

Federal Court



Cour fédérale

**Date: 20120926**

**Docket: IMM-5531-11**

**Citation: 2012 FC 1137**

**Ottawa, Ontario, September 26, 2012**

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

**BETWEEN:**

**PASCAL ERIC PATCHELLI GATALI  
BOUKAKA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction and background facts**

[1] The applicant, Pascal Boukaka, is a citizen of the Democratic Republic of the Congo (DROC) whose refugee claim was refused on July 21, 2011 by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD or the Tribunal).

[2] This judicial review challenges that decision. The Tribunal found the applicant had largely provided credible evidence but because of developments subsequent to his fleeing the DROC on July 18, 2008 and arriving in Canada, a month later, his agent of persecution, the Government of the DROC would no longer have any interest in persecuting him because of his political opinions.

[3] The central question in this judicial review is whether the RPD ignored or misrepresented the evidence he advanced. That evidence was since he had escaped from detention, the December 2008 declaration by the Minister of Justice of the DROC that all individuals who had been arrested following the July 7, 2008 demonstration would be set free without undergoing a trial. The document evidence shows that on December 18, 2008 at least 35 detainees were so freed.

## II. The facts

[4] On July 7, 2008 the applicant was one of several youths arrested during a spontaneous anti-government manifestation which ignited at the funeral of the founder of the political party known as Le Rassemblement pour la démocratie et le progrès social (RDPS).

[5] He told the Tribunal he had not participated in politics in the DROC before that demonstration. He testified he was interrogated and abused by the police but was set free on July 18, 2008 after his uncle bribed a police officer who told Mr. Boukaka his life was in danger as some 30 detainees had been taken away and had been executed. Financed by his uncle, he fled the next day arriving in Canada on August 5, 2008 having travelled through Angola, South Africa and the UK.

### III. The Tribunal's decision

[6] Based on a report from Amnesty International, the Tribunal was satisfied the demonstration had occurred and the applicant had been arrested. In terms of the number of young people arrested, their treatment upon incarceration and the number of persons killed, the Tribunal preferred the Amnesty report over the testimony of the applicant.

[7] The determining factor in the Tribunal's decision is the fact Amnesty International reported all rioters were freed in December 2008 as a result of protests from opposition parties and human rights activists. The Minister of Justice also stated the persons freed would not be prosecuted.

[8] According to the Tribunal the objective evidence confirms the applicant would not be accused and charged should he return to DROC and that the applicant had failed to establish the existence of a serious possibility of his being persecuted for any reason set out in section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), nor would he be exposed to any of the dangers set out in section 97 of that Act.

### IV. The position of the parties

[9] Counsel for the applicant submits the Tribunal ignored crucial evidence advanced by the applicant.

[10] First, the Tribunal ignored the following evidence in the applicant's testimony (Transcript p. 33):

Donc, ce que vous me dites c'est que vous ne savez pas si la police vous recherche toujours.

Mais, la police me recherche toujours parce que d'abord 1), moi je me suis sauvé; et de 2), le problème n'est pas encore fini. Donc, je me dis que si je repartais aujourd'hui, mais je serais arrêté, vous voyez?

Donc, c'est la raison pour laquelle que j'étais parti de là parce que j'ai fui de la prison et pour eux, une personne qui est en prison, vu les tortures, vu tout ce que j'ai vécu, je suis parti de là mais je suis un élément dangereux. Je peux aller n'importe où et publié. Dans un plan, vous avez lu les lettres que le ONG on écrit. Moi aussi, je pouvais aller voir un ONG pour dire la vérité, ce que moi j'avais vécu.

[Emphasis added]

[11] Secondly, the Tribunal ignored two letters which were entered in the record : one from the applicant's wife and the other from the applicant's uncle. Both report that after the applicant had escaped from prison the police, over a period of several weeks, came to their homes (located in different cities) in search of the applicant's whereabouts.

[12] Third, the applicant also testified about the police visiting his home in search of him (Transcript pp. 139 – 142) and in particular, the fact his wife fled the capital of Brazzaville where they lived to go into hiding at her uncle's home.

[13] Fourth, the applicant's fear must be analyzed against the human rights record of the DROC (see UNHCR's 2009 Country Report on Human Rights Practices – Republic of the Congo, Applicant's Record, pp. 28-43).

[14] Counsel for the respondent argues the following points:

- a. The record does not indicate there was evidence to support the allegation he would be persecuted as an “escapee” if he returns to the DROC.
- b. The record does not indicate the applicant argued before the Tribunal he would be persecuted for this reason.

#### V. Conclusions

[15] This judicial review application must be allowed for the following reasons.

[16] First, while not argued by the parties, the standard of review of correctness in the light of section 18.1.4(d) which provides that a ground for intervention is if a tribunal decision is based on a finding reached without regard to the material before it. In my view this is the case before me.

There was evidence before the Tribunal the applicant escaped from custody with the payment of a bribe by his uncle; the interest of the police in him was supported by the letters from his wife and his uncle; and the matter was argued before the Tribunal.

[17] It is clear the Tribunal did not consider relevant evidence which, if believed, would have a material impact on the decision.

**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. No question for certification has been proposed and the Court finds that none arises.

“François Lemieux”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5531-11

**STYLE OF CAUSE:** PASCAL ERIC PATCHELLI GATALI BOUKAKA  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** April 19, 2012

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

**DATED:** September 26, 2012

**APPEARANCES:**

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FOR THE APPLICANT

Ms. Sharon Stewart Guthrie

FOR THE RESPONDENT

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