

CANADA / JUDGMENT

TB3-09544

COURT

Refugee Protection Division

DECIDED

4 February 2020

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RPD File No. / N° de dossier de la SPR : TB3-09544 Private Proceeding / Huis clos Reasons and Decision ? Motifs et Décision Claimant(s) XXXX XXXX XXXX (A.K.A. XXXX XXXX) (A.K.A. XXXX XXXX) (A.K.A. XXXX XXXX XXXX) Demandeur(e)(s) d'asile Date(s) of Hearing February 7, 2019 December 3, 2019 Date(s) de l'audience Place of Hearing Toronto, Ontario Lieu de l'audience Date of Decision February 4, 2020 Date de la décision and reasons et des motifs Panel K. Khamsi Tribunal Counsel for the Claimant(s) Howard P. Eisenberg Conseil(s) du (de la/des) demandeur(e)(s) d'asile Designated Representative(s) N/A Représentant(e)(s) désigné(e)(s) Counsel for the Minister Curtis Barry Conseil du (de la) ministre REASONS FOR DECISION

- [1] This is the decision regarding an application filed by the Minister of Public safety under section 109 of the Immigration and Refugee Protection Act (IRPA)¹ to vacate and nullify the Convention refugee status conferred in the refugee protection claim of the respondent, XXXX XXXX XXXX (A.K.A. XXXX XXXX), (A.K.A. XXXX XXXX), (A.K.A. XXXX XXXX XXXX), on November 12, 2003.

DETERMINATION

- [2] After considering the evidence, the panel grants the Minister's application under section 109 of the IRPA. The panel determines that the decision of the Refugee Protection Division on November 12, 2003, conferring refugee protection to the respondent is nullified.

BACKGROUND

- [3] The Respondent's Personal Information Form (PIF) narrative² states that his name is XXXX XXXX, that he was born in Sudan on XXXX XXXX, 1975, and that he resided in Sudan until his escape to Canada on XXXX XXXX, 2003 where he claimed refugee protection. His refugee protection was granted by the RPD on November 12, 2003.
- [4] The Minister submits that the then claimant misrepresented his true identity and asylum status in the United States. That in fact a comparison of fingerprints concluded that he was the same person as XXXX XXXX, a resident of the United State who was conferred Asylum in 2001.

- [5] The respondent asserts that XXXX XXXX is his brother and that the evidence provided by the Minister is flawed.

ANALYSIS

- [6] Section 109 of the Immigration and Refugee Protection Act states that:

- (1) The Refugee Protection Division may, on an application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.
 - (2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.
 - (3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified. Minister's Application
- [7] In the Notice of Application to Vacate dated December 3, 2013³, the Minister alleges that the respondent obtained refugee status in Canada by misrepresentation, by concealment of material facts, particularly regarding his identity and his immigration status in the United States.
- [8] The Minister provided additional documents to its application to vacate on March 12, 2019⁴.
- [9] On November 6, 2003 the respondent XXXX XXXX was found to be a Convention Refugee by the Immigration and Refugee Board's Refugee Protection Division.
- [10] The Minister's application indicates that the respondent misrepresented his identity and USA Refugee Protection status. The Minister has provided evidence in Exhibit 2,9,10,11,13,14,18 that shows that the result from a fingerprint comparison between XXXX XXXX and XXXX XXXX XXXX concluded that the respondent XXXX XXXX and XXXX XXXX XXXX resident of the United States are "one and the same person".
- [11] The Minister provided additional facts showing that both XXXX XXXX and XXXX XXXX XXXX list XXXX XXXX as their spouse; evidence that XXXX XXXX XXXX was caught using XXXX identity; travel history for the respondent while using both identities; omissions on the respondent's PIF and PR applications of an alleged brother named XXXX.
- [12] Furthermore, the Minister submits that the claimant was living under both identities after evidence was found in a package sent in XXXX 2010 by the respondent's spouse XXXX XXXX to an associate in Edmonton. The package contained documents addressed to XXXX XXXX including USA refugee travel documents and other ID issued to XXXX XXXX with the instruction from the respondent's spouse to forward them to "my husband".

- [13] Further the respondent was caught in XXXX 2011 by USA Custom Border Patrol traveling as XXXX XXXX to the USA and carrying XXXX XXXX PR card in his shoe and other incriminating evidence.
- [14] The Minister further submits that when the claimant returned to Canada on XXXX XXXX 2019, he was only in possession of a Sudanese passport containing no visas, and that he provided unreliable information regarding his PR card. The respondent
- [15] The respondent rejects the allegation made by the Minister that he is the same person as XXXX XXXX and that he concealed the fact that he had previously obtained refugee status in the US in 2001. The respondent submits that XXXX XXXX is in fact his brother.
- [16] The respondent submits that the Minister did not meet his burden of proof and that the evidence presented by the Minister is insufficient to support the allegation that the respondent XXXX XXXX and XXXX XXXX are the same person and not brothers.
- [17] The respondent submits that the fingerprint evidence is problematic and suggests that there may have been a mix up and that the 2 sets of fingerprints both belong to the respondent XXXX XXXX.
- [18] The respondent submitted further evidence that he was in Canada at the time material to this application. The respondent submitted an airport booking, and medical evidence (ex 19). He also submitted biodata pages of passports of both XXXX XXXX and XXXX XXXX XXXX containing different nationality numbers, evidence that the respondent was in Canada, as well as other supporting evidence listed in par. 14-23 of counsel's post hearing submissions which were duly considered by the panel. Considerations
- [19] The panel is aware that the consequences of a vacation application are very serious. The panel took into consideration and carefully and deeply analysed all the evidence submitted in this case, including the oral testimony of all the parties and the witness. The panel instructed both the Minister's counsel and counsel for the claimant to provide further evidence to clarify the identity issue of the respondent
- [20] Based on the material in the Minister's application and supporting disclosure⁵ which include a biometric match and further evidence, the panel is satisfied on the balance of probabilities that the Minister has proven its case and that the evidence provided by the Minister reveal on the balance of probabilities that the respondent XXXX XXXX and XXXX XXXX are one and the same person.
- [21] The panel reviewed thoroughly the evidence provided by the respondent. The evidence provided by the respondent is not enough to clarify and rebut the evidence put forth by the Minister with regard to the identity of the respondent. Based on the evidence, I am not satisfied on the balance of probabilities that XXXX and XXXX are two different persons.

- [22] I have looked at the other evidence and I have the following concerns: * The respondent and his alleged brother have the same first name, which in itself is concerning, and the explanation with regard to his maternal uncle provided by the respondent was not satisfactory; * The respondent listed six siblings in his PIF. They all have the same last name XXXX, and the explanation as to why XXXX XXXX would be the only sibling with a different last name was not satisfactory; * The respondent did not list a sibling called XXXX XXXX in his PIF and the explanation that he was told to only list the name of relatives who don't have status because they can apply for family reunion is not satisfactory as he has listed a brother XXXX XXXX who already obtained asylum in the USA; * The respondent listed in his CIC Niagara Falls Refugee intake Form (ex 1) in page 3 a mother and 3 brothers and 3 sisters as his family outside Canada, omitting one alleged sibling XXXX XXXX. * The respondent XXXX XXXX was not called as a witness in his alleged brother's US legal proceedings; * Both alleged brothers listed XXXX XXXX as their spouse; * Possession of identity documents and information pertaining to both identities.
- [23] I have reviewed the rest of the evidence as indicated by counsel in his submission and I am not persuaded on the balance of probabilities that they are sufficient to rebut the Minister's assertion and evidence * The respondent's passport of the respondent or his alleged brother was found to have been altered; * The passport used by the respondent to enter Canada recently contains no visas and no PR card was presented. It also contains some contradictory information such as the place of birth of the respondent who listed in his refugee application that he was born in Karma, and his recent passport shows Bergeeg; * As pointed out by the Minister, the medical evidence submitted to show that the respondent was in Canada at times material to the application contains contradictory information and seems to have been altered; therefore, I cannot rely on it, and this casts a doubt on all the evidence provided by the respondent to show that he was residing in Canada.
- [24] Based on the evidence the panel finds that the respondent's identity and status in the USA were concealed from the original RPD panel. Because of that, the panel is also satisfied that there was no other sufficient evidence that was before the original RPD panel that would have been sufficient to justify refugee protection.
- [25] Therefore, the panel finds that, on a balance of probabilities, the respondent's Convention refugee decision was obtained as the result of misrepresentation and the withholding of material facts relating to a relevant matter and that there was no other sufficient evidence before the original panel of the RPD that would have been sufficient to justify refugee protection.

CONCLUSION

- [26] The panel grants the Minister's application to vacate the respondent's status as a Convention refugee, pursuant to section 109 of the IRPA, and his claim is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified. (signed) "K. Khamssi" K. Khamssi "February 4, 2020" Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27,

as amended. 2 Exhibit 1, Claim for Refugee Protection in Canada. 3 Exhibit 2, The Minister's application to vacate and supporting disclosure. 4 Exhibit 14, Addition to the Minister's Vacation application and supporting disclosure. 5 Ibid.

RPD File No. / N° de dossier de la SPR : TB3-09544 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.29.1 (December 15, 2012) RPD File No. / N° de dossier
de la SPR : TB3-09544

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