Federal Court  Cour fédérale

**Date: 20110920**

**Docket: IMM-7365-10**

**Citation: 2011 FC 1078**

**Ottawa, Ontario, September 20, 2011**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**MBAIOREMEM FRANCIS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

### I. Introduction

[1] Questions regarding the weight of evidence and credibility are within the jurisdiction of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [Board] as that of a trier of fact in respect of Convention refugee consideration (*Brar v Canada (Minister of Employment and Immigration)*, [1986] FCJ No 346 (FCA) (QL/Lexis)); therefore, the Court is in agreement with the position of the Respondent.

[2] “The "presumption" that a claimant's sworn testimony is true is always rebuttable” (*Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 (QL/Lexis)), and it is within the purview of the Board to find that allegations are contrary to common sense. In *Singh v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1448, Justice Michel Beaudry, citing the Federal Court of Appeal’s reasons in *Shahamati v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 415 (QL/Lexis), found:

> [14] The Board did not believe the applicants and gave numerous examples why it came to that conclusion. It was open to the Board and I see no reason for the Court's intervention. In this regard, I would like to underline a comment made by Pratte J., in *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 (C.A.) (QL), which states that the Board is entitled, in assessing credibility, to rely on criteria such as rationality and common sense.

II. Judicial Procedure

[3] This is an application for judicial review of a decision of the Board, dated November 29, 2010, wherein the Board determined that the Applicant, a citizen of Chad, is not a Convention refugee or a person in need of protection.

[4] The Board determined that the Applicant was not credible on matters central to his claim for protection.

III. Issue

[5] Is the Board’s decision reasonable?

IV. Analysis

[6] It is accepted that the Board, as a specialized tribunal, is in position to gauge the credibility of an applicant. The Court accords the RPD a high level of deference on findings of fact, which include matters of credibility (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)).

[7] The RPD pointed to aspects of the Applicant's evidence, which were not considered credible and explained why it had made the findings it did. A credibility assessment is "the heartland of the discretion of triers of fact", and in making its determination, the RPD is entitled to take into account the discrepancies, contradictions and omissions in the evidence and to view the evidence from the perspective of rationality and common sense (*Giron v Canada (Minister of Employment and Immigration)* (1992), 43 NR 238 (FCA); *Aguebor*, above; *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA)).

[8] In the present case, it was not unreasonable for the Board to question the Applicant's narrative. The Board underlined several contradictions and discrepancies in the Applicant's testimony, as well as his failure to respond in a straightforward manner in addition to his being vague in his testimony.

[9] The Board did not believe that the Applicant was targeted by rebels since the objective documentary evidence rather demonstrates that citizens in Chad, in February 2008, and especially those living in N'Djamena, as did the Applicant, experienced the same chaotic situation. The Board

concluded that the Applicant was using the documentary evidence to invent a story to support his claim.

[10] To question the Applicant's credibility, the Board raised concerns in respect of his alleged membership card, his failure to give details regarding the cost of membership and its renewal, as well as concerns as to the manner by which the Applicant left his country of origin and his travel route. The Board also raised legitimate concerns regarding his birth certificate.

[11] The Board was entitled to draw a negative inference with respect to evidence submitted subsequent to the Applicant's written narrative which, nevertheless, does not cure the fundamental deficiencies of the narrative, itself.

[12] Those contradictions and discrepancies, as a whole, seriously undermine the Applicant's credibility. Contrary to the Applicant's allegations, the Board did not proceed by means of a microscopic examination of the evidence but essentially provided examples by which to explain its finding of the lack of credibility. The examples stem from the evidence itself and the Applicant's own behaviour.

[13] The Board is also entitled to base its decision on an applicant's behaviour at a hearing. The aptitude to answer questions in an honest and clear manner, the coherence and the uniformity of the answers are subject to the appreciation of the Board in respect of the credibility of the Applicant; thus, such findings in respect of credibility warrant significant judicial reserve (*Lapointe v Hôpital le Gardeur*, [1992] 1 SCR 351; *He v Canada (Minister of Employment and Immigration)*, [1994]

FCJ No 1107 (FCA); *Wen v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 907 (FCA) (QL/Lexis)).

[14] In *Wen*, above, the Federal Court of Appeal specifies that the Board, which sees and hears an applicant, is in a better position than this Court to appreciate the credibility of a testimony. In that decision, Justice Arthur Stone specified:

> [3] That apart, we also observe that the adverse finding was based as well on the appellant's answers being "confusing" and "evasive". This assessment of personal demeanour ought not to be interfered with by this Court which lacks the advantages available to the triers of fact. (See *Clarke v. Edinburgh Tramways Co*. [1919] S.C. 35 (H.L.) quoted in *Fletcher v. Manitoba Public Insurance Company* (1990) 116 N.R. 1 (S.C.C.), at pages 12 - 13. [Emphasis added].

[15] The Board was entitled to raise the Applicant's lack of subjective fear in light of the evidence and the delay in his claiming refugee protection. The Applicant arrived in the United States on April 14, 2008 with a U.S. visa; he did not claim refugee protection. He took a bus to New York, then to Buffalo and claimed refugee protection in Fort Erie (Ontario) on April 29, 2008. The Board was correct in concluding that the delay was inconsistent with the behaviour of a person who fears for his/her life as alleged.

[16] The delay in claiming refugee status in Canada is one more factor which the Board properly took into consideration when questioning the Applicant's credibility (*Skretyuk v Canada (Minister of Citizenship and Immigration)* (1988), 47 Imm LR (2d) 86 (CF); *Ali v Canada (Minister of Citizenship and Immigration)* (1996), 112 FTR 9 (CF)).

[17] Since the Board found the narrative not credible, it was well-founded on its part to give no probative value to the documents filed by the Applicant; thus, the letter from the "Association pour la promotion des libertés fondamentales au Tchad", and the letter from a priest were considered to have been self-serving, as were the photographs taken more than two years after the alleged events took place. This conclusion is in conformity with the jurisprudence (*R v Abbey*, [1992] 2 SCR 24).

[18] The evidence as a whole had been considered by the Board. The fact that the Board did not mention in its analysis every single piece of evidence does not signify that certain evidence was ignored (*Woolaston v Canada (Minister of Citizenship and Immigration)*, [1973] SCR 102; *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 315 (FCA); *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 598 (FCA) (QL/Lexis)).

[19] In *Sheikh*, above, the Federal Court of Appeal stated that a general finding of a lack of credibility on the part of an applicant may extend to all relevant evidence emanating from his testimony.

[20] This ruling of the Federal Court of Appeal was reiterated in *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, [2002] 3 FC 537. In this case, Justice John Maxwell Evans wrote:

> [29] … as MacGuigan J.A. acknowledged in *Sheikh*, supra, in fact the claimant's oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim. [Emphasis added].

[21] The decision of the Board met its test of reasonableness by its demonstration of the lack of credibility on the part of the Applicant.

## V. Conclusion

[22] As the Board's conclusions were clearly based on evidence, supported by detailed reasons and reasonably open to the Board, they are not considered unreasonable and do not warrant the intervention of the Court. The Board's conclusions are reasonable on the basis of the analysis as rendered by it.

[23] For all of the above reasons, the Applicant's application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed.

No question of general importance for certification.

"Michel M.J. Shore"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7365-10 |
| **STYLE OF CAUSE:** | MBAIOREMEM FRANCIS v<br>THE MINISTER OF CITIZENSHIP<br>AND IMMIGRATION |
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**APPEARANCES:**

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|---|---|
| Styliani Markaki | FOR THE APPLICANT |
| Anne Renée Touchette | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Styliani Markaki, Attorney<br>Montreal, Quebec | FOR THE APPLICANT |
| Myles J. Kirvan<br>Deputy Attorney General of Canada<br>Montreal, Quebec | FOR THE RESPONDENT |