

Federal Court



Cour fédérale

Date: 20130425

Docket: IMM-4974-12

Citation: 2013 FC 433

Ottawa, Ontario, April 25, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ISRAEL COBENA ANANE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRAION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Israel Cobena Anane [the Applicant] seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], dated April 24, 2012, wherein the Board concluded that the Applicant is not a Convention refugee or a person in need of protection [the Decision].

[2] For the following reasons, the application will be dismissed.

Background

[3] The Applicant is a 43 year-old male, a Pentecostal pastor, and a citizen of Ghana who fears persecution on the basis of his membership in a social group. He alleges that he is perceived as a homosexual and also claims that he faces persecution because of his religion. He entered Canada on June 25, 2011 and made his refugee claim on June 27, 2011.

[4] In his Personal Information Form [PIF], dated August 3, 2011, the Applicant states that he is a Christian and an ordained Minister of the Gospel of Jesus Christ. He believes in equal rights and justice for all irrespective of colour, creed and sexual orientation. However, homosexuality is illegal in Ghana. Those identified as a homosexuals face the risk of vigilante justice. Turning to the authorities is not an option as one then risks prosecution.

[5] After graduation from the Bethel Christian Church International Bible School in Koforidua the Applicant was offered a position as a Pastor. He remained in that position until 2011 without incident.

[6] In February 2011 a political crisis in the Ivory Coast caused many Ivorian nationals to move to Ghana. Some of the new arrivals joined the Applicant's church and its choir.

[7] On February 11, 2011 a church elder came to the Applicant's home to tell him that one of the new members of the church, an Ivorian national and member of the church choir ["A"], had been seen by one of the church members kissing another brother of the church ["B"]. The Applicant

was told that, but for the intervention of one of the church leaders, A and B would have been lynched.

[8] On March 5, 2011 A and B were summoned to the Applicant's house. At the meeting, the elders insisted that A and B be suspended from the choir.

[9] On April 16, 2011 another meeting was held involving A and B, the Applicant and the Church Board of Trustees. After many hours of discussion, A and B confessed to being homosexual. This caused anger and the Trustees demanded that A and B be handed over to the police. However, the Applicant refused and instead gave A and B shelter in his home. The Trustees did not approve of the Applicant's conduct and reported to the police that the Applicant was harbouring A and B.

[10] On May 22, 2011 the Applicant was summoned to the local police station and was interrogated about his sexuality. The Applicant was asked about his nephews who reside with him. Officers also asked why the Applicant was not married. Finally, the Applicant was asked about A and B and was ordered to surrender them. However, when he returned home from the station, he ignored the order and advised A and B to leave his home.

[11] On Friday, June 10, 2011 a group of men – some members of the church and some Muslim youth from the community – stormed the Applicant's home and demanded that he hand over A and B. The men chanted that the Applicant was a homosexual and did not deserve to live. The men

became more hostile when they realized that A and B were not in the house and they threatened to kill the Applicant if he did not produce the “homos”.

[12] The Applicant went to the police immediately after this incident but received no assistance because the police also demanded that he produce A and B. A female officer suggested to the Applicant that if in fact he was not a “homo”, he should marry to “shame” his accusers. The Applicant was disgusted by this response to his request for police protection.

[13] On Sunday, June 12, 2011 the Church Board of Trustees informed the Applicant that he was suspended from his position pending an investigation of his background. This caused a lot of rumours in the community and on June 14, 2011, four men accosted the Applicant while he was on his way home. The Applicant walked away with a bleeding nose and a cut on his mouth. He did not go to the police because they had made it clear that he would not receive their protection.

[14] The Applicant says that he then decided to go into hiding with a pastor in Accra. While there, the Applicant learned that the police were angry and had visited his home on June 17, 2011 in order to arrest him for failing to hand over A and B. The Applicant’s nephew told the police that he did not know where the Applicant was and that he had not seen him for over a week. His nephew was told to tell the Applicant that, if he knew what was good for him, he would return to Koforidua immediately.

[15] At this point, the Applicant felt that his only option was to leave the country. The Applicant alleges that, since being in Canada, he has heard from his nephews that the search for him continues and that they were twice summoned by the local police and questioned about his whereabouts.

The Evidence

[16] At the hearing the Applicant relied in part on written evidence which included:

- a Statutory Declaration dated November 9, 2011 made by Rev. Gideon Tetteth who is also a Minister of the Gospel of Jesus Christ. He confirmed the main facts set out in the Applicant's PIF narrative;
- a letter of June 12, 2011 suspending the Applicant as Pastor pending an investigation into whether he is a homosexual.

The Decision

[17] The Board did not find the Applicant's evidence was credible. As well, the Board found that he had an internal flight alternative [IFA] in the cities of Kumasi, Secondi-Takoradi and Tamale. I will first consider the IFA.

[18] The Board addressed the two-pronged test (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA)).

[19] The Board noted that the Applicant fears Muslim youth in Koforidua, members of the community and the police. The Board concluded that the threat from the Muslim youth and the

members of the community is localized and therefore the Applicant could seek refuge from these two groups by relocating. Moreover, the three cities identified above are a substantial distance from the Applicant's home in Koforidua.

[20] With respect to the Applicant's fear of the Ghanaian police, the Board identified a number of factors that suggested that an IFA was a viable option. First, the Applicant had been out of Ghana for ten months at the time of the hearing and the Board found that he had not provided persuasive evidence to show that the police in Koforidua continued to search for him. There was also no evidence to suggest that there was any nation-wide interest in his case. The Board acknowledged that he might still be at risk in Koforidua, but was not satisfied that the police would seek him out in other parts of Ghana, especially since he does not have a criminal record and there is no outstanding warrant for his arrest.

[21] The Board turned to the documentary evidence dealing with policing in Ghana and noted that the Ghana Police Service is divided into twelve administrative regions and has a force of little over 23,000 personnel for a population of 24 million. While specialized police units are maintained in Accra, there are significant barriers to extending such services nationwide. Citing these barriers and the widespread perception of police ineptitude, the Board determined that the police are incompetent and not equipped to search for the Applicant throughout the country.

[22] Furthermore, the Board was not persuaded that the police even maintain an interest in the whereabouts of A and B. It noted that it took the police almost one month to follow-up with the Applicant after they demanded that he hand them over.

[23] The Board was also not satisfied that the Applicant has a problematic profile. The church over which he presided is one of two churches in Ghana of that denomination and his congregation of 500 individuals makes up approximately 0.1% of Koforidua's population of 500,000. In response to the Applicant's assertion that he was well known because he conducted open crusades in the city, the Board found that although he may be known locally, he is not known throughout Ghana.

[24] The Board also addressed the IFA in relation to the unique nature of the Applicant's claim, namely that he is being persecuted because he is *perceived* as a homosexual. However, since he is not a homosexual and had never been so perceived in the years before he sheltered A and B, the Board concluded that he would not be perceived as a homosexual in any of the IFA locations.

[25] Regarding the second prong of the test, the Board was of the view that it was not unreasonable for the Applicant to live in Kumasi, Secondi-Takoradi or Tamale. The Applicant had not provided evidence to indicate that he was unfamiliar with cultural issues and norms in any of the three cities. The Board also took into account that the Applicant had travelled half way across the world and settled into a home and job in Toronto. This indicated that the Applicant was a mobile individual with the capacity to relocate effectively.

[26] The Applicant had said that fear of persecution on religious grounds was also a reason for his refugee claim. However, the Board held that as a Christian, the Applicant would be familiar with religious practices in the three IFA locations. The Board took into account that the majority of Ghana's Christian population, which makes up 69% of the country's total population, resides in the

southern areas of the country. All three of the IFA cities are located in the southern part of the country.

[27] Although it acknowledged that the Applicant would have to join a different congregation, the Board noted that he had already done so in Canada. Highlighting the Applicant's education and ten years of work experience, the Board determined that there was no persuasive evidence to suggest that he would be at a greater disadvantage of finding employment than any other Ghanaian in Kumasi, Secondi-Takoradi or Tamale. The Board also addressed language barriers and found that there were none.

[28] Based on this analysis, the Board determined that Kumasi, Secondi-Takoradi and Tamale are reasonable locations, in all circumstances, for the Applicant to seek refuge and that he would not be at risk under sections 96 or 97 of the Act in those locations.

The Applicant's Issues

[29] Is the Board's IFA finding reasonable given its failure to consider whether there was adequate state protection for the Applicant?

[30] Did the Board err in its assessment of the Applicant's credibility?

Discussion

[31] In my view, the Board was not required to consider the issue of state protection given its conclusions that i) the Applicant's risk was local; ii) he did not have a national profile; iii) the local

police had no serious interest in him; iv) the police lacked the means to search for him beyond Koforidua even if they were interested; and v) there was no reason to think he would again be perceived to be homosexual.

Conclusion

[32] In my view the IFA finding was reasonable. Accordingly, there is no need to address the Board's concerns about the Applicant's credibility.

[33] No question was posed for certification pursuant to section 74(d) of the Act.

ORDER

THIS COURT ORDERS that:

The application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4974-12

STYLE OF CAUSE: ISRAEL COBENA ANANE v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 14, 2013

**REASONS FOR ORDER
AND ORDER:** SIMPSON J.

DATED: April 25, 2013

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