

Federal Court



Cour fédérale

Date: 20101217

Docket: IMM-1560-10

Citation: 2010 FC 1298

Toronto, Ontario, December 17, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

AYOKANMI DEJI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a decision of a Member of the Refugee Protection Division of the Immigration and Refugee Board (RPD), in which the Applicant's claim for refugee protection was dismissed on a finding that the Applicant was neither a Convention refugee nor a person in need of protection. The Applicant's claim for protection is based on his political opinion with respect to police corruption in Nigeria.

[2] The Applicant tendered the following evidence in support of his claim. Mr. Deji, a citizen of Nigeria was a commercial passenger bus owner-operator in Ibadan, Nigeria. In December 2006, his bus was stopped by the local police. The police demanded a bribe from him, which Mr. Deji was ordinarily accustomed to providing. On this occasion, however, he was unable to supply a bribe because did not have a sufficient amount of money to do so. As Mr. Deji began to drive away, the police became aggressive with him and one of the officers' handguns was discharged, also seriously injuring a passenger on Mr. Deji's bus. Through the support of his transportation workers' union, Mr. Deji attempted to file an official complaint with the police. While the complaint was eventually received by the police, Mr. Deji believes that the complaint was the impetus for his unlawful arrest and 5-week detention wherein he allegedly suffered torture and beatings by his cell mates.

Furthermore, on a second occasion, his father and brother were arrested because the police could not find Mr. Deji at his residence; his brother died in custody. Mr. Deji had been in hiding at his aunt's place at that time. Mr. Deji considered himself a target of the police, feared for his personal safety and therefore fled from Nigeria to Canada in March 2007. The RPD heard his refugee claim on November 06, 2009 and issued its decision denying him refugee status on February 26, 2010.

[3] In rejecting Mr. Deji's claim, the RPD Member made the following global finding: "the panel finds that there is insufficient credible and trustworthy evidence with regards to pivotal areas of the claimant's testimony and the documentary evidence . . . [and that] the claimant has failed to provide credible evidence with regards to the events leading to his flight from Nigeria or the risk he would face if he is to return to Nigeria" (Tribunal Record, p. 5). In support of this conclusion, the Member cites several examples of the evidence which "the panel found not to be credible" (Tribunal Record, p. 5).

[4] Counsel for Mr. Deji argues that through the provision of these examples, the RPD Member perversely and capriciously made a number of erroneous findings in rendering the decision denying the Applicant's refugee claim (Application Record, p. 111). The findings that I consider to be critical fall into two groups: those that are unsupported by the evidence on the record; and those that are essentially implausibility findings for which there is no reasonable expectation. For the reasons that follow, I accept Counsel's argument.

Erroneous Factual Findings

[5] The RPD Member took issue with respect to the assistance of Mr. Deji's transportation workers' union in filing his complaint against the police with the police. At paragraph 7 of the decision, with respect to the transportation workers' union official who assisted Mr. Deji to file his complaint against the police with the police, the RPD Member found that "the union leader would have no authority to investigate the police" (Tribunal Record, p. 5). Counsel for the Applicant argues that the panel misstated the evidence. I agree. Mr. Deji never claimed at his hearing that the union or the union official wished to investigate the police. Rather, he explained that the union official was going to assist him with the filing of his police complaint (Tribunal Record, p. 204 – 205).

[6] At paragraph 7 of the decision the RPD Member found that Mr. Deji "had no explanation about what happened to his bus [...]". However, in oral argument, Counsel for Mr. Deji identified in the certified tribunal record that indeed Mr. Deji had explained to the Member that the original owner of the bus to whom Mr. Deji still owed a debt repossessed it while he was detained by the police. In fact, Mr. Deji provides this explanation to the Member on two separate occasions during

the hearing (Tribunal Record, p. 205, 217). I agree with Counsel for Mr. Deji that the Member's finding is erroneous.

[7] The RPD Member took issue with letters supplied by Mr. Deji in support of his refugee claim, writing that there "was no trustworthy evidence with regards to when the letters were written or sent to the claimant" (Tribunal Record, p. 7). Counsel for Mr. Deji argues that all of the documents submitted to the RPD Member bore their issue date (Application Record, p. 114). The more important consideration, however, is that the RPD Member failed to provide clear reasons for this unsubstantiated conclusion which rests on nothing more than bald suspicion. As a result, the finding is unreasonable.

[8] Additionally, the RPD Member took issue with the death of Mr. Deji's brother, writing in her decision that the "claimant was unable to provide a coherent or reasonable explanation with regards to the two dates for the death of his brother" (Tribunal Record, p. 7). Counsel for Mr. Deji argues that the Applicant's explanation is reasonable (Application Record, p. 114). From a reading of the transcript it appears that the RPD Member is more concerned with the two dates of the death certificates rather than by the fact that there are two and on their face they are official documents. Notwithstanding this observation, with respect to the two dates, Mr. Deji's explanation is that his father was only informed of the death of Mr. Deji's brother on March 01, 2007 when the actual date of death was apparently February 26, 2007. Mr. Deji also explained at the hearing with respect to the two death certificates that one was issued in Ibadan, Nigeria and the other in Lagos, Nigeria pending his brother's interment under the auspices of a church official (Tribunal Record, p. 193-

194, 228). I find that the RPD Member's finding that Mr. Deji failed to supply a coherent or reasonable explanation with respect to the death certificates is unreasonable.

Erroneous Implausibility Findings

[9] The RPD Member questioned the apparent failure of the police to seek a bribe in respect of Mr. Deji's release from the police custody when he had gastrointestinal issues. At paragraph 7 of the decision, the Member finds that the "claimant had no explanation why the police did not ask for any bribes" (Tribunal Record, p. 5). Counsel for Mr. Deji argues that it is unreasonable for the panel to expect Mr. Deji to proffer a reason as to why the police did not solicit a bribe from him and further to make a negative credibility finding on the fact that Mr. Deji was unable to supply an answer (Application Record, p. 112 – 113). I agree. In my opinion, it was unreasonable to expect an answer to the question because Mr. Deji could not be taken to know what was in the mind of the police; anything he might say in answer to the question would be speculation.

[10] Additionally, the RPD Member took issue with Mr. Deji's flight from Nigeria, finding that he "had no explanation with regards to why he left the country when he was in the midst of taking the police to court for their corruption, their illegal activities and the alleged death of his brother and the alleged unlawful arrest and detention of him and his father" (Tribunal Record, p. 8). Counsel for Mr. Deji argues that expecting him to confront his persecutors rather than flee is an unreasonable expectation (Application Record, p. 115). I agree. I find that to put the question to Mr. Deji, to which he can only provide a self-evident answer, is unreasonable.

[11] The RPD Member similarly surmised that Mr. Deji's family would have been detained in his stead were the police actually seeking him out. Counsel for Mr. Deji argues that this is an unreasonable expectation, given the fact that Mr. Deji's brother and father were both arrested when he could not be found at his residence (Application Record, p. 115). Given that these arrests had already taken place before Mr. Deji fled, and given that the threat against him had already been accomplished, there exists no evidentiary reason for expecting that the same action would be taken after he fled.

[12] As a result, I find the decision under review is made in reviewable error.

ORDER

The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1560-10

STYLE OF CAUSE: AYOKANMI DEJI v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 15, 2010

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: December 17, 2010

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