

Date: 20070924

Docket: IMM-631-07

Citation: 2007 FC 936

Ottawa, Ontario, September 24, 2007

Present: The Honourable Mr. Justice Beaudry

BETWEEN:

**KALTOUMA AHMAT KARAMBAL
ALI IBRAHIM MAHAMAT**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), following a decision by the Immigration and Refugee Board (the panel), dated January 23, 2007.

ISSUES

[2] There are two issues in this matter:

1. Did the panel err in basing its decision on an erroneous finding of fact, made in a perverse or capricious manner or without regard for the material before it?
2. Did the panel err in not assessing the documents submitted in support of the claim?

[3] For the reasons that follow, I respond to both of these questions in the negative and the application will therefore be dismissed.

FACTUAL BACKGROUND

[4] The applicants are citizens of the Republic of Chad. On June 24, 2005, men in military garb arrested the female applicant's father. Afterwards, the female applicant and her family were visited daily by officers from the National Security Agency (ANS) who questioned, intimidated and harassed family members and arrested some cousins and uncles.

[5] At the time of the incident on June 24, the female applicant was living with her parents because she was pregnant and was having problems with her pregnancy. She stated that during the interrogations by the ANS, the officers screamed at her, pushed her and threatened her with a rifle.

[6] On June 27, 2005, Colonel Ousmane Tegouene, a family friend and an influential man in the military hierarchy of Chad, came to get the applicants to ensure their protection. They stayed with him until September 20, 2005, and left Chad to join the female applicant's uncle in Canada. They

stopped in the United States until October 29, 2005, because of the health problems caused by the female applicant's pregnancy. They went to the Canadian border and claimed refugee status.

IMPUGNED DECISION

[7] The panel determined that the applicants had not discharged their burden of establishing that there was a 'serious possibility' that they would be persecuted, or subjected to a danger of torture or to a risk to their life or to a risk of cruel and unusual treatment or punishment. The panel listed the grounds substantiating this finding:

- (a) There was an omission by the female applicant at the interview with the immigration officer at the border; the officer asked her whether her father was a political figure and she responded: [TRANSLATION] 'He's an administrator, he works in ... I don't know.' The documentary evidence filed by the immigration officer indicated that her father was a former minister of the Chad government, yet at the hearing the female applicant testified that her father had left Chad for a period of more than a year for political reasons.
- (b) She alleged that she was not spoken to when her father was arrested, yet her testimony indicated that ANS officers returned later the same day to interrogate her.
- (c) The panel found it inconsistent that the applicant did not hide at her husband's home given that her husband testified that the authorities did not know where he lived. The female applicant testified that by going to her husband's home, she would have subjected her mother to reprisals from the ANS. The panel found it more inconsistent that Colonel Ousmane Teguene, a childhood friend of the female

applicant's father, would not have also brought her mother to hide at his home on June 27, 2007, when he brought the female applicant. She could not explain why her mother had not fled with her.

- (d) The panel observed that the male applicant had not been taken in for questioning even though, according to the applicants, the ANS thought that he was an accomplice of the female applicant's father, his employment was known by the authorities and his house was located on the same street as her parents. Further, the ANS officers did not arrest the applicant despite the repeated visits.
- (e) The panel drew negative inferences from the lack of documentary evidence regarding the arrest and disappearance of Mr. Karambal, while the documentary evidence filed by the female applicant referred to a decision by the Tribunal du Travail between her father and Air Afrique and stated that he resigned when he was a minister and a member of the executive of the party in power. The panel determined that an incident such as a political arrest ought reasonably to be supported by documentary evidence.
- (f) The panel determined as a result that the letter from the female applicant's uncle, her mother's attested testimony and the letter from a friend of the male applicant, were self-serving documents.

[8] Based on the applicants' lack of credibility, the panel did not believe that they were targeted in Chad.

ANALYSIS

Standard of review

[9] When dealing with an issue bearing on the credibility of a refugee claimant, the appropriate standard of review is that of patent unreasonableness: *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (C.A.)(QL), paragraphs 2 to 4:

In his memorandum, counsel for the appellant relied on the decision of this Court in *Giron v. Minister of Employment and Immigration* [(1992), 143 N.R. 238 (F.C.A.)] in support of his argument that a court which hears an application for judicial review may more easily intervene where there is a finding of implausibility. Because counsel are using *Giron* with increasing frequency, it appeared to us to be useful to put it in its proper perspective.

It is correct, as the Court said in *Giron*, that it may be easier to have a finding of implausibility reviewed where it results from inferences than to have a finding of non-credibility reviewed where it results from the conduct of the witness and from inconsistencies in the testimony. The Court did not, in saying this, exclude the issue of the plausibility of an account from the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is 'plausibility' or 'credibility'.

There is no longer any doubt that the Refugee Division, which is a specialized panel, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the panel are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

Applicants' submissions

[10] The applicants submitted four arguments in support of their application. I will examine them in turn.

[11] First, they alleged that the panel erred regarding the female applicant's credibility when she omitted to disclose her father's political career. Given that the immigration officer had asked the question in the present tense, it was normal for her to state that her father was currently an administrator.

[12] The Court cannot agree with this argument because the panel is definitely in a better position to decide on questions of fact and to make a negative finding when faced with such an omission: *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1108, [2005] F.C.J. No. 1374 (QL) at paragraphs 23 and 24:

Overall, it must not be forgotten that an evaluation of credibility based on evidentiary inconsistencies, omissions, evasions and lack of detail is at the heartland of the Board's discretion as the trier of fact.

...

It is up to the Board to evaluate the evidence provided to it as a whole and to determine what weight to attribute to the credibility of the applicants' testimony. In a case such as this, the standard of review is that of patent unreasonableness, as the arguments presented rely solely on contradicting the findings of fact made by the Board. . .

[13] Second, the applicants contend that the panel erred again in making negative findings based on the absence of documentary evidence regarding the arrest or disappearance of Mr. Karambal (the female applicant's father). They refer to the document *Country Report on Human Rights Practices 2005*, which states that the situation in Chad is such that there is no free press and there is little chance that such an incident would be reported.

[14] However, the panel is at liberty to make negative findings based on a lack of documentary evidence. The Court stated this principle recently in *Morka v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 315, at paragraph 18:

Lack of supporting documentary evidence is sufficient to rebut the presumption that the claimant's sworn testimony is true (*Adu v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 114 (F.C.A.); *Diadama v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1518, 2006 FC 1206; *Kahiga v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1538, 2005 FC 1240 at para. 10; *Oppong v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1187 at para. 5). Consequently, in these particular circumstances, it was not patently unreasonable for the Board to draw an adverse inference from a lack of information in documentary evidence that might reasonably be expected to be mentioned in the circumstances.

[15] Third, the applicants submitted that the panel erred in refusing to believe their story. They contend that the documentary evidence on Chad corroborates their version. The Court does not believe that the panel made a patently unreasonable error. For example, the only evidence of the ANS officers' actions toward the applicants comes from their own story. It was entirely reasonable for the panel to make determinations regarding their lack of credibility. In *Neame v. Canada (Minister of Citizenship and Immigration)*, (March 23, 2000) IMM-847-99, (F.C.T.D.), Lemieux J. stated the following at paragraph 21:

Furthermore, I think the remarks by Mr. Justice MacGuigan in *Sheikh v. Minister of Employment and Immigration*, [1990] 3 F.C. 238, at page 244, are applicable to the case at bar:

The concept of 'credible evidence' is not, of course, the same as that of the credibility of the applicant, but it is obvious that where the only evidence before a panel linking the applicant to his claim is that of the applicant himself (in addition, perhaps, to 'country reports' from which nothing about the applicant's claim can be directly deduced), a panel's perception that he is not a credible witness effectively amounts to a finding that there is no credible evidence on which the second-level panel could allow his claim. [Emphasis added]

[16] Finally, the applicants alleged that the panel made a reviewable error in analyzing their story without taking into account circumstances unique to Chad. Specifically, they disputed the negative inferences made by the panel on the basis that the female applicant's mother did not hide with Mr. Teguene. According to the Court, the panel rather observed contradictions, implausibilities and inconsistencies in the female applicant's testimony. The panel's reasons are properly explained and supported by the evidence.

[17] This Court's intervention is not justified.

[18] The parties did not propose questions for certification and there are none in this matter.

JUDGMENT

THE COURT ORDERS that:

1. The application for judicial review be dismissed.
2. No question is certified.

“Michel Beaudry”

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-631-07

STYLE OF CAUSE: **KALTOUMA AHMAT KARAMBAL
ALI IBRAHIM MAHAMAT AND
MINISTER OF CITIZENSHIP
AND IMMIGRATION**

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

DATE OF REASONS: September 24, 2007

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