Federal Court  Cour fédérale

**Date: 20121213**

**Docket: IMM-3304-12**

**Citation: 2012 FC 1470**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, December 13, 2012**

**PRESENT: The Honourable Madam Justice Gleason**

**BETWEEN:**

**KOUADIO MATHURI YAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (IRPA), of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) dated March 12, 2012, with respect to Kouadio Mathuri Yao (applicant). The RPD found that the

applicant was not "a 'Convention refugee' or a 'person in need of protection'" under sections 96 and 97 of the IRPA.

**Background**

[2] The applicant is a citizen of Côte d'Ivoire and was a member of that country's armed forces. He alleges that he fears the Forces républicaines de la Côte d'Ivoire [republican forces of Côte d'Ivoire] because of his membership in a division of the Parti démocratique de la Côte d'Ivoire [democratic party of Côte d'Ivoire] (PDCI). Even though the current president of Côte d'Ivoire is also affiliated with that political party, the applicant does not support the political ideas advocated by the division to which the president belongs. More specifically, that division merged with the Rassemblement houphouétiste démocratique et de la paix [Rally of the Houphouetistes for Democracy and Peace] (RHDP), another political party in Côte d'Ivoire. The applicant is against the RHDP.

[3] Between September 30, 2009, and December 9, 2009, the applicant was apparently targeted by his unit commander as well as by members of his country's [TRANSLATION] "Death squads". The alleged persecution took the form of threats, including death threats. The applicant claims that he was targeted because he was a member of the PDCI, which, at the time, was not the party in power in Côte d'Ivoire.

[4] In its decision, the RPD accepted that the applicant is a member of the PDCI because a membership card was produced to that effect, but nevertheless found that the applicant was not

credible in light of the accumulation of omissions, contradictions and implausibilities contained in his written narrative and testimony.

[5] First, the applicant failed to mention his involvement in the PDCI during his first stay in Canada between July 5, 2008, and September 20, 2009, and since his return to Canada on December 9, 2009. When asked about these omissions, the applicant stated that he did not know why he did not mention these facts and did not provide any other explanation.

[6] When questioned about why he had chosen to claim refugee protection in Canada, the applicant stated that he was employed at his country's embassy in Canada and that he had received a return plane ticket from the Minister of Defence in the Côte d'Ivoire. To support this, the applicant provided a boarding pass between Abidjan-Paris and Montréal dated December 9, 2009, that is, the date of his return to Canada. However, in examining the ticket, the panel pointed out to the applicant that the document was only a one-way ticket. The applicant then maintained his statements, without being able to provide any other explanation.

[7] Furthermore, regarding the issue of when he decided to leave his country, the applicant stated that the triggering event occurred on October 20, 2009. When questioned about why he stayed in his country until December 10, 2009, the applicant stated that he had not known how to leave his country. That statement contradicts his allegations that he had a return ticket for Canada.

[8] The RPD also found it implausible that the applicant's government, when he was recalled to his country, issued him a return ticket. Logically, since he had been recalled, he would have been issued just a one-way ticket.

[9] The RPD also attached little weight to the documentary evidence submitted by the applicant. He submitted two letters to support his claim, that is, one from a sergeant to whom the applicant allegedly reported, and the other from the mother of one of his friends. He alleges that his friend was killed because of his membership in the PDCI. The panel did not assign them any probative value because the applicant did not keep the envelopes from those letters and was unable to establish their authenticity. The RPD also attached little weight to the death notice of the applicant's friend because it does not indicate the circumstances of the death.

[10] The RPD also noted that the applicant's conduct is inconsistent with his fear. Thus, even if he returned to Canada on December 9, 2009, it was only on August 9, 2010, that he claimed refugee protection. When questioned about why he waited so long, he replied that he had a visa that allowed him to stay in Canada until June 2011 and that it was after consulting a lawyer in August 2010 that he claimed refugee protection. The panel was of the opinion that such an attitude was not the attitude of someone fearing return to his country of origin and that the applicant's explanation did not justify the nine-month delay.

[11] Finally, the RPD pointed out that, since the signing of his Personal Information Form (PIF) on October 10, 2010, the political situation in Côte d'Ivoire has changed and the PDCI is now part of the government. Despite that, the applicant alleges that he is still at risk because his party is

divided and that he is a member of the division that is not in power. However, in relying on what the applicant said about being merely a member of the PDCI with no particular responsibility, the panel was of the opinion that, on a balance of probabilities, he would have no grounds for fear or would not be at risk by reason of his political membership should he return to his country.

**Arguments of the parties**

[12] The applicant maintains that the RPD's decision was unreasonable, essentially arguing that it made generalized and unfounded findings with respect to his credibility and that it failed to consider fundamental evidence. More specifically, the applicant criticizes the RPD for disregarding the evidence submitted in connection with his membership to the PDCI and for excluding the two credible and trustworthy letters. Also, he submits that the panel disregarded his explanations on the grounds of his persecution by the Ivorian authorities and also rejected, without justification, his credible explanation with respect to his plane ticket to return to Canada in December 2009.

[13] Relying on *Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 442 (QL) (FCA) and *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1867 (QL) (FCTD), the applicant maintains that the RPD cannot make general findings with respect to credibility and must make specific findings on the facts. Furthermore, he points out that the case law recognizes that, in order to make a finding of lack of credibility, the discrepancies on which the panel relies must be real, without it being overzealous or overly vigilant in a microscopic examination of all of the evidence.

[14] The respondent submits that the RPD's decision must be upheld based on three grounds, that is, that its findings with respect to credibility were reasonable, that its determination regarding the applicant's lack of subjective fear of persecution was well-founded and that the inexistence of an objective basis for the alleged fear of persecution justified the rejection of the applicant's refugee claim.

[15] On the first point, the respondent notes that the panel raised several inconsistencies in the applicant's testimony and evidence, namely the omission in his narrative concerning his political affiliation upon his arrival to Canada, the return ticket, the implausibility that he received such a ticket and the delay in claiming refugee protection. In light of these numerous inconsistencies, and relying on *Onofre v The Minister of Citizenship and Immigration*, 2010 FC 1219 at paragraphs 21-22 (*Onofre*), *Bunema v The Minister of Citizenship and Immigration*, 2007 FC 774 at paragraph 1 (*Bunema*), *Cienfuegos v The Minister of Citizenship and Immigration*, 2009 FC 1262 at paragraph 1, *Lawal v The Minister of Citizenship and Immigration*, 2010 FC 558 at paragraph 20 and *Vybyrana v The Minister of Citizenship and Immigration*, 2007 FC 1279 at paragraph 7, the respondent submits that it is not surprising that the panel found that the applicant was not credible.

[16] Regarding the subjective fear, the respondent submits that the applicant's conduct is inconsistent with that of someone actually fearing for his life. The applicant waited nine months before claiming refugee protection and it is settled law that the panel may consider such a delay. He adds that delay, together with the absence of a reasonable explanation justifying it, plays a determinative role in assessing the subjective fear of a refugee claimant.

[17] Finally, the respondent contends that the panel's finding with respect to the absence of risks of persecution for the applicant if he were to return to Côte d'Ivoire was reasonable given the PDCI's access to power and the lack of objective evidence regarding the risks the applicant could face from the division of that party that he claims is in power.

**Analysis**

[18] Despite the many arguments made by the applicant, it is necessary in this case to assess only the reasonableness of RPD's findings with respect to credibility. For the following reasons, I find that those findings are reasonable.

[19] There is no doubt that the standard to apply to credibility matters is reasonableness (*Cervenakova v The Minister of Citizenship and Immigration*, 2012 FC 525; *Pathmanathan v The Minister of Citizenship and Immigration*, 2012 FC 519; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL), 160 NR 315 (FCA) (*Aguebor*); *Elmi v The Minister of Citizenship and Immigration*, 2008 FC 773; *Wu v The Minister of Citizenship and Immigration*, 2009 FC 929; *Rahal v The Minister of Citizenship and Immigration*, 2012 FC 319 (*Rahal*)).

[20] This Court must therefore show considerable deference (*Singh v The Minister of Citizenship and Immigration*, 2006 FC 565 at paragraph 11) in determining whether the findings are justified, transparent and intelligible and fall within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47). It is not up to this Court to reassess the evidence that was before the panel

(*Zrig v The Minister of Citizenship and Immigration*, 2003 FCA 178 at paragraph 42). In fact, I made the following statement in *Rahal*, above, at paragraph 42:

> . . . the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule. . . .

[21] I am of the opinion that the RPD, contrary to what the applicant claims, did not make a generalized finding with respect to credibility but rather properly analyzed the evidence submitted. The credibility findings, as apparent in the above analysis, were detailed and based on the evidence (or lack of evidence) submitted by the applicant in this case. In addition, contrary to what the applicant claims, his membership in the PDCI was not challenged by the panel. In reality, the RPD simply did not believe that the applicant had received the alleged threats.

[22] There was ample evidence submitted for the RPD's assessment to support that finding. The discrepancies in the applicant's narrative on how he left Côte d'Ivoire and the reasons that apparently caused him to act as such are a key element. The statement that a return ticket to Canada had been previously issued to him is inconsistent with the statement that he delayed his departure because he did not know how to go about leaving his country. The need to seek refuge is at the heart of a refugee claim: a fundamental lack of consistency in the narrative regarding an applicant's search for refuge rightly undermines the credibility of an applicant (*Onofre*, above, at paragraphs 21-22; *Bunema*, *supra*, at paragraph 1).

[23] It was open to the RPD to attach little weight to the two letters provided by the applicant given the fact that he was unable to establish their authenticity. Similarly, it was reasonable for the RPD to attach little weight to the death certificate because it contained no information concerning the circumstances surrounding the death of the applicant's friend. In addition to these elements, the applicant did not submit any other evidence in support of his rendition of the events. (The notice to appear before the Court Martial does not contain any information on the grounds on which it was issued and thus does not attest to the applicant's narrative. The notice could also have been for a military offence in no way connected to his refugee claim.)

[24] In light of the applicant's lack of credibility, "the Board was entitled to use a common-sense approach and to take into account the apparent discrepancies and omissions" (*Chandra v The Minister of Citizenship and Immigration*, 2012 FC 751 at paragraph 27; *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 415 (QL) (FCA); *Gill v The Minister of Citizenship and Immigration*, 2005 FC 34; *Gudino v The Minister of Citizenship and Immigration*, 2009 FC 457; *Aguebor*, above, at paragraph 20). It is well established that "it is up to the IRB to assess the evidence and the testimony and to attach probative value to them" (*Ortega v The Minister of Citizenship and Immigration*, 2012 FC 573 at paragraph 27 (*Ortega*) citing *Aguebor*, at paragraph 20 and *Romhaine v The Minister of Citizenship and Immigration*, 2011 FC 534 at paragraph 21). This is reinforced by the fact that the panel can draw "a negative inference with respect to the applicant's credibility based on the fact that he did not give a reasonable explanation for his failure to submit evidence corroborating his allegations" (*Soto v The*

*Minister of Citizenship and Immigration*, 2011 FC 360 at paragraph 25 as cited in *Ortega*, above, at paragraph 28). That is precisely what the RPD did in this case.

[25] For the above-mentioned reasons, the application for judicial review is dismissed.

[26] No question of general importance was submitted by the parties under section 74 of the IRPA and none arise in this case.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review of the decision dated March 12, 2012, by the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

2. No question of general importance is certified.

3. Without costs.

"Mary J.L. Gleason"
Judge

Certified true translation
Janine Anderson, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3304-12 |
| **STYLE OF CAUSE**: | KOUADIO MATHURI YAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING**: | Montréal, Quebec |
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| **DATED:** | December 13, 2012 |

**APPEARANCES:**

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| Charles Junior Jean | FOR THE RESPONDENT |

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