

Federal Court



Cour fédérale

**Date: 20150327**

**Docket: IMM-5928-14**

**Citation: 2015 FC 395**

**Ottawa, Ontario, March 27, 2015**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**BUNYIM YI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] wherein it concluded that the applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 or 97 of IRPA.

I. Facts

[2] The applicant is a citizen of the Kingdom of Cambodia who alleges fear of persecution because of his work as an activist for Cambodia Global Fund in Cambodia. He also alleges a fear of persecution if returned due to his activism in Canada that would make him a refugee *sur place*.

[3] The applicant indicates that he was assistant director of the Cambodia Global Fund from 2007 to 2011. His work included training people in the community on matters such as human rights, corruption and exploitation.

[4] He alleges the following facts in support of his claim.

[5] In mid-June 2008, two police officers came to stop a training session he was giving to a group of orphans and others in Kandal Province, and beat him. His director allowed him to take a break during which he went into hiding for three weeks.

[6] In July 2009, after he ignored warnings to cease a human rights training program that he was giving to children in Kompong Chhnang Province, three policemen stopped his motorbike one evening and hit him on the forehead with a gun, knocking him unconscious.

[7] In September 2009, following his attendance at a public forum, a pickup truck known to belong to the Prime Minister's bodyguard unit hit him while he was on his motorbike. He flew

off his motorbike, was knocked unconscious, and woke up at his friend's house. His motorbike was crushed and he could not use his left hand for approximately three months.

[8] After this event, his director allowed him to take another break, which lasted two and a half months, during which time he stayed with a friend in Kompong Chhnang Province.

[9] The key event which the applicant alleged caused him to fear for his life and decide to flee Cambodia occurred in April 2011 when two men under the authority of the Chief of Security of the Prime Minister went to his parents' home in his village each day for three days and threatened to burn down the home and kill the applicant. He states that it was after these threats that he realized the seriousness of the danger he was facing and tried to find a way to get out of Cambodia.

[10] He applied for a visa to attend a training program in Ontario and went to Bangkok in July 2011 to pick it up. He returned to Cambodia with his Canadian visa and left for Canada on August 21, 2011, arriving the next day and making a claim for refugee protection a month later.

[11] He claims that he has continued with his activism activities in Canada, and provides details and documentation thereof.

[12] He states that since he left Cambodia, people from the bodyguard unit and Cambodian People Party attended at his parents' home in November 2012 and April 2013 looking for him.

I. The Impugned Decision

[13] In its decision, the Board rejected the applicant's claim for the following reasons:

- First, the applicant' alleged career as an activist with the Cambodia Global Fund was unsupported by any trustworthy corroborative evidence. Specifically, the Board found that the website for Cambodia Global Fund, mentioned in a letter from its alleged Executive Director, did not exist.
- Second, the applicant's behaviour showed a lack of fear of persecution in Cambodia. Specifically, the applicant admitted to having never been in hiding and he returned to Cambodia after collecting his Canadian visa in Bangkok, despite there being nothing forcing him to do so. His visa would have allowed him to travel to Canada directly from Bangkok.
- Third, the applicant was not able to show how his political activities or his alleged field activities since his arrival in Canada could turn him into a refugee *sur place*.

II. Issues

1. Was it reasonable to conclude that the applicant was not credible about his allegations of persecution in Cambodia?
2. Was it reasonable to conclude that he was not a refugee *sur place*?

III. Standard of Review

[14] The decision concerns issues of fact and of mixed fact and law, and is reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51).

IV. Applicant's position

[15] The applicant argues that the Board misconstrued or misunderstood the evidence when it found that he stated he had never been in hiding, as he testified about hiding places during his hearing. Another error regarding the "hiding places" is when it presumed that the applicant alleged being in hiding continuously since 2008 in his Personal Information Form [PIF], when in fact the evidence was that he had gone into hiding for periods of time after certain prosecutorial events.

[16] The applicant also submits that the Board erred when it found that he could have departed for Canada directly from Bangkok after picking up his visa, as he had made it clear that he had no choice but to return to Cambodia first. Due to the fact that he had to wait in Bangkok for two weeks to get his visa, he had no money left to live in Bangkok or to buy a plane ticket to Canada.

[17] Further, it was unreasonable for the Board to conclude that the applicant had lied about his work. The Board concluded that the Cambodia Global Fund's website did not exist, despite the fact that the applicant's lawyer had provided copies of the website.

[18] Finally, the Board ignored evidence going to the applicant's *sur place* claim. Concentrating solely on the fact that the Cambodian activist Sam Rainsy seemed not to be disturbed by the Cambodian authorities, the Board ignored a number of relevant documents showing that many activists and opposition members fear for their lives in Cambodia, and also ignored the evidence of the applicant's activism in Canada.

V. Respondent's position

[19] The respondent submits that since the applicant could not prove that he worked for the organizations he had allegedly worked for and since he was not a credible witness, he has failed to establish that he was an activist in Cambodia and the documentary evidence is of no help to him.

[20] With respect to the Cambodia Global Fund, it was reasonable for the Board to believe the results of its own search indicating that its website did not exist, over a printout submitted by the applicant allegedly from that site.

[21] Even assuming that the organization in fact exists and the printout is a publicly available document, the Board noted that the organization conducts field activities apparently without any difficulty in full view of the Cambodian government. As such, it is difficult to believe the organization's activities are challenged by the government.

[22] Further, the applicant's actions after he began to be persecuted also raise credibility concerns. His statement in his PIF that since 2008 he was hiding at several friends' houses at

different times out of fear of being found is incompatible with his testimony that he hid on only two occasions, or is at least a significant exaggeration.

[23] With respect to the applicant's submission that the Board erred in finding that he could have departed for Canada directly from Bangkok after picking up his visa, the respondent submits, on the basis of comments made by the Board member at the hearing, that the Board did not believe the applicant could not have purchased a plane ticket using a credit card, debit card, or wire transfer.

[24] Since the applicant is not credible, he has not shown that his activities in Canada make him a refugee *sur place*. It is also speculative to conclude that his public support of opposition activity since arriving in Canada would put him at risk upon return to Cambodia.

## VI. Analysis

A. *Was it reasonable to conclude that the applicant was not credible about his allegations of persecution in Cambodia?*

[25] I find that the Board made several factual errors that were material to its credibility findings and to its determination of the applicant's claim.

[26] Firstly, the Board found that the website for the Cambodia Global Fund, which was mentioned in the letter from the executive director of that organization, did not appear to exist, despite printouts of the website submitted by the applicant's counsel to show that the website did indeed exist.

[27] On the basis of the apparent non-existence of the website, the Board concluded that the applicant did not work for the Cambodia Global Fund. It inferred that the NGO letter purportedly written by the executive director of the organization contained erroneous information, and considered that the applicant would not have provided false information about the website of the organization if he had actually worked there.

[28] However, after concluding that the website did not exist, the Board went on to make numerous findings on the basis of the exhibit that was purported to be a printout of the website. This suggests that the Board was not in fact convinced that the website did not exist. Specifically, it found on the basis of this exhibit that the organization was based in the U.S., not Cambodia; that the applicant's testimony at his hearing regarding the organization's donors was inconsistent with those listed in the exhibit; and that the organization's public listing of its activities would lead to the impression that it would have no difficulty in carrying on activities of any kind in Cambodia.

[29] In addition, the Board's finding that the organization was not based in Cambodia ignored a substantial amount of evidence in the record that pointed to the existence of the Cambodia Global Fund in Cambodia. This evidence included both documents and pictures.

[30] Further, the Board had before it the CAIPS notes regarding the visa application made by the applicant from Cambodia, in which immigration authorities had noted that one of the applicant's sponsors was the Cambodia Global Fund.



[31] On the basis of all the evidence that was before the Board, its conclusion that the applicant did not work for the Cambodia Global Fund was unreasonable, and this conclusion tainted the whole decision.

[32] Secondly, the Board made another factual error when it concluded that the applicant had testified to never having been in hiding.

[33] At the hearing, the applicant gave evidence about staying at friends' homes and taking breaks from work after some of the incidents that took place with the authorities. Following this, the following exchange took place:

Q. Okay, so you never went to hide anywhere; you just went because of the break that you had, but never went to hide anywhere?

A. I didn't hide anywhere else after the break, but I took more precaution. [...]

Q. Okay, but this is not what you said on your Personal Information Form. At question 11, 'Since 2008 I was in hiding at different times out of fear of being found.' So you say that you never hid somewhere; you never went to hide anywhere?

(Emphasis added)

[34] This excerpt indicates that prior to this exchange the applicant had been referring to being in hiding when discussing his stays at friends' houses and the breaks from work. Therefore, the Board erred in finding that the applicant admitted to not having been in hiding, and that he had contradicted himself on this front.

[35] Thirdly, the Board's finding that the applicant exhibited the behaviour of a person who was not fearful of risks in Cambodia, due to the fact that he returned to Cambodia after collecting his visa in Bangkok, was not reasonably supported.

[36] The Board misconstrued the evidence when it wrote that the applicant did not feel obliged to return to Cambodia after collecting his visa in Bangkok but did it to get ready. However, the applicant testified that, because he had unexpectedly been required to wait in Bangkok for two weeks, he had spent all his money and did not have any money left to buy a plane ticket to Canada or to live in Bangkok. Thus the applicant did not return to get ready for his trip but to finance his travel to Canada.

[37] As a result, the cumulative effect of these erroneous findings of fact that were central to the Board's credibility finding renders the decision unreasonable. The decision is set aside as it does not fall within the range of possible, acceptable outcomes.

[38] In light of this conclusion, there is no need to discuss the applicant's refugee *sur place* claim. However, in this regard I wish to note that in light of the substantial evidence submitted by the applicant that activists are at risk in Cambodia, the Board had a duty to at least explain why it disregarded all this evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at paras 16-18).

[39] For all of these reasons, this application for judicial review is allowed. The matter is remitted back to be decided by another Board member.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

This application for judicial review is allowed and the matter is to be remitted back to be decided by another Board member. There is no question for certification.

"Danièle Tremblay-Lamer"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5928-14

**STYLE OF CAUSE:** BUNYIM YI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MARCH 19, 2015

**JUDGMENT AND REASONS:** TREMBLAY-LAMER J.

**DATED:** MARCH 27, 2015

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