

Federal Court



Cour fédérale

Date: 20120924

Docket: IMM-9676-11

Citation: 2012 FC 1113

Ottawa, Ontario, September 24, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

EDOUARD EPAMPIA MBO WATO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated November 17, 2011, finding that the applicant was not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is granted.

Facts

[2] The applicant, Edouard Epampia Mbo Wato, is a citizen of the Democratic Republic of the Congo (DRC). He worked for several years as a French language professor and also worked with the Mennonite Central Committee before starting his own business in the Equateur Province in 2006. In the course of running his business he obtained foreign currency from a lender named Hugo Tanzambi. Mr. Tanzambi, unbeknownst to the applicant, had ties to Jean-Pierre Bemba, leader of the Mouvement de Liberation du Congo (MLC), the opposition to the ruling People's Party for Reconstruction and Democracy (PPRD). Mr. Tanzambi was assassinated in March 2007 after which people associated with the Equateur Province and with Mr. Tanzambi were suspected of supporting Mr. Bemba.

[3] The applicant alleges that he was perceived to be opposed to the ruling regime in the DRC for the following reasons: he had links to the Equateur region, which is home to Bemba sympathizers; he belonged to a tribe perceived to align itself with Bemba supporters; and he had had business dealings with Mr. Tanzambi. He received threatening phone calls; he was stopped on the street and beaten by unknown individuals threatening him for his activities. He tried to relocate but the Special Services found him, keeping him under close surveillance.

[4] In late 2009, fearing for his safety, the applicant asked his friends to help him flee the country. He obtained a new passport in November 2009 and a US visa in December. He fled the DRC on January 21, 2010, transiting through Belgium to the United States. After he left, he learned that he was the subject of a summons from the National Intelligence Agency, which was notorious

for killing those it detains. The applicant arrived in Canada on April 9, 2010 and claimed refugee protection.

Decision Under Review

[5] In the reasons for its decision, dated November 17, 2011, the Board found that the determinative issue was credibility, including subjective fear. The Board did not find the applicant's allegations credible.

[6] The Board found it implausible that the applicant would indebt himself to a man like Mr. Tanzambi without researching his background and his political ties given the applicant's educational background.

[7] The Board rejected the applicant's allegation that he faced a risk due to his affiliation with the Mennonite church since it was not supported by any evidence, and if he were targeted for that reason, he would have been targeted long before the first incident the applicant reported.

[8] The Board acknowledged that the applicant belonged to the *Inongo tribe*, which is perceived as affiliated with Mongo, one of the tribes considered to be aligned with Bemba. The Board also acknowledged evidence that perceived Bemba sympathizers had been brutally attacked and indiscriminately killed in 2006-2008. The Board found based on the latest evidence that, while there was some harassment, arbitrary arrest and threats against tribes from the Equateur Province in Kinshasa, beyond that there were only isolated reports about persecution of people from that region.

[9] The Board noted discrepancies in the applicant's recounting of the number of times he relocated within the DRC, and the dates on which he moved. The Board found that whichever of those dates were accurate, he clearly did not move because of the June 2008 beating incident, which the Board further found had not been shown to be related to political opinion or to have created a subjective fear of persecution.

[10] The Board rejected the two summonses submitted by the applicant on the grounds that he claimed they were left with his brother, which conflicted with the documentary evidence that only a subpoena would be left with the person charged, and also because it was suspicious that the applicant had lived in the same place for a long period of time, but the authorities did not come to his house until after he fled the country.

[11] The Board also noted that a letter of support from Colonel Bolabolo indicated that he was the applicant's brother-in-law, which the applicant had not mentioned at any point during his testimony. The Board found it highly implausible that the applicant would not ask for Bolabolo's help in protecting his family, especially since they were related.

[12] The Board further found that the applicant's failure to investigate claiming asylum in the United States undermined his subjective fear, and he did not provide a reasonable explanation for that failure. The Board concluded at paragraph 47:

In assessing the totality of the evidence, on a balance of probabilities, I do not find the claimant's allegations of persecution based on imputed political opinion to be credible. As such, his claim fails under sections 96 of *the Act*. My credibility findings also extend to Section 97. While I accept that he was aggressed in June 2008, as I have not found there to be a link to Tanzambi or Bemba, and given

that he remained in that location until at least mid-2009 without further attacks, on a balance of probabilities, I find that he does not face a personalized risk of harm in accordance with Section 97. And as I do not find credible that he is being sought by the state authorities, on a balance of probabilities, I find he does not face a risk of torture if he return [sic] to the DRC.

[13] The applicant's claim was therefore refused.

Standard of Review and Issue

[14] The only issue raised by the applicant is whether the Board's decision was reasonable:

Dunsmuir v New Brunswick, 2008 SCC 9.

Analysis

[15] The applicant acknowledges that credibility findings are accorded significant deference upon judicial review and therefore the applicant does not directly impugn the Board's credibility findings. The applicant argues, however, that even accepting the Board's credibility findings, the Board should have found the applicant to meet the Convention refugee definition on the basis of his ethnicity or tribe.

[16] As the applicant argues, the Board must consider all grounds for a claim raised by the evidence: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, pp 745-746. The applicant submits that the following findings led necessarily to the conclusion that he had a well-founded fear of persecution:

- The applicant is perceived as a member of a tribe from the Equateur Province;

- People from the Equateur Province were the victims of atrocities from 2006-2008, including arbitrary arrest, indiscriminate killing, and torture; and
- The latest documentary evidence indicated: “State security forces in Kinshasa sometimes harassed, arbitrarily arrested, or threatened members of ethnic groups from Equateur, according to the UNJHRO.”

[17] Thus, the applicant argues the Board erred by failing to consider the applicant’s risk based on his ethnicity or perceived origin from the Equateur Province.

[18] The respondent argues that the Board committed no error in this regard, because the Convention refugee definition is forward-looking, and just because there was evidence of persecution of people from the Equateur Province from 2006-2008 did not establish a prospective risk for the applicant. The respondent submits that the Board considered the most recent evidence and found that despite the presence of the evidence quoted above regarding Kinshasa, there was no evidence of targeting of people originating from the Equateur Province.

[19] In what is otherwise a thorough and detailed decision, the Board does not, in my view, rationalize its findings that people from Equateur province are perceived as members of tribes from that Province, were the victims of atrocities from 2006-2008, including arbitrary arrest, indiscriminate killing, and torture or the latest documentary evidence indicating that “State security forces in Kinshasa sometimes harassed, arbitrarily arrested, or threatened members of ethnic groups from Equateur, according to the UNJHRO.” with its conclusion that the applicant was not at risk.

The reason given, namely “apart from this evidence” there are only isolated incidents of persecution of persons from Equateur, does not explain or support the conclusion.

[20] The reasons do not explain why the prior findings were set aside or discounted and as such fail to meet the standard set forth in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. There is a gap in the reasoning, at a critical juncture, such that it is unclear as to how and why the conclusion was reached.

[21] While this is insufficient to dispose of the application, I note as well that the Board did not consider or apply the criteria for assessment of whether mistreatment equates to persecutory conduct under the Convention; it must be serious and it must be repetitive or systemic: *Maksoudian v Canada (Citizenship and Immigration)*, 2009 FC 285. Thus, even accepting the evidence was confined to isolated events, those events need to be assessed through the criteria of their nature, or severity and frequency.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9676-11

STYLE OF CAUSE: **EDOUARD EPAMPIA MBO WATO v THE
MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: August 22, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: September 24, 2012

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