

Federal Court



Cour fédérale

Date: 20101109

Docket: IMM-547-10

Citation: 2010 FC 1118

Ottawa, Ontario, November 9, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

FRANK BRODRICK

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for a judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated January 11, 2010, wherein the Applicant was determined to be neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27 (IRPA). The Applicant failed to establish his identity such that the Board could determine that he was who he said he was.

[2] Based on the reasons below, this application is dismissed.

I. Background

A. *Factual Background*

[3] The Applicant, Frank Brodrick, is a citizen of the Federal Republic of Nigeria (Nigeria). He claims to be gay and seeks refugee protection in Canada to escape the persecution he would allegedly suffer at the hands of his ex-boyfriend, Roy, and other members of a secret gay society. The Applicant claims that these men have enlisted the Nigerian police to seek out and kill him.

[4] The Applicant claims he joined a secret gay society called the X-Guys Society in August 2005. Through this group the Applicant met Roy in September, 2005. The Applicant and Roy had a relationship until July, 2007 when the Applicant met a new X-Guys member, Kay. The Applicant and Kay began to date secretly. When Roy discovered that the Applicant was having an affair, he assaulted and threatened the Applicant, resulting in the Applicant's hospitalization.

[5] While in hospital the Applicant received a phone call from another X-Guys Society member informing him that Roy had enlisted thugs and other members of the society to come and kill him. The Applicant would later learn that Roy also enlisted the help of the police to "teach [him] a lesson" by telling them that the Applicant was a homosexual who had attempted to seduce him. Roy and the police allegedly showed up at the Applicant's parents' home and beat them when they did not produce the Applicant.

[6] The Applicant fled to Lagos where he spent four days at a hotel. He met an agent who arranged for his travel to Madrid, Spain. In the Applicant's Personal Information Form (PIF) he states that he stayed at a hotel in Madrid, and that is where he found a bag containing a Canadian passport of a Canadian-Nigerian man along with other identity documents and a valid one-way ticket to Toronto. However, during his hearing before the Board, the Applicant testified that he discovered the bag in a park. The Applicant used these documents to travel to Canada, arriving on September 18, 2007 and claiming refugee protection at the airport.

B. *Impugned Decision*

[7] The Board determined that the Applicant failed to establish his identity. Due to numerous credibility concerns related to the Applicant's testimony, as well as the documents he submitted to corroborate his claim, the Board found that:

- The Applicant failed to establish, on a balance of probabilities, his true name as being either Frank Brodick or Frank Brodrick. When interviewed at the Port of Entry (POE) he told Canada Border Services Agency that his name was Frank Brodick, signed documents as such and used this last name when referring to other family members. On his PIF the Applicant's name is typed as Brodrick, however, where he has printed it, it appears as Brodick. At the second sitting of the hearing of the claim, when asked to clarify the name discrepancy, the Applicant stated that his name is Brodrick. The Applicant explained that the difference was due to his low level of education, and later, his excitement at being in

- Canada. The Applicant's testimony regarding his own level of education was inconsistent, and his alleged poor literacy skills were refuted by the Applicant's own submission of his profile on the website gay.com, which he testified that he wrote himself. The Board found these explanations unreasonable and lacking in credibility.
- The Applicant procured a fraudulent Nigerian passport to purposely mislead the Board. The Applicant's passport, in the name of Frank Brodrick, was sent to the RCMP for verification. The RCMP analysis concluded that a counterfeit biological date page had been inserted over the original one. Though the Applicant insisted that he obtained the passport legally, the Board placed more weight on the RCMP analysis than the Applicant's evidence that the Nigerian authorities issued him a tampered document. The Board did not find the Applicant's evidence to be either reasonable or credible.
 - The other identification documents submitted by the Applicant were false. The Applicant produced a statutory declaration of age by Mr. Henry Brodrick and a National Birth Certificate application by Mr. Henry Brodrick to corroborate the Applicant's identity as Frank Brodrick. The Applicant testified that Henry is his best friend whose last name he does not know, whereas in the statutory declaration Henry Brodrick stated that he was the Applicant's uncle. The Board found the Applicant's explanation regarding this confusion that it was probably due to Henry's own fear for his life, unreasonable. The Applicant also submitted a Nigerian driver's license that was issued after the Applicant's passport even though the Applicant initially testified that he got both documents at the same time. At the last sitting before the Board, the Applicant produced an Emergency Certificate for Identification issued by the Nigerian High Commission in Ottawa. Since the certificate was

based only on the Applicant's own statements which the Board had found not to be credible, the Board placed no weight on this evidence. The Applicant also produced a work ID card showing him to be Frank Brodrick, and a copy of a 519 membership card issued to Frank Brodick. The Board found that neither of these documents confirmed the Applicant's identity.

- The account of who his family is lacking in credibility. At the POE the Applicant claimed he had a sister named Ken Brodick who lived in Toronto. On his PIF, the Applicant wrote that he had one cousin/sister named Lisa Brodrick in Toronto. Given the inconsistent statements regarding his family, the Board found that the Applicant's account of who his family is and where they live lacking in credibility and to be a further confirmation of the Applicant's failure to establish his personal identity.
- The Applicant's account of his travel to Canada was too fortuitous to be true, implausible and not credible.

II. Issue

[8] The issue raised in this application is best summarized as follows:

- (a) Was the Board's finding that the Applicant failed to prove his personal identity reasonable?

III. Standard of Review

[9] The findings of the Board with regard to the Applicant's identity documents are findings of fact requiring a very high level of deference upon review (*Qiu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 259, 176 A.C.W.S. (3d) 493 at para.4). Due deference is also owed to decisions of the Board regarding credibility, the weight assigned to evidence and the assessment of evidence. Such findings are all reviewable on a standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.) at para 4; *N.O.O. v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] F.C.J. No. 1286 at para. 38).

[10] As set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; and *Khosa v. Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12; [2009] 1 S.C.R. 339 reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

IV. Argument and Analysis

A. *The Board's Finding that the Applicant Failed to Establish His Identity is Reasonable*

[11] In order to successfully claim refugee protection, the claimant must show that he is who he claims to be. As explained by Justice Danielle Tremblay-Lamer in *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 877, 74 Imm. L.R. (3d) 28 at para. 14:

[...] The onus is on the claimant to produce acceptable documentation establishing his identity; however, where he is unable to do so, the Board must take into account whether he has provided a reasonable explanation for the lack of documentation or has taken reasonable steps to obtain the documentation

[12] The importance of establishing a claimant's identity is set out in section 106 of IRPA and section 7 of the *Refugee Protection Division Rules*.

Credibility

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.

Crédibilité

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.

Documents establishing identity and other elements of the claim

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.

Documents d'identité et autres éléments de la demande

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.

[13] Where identity is not established, the Board is under no obligation to further analyze the claim (*Li v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 296, 146 A.C.W.S. (3d) 704 at para. 8). In the present case, the Board found that the Applicant failed to credibly establish his identity on a balance of probabilities.

[14] The Applicant argues that the Board unreasonably rejected the testimony of the Applicant explaining the discrepancy between the different spellings of his last name. The Applicant further submits that the Board erred in finding that the Applicant's Nigerian passport was fraudulent and in rejecting the additional supporting identity documents.

[15] The Respondent counters that the Applicant only presents the argument that the Board should have made alternate inferences regarding the Applicant's testimony. In order to justify a judicial review of the decision, the Applicant would need to show that the inferences made by the Board are not supportable in any way by the evidence.

[16] In my view, the Respondent is correct in contending the Applicant has not presented any argument that the Board made a reviewable error. There was more than sufficient evidence available to support the Board's finding that the Applicant's explanations were unsatisfactory and unreasonable. The Board documents several contradictions and inconsistencies in the evidence of the Applicant in the impugned decision. This is a well-established basis for finding a lack of credibility and such a finding is considered "the heartland of the discretion of triers of fact," (*He v. Canada (Minister of Employment & Immigration)*, [1994] F.C.J. No. 1107, 49 A.C.W.S. (3d) 562 (F.C.A.) (QL) at para.2).

[17] As for the identity documents, the Applicant cites several cases to support the proposition that apparently validly issued identity documents cannot be found to be fraudulent if there is no evidence to establish this. However, the RCMP analysis of the passport coupled with the repeatedly inconsistent testimony of the Applicant gave the Board plenty of evidence on which it was reasonable to reject those documents. The Board provides a detailed explanation for how and why each piece of identification evidence was assessed and then assigned no probative value.

[18] The Applicant argues that the Board ignored a document in the national documentation package explaining the wide availability of counterfeit documents in Nigeria. However, the Board does discuss this documentary evidence and concludes that in this particular circumstance the Applicant obtained false documents to purposely mislead the Board.

[19] Furthermore, contrary to the Applicant's submissions, the Board is not required to submit each piece of evidence of which it doubts the authenticity for forensic testing. As long as there is enough evidence to reasonably cast doubt on the genuineness of a document the Board is not obliged to conduct an assessment (*Hossain v. Canada (Minister of Citizenship and Immigration)*, [2000] A.C.F. no 160, 102 A.C.W.S. (3d) 1133 at para.4).

[20] The role of this Court is not to reweigh the effectiveness of the Applicant's attempts to explain or justify his inconsistent and implausible evidence. There is no basis to disturb the Board's finding.

V. Conclusion

[21] There was a reasonable basis for the Board to find that the Applicant failed to establish his identity.

[22] No question to be certified was proposed and none arises.

[23] In consideration of the above conclusions, this application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

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