

**Date: 20070628**

**Docket: IMM-4255-06**

**Citation: 2007 FC 682**

**Ottawa, Ontario, June 28, 2007**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**FREDERICK LUKE RUSSELL**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] “Even if the panel was right to doubt some aspects of the circumstances which had led the claimant to leave his village and ultimately his country, there were facts in evidence, including irrefutable documentary evidence, which could provide support for his claims that there was a real danger that he might be subject to persecution in his country because of his nationality and the family and social group of which he is a member. The panel did not take any account of this evidence and completely ignored it.” (*Djama v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 531 (F.C.A.) (QL), justice Louis Marceau.)

## **JUDICIAL PROCEDURE**

[2] This is an application under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c-27 (IRPA), for judicial review and to set aside the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (Board), in which it was decided that the Applicant is not a Convention Refugee or a person in need of protection.

## **BACKGROUND**

[3] The Applicant, Mr. Frederick Luke Russell, alleges that his father was accused of spreading false propaganda against the rebel group, the Liberians United for Reconciliation and Democracy (LURD). Mr. Russell's father, together with others, was executed by the LURD rebel leader Sekou Conneh in early 2003. Conneh, also, set fire to Mr. Russell's family home and, as a result, Mr. Russell's son, sister and two step-brothers died in the blaze. Mr. Russell believes that Conneh will not be appeased until he and his entire family are killed.

## **ISSUE**

[4] Did the Board err in concluding that the Applicant lacked credibility?

## **STANDARD OF REVIEW**

[5] Findings of fact must be shown to have been made in a "perverse or capricious manner", or made "without regard to the material", thus, patently unreasonable.

**Did the Board err in concluding that the Applicant lacked credibility?**

[6] Credibility findings are based on questions of facts generally within the proper jurisdiction of the Refugee Protection Division; nevertheless, the Federal Court of Appeal has clearly determined that a Board errs in law if it bases its credibility finding on irrelevant considerations. (*Salamat v. Canada (Immigration Appeal Board)* (1989), 8 Imm. L.R. (2d) 58 (F.C.A.).)

[7] The evidence before the Board did not support its finding that Mr. Russell's fear of persecution in Liberia was not objectively well-founded. To the contrary, Mr. Russell testified extensively that he would face a dire situation if compelled to return to his country of origin. He presented evidence to confirm the basis of his fear of persecution in Liberia: membership in a particular social group, with clear evidence in regard to persons in Liberia persecuted on the basis of their affiliation to family. (Affidavit of Application; RPD decision.) Additionally, failure to state the grounds for rejecting a claim, based on findings of credibility, constitute a reviewable error. Speculative unsubstantiated reasons are subject to review.

[8] The Board, in its reasons, described all the documents which the Applicant submitted to corroborate his testimony. Commenting on the notary certificate, the Board opined that there were spelling errors and as such could not have been issued by the appropriate authorities in Liberia. In the *Cheema v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 224, [2004] F.C.J. No. 255 (QL) decision, the Court concluded that the Board committed a reviewable error by not supporting its findings of forgery:

[7] The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. As the Respondent noted evidence of widespread forgery merely demonstrates<sup>S[sic]</sup> that false documentation **could** be available to the Applicant. (Emphasis added.)

[9] While it is acknowledged that evidence of perceived discrepancy could impact on the Applicant's credibility, the Board cannot close its eyes to objective evidence that supports the Applicant's position; he was, in fact, targeted and persecuted by the LURD rebels as a result of his affiliation to his father. The Board, without substantiation, rejected Mr. Russell's evidence that his family home in the Paynesville area of Monrovia was razed to the ground by the LURD rebels. Documentary evidence for the relevant period clearly indicates an almost total breakdown of law and order that led to the imposition of a curfew in the city. A BBC News report of Friday, October 29, 2004, (from the Applicant's record), clearly implicates ex-militants as being responsible for the mayhem that was unleashed on the city. Even if one of the corroborating pieces of evidence of the Applicant would have been considered, the result may have been different. The Board failed to provide clear reasons for a finding that there was no credible or trustworthy evidence upon which it could have reached a favourable determination. (*Pour v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1991] F.C.J. No. 1282 (QL).)

[10] In and of itself, a lack of corroborating evidence to support the Applicant's testimony is insufficient reason to discredit his testimony regarding the burning of his home and the death of his son, sister and two step-brothers in the house. Specifically, this must be viewed against the backdrop of objective evidence, and on the very basis of the specialized knowledge of the Board itself, wherein the Board acknowledged that, in fact, there was a situation of an almost, complete,

breakdown of law and order in Liberia. By ignoring the key parts of Mr. Russell's testimony, the Board disregarded extremely pertinent evidence corroborating both the subjective and objective elements of the Applicant's claim. The Board failed to consider the totality of the evidence in its assessment of the overall credibility of Mr. Russell. (*Djama*, above.)

[11] Furthermore, by ignoring the key elements of Mr. Russell's testimony as related to his fear of persecution in Liberia, the Board, without stated reasons, set aside his subjective fear of persecution in Liberia. In addition, the Board's analysis of the objective fear component of Mr. Russell's claim for refugee status is speculative and without appreciation for his testimony as it concerns his fear of return to Liberia.

## **CONCLUSION**

[12] For all the above reasons, the Board made a patently unreasonable finding as to the credibility of Mr. Russell.

**JUDGMENT**

**THIS COURT ORDERS** the application for judicial review be allowed and the matter be remitted for redetermination by a differently constituted panel of the Refugee Protection Division of the Immigration and Refugee Board.

“Michel M.J. Shore”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4255-06

**STYLE OF CAUSE:** FREDERICK LUKE RUSSELL  
v. MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 21, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** June 28, 2007

**APPEARANCES:**

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