough in French to write her account, and has some knowledge of English. She seems to me to be much more employable than other women and men in her country.
- [79] The ability to afford safe housing is generally related to the ability to obtain gainful employment. I did not note any evidence suggesting that housing is denied to women who are married to foreigners or those who have children of mixed race.
- [80] In these circumstances, I consider that the testimonial and documentary evidence is insufficient to conclude that there is a serious possibility that she would face cumulative discrimination amounting to persecution.

The appellants are not credible and the other issues are not determinative

- [81] I find that all the credibility problems, particularly the contradictions and omissions, are sufficient to rebut the presumption of the truthfulness of testimony and conclude that they are generally not credible.
- [82] In these circumstances, I am of the opinion that it is not necessary to examine the issues related to the internal flight alternative.
- [83] The appellants failed to demonstrate a serious possibility of persecution or that, on a balance of probabilities, they would be personally subjected to a threat to their lives or to a risk of cruel and unusual treatment or punishment.

CONCLUSION

- [84] I dismiss the appeal and confirm the determination of the RPD that the appellants are not Convention refugees or persons in need of protection.

(s) Michel Colin

Me Michel Colin

February 27, 2020

Date

IRB translation

Original language: French

1 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385.

2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145.

3 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution.

4 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution.

5 Refugee Protection Division (RPD) Record: Document 3.2, National Documentation Package (NDP), Morocco, May 31, 2017, Tab 3.2: The current Moroccan citizenship regime. Country Report: Morocco. European University Institute. EUDO Citizenship. Delphine Perrin. October 2011, p. 3, also in the most recent NDP on Morocco.

6 RPD Record: Document 3.2, National Documentation Package, Morocco, May 31, 2017, Tab 1.3, The World Factbook.

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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 (January 2020)

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