

Date: 20081017

Docket: IMM-1199-08

Citation: 2008 FC 1176

Toronto, Ontario, October 17, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

KABANGA TED KANDOLO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The refugee claim of Mr. Kandolo was dismissed by the Board. It found that he was not a credible witness. For the reasons that follow, I am of the view that its decision was reasonable and there is no basis to set it aside.

Background

[2] Mr. Kandolo, a 22 year old national of the Democratic Republic of Congo (DRC), claims to be a victim of political persecution. He arrived in Canada at Fort Erie on March 30, 2006, by way

of the United States. In the personal narrative submitted in support of his claim, Mr. Kandolo claims that he is a youth activist with the Union pour la démocratie et la progress social (UDPS), and that he was beaten and arrested during a June 8, 2005 march in the city of Lubumbashi protesting the postponement of national elections in the DRC. He claims that he was detained and tortured on account of his refusal to give up information, and that he was only released on the intervention of the UDPS after 30 days in custody, and then only conditionally. He was instructed not to participate in any rallies or marches.

[3] Notwithstanding these conditions, he claims to have been arrested a second time on March 10, 2006, at a rally in Kinshasha organized to protest a government prohibition on late voter registration for the then-upcoming elections. The rally was violently broken up by the military police and Mr. Kandolo, along with others, was arrested and taken to Bolowa prison. There he was recognized as an activist from Lubumbashi, and was beaten and detained without food for six days. He and other detainees were able to escape en route to a work detail in the city.

[4] After this escape, Mr. Kandolo says that he managed to get into contact with his pastor, who took him in, and hid him from the military police. The pastor was able to supply him with a false passport and a plane ticket to the United States, and instructed him to make his way to Canada.

[5] The RPD rejected Mr. Kandolo's claim on the basis of its finding that there was no credible evidence before it to substantiate his claim. The following specific problems with Mr. Kandolo's evidence were noted:

- When he arrived in Canada and was questioned by immigration officials, Mr. Kandolo indicated that he was a member of the UDPS, yet he could not answer what the acronym UDPS stands for. While acknowledging the explanation at the hearing that he had misunderstood what the immigration officers were asking, the RPD found that his initial unfamiliarity with the meaning of the acronym UDPS raised serious doubts as to the credibility of his claim.
- There was no reasonable explanation for a number of irregularities in the Mr. Kandolo's evidence in relation to his alleged arrests, raising the question of whether he was arrested at all. Mr. Kandolo had initially reported a single arrest upon entry and in his personal narrative (which had already been amended once prior to the hearing, with the assistance of counsel), yet at the hearing he added a second arrest.
- In relation to his alleged first detention, Mr. Kandolo could not say whether the other prisoners were political or criminal detainees, and did not recall the exact day of his release. The RPD found it unusual that a person would spend a month with other inmates and not learn anything about them.
- Mr. Kandolo alleged that he received 8 to 10 lashes a day for one month during his first incarceration, yet by his own admission he bears no scars. His only explanation in this respect was that his skin does not scar.

- Asked to explain why less than a year after his release from detention, he would risk being arrested again by participating in a protest march, he could only say that it was for love of his country. He was able to describe the party structure of the UDPS but he provided only vague evidence about his own activities within the party. He was unfamiliar with key political events occurring at the relevant time.
- At the hearing, Mr. Kandolo admitted that his personal narrative was prepared by Congolese persons living in Hamilton, Ontario. Considering that he had not been forthcoming about this earlier, the RPD was doubtful that the narrative actually depicted events he had experienced.
- The claimant stated that his UDPS membership card had been confiscated at the time of his second arrest, yet he could not explain why he would have had this card at a protest march, in light of the objective evidence that UDPS members have been targeted by the authorities. His explanation that he had to prove membership to participate in the march did not satisfy the RPD.
- A letter put into evidence, allegedly from the UPDS, makes no reference to the first arrest in 2005, yet Mr. Kandolo stated that the UPDS helped secure his

release at that time. Further, the letterhead on the letter appeared to the RPD to have been painted by hand.

Issues

[6] Mr. Kandolo raised a number of issues in his memorandum. Relying chiefly on *Ullah v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1918, he submits that the RPD erred in law by imposing “too high a standard on the applicant’s knowledge about politics”. Further, it is submitted that the RPD’s implausibility findings are “patently unreasonable” and based on speculation alone, noting that in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, the Court stated that implausibility findings should only be made in the clearest of cases. Lastly, it is submitted that when the RPD noted an inconsistency between the oral and written testimony of Mr. Kandolo in relation to his escape from detention, he should have been confronted with it in order to be given an opportunity to explain.

[7] The Respondent takes the position that the RPD’s findings regarding the credibility and plausibility of the evidence were reasonably open to it on the record, considering among other things Mr. Kandolo’s lack of knowledge of the details of his own claim, and his failure to mention key events at the port of entry. As for the alleged duty to confront him with the inconsistency in his testimony regarding his escape, the Respondent submits that the specific point is not material to the decision itself given the number of credibility concerns and, citing *Ayodele v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1833, a case where it was held that contradictions

in the Applicant's testimony would have been as apparent to the claimant's counsel as to the refugee Board, denies that there was any "duty to confront" incumbent upon the RPD.

Analysis

[8] I find that the Applicant's contention that the RPD imposed too high a standard with respect to his knowledge about politics mischaracterizes the basis of the RPD's adverse credibility findings. Firstly, it is clear from the certified record that political sophistication was not an issue as such, either at the hearing or in the decision. Rather, the RPD's concerns related to a lack of basic knowledge of the alleged grounds of persecution on the part of Mr. Kandolo. While he was able to identify the party structure, his evidence as to his own activities on behalf of the party, other than participating in a rally, were described as being "vague". My review of the certified record leads me to the view that the Board accurately characterized his knowledge. In my view, it was open to the RPD to find that it is unlikely that a professed political activist cannot articulate the basic political beliefs or opinions of the party he claims to support.

[9] Even adopting the strict standard enunciated in *Valtchev* – that is, that findings of implausibility should only be made in the clearest of cases - the RPD's decision is sound. The RPD did not find Mr. Kandolo's story intrinsically implausible; rather, the various inconsistencies and omissions in his evidence were found to be serious and numerous enough to undermine his credibility as a whole. That was a finding reasonably open to the board on the evidence he presented to it. For example, a claim to have been whipped daily over an extended period is not implausible; however, having survived with no scars strains credulity. The story of his escape from

prison, likewise, is not implausible, but his evidence as to how he escaped changed and became far more detailed over time. This too leads one to seriously question the Applicant's credibility. In short, I find nothing unreasonable in the decision that would justify the Court's intervention.

[10] Finally, as for the alleged duty to confront the Applicant with the inconsistency in his oral and written testimony in relation to his escape, I agree with the Respondent that *Ayodele* is instructive. Where there are obvious and numerous contradictions in a claimant's testimony, it cannot be grounds for review that the Board has not expressly pointed them all out, particularly where the claimant was represented by counsel throughout.

[11] For all of these reasons, this application is dismissed.

[12] Neither counsel proposed any question for certification. On the facts of this application no question is certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application is dismissed; and
2. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1199-08

STYLE OF CAUSE: KABANGA TED KANDOLO v.
THE MINISTER OF CITIZENSHIP AND
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