



BETWEEN:

TSHIBOLA KATALAYI

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent.

REASONS FOR ORDER

(Reasons delivered orally from the Bench
on September 15, 1997,
in Toronto, Ontario, as edited)

WETSTON J.:

Mr. Tyndale, you kindly indicated in your submissions that there are some errors in this decision that the Board obviously made. You decided, quite rightly, a central issue is whether the Board could have found a well founded fear of persecution on these facts given the evidence. Obviously, that deals very much with issues of credibility which the Court rarely interferes with, but this case is not one of credibility in and of itself.

The case really deals, from the Court's perspective, with a number of fundamental errors; and it is not the Court's responsibility to determine whether it is a central issue in the face of such errors and then conclude that another Board would have come to the same conclusion but may have done it in a more correct legal manner. That is not, I think, what this Court could do when confronted with findings of fact that are clearly perverse and capricious on the evidence before it.

In this regard, for example, the identification card issue, is clearly an incorrect finding by the Board. The issue with respect to the PALU identification card was also not a finding that was properly made on the evidence before the

Court. I was referred some authorities on the issue of vagueness in the context of the evidence of the applicant. The Board should have taken some opportunity to explain what was vague and why.

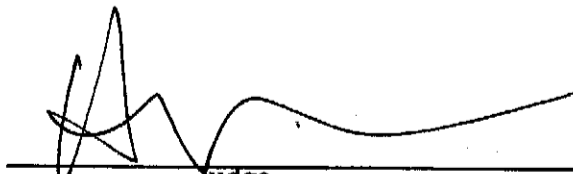
The issue with respect to the relationship between the government and the opposition party, in this case the PALU, was not made in a manner which was consistent with the other decision brought before the Board.

I agree with you, Mr. Tyndale, that these decisions must be considered in and of themselves, and a Board might make a different finding objectively on the facts before it with respect to the individual who was a member of the PALU; but in this case, it would seem that the conditions in Zaire could not lead the Board to such a finding if the applicant was a member of the PALU party. As I indicated previously, the Board appears to have been in error in how it considered that issue.

So, in conclusion, while I agree that the evidence of the applicant may appear incredible, and that it may not appear to be an unreasonable finding on the part of the Board that he was not going to face a fear of persecution if returned to Zaire, as I indicated previously, the Board made too many errors for this Court to ignore by finding that they were not central to the issues in this case. I believe it is the duty of the Board to assess the facts in an objective manner and come to a conclusion as to whether the applicant would face a well founded fear of persecution if he was to return to Zaire.

So, on that basis, I will set aside the decision of the Board and refer it back to the Board for rehearing and reconsideration.

No question for certification was proposed.



Judge

Ottawa, Ontario
October 31, 1997