

Federal Court



Cour fédérale

Date: 20130611

Docket: IMM-9696-12

Citation: 2013 FC 635

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, June 11, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

EDOUARD KASEREKA KISONI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Protection Board, rendered on August 22, 2012, in which it was decided that the applicant was not a Convention refugee or a person in need of protection within the meaning of section 96 and subsection 97(1) respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act). The applicant claims that the RPD erred in its assessment

of the credibility of his story and in the assessment of his fear of returning as a *sur place* refugee because of the political activities that he led against the Congolese government since he was in Canada.

II. Facts

[2] The applicant, Edouard Kasereka Kisoni, citizen of the Democratic Republic of the Congo (DRC), is married and has seven children, is a research officer at the university, an economist by training, and works at the ministry of post, telephone and telecommunications (MPTT) in DRC. He alleged that he fears the security services and the police in DRC because of his union and political activities.

[3] In fact, the applicant's problems apparently started when he became a unionist in 1997 and then when he joined the Union for Democracy and Social Progress (UDPS) party in 2005.

[4] The applicant alleged that he was arrested twice in the DRC, on June 2, 2000, and June 25, 2003. In June 2, 2000, he had apparently been arrested by security services for participating in creating the union of Société Telecel where he was employed as department head. He then apparently was released under threat of being killed if he did not cease his union demands. On June 25, 2003, the applicant was apparently arrested by the national police for participating in a strike to protest against the massive layoff of a number of Telecel workers. He was released because of his union's influence with the authorities.

[5] Between 2004 and 2005, the applicant apparently worked for a project financed by the international community and by the Congolese government under the supervision of the Ministry of Planning. This project consisted in addressing poverty in the DRC. He was sent to France in 2005 and it was thus by meeting the UDPS sympathizers during this trip that he chose to become a member of this party.

[6] In March 2008, the applicant was hired on at the MPTT. His work consisted in analyzing records and reporting directly to the ministry. The applicant alleged that, in working at the MPTT, he lived in fear because all his colleagues [TRANSLATION] “wore the colours of the party in power”.

[7] In January 2009, a protest memo from the UDPS that the applicant had kept disappeared from a drawer in his office and was submitted to the chief of staff of the MPTT. This memo allegedly criticized the government’s decision to form a coalition force composed of elements of the Armed Forces of the DRC and the National Congress for the Defence of the People to fight the Democratic Forces for the Liberation of Rwanda, an armed group formed in DRC to defend the interests of Rwandan refugees.

[8] The applicant alleged that on February 28, 2009, he was arrested by two police officers from the Rapid Intervention Police. He alleged that he was detained, intimidated and threatened with death and that he was then told that he was on the black list. One of the police officers apparently then told the applicant that he [TRANSLATION] “might die young”. The applicant was able to escape and sought refuge in a nightclub so he could go home the next morning.

[9] Following this incident, the applicant continued to work at the MPTT. It was at the same time that he learned that a conference that interested him was being organized in the United States from March 27 to 29, 2009. The applicant alleged that he obtained a visa to attend the conference. He alleged that on March 27, 2009, his passport was held at the airport and that he was not able to leave the DRC until the next day.

[10] The applicant alleged that when he was in the United States, his spouse informed him that Mai Mai rebels were looking for him with respect to his grandparents' land grants, that the rebels had threatened her and that his work colleague who had similar duties had disappeared.

[11] On April 7 and 8, 2009, the applicant sought a Canadian visa. He arrived in Canada on May 18, 2009, and immediately claimed refugee protection.

[12] Since he has been in Canada, the applicant apparently participated in several protests against the Congolese president held in Montréal, Quebec and Ottawa.

III. Decision under judicial review

[13] On August 22, 2012, the RPD rejected the refugee claim, finding that the applicant's credibility was undermined because of several gaps and inconsistencies in his testimony.

[14] The RPD did not believe several aspects of the applicant's allegations. First, the RPD did not believe that the applicant could have left the DRC with his own identity and passport when he

claimed to fear the state security services and the police and that, further, he was arrested at the airport the day before his departure.

[15] As for the applicant's union involvement, the RPD found that the applicant had no fear of returning since he had had no problems for this reason since 2003. According to the applicant, the company offshored its work and the union's activity decreased; which, according to the RPD, affects the applicant's objective fear. Further, questioned by the RPD as to why no charges had been laid against him at the time of his arrest in June 2000, although he had been detained, undressed, searched and placed in a cell, the applicant stated that he presumed that he had been arrested because of his union activities. In fact, the applicant stated that, although his employer was a private company, the state often places its security officers in companies where it is involved as a hidden shareholder. Further, the RPD explained that the applicant was unable to describe in detail the problems he had with the Congolese authorities because of his union activities while he was working for Telecel.

[16] As for his political involvement as part of the UDPS, the RPD noted that the applicant could not adequately explain what problems he encountered because of his membership in the UDPS except to state that his work contract with the ministry of planning was not extended and that 10% of his salary was withheld at the source and went to the governing party while he was working for the MPTT. Further, the RPD did not believe that the applicant could have been so careless as to leave such a compromising memo lying around that he described it being in his drawer when he worked for the MPTT and supported the UDPS. The RPD rejected the applicant's explanation that

he could not keep this memo anywhere other than in his desk, because the documents that accompanied it were too bulky.

[17] The RPD found that it was not credible that the applicant could have continued to work for the MPTT following his arrest in February 2009 since, according to him, the Minister had not been informed of it by her chief of staff, and he even had to continue his job as a research officer in this ministry without ever being approached about this topic.

[18] In addition, the RPD found that the applicant's behaviour was inconsistent with the existence of a subjective fear since he did not request protection at the first opportunity in France or in the United states before coming to Canada.

[19] Finally, the RPD found that the applicant had not succeeded in establishing that there was a risk of return for him as a member of the UDPS (a party that won 48% of the votes in the last elections), by the mere fact that he had allegedly been active abroad.

IV. Issues

[20] (1) Did the RPD err in its assessment of the applicant's credibility?

(2) Did the RPD commit an error in its assessment of the applicant's fear of returning as a *sur place* refugee within the meaning of subsection 97(1) of the IRPA, because of his political activities in Canada?

V. Standard of review

[21] These are determinations of fact or questions of mixed fact and law, which are reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 59; *Earl v Canada (Minister of Citizenship and Immigration)*, 2011 FC 312, at para 16).

VI. Analysis

(1) Did the RPD err in its assessment of the applicant's credibility?

[22] The applicant acknowledged that his union activities date back several years and that he did not seek to leave his country before his arrest of February 2009 because of his political activities. However, he submits that the RPD erred in dwelling on the details of the application rather than on the true basis of the applicant's fear. With respect, the Court cannot allow this argument.

[23] The applicant alleges that the memo in which he had criticized the government's actions was given to the chief of staff, who read the document in the applicant's presence and then gave it back to him without making a copy or sharing it with the Minister. The applicant claimed that the RPD rejected this allegation on the basis of pure speculation. However, on reading the RPD reasons, it is clear that it did not find that the applicant's fear was objectively well-founded because not only was the report given back to him, but also the Minister was never informed of it and the applicant had no problem continuing to work for the MPTT. This finding is reasonable, the determinative point being that the incidents alleged by the applicant still had no consequence for him, either to his job or his personal safety, until he left his country.

[24] The applicant submitted that the RPD did not consider his explanation that he had been arrested at the airport when he was leaving for the United States and that he had paid a person who worked at the airport so that he could leave the country. It is true that the RPD did not refer to this explanation in its reasons. However, given all of the reasons and in particular the fact that the applicant did not succeed in establishing that his objective and subjective fear were well-founded, a finding that the applicant had also not disputed in his written submissions, this argument is insufficient to make the decision under review unreasonable.

[25] The Court found that the RPD did not err in its assessment of the credibility of the various aspects of the applicant's claim.

(2) Did the RPD commit an error in its assessment of the applicant's fear of returning as a *sur place* refugee within the meaning of subsection 97(1) of the IRPA, because of his political activities in Canada?

[26] The applicant submitted that the RPD had not considered the problems that it could be exposed to if he were to return to the DRC because of activities that he publically led in Canada against the Kabila government. He claims that the RPD erred in limiting itself to the documentary evidence that the applicant had submitted to it the day of the hearing, without analyzing the objective evidence in the package with respect to the treatment of the opposition members and persons who oppose the Kabila government overseas.

[27] First, the exhibit filed by the applicant established that Étienne Tshisekedi, UDPS president, was arrested and detained for a few hours in the offices of the Agence nationale de renseignement

when he was getting ready to leave the DRC during the recent elections. He was then released, but the applicant was basing himself on this document to establish that the situation would be worse for the party's simple members. The RPD reasonably dismissed this argument on the ground that the UDPS is an opposition party with 48% of the votes at the last elections.

[28] The applicant referred to excerpts drawn from three documents of the evidence in the package that did not contradict the RPD's finding that nothing shows that a member who is a UDPS activist would not be a *sur place* refugee because of the mere fact of his membership and political activities in support of his party outside the DRC. In sum, these documents instead indicate that the Congolese authorities apparently systematically refused to allow opponents to organize public protests, that the government does not authorize opposing political parties and independent civil society organizations to hold peaceful protests and that 30 members of the UDPS present at a meeting organized in Kinshasa in September 2010 had allegedly been arrested and detained arbitrarily (National Documentation Package of June 8, 2012 (CND), tab 4.6: COD103712.FE).

[29] Another document cited by the applicant, a report from March 2012 of the UN Organization Stabilization Mission in the Democratic Republic of the Congo and Office of the High Commissioner for Human Rights (CND, tab 4.17), describes the tensions linked to the lack of transparency and the inconsistencies in the electoral process during the last elections of 2011, by stating in an investigation:

... documented the arrest of at least 265 civilians, most of whom have been detained illegally and/or arbitrarily, mainly due to their real or alleged affiliation to a political opposition party or for coming from Mr. Etienne Tshisekedi's home province or to other provinces where he enjoys significant support. These human rights violations were attributed mainly to elements of the Garde républicaine (GR), officers of the National Congolese Police (PNC) and its specialized units, such as the Légion

nationale d'intervention (LENI), the criminal investigation brigade and the Groupe mobile d'intervention (GMI), and to a lesser extent, to soldiers of the Armed Forces of the Democratic Republic of the Congo (FARDC) not belonging to the GR. Moreover, agents of the National Intelligence Agency (ANR) were also allegedly responsible for several cases of arbitrary arrest and illegal detention.

[30] Finally, the applicant quoted an excerpt of the report of June 30, 2009, by the United Kingdom's Home Office that reported cases of arrest and imprisonment for political reasons despite the fact that the political parties were able to operate most of the time without restriction or outside interference (CND, tab 2.5, at para 16.05-16.06 and 18.05-18.06).

[31] None of these documents shows the relevance and probative value required from evidence supposedly ignored by the RPD, to refute the presumption that the RPD considered all of the evidence submitted to it (*Ferraro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 801, at para 17; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA)).

VII. Conclusion

[32] For all the foregoing reasons, the application for judicial review is dismissed. The Court is of the opinion that the impugned decision is not unreasonable and does not fall outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir*, above, at para 47).

JUDGMENT

THE COURT ORDERS that the applicant's application for judicial review be dismissed without any question of general importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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