

Federal Court



Cour fédérale

Date: 20120203

Docket: IMM-4871-11

Citation: 2012 FC 141

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 3, 2012

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JOSEPHINE NGOMA KHUABI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application to consider the lawfulness of a decision dated May 26, 2011, by the Refugee Protection Division of the Immigration and Refugee Board (panel) rejecting the applicant's refugee claim. In this case, there is no basis to intervene to reverse the panel's findings of fact on the credibility of the applicant or to reassess the evidence submitted in support of her refugee claim.

[2] The applicant is a citizen of the Democratic Republic of the Congo, originally from the province of Bas-Congo and a resident of Kinshasa. She is 59 years old and is mother to five children. Before retiring in April 2006, she worked as a nurse for the Société Nationale d'Électricité in Kinshasa. On June 30, 2006, the applicant stated that she participated, for the first time, in a meeting of the Bundu Dia Kongo (BDK) in Boma. The BDK is a political and religious party that was founded in 1969 and whose mission is, according to the applicant, to denounce inequities and injustices committed by the central government in the provinces, to defend the interests of Bas-Congo and to educate the residents of that province about work, health and education.

[3] The applicant alleges that, after joining this movement, she participated in more than 15 meetings held by the BDK in Bas-Congo and Kinshasa. The meetings were three to four hours in length and attended by between 50 and 100 members. As a retired nurse, her involvement in the BDK consisted of assisting the female residents of Bas-Congo by counselling them on family planning and the prevention of sexually transmitted diseases. Furthermore, as a member of the BDK, the applicant regularly hosted other members in her home when they travelled to Kinshasa to do business between Bas-Congo and the capital.

[4] In support of her refugee claim, the applicant alleged that, on March 25, 2009, judicial police officers came to her home with a bench warrant and a provisional warrant for her arrest. In fact, according to the applicant, people from Bas-Congo who are affiliated with the BDK were, and are still, sought by the Congolese police since the clashes between the police and BDK members in January 2008. Police officers took the applicant before the judicial police and then to the prosecutor's office in Kinshasa, where she was allegedly questioned about the BDK and the events

of January 2008 in Bas-Congo. The applicant alleges that she had been denounced but does not know by whom.

[5] According to the applicant, on April 14, 2009, after three weeks of detention during which she suffered all kinds of abuse, she was granted interim release on the condition that she was forbidden to leave the city of Kinshasa and had to report to the examining magistrate every Tuesday and Friday, which she did until May 8, 2009. After her release, the applicant was hospitalized for five days. Subsequently, she took refuge with her nephew until she left her country for Great Britain on May 11, 2009. She travelled to the United States on May 26, 2009, and then to Canada on June 12, 2006, and she sought refugee protection here that same day.

[6] The applicant essentially fears persecution by the Congolese justice system because she is now accused of belonging to an insurgent movement and endangering national security. Unfortunately for her, the panel did not believe her story of persecution. In this case, her testimony with respect to the BDK contained significant omissions and contradictions that undermined her credibility, hence this application for judicial review.

[7] First, it should be recalled that the panel is in a better position than the Court to assess the credibility of a refugee claimant, especially because it had the opportunity to observe the claimant's demeanor at the hearing as well as the spontaneity and consistency of the claimant's answers. In this case, the applicant has not demonstrated to the Court that the panel's findings are unreasonable. The reasons provided by the panel for doubting the credibility of the applicant are clear and rely on the

evidence in the record. I reject the applicant's claim that the panel was over-vigilant and that her explanations should have been accepted by the panel.

[8] First, the panel found that the applicant was unable to provide sufficient detail on the discussions that took place during the monthly BDK meetings that she said she participated in 15 to 20 times, which suggests active participation and some knowledge of this movement.

[9] When asked for examples, the applicant's answers were rather vague with respect to what is reasonably expected of an active member. The applicant submits that, as a retired nurse, what captured her attention the most during these meetings were issues related to the population's health and well-being and that her role as a nurse within the organization could explain the very general nature of her answers. However, from the transcripts of the proceedings, it is clear that the applicant was unable to provide convincing details on any of the subjects she had referred to (including health), and thus it was reasonable for the panel to doubt the truthfulness of the facts alleged regarding the applicant's commitment to the BDK.

[10] On this point, the following exchange is particularly telling:

[TRANSLATION]

Q.: And what did you discuss?

A.: There were several subjects that we—about which we spoke because it always depended on the leaders. We discussed problems concerning dues, we discussed the presidential elections, for example, and so on.

Q.: Could you give me other examples?

A.: Other than what I just said, we discussed culture. We also discussed their health, members' health, how to stay healthy.

Q.: Anything else?

A: Etc. Because it depended on the leaders and the subjects that they raised.

...

Q.: And what did you discuss regarding elections?

A.: There were various leaders. Concerning elections there was one leader who spoke to us about how to go vote. That one must vote and for whom to vote.

Q.: Other than that, did you discuss anything else concerning elections Ms. Khuabi? Other than who to vote for?

A.: Well yes. We also discussed that, if there were an election, we would select one of our members to run, with our support.

[11] Furthermore, the panel criticizes the applicant for not making any reference in her Personal Information Form (PIF) or testimony to the Congolese government's revocation of the authorization of the BDK to operate as a social and cultural organization, effectively making it illegal to participate in the movement as of March 21, 2008 (National Documentation Packages on the Democratic Republic of the Congo, April 30, 2010, tab 2.5, page 65). When questioned by the panel, the applicant stated that she knew of this ban but did not recall this when the panel questioned her about why she was arrested in March 2009 or why BDK supporters are still being sought by the Congolese government.

[12] The applicant explains that she may not have thought to mention the fact that the BDK had been declared illegal in March 2008, but was aware of this fact. It may very well be that the Congolese government's formal declaration of the illegality of the BDK further to the incidents of January 2008 could be perceived as more or less important by someone describing these facts, regardless of whether that person was a member of the BDK or not. However, even though the panel could not reasonably base its refusal exclusively on such an omission by the applicant, I note that, in this case, it was instead her general lack of knowledge regarding BDK meetings and activities that was determinative in the panel's reasoning.

[13] It was also open to the panel to give no probative value to the documents submitted by the applicant regarding her participation as a member of the BDK. In fact, the panel mentioned that, according to the documentary evidence, it is easy for a refugee claimant from the DRC to obtain fraudulent documents in support of his or her refugee claim. The applicant argues that the panel could not disregard the documents submitted into evidence, which were authentic at first glance. However, a review of the reasons reveals that the finding on the credibility of the applicant was not based on a frivolous consideration, but on discrepancies and contradictions identified in the testimonial evidence. Therefore, there was nothing to prevent the panel from considering the applicant's ability to acquire fraudulent documents in support of her claim. Here, the reasonability of this finding of fact should be reviewed by taking into account other negative elements in the record.

[14] Furthermore, the applicant gave inconsistent answers when the panel was trying to determine whether she had been sought by the Congolese police since her departure in March 2009. She initially mentioned that her children had no problems after her departure because they too had fled their family home, where the applicant had been arrested. When further questioned on this, the applicant told the panel that the police had tried on three occasions to find her at her home, that is, in June 2009, in November 2009 and in December 2010. She alleged that her nephew had obtained this information from one of her neighbours. The panel indicated that not only did the applicant provide contradictory testimony on these events, but she also failed to refer to them in her first PIF dated July 9, 2009, as well as in her amended PIF submitted on March 30, 2011. Given all of these facts, the applicant cannot criticize the panel for drawing a negative inference with respect to her credibility.

[15] Another point that undermined the applicant's credibility is the fact that she applied for a visa for the United States while she already had a visa for Great Britain. The applicant explained to the panel that she took advantage of her stay in the United States and Great Britain to visit family members but that she did not seek refugee protection there because French is not spoken there and the applicant does not speak English. Contrary to what the applicant claims, the panel considered her explanations but found them insufficient. The Court must not intervene as long as the rejection by the panel was based on sound reasoning. Furthermore, a refugee claimant's failure to seek protection at the first possible opportunity may be an additional factor to consider in assessing the subjective fear of an applicant, even though it is not determinative in itself.

[16] In light of the foregoing, the application for judicial review will be dismissed. No question of general importance was proposed to the Court.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4871-11

STYLE OF CAUSE: **JOSEPHINE NGOMA KHUABI**
v
**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 30, 2012

REASONS FOR JUDGMENT: MARTINEAU J.

DATED: February 3, 2012

APPEARANCES:

Giuseppe Di Donato FOR THE APPLICANT

Thomas Cormie FOR THE RESPONDENT

SOLICITORS OF RECORD:

Giuseppe Di Donato FOR THE APPLICANT
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec