

Federal Court



Cour fédérale

Date: May 31, 2022

Docket: IMM-3204-20

Citation: 2022 FC 787

Ottawa, Ontario, May 31, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

EMMANUEL MULE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Mule asks the Court to set aside his negative pre-removal risk assessment [PRRA]. I find that the officer properly considered the Applicant's evidence and arguments, and reasonably explained how it failed to establish that he faced persecution or a personalized risk in Uganda. Accordingly, this application will be dismissed.

Background

[2] The Applicant is from the Kuku tribe in South Sudan. In 2003, he and his family fled the Second Sudanese Civil War and lived in the Pagirinya refugee camp in Uganda. When the war ended in 2005, the Applicant's family returned to their home, but the Applicant remained in Uganda with his aunt to continue his education, visiting his family in South Sudan over the holidays.

[3] When the Applicant's family returned home, they found that their property had been occupied by an army officer, Brigadier Ring, a member of the dominant Dinka tribe. The Applicant's family was eventually able to force Brigadier Ring to leave their property. However, he retaliated by having the Applicant's father arrested and detained for two months. One of the Applicant's brothers, Ayubu, was shot in the leg while his father was being arrested. The Applicant's father was beaten while he was detained.

[4] In November 2013, the Applicant made his annual return to South Sudan. During this time, fighting broke out. The Applicant and his brother Ivan fled to Uganda, where they registered as refugees, once again at the Pagirinya refugee camp.

[5] The Applicant did not feel safe in the Pagirinya camp. He says that he recognized several of Brigadier Ring's men at the camp posing as refugees and that, during the two weeks that he was in the camp, there were three people kidnapped and later killed. The Applicant says he

knows this because “the police manning the camp would tell us to stop our movements because the camp is not safe.”

[6] The Applicant left the camp to live again with his aunt in Kampala. There he reunited with his sister, who was in the family’s hometown on the day of the fighting in November 2013. The Applicant learned from her that his parents had been killed when their house was burned down with them inside. The men who burned the house down also arrested the Applicant’s brother, Ayubu, who was never heard from again. According to the Applicant’s sister, these men worked for Brigadier Ring. The Applicant says that Ayubu was executed and that he knows this “because during this time, it was very common for arrestees [to be] taken to Gudele and [to be] shot in this manner.”

[7] In August 2014, the Applicant’s brother Wori, who lived in the Pagirinya refugee camp, was found dead near the border between South Sudan and Uganda. The Applicant says that his brother was kidnapped from the camp. He also says that, according to Wori’s wife, he was crossing back into South Sudan to check in on his cattle, which is “likely how he came to be kidnapped.”

[8] In December 2016, the Applicant saw a man whom he recognized as being associated with Brigadier Ring at InterAid, a centre for refugees in Kampala. He stared at the Applicant “for a very long time.” The Applicant says that he was worried that this man had followed him from the Pagirinya camp.

[9] On December 25, 2016, three men in civilian clothes kidnapped the Applicant while he was walking with his brother in Kampala. His brother escaped. The Applicant was beaten. He lost consciousness and awoke in a hospital. He was told that he had been found bleeding on the side of the road. The Applicant believes that his kidnappers had tried to kill him and thought they had succeeded when he passed out. The Applicant believes that the man from InterAid was working with these men.

[10] The Applicant reported the incident to the police, who said they would investigate but could not provide protection. The Applicant was afraid and so mostly kept to the house, which meant he was unable to go to work or school. Not feeling safe in Uganda, the Applicant came to Canada on December 9, 2017, using a fraudulent passport.

[11] The Applicant made a refugee claim in January 2018. He was found to be ineligible because he was already a refugee in Uganda. However, the Applicant was invited to apply for a PRRA. The Applicant applied, and a decision was rendered on February 15, 2020.

The PRRA Decision

[12] The officer found that the Applicant did not face a personalized risk and that his fears of violence in Uganda were of a generalized risk faced by the general population.

[13] The officer first noted that, since the Applicant had not previously been before a panel of the refugee protection division, all of the evidence was new and would be considered.

[14] After reviewing the Applicant's narrative, the officer considered documentary evidence regarding conditions in Uganda and South Sudan, including documents provided by the Applicant. The officer noted that a report from the United States Department of State [the DOS Report] found that there were no credible reports of *refoulement* for refugees in Uganda. The officer therefore only considered the risk to the Applicant in Uganda.

[15] The officer considered reports provided by the Applicant regarding kidnappings into South Sudan from districts of Uganda that are on the border. The officer also considered reports documenting conflicts between refugees and Ugandan nationals, but noted that these conflicts were all in southern districts that bordered Tanzania. The officer noted that the Applicant did not live in any of these regions and therefore gave these reports little weight.

[16] The officer noted that the incidents of violence against refugees described in the country reports occurred almost exclusively in or near refugee camps. The officer noted that, since arriving in Uganda in January 2014, the Applicant had only spent two weeks in a refugee camp and therefore assigned little weight to reports on conditions in refugee camps.

[17] The officer considered the Applicant's allegation that his brother Wori was kidnapped from the Pagirinya refugee camp. The officer noted that the Applicant had admitted that Wori crossed the border frequently and that the Applicant had not stated his source for the information that he had been kidnapped from the camp.

[18] The officer consider a report from the Overseas Security Advisory Council [the OSAC Report], which, according to the officer, reported “that violent robberies in Kampala are common for individuals or small groups going for walks after dark.” The officer indicated that there was insufficient evidence to persuade them that the Applicant’s kidnappers were associated with Brigadier Ring or targeted him because he was a South Sudanese refugee. The officer was not persuaded that the Applicant was being pursued by Brigadier Ring or his associates and indicated “the applicant makes a number of assumptions in this regard.”

Issues

[19] The Applicant raises two issues on this application:

1. Whether the Applicant was denied procedural fairness by the officer making adverse credibility findings without an oral hearing; and
2. Whether the officer unreasonably ignored evidence and failed to provide justified, intelligible, and transparent reasons?

[20] The parties agree that the appropriate standard of review for the first issue is correctness and the appropriate standard of review for the second issue is reasonableness.

Analysis

1. Adverse Credibility Findings

[21] The first issue turns on whether the officer did in fact make adverse credibility findings.

[22] The Applicant notes that, as part of his submissions for his PRRA application, he provided a sworn affidavit describing his experience. This affidavit includes detailed information relating to:

- the ongoing and targeted persecution of the Applicant's family, on the basis of their being from the Kuku tribe, at the hands of Brigadier Ring and his men, both in South Sudan, and in Uganda;
- the Applicant having personally witnessed the presence of Brigadier Ring's men in the Pagirinya refugee camp when he arrived in Uganda in 2013 and again in Kampala at a hub for refugee activity in 2016; and
- the Applicant being watched intently by a man that he recognized as working for Brigadier Ring and days later being the subject of a violent attack and a kidnapping, which was corroborated by medical evidence and a letter from his Aunt, also included in his submissions.

[23] The Applicant submits that the officer disregarded the principle from *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) that sworn statements of refugee claimants are presumed to be true unless there are reasons to doubt their

truthfulness. The Applicant submits that the officer failed to identify any inconsistencies, improbabilities, or other problems with his sworn evidence.

[24] The Applicant acknowledges that the officer never uses the word “credibility” but says that this is immaterial in cases “where ascriptions of ‘little weight’ can only be explained by an assumption that the evidence presented is untruthful” (citing *Mangoza v Canada (Minister of Citizenship and Immigration)*, 2019 FC 14 at para 42).

[25] The Applicant submits that section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 sets out factors that an officer must consider when determining whether to hold an oral hearing. The Applicant observes that this Court in *Zmari v Canada (Minister of Citizenship and Immigration)*, 2016 FC 132 at paragraph 17 stated that that an oral hearing is required “where credibility is an issue which could result in a negative PRRA decision; the intent of the provision is to allow an applicant to face any credibility concern which may be in issue.” The Applicant submits that he was denied an opportunity to address credibility concerns about his fears in Uganda.

[26] The Respondent submits that the officer did not make a credibility finding; rather, the officer made a finding that the Applicant’s evidence was insufficient to substantiate his allegations. There was therefore no serious issue of credibility warranting an oral hearing.

[27] In this regard, the Respondent submits that the Applicant’s affidavit contains numerous unfounded assumptions and material gaps in the evidence. The Respondent submits that even

taken to be true, the Applicant's evidence does not demonstrate that he faces a risk under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[28] In short, the Respondent submits that the shortcomings in the Applicant's evidence did not go to credibility but instead to probative value. Citing *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 and *Lv v Canada (Minister of Citizenship and Immigration)*, 2018 FC 935 [Lv], the Respondent further notes that in order for the evidence of a witness with a personal interest in a matter to have probative value, corroborating evidence is required.

[29] In reply, the Applicant submits that the Respondent is attempting to buttress the officer's reasons and that the officer's blanket statement that the evidence is insufficient does not meet the requirements of reasonableness. The Applicant submits that the officer failed to conduct any analysis related to probative value, weight, or credibility. The Applicant submits that the Court at paragraph 43 of *Lv* stated that it is appropriate to consider sufficiency of evidence only "[w]hen frailties have been highlighted in the evidence."

[30] Having reviewed the evidence submitted with the PRRA application, including the Applicant's affidavit, I conclude that the officer did not make a credibility assessment but instead found that the Applicant's evidence was insufficient to establish that he would face a personalized risk from Brigadier Ring or his associates.

[31] The Applicant testified that he was kidnapped and assaulted in Kampala. He says that he believes that his assailants wanted to kill him and that he believes that they did so at the direction of Brigadier Ring or those associated with him. However, the Applicant's beliefs are just that: beliefs. Even though the Applicant may sincerely believe these things to be true, that does not necessarily make them true, nor does it prove they are true. The officer did not cast doubt on whether the Applicant sincerely held these beliefs. What the officer took issue with was the lack of evidence to substantiate the Applicant's beliefs.

[32] I do not agree that the Respondent is improperly attempting to buttress the officer's decision. It is clear from the reasons that the officer had concerns with the number of assumptions within the Applicant's testimony with respect to his fear that he is being pursued by Brigadier Ring. A decision maker's reasons should be "read in light of the record and with due sensitivity to the administrative regime in which they were given" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 103). While the officer did not set out each assumption explicitly, it is clear upon reviewing the record what these assumptions are. With respect to the Applicant's reply submissions regarding *Lv*, in my view these assumptions are frailties that have been highlighted in the evidence, making it appropriate for the sufficiency of the evidence to be considered.

[33] I also note that there are a number of statements in the Applicant's testimony where he speaks to things he believed occurred. In particular, he speaks to his beliefs regarding the fate of his brother Ayubu and how his brother Wori came to be found dead on the border. Regardless of whether these beliefs are well founded, these events, taking place in South Sudan and in or

around the Pagirinya refugee camp, are irrelevant to the Applicant's fear of persecution in Kampala.

2. Ignoring Evidence and Failing to Provide Justified, Intelligible, and Transparent Reasons

[34] The Applicant raises several issues with the officer's assessment in support of his submission that the officer ignored evidence and failed to provide justified, intelligible, and transparent reasons.

[35] He submits that the officer failed to explain why his evidence was insufficient or what other corroborative evidence he ought to have provided.

[36] He further submits that there is no presumption afforded to the officer that all evidence and arguments have been considered and that the officer failed to demonstrate that they had substantively engaged with the evidence and arguments before them. The Applicant submits that the officer did not properly assess the Applicant's specific profile as a member of the minority Kuku tribe and that, by not considering the risk to refugees in Uganda, the officer either ignored objective evidence of risk to the Applicant or made an implicit finding that he had a viable internal flight alternative without applying the correct legal framework for making such a finding.

[37] The Applicant submits that the officer failed to properly consider the country condition evidence. The Applicant notes that the DOS Report indicates that there are no credible reports of refoulement in Uganda and the officer relied on this statement to justify not considering conditions in South Sudan. However, the Applicant's testimony and other country condition reports provide evidence of cross-border kidnapping of South Sudanese refugees in Uganda. The Applicant submits that the officer did not properly engage with this contradictory evidence.

[38] The Applicant submits that the officer erred by relying on the OSAC Report. The Applicant submits that the OSAC Report is written in the context of "expatriate persons and organizations, including US citizens." The Applicant submits that the officer unreasonably conflated the dangers to foreign executives, the audience of the OSAC Report, with those faced by a South Sudanese refugee living in Uganda. The Applicant further submits that the officer misstated the evidence in the report when they said that violent robberies are common.

[39] In my view, the officer's assessment is reasonable.

[40] I agree with the Respondent's submission that the officer explained why the Applicant's evidence was insufficient. The officer indicated that it was premised on assumptions. As discussed above, the officer took issue with the lack of evidence to substantiate the Applicant's beliefs. I disagree with the Applicant's submission that the officer was required to explain what corroborative evidence was required. As the Respondent correctly notes, the onus was on the Applicant to provide evidence support his allegations.

[41] The Applicant's submission that there is no presumption that the officer considered all of the evidence and arguments is incorrect. Decision makers are not expected to "respond to every argument or line of possible analysis" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 25; cited in *Vavilov* at para 128). Furthermore, decision makers are not required to refer to every piece of evidence, even if it is contrary to their findings. Admittedly, the more important the evidence is, the more likely an omission will render a decision unreasonable (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 (FCTD) at paras 16–17, cited in *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161 at para 123).

[42] The Applicant did not make extensive submissions as to how being a member of the Kuku tribe would place him in a different position than that of other South Sudanese refugees in Uganda. Furthermore, the officer did respond to the Applicant's minority tribe status when considering his inability to obtain a South Sudanese passport in Uganda, which indicates that the officer was aware of and alive to this aspect of the Applicant's identity.

[43] The officer did not err by not considering the risk to refugees in Uganda generally or implicitly finding that the Applicant had an internal flight alternative. The officer did consider the risk to refugees in Uganda. This, along with the specific threat from Brigadier Ring, was the personalized risk that the officer considered.

[44] As for an implicit internal flight alternative finding, the officer did not make such a finding. The officer considered the Applicant's risk in Kampala, where he previously lived.

Since this is where the Applicant was previously situated, this was not an analysis of an internal flight alternative. Furthermore, the officer noted that refugees are not confined to refugee camps and can freely move throughout Uganda. There was nothing to suggest that it was unreasonable for the Applicant to reside in Kampala.

[45] In my view, there is no contradiction between the DOS Report, which indicates that there are no credible reports of refoulement, and the evidence of cross-border kidnappings. The term “refoulement” is generally understood to mean forcible return of a refugee by state actors. Article 33 of the United Nations Convention Relating to the Status of Refugees [the Refugee Convention] states that “[n]o Contracting State shall expel or return (‘refouler’) a refugee”, and other documents from the United Nations refer to *refoulement* in the context of actions by states. After saying there were no credible reports of refoulement, the DOS Report goes on to say that some refugee groups “fear that authorities were either complicit in or unable to stop extrajudicial actions by neighbouring governments.” This suggests that the DOS Report is referring to removal of refugees by the Uganda government (i.e. refoulement in the context of the Refugee Convention). Read in this context, the DOS Report is not inconsistent with the evidence of cross-border kidnappings.

[46] In any event, the officer reasonably found that there was no evidence to suggest that the Applicant was at risk of being returned to South Sudan illegally. As indicated by the officer, the incidents of cross-border kidnappings described in the Applicant’s testimony and in his documentary evidence all occurred near the border; however, the Applicant lived in Kampala. This evidence includes the circumstances surrounding the death of the Applicant’s brother Wori,

who lived in a refugee camp and who, by the Applicant's own admission, may have been killed while crossing the border to check on his cattle.

[47] With respect to the OSAC Report, I agree with the Applicant that there are some issues with the officer's characterization of the evidence in this report. However, it is not enough to render the decision unreasonable. The officer writes that the OSAC Report indicated that robberies of individuals and small groups travelling at night were common in Uganda. However, as noted by the Applicant, what the OSAC Report actually says is that "[m]ost violent robberies in Kampala target individuals or small groups walking alone in isolated areas after dark." This statement only speaks to who the typical robbery victim is and says nothing about the frequency of robberies.

[48] However, overall, the OSAC Report does suggest that crime is relatively commonplace in Uganda, which suggests that the Applicant was not specifically targeted because of his identity. While the Applicant submits, and I agree, that the audience of the OSAC Report is expatriates and foreign businesspeople in Uganda, it is not solely concerned with crimes affecting its audience and refers to crimes affecting local residents. For example, in the paragraph following the one relied on by the officer, the OSAC Report reads "organized gangs (sometimes known as 'iron bar gangs') periodically rob and extort businesses, residents, and visitors."

[49] In light of the country condition evidence and the lack of evidence from the Applicant detailing why he was attacked, the officer's finding that the Applicant does not face a

personalized risk in Uganda is reasonable. Aside from the Applicant's subjective beliefs, there is little evidence to suggest that the Applicant was the victim of a targeted attack.

Conclusion

[50] This application must be dismissed as the officer's decision is reasonable and made in a procedurally fair manner. Neither party proposed a question for certification.

JUDGMENT in IMM-3204-20

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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