

Federal Court



Cour fédérale

**Date: 20160411**

**Docket: IMM-4469-15**

**Citation: 2016 FC 398**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, April 11, 2016**

**PRESENT: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**NONVIGNON ARMAND VIGAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] rendered September 2, 2015, confirming the Refugee Protection Division's [RPD] decision that the applicant is not considered a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA].

[2] The applicant, who was previously represented by Odette Desjardins, is now representing himself. When the hearing opened, the Court allowed him to remove from the Court files the abandonment that he had served and filed a week ago; the applicant erroneously believed that he was not entitled to represent himself. However, the Court dismissed his application to postpone the hearing. The applicant has known since at least February 23, 2016, that he must represent himself or find a new counsel. Finally, the Court took into consideration all the representations made on behalf of the applicant by Ms. Desjardins in her written factum, as well as the applicant's oral comments at the hearing.

[3] The following is an overview of the applicant's main allegations.

[4] The applicant is a citizen of Benin. He came to Canada in 2010 on a student visa. In November 2011, the applicant's father died. The applicant returned to Benin for about 10 days to attend the funeral and the family ceremonies. Shortly thereafter, the applicant's mother informed him that his deceased father's eldest half-brother, Assogba, had used pressure and threats to incite the applicant's mother or sister to marry him in order to take possession of his brother's assets. The applicant's mother apparently refused and complained to the police, but in vain. In March 2012, to cut ties with the father's side of the family, the applicant's mother and sister left the family home in Cotonou, and moved to Calavie, another city about 30 to 40 km away. They stayed in Calavie with one of the applicant's uncles on his mother's side, Alarick. Meanwhile, the applicant's sister apparently suffered from nightmares, visions and some illnesses, which the applicant alleged were caused by witchcraft performed by Assogba. She was allegedly treated by witch doctors.

[5] The applicant filed an application for refugee protection in Canada in September 2013. An initial negative decision was rendered by the RPD on November 5, 2013. The decision was successfully appealed before the RAD. On October 21, 2014, the RPD rendered a second negative decision. The applicant appealed to the RAD.

[6] Meanwhile, before the applicant's second appeal had been heard, new facts arose. According to the applicant, on January 4, 2015, the applicant's mother and sister found refuge in Kandi, in northern Benin, wanting to move away from the Calavie area and receive treatment from healers in Kandi. On February 15, 2015, the applicant's sister was allegedly assaulted by Assogba, who was accompanied by another person. They attempted to kidnap her, but she managed to escape. She and her mother fled to Cotonou, where the applicant's sister apparently received care for her injuries in a hospital. In Cotonou, the applicant's mother and sister tried to get in touch with Alarick, but his wife told them that Alarick no longer wanted to have any contact with them, and that he had been beaten and forced to say where they had found refuge. After this discussion with Alarick's wife, the applicant's mother and sister apparently stayed at the hospital in Cotonou. On May 23, 2015, they left the country and found refuge in Ghana. On June 6, 2015, they again tried to contact Alarick, but were told he was dead.

[7] The applicant submitted these new facts to the RAD, which agreed to consider them. Nevertheless, because the credibility of these new allegations was material, the RAD convened an oral hearing. On September 2, 2015, the RAD confirmed the RPD's decision, which led to this application for judicial review.

[8] The standard of review for assessing evidence and credibility is reasonableness. Since this involves any alleged violation of natural justice, correctness is the standard that applies. Finally, with respect to assessing whether the RAD erred in interpreting the provisions of the IRPA having to do with launching an appeal and admitting new evidence, the Court applies the correctness standard of review (*Djossou v. Canada (Citizenship and Immigration)*, 2014 FC 1080, at paragraphs 33 to 34; *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, at paragraphs 31 to 35 [*Huruglica*]; *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96, at paragraph 29).

[9] This application for judicial review must therefore be dismissed.

[10] First, I find the reasons provided by the RAD transparent and intelligible in all respects. The RAD decided to confirm the RPD's decision, but using a different reasoning, which the RAD was entitled to do in this case (see *Huruglica*). Its assessment of the new evidence admitted and its finding that the applicant lacked credibility rely on the evidence on the record and are not unreasonable.

[11] Regarding this point, it was open to the RAD to find that the hearing held before the RPD failed to provide deeper insight into certain essential aspect of the applicant's allegations. In particular, the RAD noted that the applicant not only feared being subjected to witchcraft instigated by Assogba, he also dreaded being forced to be initiated into the voodoo cult, being forced to marry one of Assogba's daughters and, if he refused, being assaulted by him. It was also permissible for the RAD to find that the RPD's review of the internal flight alternative [IFA]

was insufficient. In particular, the RAD noted that the exercise undertaken by the RPD to attempt to establish a geographic or territorial boundary to belief in witchcraft was not appropriate in the circumstances, which is consistent with what the Court wrote in *Ajayi v. Canada (Citizenship and Immigration)*, 2007 FC 594, at paragraph 16: “the state cannot provide effective protection from magic, witchcraft, supernatural powers or beings from beyond. The state can only protect a person from actions by members of a sect or a tribe participating in rituals where supernatural powers or beings from beyond are invoked or may appear.”

[12] In deciding to perform an independent review of all the evidence to determine whether the applicant was a Convention refugee or a person in need of protection, the RAD did not commit any error of law, and its approach was reasonable. In addition, subsection 110(6) of the IRPA provides that the RAD may hold a hearing if, in its opinion, there is documentary evidence that meets the requirements of subsection 110(4) of the IRPA, and that also raises a serious issue with respect to the credibility of the person who is the subject of the appeal; that is central to the decision with respect to the refugee protection claim; and, that, if accepted, would justify allowing or rejecting the refugee protection claim.

[13] I also reject the applicant’s contention that the scope of the hearing before the RAD could have taken him by surprise. The applicant and his former counsel received a notice to appear before the hearing, specifically listing the topics to be covered by the hearing. Also, any alleged breach of the principles of natural justice must be raised at the first opportunity. The applicant, who was represented at the hearing by counsel, did not raise an objection, which constitutes

another reason for not accepting his arguments (*Alvarenga v. Canada (Citizenship and Immigration)*, 2012 FC 1540, at paragraph 28).

[14] With respect to the actual merit of the applicant's allegations, the RAD provided a detailed explanation of why it did not believe his account:

- a) The RAD noted that the applicant's mother had tried to contact Alarick, but was unsuccessful because Alarick no longer wanted her to communicate with him, and he had been beaten by Assogba and forced to reveal his sister's address. Questioned on the reasons for which Alarick had not informed his mother of this event, the applicant said that she had changed her cell phone number. The RAD did not find it plausible that the applicant's mother had cut all contact with Alarick, since she had a good relationship with him; she had the means to contact him; she had lived at his residence for nearly three years; and she was interested in knowing whether Assogba was trying to find her. Neither did the RAD find Alarick's alleged behaviour credible when he supposedly did not tell the applicant's mother about his meeting with Assogba and wanted to stop helping her. This was implausible since he was aware of her situation, had given her shelter and had tried to settle matters with Assogba. There was also the issue of the considerable impact on the applicant's mother when her address was disclosed. The RAD did not find the applicant's behaviour plausible when he supposedly did not contact Alarick.
- b) The RAD therefore found that the applicant did not provide credible evidence confirming communication between his mother and Alarick's wife on February 16, 2015, or the fact that Alarick no longer wanted to communicate with his mother or the "meeting" between Alarick and Assogba, including the beating, the disclosure of the address and the threats against the applicant. In addition, the RAD noted the applicant was hesitant about the date on which such a meeting would have occurred. Consequently, it was open to the RAD to find that the applicant had not provided credible evidence that his sister had been injured by Assogba in the alleged circumstances, undermining the applicant's credibility on material elements of the application for refugee protection. With respect to medical treatments for the applicant's sister, the RAD noted that the applicant submitted documents confirming that she had received treatments for a fractured ankle, but these records did not indicate the

cause of the fracture. Given the RAD's conclusion regarding the circumstances of the sister's injury, the RAD could not give these documents any probative value. In addition, the RAD considered that the documents mentioning cardiac and ultrasound treatments were unrelated to treatment of an ankle.

- c) With respect to the reasons for which the applicant's mother and sister left for Ghana, the RAD noted that the applicant testified, inter alia, that his sister was suffering from stomach pain and nightmares. However, the applicant did not include any allegations regarding these conditions in his affidavit. The RAD did not find this final omission credible.
- d) The applicant submitted a "receipt for an ankle x-ray" for his sister (Exhibit A-9), dated June 22, 2015, and testified that a friend had given it to him, and that this friend had personally obtained it when he met with the applicant's mother at the hospital in Cotonou in June 2015. However, the applicant's mother and sister had been in Ghana since May 23, 2015. The applicant explained that he was referring to other documents that his friend had obtained in May 2015. Later on at the hearing, the RAD admitted an "order for an ankle x-ray" (Exhibit A-11), dated June 22, 2015, and the applicant explained that the document and the ankle x-ray were obtained by his friend at the hospital as a duplicate of previous receipts that had been burned. The RAD noted that nothing on exhibits A-9 and A-11 indicated that they were duplicates, and that the applicant had changed his testimony on how the documents were obtained. For these reasons, the RAD did not find the applicant's revised explanations credible, and the RAD concluded that the applicant had not provided credible evidence that his mother and sister were still living in Ghana. With respect to Alarick's death, the RAD noted that the applicant did not provide credible evidence that his death was connected with Assogba's actions. The document submitted by the applicant to confirm Alarick's death contained discrepancies regarding the deceased's residence and the fact that the declarant, Alarick's father, had died before Alarick. In addition, since the RAD did not believe that Alarick and Assogba met in January 2015, the RAD found that the applicant had not established that Alarick had been abused by Assogba. This determination is also reasonable.
- e) With respect to the applicant's allegations regarding Assogba's actions before his mother and sister moved to Kandi, the applicant testified that from 2013 until she departed for Kandi in 2015, the applicant's mother

had received threatening calls from Assogba, but that she had kept the same cell phone number. Also, the applicant testified that his mother and sister were assaulted by Assogba in September 2014, more than 30 months after they moved to Alarick's residence. In order to account for this period of time, the applicant testified that although Assogba knew Alarick because he had met him after the applicant's father died in 2011, he did not know where he lived. The RAD did not find the applicant's explanations credible because Calavie is near Cotonou and Assogba had known Alarick for several years. There was no evidence establishing that Assogba had asked Alarick for information to find the applicant's mother or sister, or that Assogba had tried to contact persons whom the mother knew through his business operations or his neighbours in Cotonou. Also, the RAD found it reasonable to believe that if the alleged telephone threats were real, the mother would have changed her cell phone number when she was living in Calavie, even after the alleged assault in September 2014. Consequently, the RAD found that the applicant had not established these telephone threats or that his mother and sister had been assaulted in September 2014 in the alleged circumstances. Therefore, the RAD did not give any probative value to the documents submitted by the applicant to establish Assogba's alleged actions against his mother and sister when they were living in Calavie.

- f) Finally, the RAD assessed the applicant's allegations that he feared being initiated into the "voodoo" cult and that he would be killed if he refused. Also, the applicant testified that he would be forced to marry his cousin. The RAD did not share this opinion and noted that the documentary evidence did not support these claims. Given the absence of such documentary evidence, the RAD considered that the applicant had not substantiated his allegations.

[15] At the hearing, the applicant told the Court that he did not understand why his appeal had been dismissed and he could not invent evidence that did not exist. There is no basis for this complaint. In every respect, the RAD's decision is intelligible and the RAD's conclusions are clearly stated. Although the applicant does not agree with some findings of fact by the RAD, it is not open to this Court to reassess all of the evidence. The RAD's reasoning and conclusions must



simply be intelligible and transparent, and the dismissal must be based on the evidence in the record, which is the case here.

[16] For the above reasons, the application for judicial review is dismissed. No serious questions of general importance are raised in this case.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be dismissed.

No question is certified.

“Luc Martineau”

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Judge

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

**DOCKET:** IMM-4469-15

**STYLE OF CAUSE:** NONVIGNON ARMAND VIGAN v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MARCH 31, 2016

**JUDGMENT AND REASONS:** MARTINEAU J.

**DATED:** APRIL 11, 2016

**APPEARANCES:**

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