

Federal Court



Cour fédérale

Date: 20180205

Docket: IMM-2616-17

Citation: 2018 FC 129

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 5, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MAMADOU KONATE

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The applicant is challenging the reasonableness of a deportation order issued against him on May 29, 2017, by the Immigration Division [ID] of the Immigration and Refugee Board.

[2] The ID found that the applicant was inadmissible pursuant to paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because he was

formerly a member of the Mouvement patriotique de la Côte d'Ivoire [MPCI] and the Forces Nouvelles, which sought to overthrow by force the Ivorian government in place.

[3] For the reasons that follow, the application for judicial review must fail. We will first review the material facts that led to the applicant's inadmissibility.

[4] The applicant is a citizen of Côte d'Ivoire. In 2002, the members of an armed group, the MPCI, seized control of multiple cities in the northern part of the country, including the village of Katiola, where the applicant lived at the time. The movement became the Forces Nouvelles in 2003 after they aligned themselves with other armed groups. It is not disputed that this movement meets the definition set out in paragraph 34(1)(b) of the IRPA, namely "engaging in or instigating the subversion by force of any government". The applicant was involved in this movement from September 2002 to December 2003, namely as the personal assistant of leader Marco Kouadio, before leaving Côte d'Ivoire for various neighbouring countries. These facts are not in dispute. Rather, the issue lies with the circumstances surrounding the applicant's enrollment in the MPCI, that is, whether he enrolled willingly or was recruited by force. As explained below, the applicant provided a number of contradictory versions in this regard.

[5] The applicant arrived in Canada on February 1, 2016. On February 3, 2016, he met with an officer. The interview was conducted in French and without an interpreter. The following are some relevant excerpts (see exhibit C-8 of the certified record at pages 65 *et seq.*):

[TRANSLATION]

Q: Then what happened, during the crisis?

A: So, when the crisis began, on September 19, 2002, we... we were recruited by the rebellion.

...

Q: What... what happens when they recruit you, these people?

A: O.K. Well, when (inaudible) they had recruited and integrated us, (inaudible) which was based in Bouna, only I was 21 years old, it was...

...

Q: ... What happened at that point? It was the... the rebel group that arrived in that city?

A: Yes, yes.

Q: O.K.

A: We were attacked. Well. (Inaudible) were recruited by the rebellion.

Q: O.K.

A: After that they took us to Bouna...

Q: Yes.

A: (Inaudible) was set up there, was near the leaders, like their house boy.

...

Q: Then, what do they... essentially, how... do... I am just wondering how it happens, the recruitment, meaning that you are... you are... they give you training? They give you a uniform? How does it work?

A: Yes. Yes, they gave us a uniform.

Q: Um-hum.

A: They gave us weapons. But, me, I started (inaudible), well, I was, yes, well I was (inaudible), so I was close to the leader, like his house boy, I was at the house...

...

Q: But then, did, these people, they forced you to join the group or...?

A: Yes, yes.

Q: Because, me, what I read is that... in 2002, they did not force anyone to join the group. They went to the villages...

A: No.

Q: ... then, first, at first they were even calm. They spoke, told the people why they were doing that.

A: At the beginning, when the rebellion arrived in the city, we had no choice. Why didn't we have a choice? Our tribe was treated, in Côte d'Ivoire, like foreigners. So, when the force... In general, we were treated like foreigners (inaudible).

Q: You, you are Muslim or...?

A: Yes. I am Muslim. Yes.

Q: O.K. So, then, what happened, there, in... so, well, you were telling me that the group, as in, your tribe... was treated like foreigners and all that. So, then, that group, they arrived there. What happened?

A: Even at... at that time, we, our tribe, to travel to countries that were. .. in another city, to go to another city, was very difficult because, often, at checkpoints, when we showed our ID, when they saw the Muslim name...

...

Q: So then, you, they brought you... the recruitment, how does that work? They entered the village. They forced you to go somewhere where you had to identify yourself, where they interrogate you, fill out...

A: When...

Q: Some documents?

A: (Inaudible) recruit, they want to motivate, to (inaudible). They motivated us, I mean.

Q: Yes.

A: (Inaudible) they motivated us with speeches...

Q: O.K.

A: (Inaudible) since everyone was focused on (inaudible) doesn't give (inaudible) also.

Q: Um-hum.

A: So, when... we joined them, so, now (inaudible) now in the cities.

Q: Um-hum.

A: So, me, they brought me to Bouna.

...

Q: Yes. O.K. But, now, I was wondering, when was this? The date... you stayed there for how many months or how many years?

A: (Inaudible) on September 10, 2002, we joined, so we were in Bouna...

[6] On February 16, 2016, the applicant claimed refugee protection. That claim was suspended pending a final decision on inadmissibility. The issue is that, in Annex A of his claim, the applicant answered "yes" to questions (g) "Have you ever used, planned or advocated the use of armed struggle or violence to reach political, religious or social objectives?" and (h) "Have you ever been associated with a group or organization that used, uses, or advocates the use of armed struggle or violence to reach political, religious or social objectives?" The notes at the bottom of the "Annex A" form specify that [TRANSLATION] "the subject states that in 2002, he joined the ranks of the 'MPCI Rebel Force' or the 'MPCI New Air Force' against the government of the Republic of Côte d'Ivoire" (see exhibit C-6 of the certified record at page 42).

[7] In his Basis of Claim [BOC] Form, a copy of which can be found at pages 47 *et seq.* of the certified record, the applicant describes his enrollment as follows:

[TRANSLATION]

When I saw the mistreatment of the nationals in the north of Côte d'Ivoire under the regime of ex-President Laurent Gbagbo, I did not hesitate for a second to enroll in the armed rebellion in September 2002.

[Emphasis added.]

[8] On March 21, 2016, the applicant was subject to a report under subsection 44(1) of the IRPA, in which an officer found that he was inadmissible under paragraph 34(1)(f) of the IRPA because he stated that he had voluntarily joined the MPCFI-Forces Nouvelles in 2002 and held two positions with them before leaving the organization in 2003. The documentary evidence shows that the MPCFI-Forces Nouvelles is an organization that committed acts intended to overthrow Côte d'Ivoire's national government by force. The report was referred to the ID for an investigation that same day.

[9] The ID conducted an admissibility investigation consisting of five sessions, on January 25, January 26, February 15, March 7 and March 21, 2017. During those sessions, the applicant was assisted by an interpreter of Malinke. During his examination before the ID, the applicant's account concerning his enrollment was different from the two versions given earlier.

Below are some relevant excerpts (see the certified record at pages 492–497):

[TRANSLATION]

Q: And you personally, what did you do after the rebels made those demands at that time? What did you do?

A: So that day many people joined the ranks of the rebels, but him, at the time I did not decide to do so.

Q: Why?

A: At that time, I was with my mother, and I didn't want to join the rebels. I wanted to stay with my family.

...

Q: And then you say, if I understood correctly, you were arrested on the premises of that company, Tantos; is that right?

A: I don't know if the rebels had hidden that night, but it's when we left that company's warehouses and were walking away that they arrested us.

Q: Did the—so, you and the two other people who were with you were captured, the three of you.

A: Yes, exactly, us three. They arrested the three of us.

Q: And then what did they do with you? What happened?

A: They had us lie down on the ground, then they started trampling on us and beating us up.

Q: Then what?

A: They saw the food we had. They told us at the same time that—they told us to join their ranks, but that some people took the opportunity by going to get some food, they would now see what they were going to do. That is what the rebels said. My foot was injured. There is still a scar on my—on the back of my foot. Then they came to find other young people in the neighbourhood to make them join their ranks. There were young people in the neighbourhood who knew them well enough and who were with them.

...

Q: So, at that point, would you have had—did you have the choice to refuse to join the rebels?

A: Well, the young people who had joined the rebellion at that time, who were from their village, told them that they had made a list of all the young people in the neighbourhood and that if someone, those who refused to join their ranks, they would kill them. Therefore, they had no choice but to join the ranks of the rebellion...

Q: So, after that, you mentioned that the MPCJ went back to your home to find you. Have I understood correctly? Is that correct?

A: The young people in the neighbourhood who had joined the rebellion plus another rebel, both came to get us at our homes. They came by car to pick us up.

Q: So, what did they say to you at that time when they came to pick you up?

A: That is when they told us that the current government did not like people from the north. If we did not join their ranks and the rebels themselves managed to overthrow that government, they would kill all the young people who had refused to join them.

[10] During the hearing on January 26, 2017, the Minister's representative confronted the applicant with the apparent contradictions stemming from his earlier statements, particularly the absence of any mention in his BOC that he had allegedly been forcibly recruited (see certified record at page 540). The applicant responded that he had been forced to summarize his story because the information was gathered by telephone. He answered hesitantly, asked for more time and tried to change the subject (see certified record at pages 540–541). He eventually explained that his account had been transcribed over the phone by a cousin in Ghana, and that he had apparently had little time to relate his account because of the cost of the call. The Minister's representative also asked him why he had not given this version during the interview with the officer when he had clearly been asked to provide details concerning his enrollment (see certified record at pages 545–546). He answered that he had been concerned about recovering his passport. Finally, the Minister's representative asked him more generally why he had not given this version at any point in the past. The applicant did not answer the question (see certified record at page 546).

[11] On February 15, 2017, the ID heard three witnesses by telephone. The ID first gathered testimony from Giweko Danso, a major in the army who had worked for the UN mission in Côte

d'Ivoire and whom the applicant met in 2006. In 2006, the applicant allegedly told him about how he had joined the rebellion: [TRANSLATION] "So, [Konate] told me that people who came into their village, they took all the young people to get them to fight alongside them. .. He was not interested. He wasn't interested. He was forced" (see certified record at pages 595–596).

[12] The second witness is Bamba Lacine. He lived in the same village as the applicant in 2002 and was also part of the rebel movement. He testified that he and the applicant [TRANSLATION] "had joined the rebellion together" (see certified record at page 620). He said he was taken by force: "you had no choice, and you couldn't refuse" (see certified record at page 623). He explained that the rebels threatened to kill the young people if they did not enroll (see certified record at page 624).

[13] The third witness is Yaho Clément. He is also from the same village as the applicant. The applicant allegedly saw him again in Burkina Faso when he was fleeing from Côte d'Ivoire to Nigeria. He had also joined the rebel forces. He explained that the rebels had incited the young people to join them and took them by force (see certified record at page 641).

[14] On May 29, 2017, the ID issued a deportation order against the applicant, declaring him inadmissible because he is a person described in paragraphs 34(1)(b) and 34(1)(f) of the IRPA, meaning that he is a person engaging in or instigating the subversion by force of any government [b] or a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (b) [f].

The Immigration Division's decision

[15] The reasons for inadmissibility are found in the transcript of the hearing held on May 29, 2017. It is a reasoned decision that is clear and transparent. The ID summarized the facts and reviewed the testimonies of the applicant and the three witnesses, as well as the arguments of both parties. The ID summarily considered the notion of the subversion by force of a government, since it was not disputed that the MPCCI had committed acts intended to overthrow the government in power. In short, the only issue was to determine whether the applicant had been a “member” of the MPCCI. Relying on *Jalloh v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 317, the ID reiterated that a person who was reportedly forced out of fear for his safety or his life to join such a movement could not be considered to be a member of it. However, the ID found that the Minister had proven that there were reasonable grounds to believe that the applicant had been a member of the MPCCI. The ID provided a number of reasons to support that finding of fact.

[16] The ID first noted that the applicant had provided two diametrically opposed versions of his enrollment in the MPCCI. He did not mention having been forcibly recruited during his interview with the officer nor in his BOC, in which he even goes so far as to say that he did not hesitate for a second to enroll. The panel preferred the applicant's initial version over the one he gave during the hearing on January 25, 2017. The panel considered the explanations of the contradictions the applicant provided at the hearing to be inadequate and to lack credibility, namely that he did not write his BOC himself; that he does not speak French well; that he was concerned about recovering his passport; that he did not have enough time to go into detail and that he simply gave a broad overview of his account. When he signed his BOC, the applicant

declared that he can read and understand French, which led the panel to doubt the validity of his subsequent allegation that he does not read nor understand French. Furthermore, he was represented by counsel throughout the process, so he was aware of the importance of providing an accurate and complete statement. Lastly, the explanation that he had not had enough time to write the account and was counting on explaining himself at the hearing was also deemed to lack credibility. A reasonable person could not think that a fact as important as forcibly recruiting someone into armed forces could be considered merely a detail, given that it changes the fundamental nature of his involvement. The ID also noted other contradictions. In particular, the applicant stated at the hearing that he did not join the rebels in September 2002 so he could stay with his mother, though he stated in his BOC that his mother had passed away in January 2002.

[17] With regard to the three testimonies mentioned above, the ID gave them little probative value because they were vague, lacked detail and pertained to irrelevant subjects.

[18] Lastly, the ID also relied on a report from Human Rights Watch, “Trapped between Two Wars: Violence Against Civilians in Western Côte d’Ivoire,” August 2003 (see exhibit C-31 in the certified record at pages 284 *et seq.*) to find that in the early days of the rebellion in September 2002, the MPCCI did not forcibly recruit civilians in northern Côte d’Ivoire, where the applicant lived. It was only later on that things could have happened differently.

[19] The ID therefore concluded that the applicant had been a member of the MPCCI and was thus a person described in paragraphs 34(1)(b) and 34(1)(f) of the IRPA.

Analysis

[20] The only issue today is to determine whether the ID's decision is reasonable, since the applicant cannot be declared inadmissible if he had in fact been forcibly recruited by the MPCl.

[21] In this regard, the applicant is attacking the decision-maker's reasoning on three separate points. First, when the ID assessed the file, it did not consider his lack of education or the fact that he is illiterate and does not speak or understand French well. The statements made during the interview with the officer should not be admitted because the applicant was not assisted by an interpreter. Since the applicant is illiterate, his written statement should not be relied on, either. As a result of his lack of education, the applicant could not have acted as a reasonable person, which explains the inconsistencies in the various versions he gave authorities. For instance, with regard to the contradiction concerning his mother's death, which occurred in January 2002, thus before the rebellion began in September 2002, he alleges that he does not know the months of the year. Second, the applicant submits that the ID did not consider the documentary evidence. Credible documents report that forcible recruitment was carried out and contradict the ID's finding, including the DOS report dated March 2003 (document D-4, specifically at page 425 of the certified record). Lastly, the ID erred by giving no probative value to Major Danso's testimony for no valid reason. The applicant submits that the testimony was relevant: it described a statement made by the applicant 10 years previously, when he had not yet known that he would come to Canada. Together, these reviewable errors make the decision unreasonable.

[22] On the contrary, the respondent submits that the decision is reasonable because it is supported by detailed reasons and is based on the ID's thorough assessment of the evidence on

record, including the various statements the applicant has made since arriving in Canada. He did not mention having been forcibly recruited in Annex A of the refugee claim nor in the BOC, even though he was represented by counsel. The version provided during the ID hearing is completely different. The fact that a person reports facts differently is an important factor that the panel can consider to call into question the applicant's credibility. In the event of contradictions, the ID can choose the evidence to which it will give more probative value. The ID could also have relied on common sense to find that the applicant's explanations lack credibility. It was open to the panel to prefer the version dating from the applicant's arrival in Canada over his testimony at the hearing, after having assessed the entire record. A person's first story is usually the most genuine (see *Athie v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 425 at paragraph 49). Concerning the issue of the lack of education, the respondent submits that this cannot serve as a cure all to bridge gaps in the evidence and cannot explain why the applicant had failed to report facts that were essential to his account. As for his understanding of French, the applicant allegedly indicated in his visa application that French was his mother tongue. Moreover, the transcripts of the interview show that his French is quite good. All of the forms were also filled out without the assistance of an interpreter, though the applicant was represented by counsel. As for the documentary evidence, the respondent submits that the decision is based on evidence on record. The ID is presumed to have considered all of the evidence and was not required to refer to each element. It was up to the ID to weigh the various elements. Furthermore, there are no contradictions between exhibit C-31 and DOS report D-4. Lastly, the respondent argues that the ID clearly analyzed the various testimonies and chose not to give them probative value, and with good reason: Major Danso did not personally witness the applicant's recruitment.

[23] I am in complete agreement with the respondent's arguments. The ID's decision is reasonable. It is detailed, reasoned and intelligible. Since it is not disputed that the MPCCI, which became the Forces Nouvelles, meets the definition set out in paragraph 34(1)(b) of the IRPA, namely "engaging in or instigating the subversion by force of any government", the ID simply had to determine whether the applicant had been a member. The case law has established that being a member within the meaning of section 34 of the IRPA simply means belonging to an organization and does not involve an element of complicity as, for example, is required under section 35 of the IRPA (see *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at paragraph 22; *Khan v Canada (Citizenship and Immigration)*, 2017 FC 397 at paragraphs 29–30, citing *Chiau v Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 FCR 297 at paragraphs 55–62, 193 FTR 159 (FCA) [*Khan*]). Informal participation or support for a group may suffice: the person does not have to be an actual or formal member of the organization in question (see *Khan* at paragraph 30). Therefore, the ID's task essentially consisted of assessing the applicant's credibility. Determining whether he was a "member" within the meaning of section 34 of the IRPA amounted to determining which of the various versions of his recruitment would be preferred. In this case, his testimony was the only direct evidence of how his enrollment had taken place. Thus, to determine the version that it preferred, the ID was entitled to consider the inconsistencies and contradictions, as well as the manner in which the applicant testified, and take into account the fact that he had changed his testimony (see, for example, *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paragraphs 43 and 45). The decision clearly indicates that the ID weighed the various versions and chose the original version. That finding seems reasonable to me.

[24] In the first version, meaning the one given on February 3, 2016, the applicant's answers were vague when he was asked to explain the recruitment. At one point, he stated that [TRANSLATION] "he had no choice" but to enroll. However, his answers seem to indicate that he did not have a choice because his ethnic group was subject to discrimination by the government in power, so he had to join the rebellion. At no point did he mention a forcible recruitment or violent incidents such as those described during the hearing before the ID. Moreover, the version provided in his BOC is unequivocal: [TRANSLATION] "When I saw the mistreatment of the nationals in the north of Côte d'Ivoire under the regime of ex-President Laurent Gbagbo, I did not hesitate for a second to enroll in the armed rebellion in September 2002." That version also seems to corroborate the explanation during the interview regarding the discrimination against the inhabitants of the north. In Annex A of his refugee claim, the applicant stated that he had joined the MPCCI without mentioning a forcible recruitment. It was only at the hearing held on January 25, 2017, after he was made aware of the inadmissibility report as a result of him having been a member of the MPCCI, that he alleged that there had been a violent forcible recruitment and death threats.

[25] It was also open to the ID to deem the applicant's explanations of the inconsistencies not to be credible. Moreover, it provided many grounds to support that finding. The ID had reason to doubt the explanation that the applicant did not understand French. The applicant was represented by counsel. The documents concerning the refugee claim were filled out in French, and the applicant declared that he understood the content of the form. Furthermore, the respondent rightly notes that the applicant stated in his initial visa application that his mother tongue was French (see certified record at page 35). In this case, the applicant's lack of education

does not justify omitting crucial facts and changing his testimony. The ID also notes that the applicant would have had the opportunity to correct his account before signing his BOC, especially since he was represented by counsel. In short, I cannot agree with the applicant's position that the ID failed to consider his lack of education. It did take that explanation into account, but deemed it insufficient. That finding is reasonable in this case.

[26] Furthermore, the ID did not commit a reviewable error by relying on exhibit C-31 to find that the MPCFI did not forcibly recruit individuals at the beginning of the rebellion in September and October 2002 in the northern region where the applicant lived. Exhibit D-4, which is a report from the U.S. Department of State, refers to forced conscriptions, but only in a general way and without specifying times and areas (see exhibit D-4 of the certified record, especially at page 425). In any event, even if the ID had acknowledged that the MPCFI had been conducting forcible recruitments since 2002, that would not have been likely to affect its assessment of the applicant's credibility in light of the contradictory testimonies.

[27] Lastly, I am also satisfied that the ID considered the other testimonies but chose not to give them probative value, which was within its authority to do. None of the witnesses had personally seen the applicant's recruitment. Major Danso's testimony referred to a [TRANSLATION] "relevant" statement that the applicant had made, but it is hearsay. Therefore, it was reasonable not to rely on it. The two other witnesses spoke only about their personal experience of being recruited by the MPCFI-Forces Nouvelles, not the applicant's.

Conclusion

[28] For these reasons, the application for judicial review is dismissed. No questions of general importance were raised or arose in this case.

JUDGMENT in IMM-2616-17

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

No question is certified.

“Luc Martineau”

Judge

Certified true translation
This 20th day of January 2020

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

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