

Date: 20071018

Docket: IMM-291-07

Citation: 2007 FC 1063

Ottawa, Ontario, the 18th day of October 2007

Present: the Honourable Mr. Justice Shore

BETWEEN:

ABDRAMANE DIALLO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

PRELIMINARY

[1] It is the function of the pre-removal risk assessment (PRRA) officer to assess the evidence submitted:

[15] Despite the able efforts made by applicant's counsel to demonstrate that the officer's conclusion is unreasonable, the documentary evidence is not unequivocal. Questions of weight and credibility to be given to the evidence in risk assessments are entirely within the discretion of the PRRA Officer and, normally, the Court should not substitute its analysis for that of the Officer (*Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2; *Ferroequus Railway Co. v. Canadian National Railway Co.*, [2003] F.C.J. No. 1773 at para. 14 (F.C.A.) (QL); *Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 974 at para. 4 (T.D.) (QL)).

[17] . . . It is sufficient to find here that there is documentary evidence supporting the Officer's conclusion. Although there may exist documentary evidence that presents a somewhat differing position, I am not ready here to accept that the failure to mention specifically such evidence alters the Officer's general conclusion that the applicant would not face a personalized risk of persecution.

(Sidhu v. Canada (Minister of Citizenship and Immigration), 2004 FC 39, [2004] F.C.J. No. 30

(QL).)

INTRODUCTION

[2] This is an application for leave from a decision by the decision-maker, C. Rebaza, on November 29, 2006 denying the PRRA application of the applicant Abdramane Diallo.

FACTS

[3] Mr. Diallo is 29 years old and single. He lived in Mali from the age of nine onwards and returned to Guinea in 1999. He has two brothers who it appears are in Guinea with his mother.

[4] Mr. Diallo lived at N'Zérékoré, in Guinea, and had a grain business with his father and his older brother Modibo.

[5] In September 2000 threats by the rebels of the Front Uni Révolutionnaire allegedly caused the inhabitants of Mr. Diallo's village to flee. In February 2001 he said he was able to leave the area

with his mother and younger brother and go to Conakry. Mr. Diallo said he then left for abroad alone, as his mother and brother did not have the means to accompany him. He said at that time they went to Mali, while his father and older brother remained in Guinea.

[6] He said he left his country on account of [TRANSLATION] “the opposition of the rebels to the existing government, and in particular the power conferred on the present President Lassane Conte”. He arrived in Canada on April 6, 2001 and claimed refugee status on April 23, 2001.

[7] The hearing before the Refugee Protection Division (RPD) took place on August 29, 2002. Mr. Diallo alleged a fear of persecution on account of his membership in a particular social group, a risk of torture and danger to his life and a risk of being subjected to cruel and unusual treatment or punishment. He explained he feared being recruited by the rebels against his will and alleged he also feared the army.

[8] On September 23, 2002 the RPD dismissed Mr. Diallo’s refugee status application on account of a lack of credibility in his testimony. The panel considered that Mr. Diallo’s inability to prove his identity had a direct effect on the credibility of the application and concluded that he was not a Convention refugee nor a person in need of protection.

[9] Mr. Diallo alleged persecution [TRANSLATION] “on account of the deterioration in the existing situation in Guinea and forced recruitment”. He also said he feared [TRANSLATION] “threats to his life and safety due to the risk of attack and situations of distress and destitution and

other disproportionate hardships”. He also said he feared the poverty which was everywhere in the country and being a victim of attacks as he would be seen as a foreigner when he arrived.

IMPUGNED DECISION

[10] The PRRA officer carefully analyzed the allegations of risk made by Mr. Diallo on the following grounds:

- regarding the difficult general situation in Guinea referred to by the applicant, the PRRA officer concluded that the applicant had not discharged his burden of proof of showing that he would incur personal risk: the risk referred to by the applicant was generalized risk, which did not correspond to the requirements of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act);
- the officer concluded that the applicant had not established he would be targeted by a specific group, that he belonged to a targeted group or had the profile of a person likely to so belong: on the objective documentary evidence, the applicant had not shown he had the profile of specifically targeted persons.

ANALYSIS

Burden and standard under sections 96 and 97 of Act

[11] The Federal Court of Appeal has held that the standard of proof for purposes of section 97 of the Act is that of a balance of probabilities, as is true of section 96 of the Act. As to the degree of a risk of torture required by the phrase “believed on substantial grounds to exist” under paragraph

97(1)(a), the Court considered that the risk must be more likely than not. The same degree of risk is required under paragraph 97(1)(b) (*Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1, [2005] F.C.J. No. 1 (QL), at paras. 14, 36 and 39).

[12] Mr. Diallo had to establish a personal risk in the event of return:

[28] That said, the assessment of the applicant's potential risk of being persecuted if he were sent back to his country must be **individualized**. **The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual** (*Ahmad v. M.C.I.*, [2004] F.C.J. No. 995 (F.C.); *Gonulcan v. M.C.I.*, [2004] F.C.J. No. 486 (F.C.); *Rahim v. M.C.I.*, [2005] F.C.J. No. 56, 2005 FC 18 (F.C.)).
[Emphasis added.]

(*Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, [2005] F.C.J. No. 506 (QL); also *Rizkallah v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 412 (QL).)

[13] Determining a risk of return is largely a question of fact. This Court therefore should not intervene unless the PRRA officer's conclusion is patently unreasonable, and that is not the case here (*Harb v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 39, [2003] F.C.J. No. 108 (QL).)

PRRA officer considered applicant's fear of forced recruitment

[14] Mr. Diallo said he feared being forcibly recruited if he had to return to Guinea. In his submission, the PRRA officer failed to consider the documents relating to this fear and did not analyze the fear.

[15] In fact, the fear is expressly mentioned in the PRRA officer's reasons (reasons, page 2: applicant's record, p. 7).

[16] The officer noted in his decision that Mr. Diallo had filed a number of documents, but they were general in nature and he did not show how they applied to his case (reasons, page 4).

[17] It is well settled that as the decision-maker it is the PRRA officer's function to determine the weight that should be given to testimony and documentary evidence filed in support of an application (*Singh v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1329 (QL), para. 3).

[18] The officer concluded on the basis of the documentary evidence that Mr. Diallo had not shown he was targeted by a specific group, belonged to a specific group or had the profile of a person likely to be so.

[19] The officer is presumed to have considered all the evidence in the record. He was entitled to prefer the evidence he cited to that of Mr. Diallo (*Florea v. Canada (Minister of Employment and*

Immigration), [1993] F.C.J. No. 598 (F.C.A.) (QL); *Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.) (QL)).

[20] In the case at bar, the officer concluded that Mr. Diallo had not filed sufficient evidence to establish a risk of persecution, torture, a threat to life or a risk of cruel or unusual treatment or punishment as required by sections 96 and 97 of the Act.

[21] Reading the documentary evidence in the record provides no basis whatever for concluding that the officer erred in assessing it.

PRRA officer considered applicant's fear as national returning from Canada

[22] As to Mr. Diallo's fear as a national returning from Canada, it appeared that the PRRA officer considered this fear. However, he noted that there was nothing in the documentary evidence to confirm it.

[23] Mr. Diallo objected that he did not consider his affidavit and that of a friend mentioning this fear.

[24] The case law of this Court indicates that the panel is presumed to have reviewed all the evidence. Further, the panel is entitled to rely on documentary evidence in preference to testimony by Mr. Diallo (*Florea, supra; Zhou, supra*).

PRRA officer did not err in analysis of section 96

[25] The officer concluded that Mr. Diallo did not establish he was targeted by a specific group, belonged to a targeted group or had the profile of a person likely to be so.

[26] He further concluded that the alleged risk was a risk to which all citizens of Guinea were subject.

[27] Consequently, Mr. Diallo's arguments that the PRRA officer misapplied section 96 of the Act are without foundation.

Assessment of evidence

[28] There is nothing in Mr. Diallo's contentions to show that the PRRA officer failed to consider important and conclusive evidence, or that he erred in assessing the facts relied on by the applicant.

[29] In the case at bar, the PRRA officer examined all the evidence and arguments made by Mr. Diallo and clearly indicated the reasons why he could not draw the conclusions desired by Mr. Diallo from this evidence.

[30] Mr. Diallo's arguments had to do with the inferences which in his submission the decision-maker should have drawn from the evidence, which it is not the Court's function to review, and not the patently unreasonable nature of the conclusions by the PRRA officer, which is the only basis on which the Court may intervene to overturn findings of fact (*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, paras. 26 to 41).

[31] The respondent maintained that a decision-maker who had to rule on risks incurred by a person in a given country was entitled to weigh the evidence and to attach greater weight to sources which he regarded as reliable and credible than to other evidence (*Hassan v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 946 (QL); *Tawfik v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 835 (QL); *Marchant Andrade v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 553 (QL); *Owusu v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 681 (QL); *Victorov v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 900 (QL)).

[32] Accordingly, it was up to the PRRA officer to assess the evidence submitted:

[15] Despite the able efforts made by applicant's counsel to demonstrate that the officer's conclusion is unreasonable, the documentary evidence is not unequivocal. Questions of weight and credibility to be given to the evidence in risk assessments are entirely within the discretion of the PRRA Officer and, normally, the Court should not substitute its analysis for that of the Officer (*Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2; *Ferroequus Railway Co. v. Canadian National Railway Co.*, [2003] F.C.J. No. 1773 at para. 14 (F.C.A.) (QL); *Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 974 at para. 4 (T.D.) (QL)).

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(QL).)

[33] It is the officer's function to decide what weight should be given to Mr. Diallo's allegations, based on the documentary evidence on the situation in his country. Since there is no patently unreasonable error in the officer's assessment, there is no basis for this Court to intervene.

[34] In his argument, although Mr. Diallo in general expressed his disagreement with the PRRA officer's comments, he did not show how the officer's decision was patently unreasonable.

[35] It is quite clear from the decision that the officer took the atmosphere of insecurity prevailing in Guinea into account. In this regard, the officer even took into account very recent documentary evidence on the situation in Guinea, as appears from the list of documents cited in the PRRA decision (comments in record, pp. 6-7 of PRRA decision).

[36] However, the PRRA officer correctly found that the risk was generalized in nature, not personal.

[37] The PRRA officer even checked whether Mr. Diallo was part of a targeted group, and came to the conclusion that he was not.

CONCLUSION

[38] In view of the foregoing, Mr. Diallo's arguments are not such as to persuade this Court that there are valid grounds for allowing the relief he is seeking.

JUDGMENT

THE COURT ORDERS that

1. the application for judicial review is dismissed;
2. no serious question of general importance is certified.

“Michel M.J. Shore”

Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-291-07

STYLE OF CAUSE: ABDRAMANE DIALLO
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 19, 2007

REASONS FOR JUDGMENT BY: THE HONOURABLE MR. JUSTICE SHORE

DATED: October 18, 2007

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