Federal Court Cour fédérale

Date: 20160629

Docket: IMM-1820-16

Citation: 2016 FC 734

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 29, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

EUGENE MWALUMBA MATA-MAZIMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

ORDER AND REASONS

[1] The applicant has been in Canada since 2007. After having tried to obtain status in Canada through all available avenues, he filed a motion for stay of a removal order against him.

[2] The applicant's stay application is related to the negative decision in his second pre-removal risk assessment (PRRA), dated January 14, 2016.

[3] The Court read the entire record and the supporting evidence to decide on the applicant's application; this record was reviewed attentively and in depth and every nuance in the evidence was considered along with the written and oral submissions in order to review the matter in its entirety.

[4] On April 8, 2011, the Immigration and Refugee Board found that the applicant was not a Convention refugee. The panel decided to exclude the applicant under article 1F(*a*) of the Convention because there were serious reasons for believing that the applicant was an accomplice in crimes against humanity and in war crimes committed by factions of the Forces armées congolaises (FAC).

[5] The applicant filed an application for leave and for judicial review of a negative decision made by the Refugee Protection Division (RPD).

[6] The application regarding the negative RPD decision was dismissed by the Federal Court on June 6, 2012.

[7] The applicant's wife, who was granted refugee status along with her children, also filed an application for permanent residence in which her husband (the applicant) was named, but the applicant was refused in the Family Class (reunification) given that the applicant is a person

described in paragraph 35(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, chapter 27 (IRPA).

[8] After the decision stating that the applicant was inadmissible under paragraph 35(1)(*a*) of the IRPA, an immigration officer decided to reopen the case to review the applicant's additional submissions and evidence, in particular with regard to the application of the six factors in *Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 SCR 678, 2013 SCC 40 [*Ezokola*]. The judgment in *Ezokola* was considered; however, the application for judicial review was still dismissed by the Federal Court.

[9] The applicant began an initial pre-removal risk assessment, whose finding was not in his favour.

[10] The PRRA was stated in a second decision, even more recent and also negative, after additions with regard to possible danger to the applicant were reviewed. This negative decision was released on January 14, 2016. The in-depth analysis and review of every nuance in the applicant's record found that the applicant did not demonstrate a risk of torture or cruel and unusual treatment or punishment, or a risk to life, in the event that he is removed to his country of nationality, this given the applicant's history; he worked at his country's embassy in Algeria just before leaving for Canada in 2007.

[11] The Court notes that an application to reopen the second PRRA decision was filed by the applicant and reviewed with yet another case study. All of the additions to the record were taken into account, but this application from the applicant was still dismissed.

[12] The Court accepts the respondents' submission, which states that 27 people were removed by Canada to the Democratic Republic of the Congo without proving a risk of torture or cruel or unusual treatment or punishment or a risk to life in the event of removal to their country of nationality. This is despite contrary information from the applicant in his documents, but without proving the contrary with regard to these 27 people indicated by the respondents.

[13] In *Toth v. Canada (Minister of Employment and Immigration)*, (1988), 86 N.R. 302 (FCA) (see also *RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311), the applicant did not meet any of the three criteria in the *Toth* test. Because the applicant did not meet any of the criteria in the *Toth* test, a stay cannot be granted.

[14] Therefore, the motion for stay of removal is dismissed.

ORDER

THE COURT ORDERS that the motion for stay of removal is dismissed.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1820-16
STYLE OF CAUSE:	EUGENE MWALUMBA MATA-MAZIMA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION HEARD BY CONFERENCE CALL ON JUNE 28, 2016, BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC

ORDER AND REASONS:	SHORE J.
DATED:	JUNE 29, 2016

ORAL AND WRITTEN SUBMISSIONS BY:

Annick Legault	FOR THE APPLICANT
Margarita Tzavelakos	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Annick Legault Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENTS