Federal Court Cour fédérale

Date: 20210716

Docket: IMM-5160-20

Citation: 2021 FC 753

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 16, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

OSAREWINDA CHARLES UKONIWE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Osarewinda Charles Ukoniwe, is seeking judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA].

[2] On September 23, 2020, the Immigration and Refugee Board's Immigration Division [ID] rejected his claim for refugee protection, finding that Mr. Ukoniwe was inadmissible to Canada under paragraph 35(1)(a) of the IRPA for his involvement in crimes against humanity while serving as a police officer in Nigeria. He contends that the ID's decision was unreasonable.

[3] Having carefully considered the record and submissions of both parties, I have come to the conclusion that this application must be dismissed. For the reasons that follow, I am satisfied that the ID reasonably weighed the relevant factors in determining that Mr. Ukoniwe made a knowing and significant contribution to the crimes committed by the Nigeria Police Force [NPF].

II. Background

[4] Mr. Ukoniwe is former Nigerian police officer. He joined the NPF in 2001 and in 2005 became a member of a special force — the 25th Mobile Police Force [MOPOL]. The MOPOL is a specialized anti-riot unit.

[5] Mr. Ukoniwe received combat training with the 25th Squadron of the MOPOL force, with which he remained until 2010, at which time he began a training phase for his planned deployment with the United Nations in 2011. After his deployment and return to Nigeria in 2012, he rejoined the MOPOL unit, this time with the 31st Squadron. He was promoted to sergeant in 2014. As a sergeant, he was responsible for supervising between seven and eleven police officers.

[6] Mr. Ukoniwe reported that in 2016 he investigated homicides of individuals killed by cult members. From that moment on, he claims that his life was in danger. He received several anonymous phone calls, and his house was set on fire in 2017.

[7] Mr. Ukoniwe left Nigeria for the United States on March 5, 2018. He arrived in Canada on June 6, 2018, at which time he filed his claim for refugee protection.

[8] Mr. Ukoniwe was subsequently questioned about his service with the NPF. In September 2018, an inadmissibility report was prepared under subsection 44(1) of the IRPA, with the officer noting that the documentary evidence showed that the NPF had committed crimes against humanity including extrajudicial killings and torture. According to the documentary evidence, the MOPOL force was one of the NPF units that frequently committed extrajudicial killings.

[9] The ID correctly recognized that in order to establish his complicity in crimes against humanity, it was not necessary to prove that Mr. Ukoniwe had personally participated in these crimes. Rather, his contribution to the organization’s crimes had to be assessed on the basis of the criteria set out by the Supreme Court of Canada in *Ezokola v. Canada (Citizenship and Immigration),* 2013 SCC 40 [*Ezokola*] to determine whether there was a voluntary and significant contribution to the crimes.

[10] After considering the criteria in *Ezokola,* the ID determined that (1) Mr. Ukoniwe had voluntarily joined the NPF; (2) he had spent over half of his career with the MOPOL unit; (3) the

documentary evidence overwhelmingly demonstrates that the NPF and the MOPOL unit committed human rights violations during Mr. Ukoniwe's service; and (4) it was unlikely that he had no knowledge of these generalized violations despite the evidence that his awareness of criminal activity and human rights violations was limited to low-level corruption within the NPF.

[11] The ID found that the evidence established the NPF's involvement in generalized and systematic human rights violations since at least 1999, including mistreatment, summary executions and torture, and that Mr. Ukoniwe had made a significant, voluntary and knowing contribution to the NPF's criminal objective.

III. Issues and standard of review

[12] The application raises only one issue: did the ID reasonably determine that there were reasonable grounds to believe that the applicant was complicit in crimes against humanity?

[13] There is no dispute as to the appropriate standard of review. *Popoola v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 305 confirms that inadmissibility decisions under paragraph 35(1)(a) of the IRPA are assessed against the standard of reasonableness. A reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

IV. Analysis

[14] Mr. Ukoniwe argued that the ID's decision was unreasonable because it misapplied the test for complicity set out in *Ezokola.* He contended that a proper application of the test would demonstrate that he was not complicit in the crimes against humanity committed by the NPF.

[15] I am not convinced by Mr. Ukoniwe's submissions. The ID considered each of the factors set out in *Ezokola* in detail, acknowledged Mr. Ukoniwe's testimony and examined the discrepancies in the evidence. In conducting this analysis, the ID determined that the documentary evidence of widespread human rights abuses within the NPF was overwhelming. That finding was not unreasonable, nor was it disputed by Mr. Ukoniwe. In the face of this evidence and in light of Mr. Ukoniwe's undisputed record of service in the NPF, including the MOPOL unit, it was reasonably possible for the ID to find, as it did, that it was "highly likely that Mr. Ukoniwe had more extensive knowledge of the NPF's regular and generalized human rights abuses, mistreatment of suspects in detention, summary executions of suspects and torture during investigations and interrogations". It was not unreasonable for the SI to favour disturbing documentary evidence and to reach a conclusion based on that evidence without finding that Mr. Ukoniwe was not generally credible. The ID made it clear why it preferred the documentary evidence, as it was entitled to do.

[16] In reasonably finding that it was unlikely that Mr. Ukoniwe was unaware of the NPF's serious and widespread crimes, the ID did not err in considering the documentary evidence of the extent of the NPF's crimes, which covered a few geographic areas where Mr. Ukoniwe had not worked. Complicity requires neither physical presence during, nor active participation in, the actual crimes (*Ezokola* at para 77).

[17] In this case, Mr. Ukoniwe is simply asking the Court to give greater weight to factors that are favourable to him and to prefer his testimony over the documentary evidence. It is not the role of this Court to consider how it would have resolved an issue. Rather, the Court must focus on whether an applicant has demonstrated that the decision in question was unreasonable (*Vavilov* at para 75).

V. Conclusion

[18] The application for judicial review is dismissed.

[19] There is no question of general importance to be certified.

JUDGMENT in IMM-5160-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"Patrick Gleeson"

Judge

Certified true translation
This 22nd day of July 2021

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5160-20
STYLE OF CAUSE:	OSAREWINDA CHARLES UKONIWE v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 17, 2021
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JULY 16, 2021

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