Date: 20081023

Docket: IMM-1058-08

Citation: 2008 FC 1191

Toronto, Ontario, October 23, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SHAKESPEARE CHIKUKWA
JOAN GORORO
TEMPTATION KIMBERLY (KIMB) CHIKUKWA
LEONORAH TAISAI YEMURAI CHIKUKWA (a minor)
NIGEL MARUVA CHIKUKWA (a minor)
KUSIVAKWASHE CHIKUKWA (a minor)

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to ss. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of the Refugee Protection Division of the Immigration Refugee Board (RPD), dated February 12, 2008 (Decision), refusing the Applicants' application to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

[2] The Applicants are citizens of Zimbabwe who claim refugee protection based upon the political opinion of Shakespeare Chikukwa (Principal Applicant), and their support for the Movement for Democratic Change party (MDC), as well as their fear of forced recruitment into the National Youth Service (NYS) in Zimbabwe.

[3] The Principal Applicant is a 43-year-old man who worked in Zimbabwe as a temporary teacher in 1983, and as an Audit Manager from 1988-1996 and as a Finance Manager from 1996-1998, eventually becoming Financial Director of Aurex (Pvt) Ltd. (Aurex) from March 1999 to August 2001. Aurex is a gold factory operated as a joint venture between a subsidiary of the Reserve Bank of Zimbabwe (RBZ) and a private company in Zimbabwe. During his time at Aurex, the Principal Applicant says he uncovered the loss of significant amounts of gold, as well as other accounting and business irregularities. The Principal Applicant presented his findings to the Aurex Board. Members of the Board blamed each other for poor corporate governance. The private partner pulled out of the joint venture; however, he owed Aurex $20 Million US. The private partner refused to pay and a court case was launched in the United States in which the Principal Applicant testified at the trial. The case was settled out of court in May 2001, and the private partner paid out $2 million US as a settlement.

[4] Without a partner in the United States, Aurex established a marketing office in New York called AuriJewel. The Principal Applicant was transferred to the AuriJewel New York Office in August 2001 as the Financial Director/Chief Financial Officer. The Principal Applicant discovered

that Aurex had sold gold directly from the factory in Zimbabwe and had taken it outside of Zimbabwe in order to externalize funds, a process which is illegal in Zimbabwe because it avoids government regulations on exchange rates. The Principal Applicant brought this fact to the attention of Mr. L.P. Chihota, Aurex & AuriJewel's Chairman, verbally in 2003, and in writing in 2004. Aurex and AuriJewel were audited by the RBZ in early 2004 and the issues of the missing gold in 1999 and the losses with the former private partner of Aurex were uncovered.

[5] The Principal Applicant met with Mr. Gono, the Governor of the RBZ in 2004 and was offered a position at the RBZ, which he turned down. The Principal Applicant was also offered a position as a liaison officer, to mobilize all the Zimbabweans in the United States to send money through government and RBZ channels in order to facilitate their Zimbabwe African National Union- Patriotic Front (ZANU-PF) Government turnaround strategy and eliminate the externalizing of funds and trading on the black market. The Principal Applicant also turned this job offer down.

[6] The Principal Applicant alleges his discussions with Mr. Gono implicated some top officials of the ZANU-PF and that Mr. Gono spoke to the Chairman of Aurex. The Principal Applicant alleges that the tone of his conversations and his correspondence with the Chairman of Aurex and the Aurex team changed. An example was that the Principal Applicant received an e-mail which indicated that AuriJewel had breached the RBZ foreign currency controls by paying U. S.-based office expenses straight from office proceeds instead of first sending the foreign currency back to the RBZ in Zimbabwe. The Principal Applicant changed AuriJewel's policy in response to this e-mail.

[7] The Principal Applicant says he received notice in April 2005 that AuriJewel was restructuring in order to reduce costs. The notice invited the Principal Applicant to become a commissioned agent, but that offer was shortly withdrawn. The Principal Applicant was laid-off from his position at AuriJewel at the end of June 2005. Because he was laid off, the Principal Applicant's application for permanent residence in the United States was denied. His subsequent attempts to find work in the United States were unsuccessful.

[8] The Principal Applicant alleges that he has sensitive information that implicates top ZANU-PF officials and he fears being targeted and arrested by Zimbabwean authorities in order to silence him. He also fears that he will be used as a scapegoat to justify Aurex's financial problems and that Zimbabwean officials will be aware that his wife and eldest daughter are MDC members. The Principal Applicant fears his family might be targeted for his activities upon their return to Zimbabwe and that his children will be forced into the National Youth Service.

[9] The Principal Applicant and his family arrived at Windsor, Ontario on September 28, 2006 and sought protection at the border.

DECISION UNDER REVIEW

[10] The RPD held that the Applicants were not Convention refugees because they did not have a well-founded fear of persecution in Zimbabwe. The RPD also found that the Applicants were not persons in need of protection, as their removal to Zimbabwe would not subject them personally to a

risk to their lives, or to a risk of cruel and unusual treatment or punishment. There were no substantial grounds to believe that the Applicants' removal to Zimbabwe would subject them personally to a danger of torture.

Credibility of Support for MDC

[11] The RPD did not find the Applicants' account of their involvement with the MDC credible. The RPD found that the Principal Applicant did not have a long-term membership in the MDC. The RPD also found Temptation's evidence that she had a membership in the MDC prior to her arrival in Canada was not credible. Joan, the Principal Applicant's wife, could only supply a membership card from 2006. The RPD reasoned that the Applicants could have produced letters from the MDC in support of their membership. They were represented by counsel and so should reasonably have provided supporting evidence regarding all aspects of their claim, including membership in the MDC.

[12] As well, the Applicants failed to satisfy Rule 7 of the *Refugee Protection Division Rules* SOR/2002-228 (RPD Rules) and section 106 of the Act which provide that claimants must make reasonable attempts to provide the RPD with documentation in support of their claim. The RPD was unable to accept the Applicants as long-term opposition supporters in Zimbabwe.

[13] The RPD also found that the Principal Applicant could not provide credible or trustworthy evidence to support his assertion that he had engaged in long-term public support for the MDC in

the workplace. The U.S Dept. of State, *Zimbabwe Country Reports on Human Rights Practices-2006*, March 6, 2007, indicates that the "state sanctioned the use of excessive force and torture, and security forces tortured members of the opposition, union leaders, and civil society activists." The Principal Applicant, however, testified that he did not suffer any difficulties in relation to his political opinion. He was promoted, transferred to the United States and offered two positions by the head of the RBZ, a senior ZANU-PF member.

[14] There was no evidence that the Applicants made any contributions to the MDC except to buy memberships. The RPD found that the Applicants did not provide credible or trustworthy evidence in support of their well-founded fear of persecution, or their fear of cruel and unusual treatment or punishment, or in support of a risk, believed on substantial grounds to exist, of torture, should they return to Zimbabwe.

Credibility of Firing for Knowledge of Sensitive Information

[15] The RPD found that the Principal Applicant could not provide credible or trustworthy evidence in support of his allegations that he was laid-off because of his whistle blowing or his possession of sensitive information. The Principal Applicant's testimony was that two other staff members were laid off at the same time. This suggested that the office was, in fact, being restructured and that the Principal Applicant was not individually targeted by Aurex. Also, the Principal Applicant could not demonstrate that his meeting with Gideon Gono resulted in the deterioration of his relationship with the Chairman of AuriJewel and the loss of his job.

[16] The RPD also found that the initial offer made by Aurex to have the Principal Applicant stay in the United States after the restructuring undermined the credibility of his claim that he was being forced back to Zimbabwe to be silenced by ZANU-PF officials.

[17] The RPD concluded that the Principal Applicant had not provided credible or trustworthy evidence in support of his allegation that he was released from his job because of his anti-corruption activities in 1999 and 2003. Hence, the Principal Applicant did not have a well-founded fear of persecution in Zimbabwe for his business activities.

Well-Founded Fear of Persecution in Zimbabwe

[18] The RPD found that the Principal Applicant could not establish with credible or trustworthy evidence that he had a well-founded fear of persecution by government officials in Zimbabwe for his knowledge of, and disclosure of, corruption and irregularities gained through his work with Aurex and AuriJewel. The RPD found that, on a balance of probabilities, Zimbabwean officials did not want to bring the Principal Applicant back to Zimbabwe so that they could control or silence him. The Principal Applicant could not provide credible or trustworthy evidence that the information he possessed would be damaging to ZANU-PF officials in 2007. The information uncovered in 1999 by the Principal Applicant was in the public domain, as it was included in the legal proceedings in the United States.

[19] In relation to the Principal Applicant's claim that he possessed damaging information about high ranking officials, the RPD found that senior members of Aurex and AuriJewel knew for

several years that the Principal Applicant had knowledge of corruption in the industry. However, the Principal Applicant was not punished for disclosing the corruption in 1999 or 2003, but was, in fact, promoted, sent to the United States, received a salary increase and two job offers at the RBZ.

[20] The RPD found that the Principal Applicant did not have a track record of disclosing confidential or politically sensitive information to the greater public, and so would not risk angering senior ZANU-PF officials. Nor would these officials have any reasons to be concerned about the information the Principal Applicant had on Aurex and AuriJewel.

[21] The Principal Applicant provided no evidence of threats from Aurex, the RBZ or senior officials directed towards him because of his activities. He also provided no evidence he was involved in any alleged corruption or wrongdoing. Consequently, he would not be subject to persecution should he return to Zimbabwe.

Well-Foundedness of Fear of Persecution of Claimant's Family

[22] The RPD held that the Principal Applicant did not provide credible or trustworthy evidence to support a well-founded fear of persecution of his family because of his previous business activities should they return to Zimbabwe. No persuasive evidence was provided that family members of people who speak out about corruption or fraud, or people who are falsely accused of crimes are persecuted or harmed in any way. In addition, the RPD found that the Principal

Applicant's fear that his children would be forced into the NYS was not supported by the documentary evidence.

[23] In the Response to Information Request ZWE101401.E, 22 June 2006, p. 8.1.1, the *Zimbabwe Independent* of May 12, 2006 was cited as indicating that all NYS training camps across Zimbabwe had been shut down because of food and resource shortages and that, since the last intake of youths in 2005, no new recruits to the NYS had been taken.

Summary

[24] The RPD concluded as follows:

- The [Principal] Applicant, his wife and eldest daughter have not established their membership in the MDC while in Zimbabwe;
- The [Principal] Applicant has not established that he was vocal in his support for the MDC while working in Zimbabwe;
- The [Principal] Applicant, his wife and eldest daughter do not have a well-founded fear of persecution in Zimbabwe because of their very minor role in the MDC;
- The [Principal] Applicant could not provide credible or trustworthy evidence to support his claim that he was terminated for whistle blowing and that he was terminated in order for him to return to Zimbabwe to be silenced;
- The [Principal] Applicant did not provide evidence in support of his children's subjective fear of persecution through forced recruitment into the NYS;
- The [Principal] Applicant has not established that he would be subject to a serious possibility of persecution should he return to Zimbabwe;
- The [Principal] Applicant would not be subject personally to a risk to his life, or a risk of cruel or unusual treatment or punishment, or a danger, believed on substantial grounds to exist, of torture, should he return to Zimbabwe;
- The [Principal] Applicant's wife and children have not established that they would be subject to a serious possibility of persecution should they return to Zimbabwe;
- The [Principal] Applicant's wife and children would not be subject personally to a risk to their lives, or a risk of cruel or unusual treatment or punishment, or a danger, believed on substantial grounds to exist, of torture, should they return to Zimbabwe;

- The Applicants are not Convention refugees and are not persons in need of protection and therefore the claims are rejected.

ISSUES

[25] The Applicants have raised the following issues on this application:

1. Did the RPD err by imposing an erroneously high evidentiary burden on the Applicants by requiring that they provide corroborative evidence regarding all aspects of their claims?

2. Did the RPD err by basing its Decision on a significant mistake of fact?

3. Did the RPD err by basing its Decision on speculation?

4. Did the RPD err by failing to consider the issue of whether or not the Applicants would be placed at risk of cruel and unusual treatment or punishment as returnees to Zimbabwe from USA/Canada in its analysis of the Applicants' claims under section 97 of the *Immigration and Refugee Protection Act*?

STATUTORY PROVISIONS

[26] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their	*a*) soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by

(ii) elle y est exposée en tout

the person in every part of that country and is not faced generally by other individuals in or from that country,	lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.
Duty of claimant	**Obligation**
100(4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.	100(4) La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées et fournir à la section, si le cas lui est déféré, les renseignements et documents prévus par les règles de la Commission.

Credibility	**Crédibilité**
106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	**106.** La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[27] The following provisions of the RPD Rules are also applicable:

Documents establishing identity and other elements of the claim	**Documents d'identité et autres éléments de la demande**
7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.	**7.** Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

STANDARD OF REVIEW

[28] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically

different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review” (*Dunsmuir* at para. 44). Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[29] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[30] The Applicants submit that the Officer erred by requiring corroborative evidence. The Court in *A.M. v. Canada (Minister of Citizenship and Immigration)* 2005 FC 579 held that although applicants are not legally required to produce corroborative evidence, it is not unreasonable for a Board to consider the lack of such evidence as one of the factors in assessing credibility. The standard of review for credibility findings is patent unreasonableness: *Malveda v. Canada (Minister of Citizenship and Immigration)* 2008 FC 447 (*Malveda*). The Applicants also submit that the Officer was speculative and discounted the documentary evidence as to whether the Applicants were at risk of cruel and unusual treatment or punishment.

[31] The Court in *Malveda* at paragraph 18 holds that for implausibility and credibility findings, the appropriate standard is patent unreasonableness: *Soosaipillai v. Canada (Minister of Citizenship*

and Immigration) 2007 FC 1040 at para. 9; *Xu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1701 at para. 5; *Asashi v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 102 at para. 6; *Canada (Minister of Citizenship and Immigration) v. Elbarnes*, 2005 FC 70 at para. 19; *Aguebor v. Canada (Minister of Employment and Immigration)*, (1993) 160 N.R. 315 at 316-317.

[32] The Applicant also submits that the Officer made a mistake of fact. The Court in *Malveda* states at paragraph 19 that when reviewing whether or not the Board ignored relevant evidence is a factual inquiry and reviewed on a standard of patent unreasonableness: *Dannett v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1363 at paragraph 33.

[33] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to issues raised by the Applicants to be reasonableness, and that significant deference should be afforded to the Decision in this case. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para. 47). Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law".

ARGUMENTS

The Applicants

Evidentiary Burden

[34] The Applicants submit that there is a presumption of truthfulness that applies to sworn testimony, unless there is a valid reason to doubt it: *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.) at paragraph 5. They contend that there was no legal requirement for them to corroborate their sworn testimony and that it was an error of the RPD to disbelieve them just because there was no corroborative documentary or other evidence: *Ovakimoglu v. Canada (Minister of Employment and Immigration)*, [1983] F.C. J. No. 937 (C.A.) and *Attakora v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 444 (C.A.).

[35] The Applicants say that, although corroborative evidence may be helpful, it is not a requirement for refugee claimants. The Applicants argue that the RPD analyzed each element of their claim with an erroneously high evidentiary burden and rejected evidence that was credible and trustworthy just because of a lack of corroborative support.

[36] The Applicants cite the following statement from the RPD's written reasons to support their assertion that the RPD placed an erroneously high evidentiary onus on them to produce evidence to corroborate all aspects of their claim:

> Firstly, the claimant was represented by counsel and the panel found it reasonable for him to know that he was required to provide supporting evidence regarding all aspects of his claim…

[37] The Applicants conclude that a plain reading of the RPD's written reasons demonstrates that the RPD erroneously applied an evidentiary onus that required the Applicants to provide "supporting evidence regarding all aspects of his claim." As well as being erroneous, the Applicants argue that such a high onus is not applicable to refugee claimants.

Mistake of Fact

[38] The Applicants submit that an adverse finding of credibility must have a proper foundation in the evidence and that the RPD erred by ignoring, misapprehending or misconstruing evidence, and by basing its conclusions on speculation. The Applicants argue that the RPD wrongly rejected the Principal Applicant's concerns that he was being individually targeted and that there was something sinister behind his termination on the basis of the RPD's factual finding that two other persons were laid off at the same time as the Principal Applicant. The Applicants claim this was a mistake of fact; the Principal Applicant specifically testified that these two people were not laid off. The Applicants cite a portion of the record at page 21 of the Affidavit of Hunimano Coelho, which reads as follows:

Board Member ("BM"):	At the time that you were laid off in the restructuring, was anyone else laid off?
Applicant:	No.
BM:	Nobody?
Applicant:	No.
BM:	How many people were employed in the office when you were laid off?

Applicant:	Three.
BM:	And who were they?
Applicant:	There was myself, Marilyn Orlando.
BM:	And what was she doing?
Applicant:	She was the Financial Controller. And Nancy who was in charge of sales.
BM:	And Nancy and Marilyn remained with the organization?
Applicant:	That is correct sir.

[39] The Applicants submit that the RPD's mistake in this regard was significant and removes the foundation of the Decision as a whole. Had the RPD understood that the Principal Applicant was the only person laid off at that time, it may have come to a different conclusion regarding whether he was being personally targeted and that his fear of returning to Zimbabwe was reasonable.

[40] The Applicants rely upon the following paragraph from the written reasons of the RPD to demonstrate that the mistake of fact was fundamental to the Decision:

> The panel finds that the fact that two other staff were laid off indicates that the office was being restructured and the claimant was not individually targeted or that Aurex used the excuse of restructuring just to get rid of him.

Speculation

[41] The Applicants submit that the RPD's finding that the Principal Applicant was not at risk of persecution in Zimbabwe was not only based on a significant mistake of fact but was also of a speculative nature.

[42] The RPD noted that the Principal Applicant did not have a track record of disclosing sensitive information to the general public and had not proven that senior government officials would have reasons to silence him. The Applicants submit that the Decision was speculative because it was impossible to make any judgment at to whether or not the authorities would perceive the Principal Applicant as a threat based on his knowledge of corruption, regardless of his track record of acting appropriately. The Applicants go on to say that the RPD's conclusions are coloured by its failure to appreciate that the Principal Applicant was individually targeted for dismissal from AuriJewel.

Risk of Cruel and Unusual Treatment or Punishment

[43] The Applicants submit that there was a significant amount of documentary evidence, in the form of news articles, before the RPD that spoke to the potential risks associated with the return of failed refugee claimants to Zimbabwe. The articles suggest that they would be at risk of being handed over and persecuted by the Zimbabwean security services immediately upon their return to that country.

[44] The Applicants admit that, although they did not raise this as a ground of persecution and serious harm in the course of their hearing, the RPD should have considered and determined the degree of risk which the Applicants would be exposed to if they returned to Zimbabwe. For this reason, the Applicants submit that the RPD's analysis under section 97 of the Act was deficient.

[45] The Applicants cite the Supreme Court of Canada case of *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, for the proposition that a board must consider all of the grounds advanced for a claim for refugee status, even if the grounds are not raised by the claimants during the course of a hearing.

The Respondent

Evidentiary Burden

[46] The Respondent contends that the RPD did not reject the Applicants' claim because they did not corroborate every part of their claim. The claim was rejected because the Applicants could not provide any reasonable explanation for not producing documents to corroborate their assertions. The Respondent relies upon subsection 100(4) of the Act which requires a claimant to produce all of the documents and information required by the rules of the RPD. Rule 7 of the RPD Rules requires that claimants provide acceptable documents to establish identity and other elements of their claim. Section 106 of the Act requires that a panel take into account, when assessing credibility, whether a claimant has provided a reasonable explanation for any lack of documentation or has taken reasonable steps to obtain relevant documentation.

[47] The Respondent points out that there was evidence before the RPD that the MDC in Zimbabwe verifies MDC membership for its members. The only reason the Applicants did not produce membership letters was because they did not think they were necessary.

[48] The Respondent concludes that the proposition proposed by the Applicants in relation to the evidentiary burden issue is contrary to the principle that a decision or reasons must be read and interpreted as a whole: *Kanakulya v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1420; *Miranda v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 437, at 3-5 and *Sidhu v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1026, at 31-33.

Mistake of Fact

[49] The Respondent finds there is merit to the contention that the RPD made a mistake of fact that other employees were laid off from AuriJewel at the same time as the Principal Applicant. However, the Respondent says this mistake was not fundamental to the determination of the claim. As the RPD noted, there were several reasons for the conclusion that the Principal Applicant was laid off: firstly, because the office was being restructured, as revealed in a letter from AuriJewel dated April 8, 2005; and, secondly, because the restructuring was to reduce marketing costs.

[50] The Respondent says that the Applicants have failed to raise an arguable issue of law, as their excerpt of the transcript at page 21 of the affidavit of Hunimano Coelho (at page 17 of

Judgment) was evidence only for the conclusion that at some point in the hearing the Principal Applicant testified that nobody else was laid off with him. It did not establish what he testified later on in his interview on the same issue or that he did not later correct himself. As well, the Applicants rely upon a paralegal's affidavit which does not specify whether the entire transcript had been reviewed.

[51] The Respondent emphasizes that the April 8, 2005 letter received by the Principal Applicant states as follows:

> The marketing plan is to employ commissioned agents for the USA market. Consequently the AuriJewel staff will be affected by this strategy. We will serve notice form the 1st of May 2005 to all the AuriJewel employees in compliance with contractual obligations during out April visit to the U.S.A.

[52] In addition, the Respondent quotes the Principal Applicant's PIF narrative at paragraph 23, where he describes his termination as a "lay off" rather than a termination without just cause:

> …In April of 2005 I received a notice from the Aurex Marketing Director that the AuriJewel office was to be restructured to reduce costs and inviting me to become a commissioned agent. In a subsequent letter to me, the offer to me to become a commissioned agent was withdrawn and I was laid off…

[53] Further, the Respondent points out that the Principal Applicant knew his job was not secure and that he was searching for alternative arrangements a year before he was laid off. At paragraph 19 of the Principal Applicant's PIF narrative he said the following:

> Prior to the appointment of Gono as the reserve Bank Govenor, Aurex and AuriJewel operated as independent private companies. When Gono took office in late 2003, he came with expanded powers to manage every company he considered strategic. All companies

> generating foreign currency were among his targets. With Chronic shortages of foreign currency, RBZ has been turned into a Zanu PF machine to terrorize those seen to be externalizing funds, trading on the black market and hampering the Zanu PF government turnaround strategy, and this made me feel apprehensive about my own future. I therefore decided to give myself a fall back position by applying for permanent residence in the USA. This was in about April of 2004. I also started looking for a new job, while still working at AuriJewel.

Speculation

[54] The Respondent submits that Applicants' arguments on this issue are based on reading each finding of the RPD in isolation, and that if all findings are read in context it was reasonably open to the RPD to conclude that the Principal Applicant would not be perceived as a threat by the authorities in Zimbabwe.

Risk of Cruel and Unusual Treatment or Punishment

[55] The Respondent points out that this issue was not specifically raised before the RPD. As well, if there is no other evidence beyond that considered in the section 96 analysis that could establish that a claimant is in need of protection, a section 97 analysis is not required: *Soleimanian v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1660 at 22; *Brovina v. Canada (Minister of Citizenship and Immigration)* 2004 FC 635; *Nyathi v. Canada (Minister of Citizenship and Immigration)* 2003 FC 1119 and *Ozdemir v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1008. The Respondent concludes that the Applicants did not demonstrate there was evidence warranting a separate s. 97 analysis.

ANALYSIS

[56] I have examined each of the grounds raised by the Applicants in turn. I cannot find the Decision unreasonable or otherwise reviewable in relation to the corroborative evidence issue or agree that the Officer raised the evidentiary burden.

[57] As the Respondent points out, the RPD was simply applying sections 100(4) and 106 of the Act and Rule 7 of the RPD Rules. There was no reasonable explanation for the Applicants' failure to obtain relevant documentation.

[58] As regards the speculation issue, I have to agree with the Respondent. When the Decision is read as a whole, there were reasonable grounds for the RPD to conclude that the authorities in Zimbabwe would not perceive the Applicant as a threat.

[59] There is also no reason to question the RPD's failure to consider section 97(1) and the risk the Applicants would face as failed refugee claimants. The Applicants did not raise this risk before the RPD and there was no evidence beyond what was considered in the section 96 analysis to establish that the Applicants were in need of protection under section 97.

[60] The mistake of fact is more complicated. The Respondent concedes that the Principal Applicant did not testify that a financial controller and a fellow employee in charge of sales were laid off at the same time, but argues that this mistake is not fundamental to the determination of the claim.

[61] There was other evidence before the RPD to support a conclusion that the Principal Applicant was laid off because Aurijewel was restructuring and not because he was being targeted. The letter of April 8, 2005 was notice "to all the Aurijewel employees" that they would be affected by the strategy of employing commissioned agents for the USA market. The Principal Applicant appears to have known that his job was not secure because he looked for a "fall back position by applying for permanent residence in the USA" and he "also started looking for a new job, while still working at Aurijewel." This appears to have been prompted by Mr. Gono's taking office in 2003 and his targeting of all companies generating foreign currency.

[62] There is also a broader context to the passage quoted by the Applicants from the transcript in which the Principal Applicant testified that no one else was laid off in the restructuring besides him. For example, the following exchange occurs at pages 57-58 of the transcript where the lay-off issue is discussed:

> PM: You've provided two or three documents that talk about layoff and their consistent, that they're reorganizing and restructuring the department, that they're going to commission sales versus non commission sales. What makes you, or do you have any proof that they laid you off, specifically you, because of the information you knew?
>
> PC: I couldn't understand, sir, why they were targeting me to lay me off. So the only logic I had was it's because I'm refusing to be part of the bigger picture of the bank and at the same time I have sensitive information.
>
> PM: But that's all speculation. You haven't, you don't have it written anywhere or---
>
> PC: It is a fear, sir, I am afraid.
>
> PM: Okay. I have to rule on facts so I'm going to compare your subjective fear which you've talked about with the documentary evidence you've provided to me says

and weight it. Do you have any information about the structure of Aurex Office in New York now?

PC: No, sir.

PM: So do you not know what if they really went through a downsizing?

PC: I don't know that, sir.

PM: Because without knowing that, if I knew that they threatened in the letters that they're downsizing, they get rid of you, but then they keep everybody and they don't go to sales, commissioned sales officer, you could make the logical link between them trying to get rid of you and not changing. But now we don't know if the office has changed right?

PC: All I can say ---

PM: I have no idea. So we, It's all speculation.

PC: All I can say, sir, is I left the people there.

PM: I left the people there.

PC: Yes.

PM: And have bayou contacted any of them and asked them for an update or a letter saying what's happened with the office?

PC: No.

PM: How come you didn't ask them for an update?

PC: I had left the company, sir, so I didn't have, I just felt that there's no need for me to contact them.

PM: Did you have a web site that you listed staff that you could look at?

PC: No, we don't have a website.

[63] As the transcript as a whole reveals, the RPD's concern was that the Principal Applicant's allegations of targeting were entirely speculative since there was ample evidence to suggest that the company was in fact, re-structuring.

[64] Not every mistake of fact warrants intervention by the Court. Although the RPD made a mistake of fact, there is other documentary evidence to support the RPD's finding that there was no targeting surrounding the Principal Applicant's dismissal. This evidence was cited by the Board and included the April 8, 2005 letter received by the Principal Applicant and the comments made in the Principal Applicant's PIF narrative. This evidence supports the conclusion that the Board came to.

[65] I find that *Chulu v. Canada (Solicitor General)*, [1995] F.C.J. No. 116 provides helpful guidance. *Chulu* involved a Board making several mistakes of fact, one in which the Respondent conceded was in error. The Court held as follows:

> 16. The respondent conceded that the Board did make one of the errors. However, the respondent states that the errors were not central to the Board's decision and would not change the Board's finding that the applicant is not a Convention refugee. I agree. The fact that the Board misstated itself on some minor matters does not change the decision at which it ultimately arrived. I adopt the reasoning of Joyal, J. in *Miranda v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 81, where he stated:
>
> > For purposes of judicial review, however, it is my view that a Refugee Board decision must be interpreted as a whole. One might approach it with a pathologist's scalpel, subject it to a microscopic examination or perform a kind of semantic autopsy on particular statements found in the decision. But mostly, in my view, the decision must be analyzed in the context of the evidence itself. I believe it is an effective way to decide if the conclusions reached were reasonable or patently unreasonable.
> >
> > I have now read through the transcript of the evidence before the Board and I have listened to arguments from both counsel. Although one may isolate one comment from the Board's decision and find some error therein, the error must nevertheless be material to the decision reached.

> 17. After having carefully reviewed the decision of the Board, I am not convinced that the errors of fact, made by the Board, are so egregious as to warrant judicial intervention.

[66] Viewed against the transcript, the Decision as a whole, and the evidence before the RPD on this issue, I do not think that, had the mistake concerning the two other employees not been made, the RPD could or would have come to any other conclusion than that the Applicant had not established he had been targeted in the past or that he had been laid-off because of whistle blowing or the possession of sensitive information.

[67] In addition, when the Decision is read as a whole and, in particular, the RPD's findings and conclusions regarding a well-founded fear of persecution in Zimbabwe should the Applicants return, it cannot be said that, reasonably speaking, this one mistake could have made any difference to the RPD's Decision.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The Application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1058-08
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PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	September 18, 2008
REASONS FOR JUDGMENT And JUDGMENT:	RUSSELL J.
DATED:	October 23, 2008

APPEARANCES:

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