

Federal Court



Cour fédérale

Date: 20160711

Docket: IMM-155-16

Citation: 2016 FC 788

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 11, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**DAUDET ROUSSEL NTSONGO
(alias DAUDET ARIA SOUAMOUNOU)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) of a decision made by a Refugee Protection Division (RPD) officer on December 18, 2015. The RPD concluded that the claim for refugee

protection was manifestly unfounded. Therefore, the applicant is not a Convention refugee or a person in need of protection under section 96 or subsection 97(1) of the IRPA. The applicant tried to have that decision set aside and referred to another immigration officer for reconsideration.

[1] For the reasons that follow, the application is dismissed.

II. Facts

[2] The applicant, Mr. Daudet Roussel Ntsongo, affirmed that he is a citizen of the Republic of the Congo-Brazzaville. He was a market gardener there and sold his products at a military compound, including Colonel Ntsourou's residence.

[3] On December 16, 2013, Colonel Ntsourou was arrested.

[4] During the following week, two police officers came to the applicant's home since his name appeared on the visitor's list at Colonel Ntsourou's home. The applicant was not home.

[5] On December 24, 2013, the applicant was informed by the president of the young grocers' cooperative to which he belonged that three police officers were looking for him and had destroyed his fields. The applicant fled to Boko and asked his spouse to seek refuge at her mother's with the children.

[6] In November 2014, the police allegedly tried once again to obtain information on the applicant and the cooperative.

[7] In December 2014, a friend of the applicant's uncle agreed to place him on a participant list for a *Vision dentaire internationale* exchange to help him leave the Congo. That individual provided him with a passport under the name "Daudet Aria Souamounou" and helped him obtain a Canadian visa.

[8] The applicant left Congo-Brazzaville on May 16, 2015, and entered Canadian territory the following day using his false passport.

III. Contested decision

[9] The determinative issue in this case is the applicant's identity. The RPD noted that the fact that the applicant had submitted identity documents issued under two different identities was not determinative in itself, since it is possible that a claimant would have to resort to false documents to leave his or her country. Thus, the RPD considered several factors that contributed to the identity of a person through the applicant's testimony and the evidence submitted, i.e. his name, his date of birth, his country of origin and citizenship, his employment status, his family composition, his civil status, his religion and his language.

[10] The RPD first addressed the issue of the applicant's false passport. It noted two significant contradictions: first, in his testimony, the applicant said he held a valid passport under his real name, whereas that document is not mentioned on any form; next, the applicant also

stated on his refugee protection claim forms that the passport issued under his false identity was his genuine valid passport. He also could not explain to the RPD why he had not brought his real passport with him before leaving the Congo, nor why he did not make any effort to retrieve it afterwards. The RPD therefore concluded that the applicant did not hold a valid passport under the name Daudet Roussel Ntsongo. The RPD also noted that the applicant had not mentioned on his forms that he received help to obtain a false document and drew a negative inference from the omission of such an important fact.

[11] As regards additional factors, the RPD noted that in his refugee protection claim and in his testimony, the applicant had stated that he had two children. However, in the two visa applications made in 2011 and 2012, the applicant had declared three children. The applicant could not explain this inconsistency.

[12] The applicant's testimony regarding his marital state was also inconsistent. In his visa applications, he stated that he was married, whereas in his claim for refugee protection, he declared that he was in a common-law relationship and said that he had never been married. He finally explained that he was a polygamist and that he had been married in a customary marriage. The RPD did not accept that explanation, noting that a recent marriage was an important omission.

[13] Moreover, the RPD also noted that under the Catholic faith, polygamy is not permitted, yet the applicant had stated that he was a practising Catholic. The applicant explained that polygamy was a common practice, even among Catholics. During his testimony, the applicant

also could not indicate the exact date on which he fled for Boko, although he had indicated it on his form, when December 25 is a significant Catholic holiday. The RPD found that it was reasonable to expect that the applicant would remember such a prominent date.

[14] The RPD also pointed out a contradiction between the jobs declared on the 2011 and 2012 visa applications, and the job declared in the claim for refugee protection.. The applicant stated that he has two jobs and that he forgot to include one on the claim for refugee protection. The RPD concluded that the lack of agreement between his visa applications and his claim for refugee protection on such an important fact undermines the applicant's credibility. The applicant's cooperative membership card also stated a different address than the one declared on his claim for refugee protection for the same period.

[15] The RPD ultimately found that the corroborating documents submitted by the applicant failed to fill the gaps in the applicant's testimony with respect to his identity and pointed out his account of obtaining false documents. The RPD therefore found that the applicant was not credible and had thus not succeeded in establishing his identity, and that his claim for refugee protection was manifestly unfounded.

IV. Issue in dispute

- Did the RPD err in its analysis of the applicant's identity?

V. Analysis

[16] The question of the applicant's identity is a factual issue, reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[17] The applicant argues that the omissions, contradictions and inconsistencies noted by the RPD between the applicant's oral testimony and his written testimony, as well as the evidence submitted, do not relate to essential elements in the claim for refugee protection and are therefore not significant enough to justify a negative finding.

[18] However, it is well established in case law that a refugee claimant has a fundamental obligation to establish his or her identity, otherwise the application must be denied (*Yip v. Canada (MEI)*, 70 FTR 175, at paragraph 7; *Najam v. Canada (MCI)*, 2004 FC 425, at paragraph 16).

[19] Despite the considerable number of documents submitted to this effect, the fact remains that it is impossible to determine the applicant's identity.

[20] He submitted two passports: one is valid, supposedly issued under a false name; the other, expired, under his real name. He also stated at the hearing that he holds a valid passport issued in his real name that he left in the Congo. According to what appears on his forms, the passport issued under a false name was his only valid passport, suggesting that: a) it was his genuine passport; and b) he held no other valid travel documents. He also refused to make a

reasonable effort to obtain the passport left in the Congo, despite the fact that his wife apparently could have easily sent it to him. It was therefore not unreasonable for the RPD to conclude that it was impossible to establish the applicant's identity based on his passports and that his credibility had thus been affected.

[21] Moreover, after reviewing his testimony, it appears that the applicant also does not know who he is: he is unable to explain the inconsistencies as to how many children he has, how many spouses he has, his marital history, or even his employment. Contrary to what the applicant affirms, these are not minor, peripheral details on the application; rather, they form the very core of his identity. Also note that his employment is directly linked to the basis for his claim for refugee protection.

[22] Under the circumstances, the RPD's decision is entirely reasonable.

VI. Conclusion

[23] The application for judicial review is dismissed. The applicant failed to establish his identity on the balance of probabilities.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and that there are no questions to certify.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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