Federal Court Cour fédérale

Date: 20160401

Docket: IMM-4127-15

Citation: 2016 FC 373

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 1, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

SALIU DEEN BAH
ALIAS ATTOUMANI BAROUFOUDINE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The applicant entered Canada from Britain on August 27, 2015. He said he wanted to visit Canada for 14 days and had a French passport under the name of Baroufoudine Attoumani, birth date September 6, 1981. When confronted with the fact that he was receiving text messages addressed to a certain Saliou Bah and did not appear to be the age indicated on the passport, the applicant continued to claim that said passport was his. Since, in addition, he knew nothing about

his country of origin, the island of Mayotte, an overseas French department in the Indian Ocean, an exclusion order was issued immediately by an enforcement officer under the *Immigration and Refugee Protection Act*, SC 2001, ch. 27 (the Act), on the grounds that the applicant failed to satisfactorily prove his identity. Because the applicant was thought to be a flight risk, he was placed in detention.

[2] On August 31, 2015, during a detention review, the applicant alleged that his name was in fact Saliou Bah, that he was a Guinean national, not French, and that he was born not in September 1981, but on May 3, 1998, which would make him a minor.

[3] Through this application for judicial review under Section 72 of the Act, the applicant is challenging the deportation order issued against him on the grounds that only the Immigration Division could issue such a measure, given that he is allegedly under 18.

[4] This claim does not hold up.

[5] While it is true that under Section 228 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, a deportation order can be issued only by the Immigration Division when the subject of the order is under 18 years of age and is not accompanied by a parent or an adult legally responsible for him or her, the conditions for the argument of jurisdiction must be met.

[6] In this respect, there are two problems with the applicant's claims. First, as the applicant says, when the deportation order was issued, the applicant—quite insistently—presented himself

as someone born in 1981, which would make him a 33-year-old adult. Based on these claims, the authority to issue a deportation order fell to the law enforcement officer, not the Immigration Division. In other words, the condition required to transfer jurisdiction to the Immigration Division was, at the time, and based on the applicant's own claims, not met. Based on these facts, the law enforcement officer was entirely without fault, and legally, jurisdiction was assigned in compliance with the Act. The applicant could not hope to have his cake and eat it too.

[7] Second, when the applicant invited the Court to consider, *ex post facto*, the argument of jurisdiction based on his supposed new identity, revealed in the days after the deportation order was issued, the argument, supposing that it is legally possible, must also fail, since this new identity remains unconfirmed. Remember that identity is the cornerstone of the Canadian immigration regime, since identity is the basis for issues such as admissibility to Canada, assessment of the need for protection, assessment of potential threats to public safety, and the risks of a subject evading official examination (*Canada (Minister of Citizenship and Immigration) v. Singh*, 2004 FC 1634, at paragraph 38; *Canada (Citizenship and Immigration) v. X*, 2010 FC 1095, at paragraph 23, 375 FTR 204).

[8] In this case, the applicant's theory is based on his status as a minor supposedly being recognized by the Canadian authorities, which, in his opinion, is evidenced by his detention in quarters reserved for minors and the comments of the Immigration Division Member who presided over the September 16, 2015, detention review (the Member) to the effect that the Canada Border Services Agency (CBSA) did not challenge this status.

[9] This theory does not stand up to scrutiny. First, the comments attributed to the Member who presided over the September 16, 2015, detention review appeared in an amateur transcription presented as an affidavit signed by a lawyer presumably from the same office as counsel for the applicant. However, this affidavit is only a partial reproduction of the hearing for said detention review, with only the statements attributed to the Member. It contains no information on what CBSA or Minister of Citizenship and Immigration representatives may have said at this hearing. In short, there is no probative evidence whatsoever for the admission attributed to CBSA. What's more, in the statements attributed to the Member, I note a near-constant use of hedging on the subject of the applicant's age ([translation] «you are supposedly under 18,» «because you are purportedly a minor,» «Mr. Bah claims he is a minor,» «Mr. Bah is apparently under 18»). All this hedging is the hallmark of a hypothesis rather than an established fact.

[10] Second, the applicant's inference about the statements attributed to the Member is incompatible with the release conditions imposed by this same Member at the end of the detention hearing. Based on the evidence on record, one of the applicant's release conditions was that he had to report to CBSA once a week until his identity was confirmed. I also find this inference difficult to reconcile with the fact that CBSA requested an expert opinion on the

authenticity of the national identification card submitted by the applicant on September 22, 2015, once his conditional release was ordered, to prove that he is, as he claims, Saliu Bah, born on May 3, 1998, in Guinea. This expert opinion, which was delivered only in late December 2015, revealed that this document was altered by replacing the biographical data page. For CBSA to be convinced of the applicant's age, they needed to have been convinced of his identity. It seems to me that the former is not valid without the latter. Clearly, CBSA was unconvinced, and according to the evidence on record, remains so. In fact, at the time of the hearing for this application for judicial review, on February 25, 2016, this question was still unresolved.

[11] Based on the evidence on record, the applicant's true identity, and therefore his age, had not been determined at the time when the applicant was placed in detention on August 27, 2015, and had still not been determined at the detention review overseen by the Member, as is evidenced by the release conditions assigned to the applicant and the steps taken by CBSA subsequently to verify the identification documents he provided.

[12] In this situation, it is neither plausible nor logical to attribute to CBSA any recognition of any sort of the status of minor claimed by the applicant. Accordingly, I agree with the respondent when she says that the applicant was only detained in the quarters reserved for minors as a precaution, in case the applicant did successfully prove his true identity and as such his true age.

[13] The applicant has not convinced me that there is a reason to intervene and strike down the deportation order issued against him on August 27, 2015.

[14] The parties agree that there is no need, in this case, to certify a question to the Federal Court of Appeal. I agree with this opinion.

ORDER

THE COURT ORDERS that:

1. The application for judicial review is dismissed;

2. No question is certified.

«René LeBlanc»

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4127-15
STYLE OF CAUSE:	SALIU DEEN BAH ALIAS ATTOUMANI BAROUFOUDINE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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