

Federal Court



Cour fédérale

Date: 20141110

Docket: IMM-7222-13

Citation: 2014 FC 1055

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 10, 2014

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

CHARLES MBO MONSEDJU

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision dated October 28, 2013, (Decision) by the Refugee Protection Division [RPD] of the Immigration and Refugee Board,

rejecting the applicant's claim for refugee protection and finding that he was not a "Convention refugee" or a "person in need of protection", within the meaning of sections 96 and 97 of the IRPA.

[2] For the reasons that follow, I find that the application for judicial review must be dismissed.

II. Facts

[3] The applicant is a citizen of the Democratic Republic of the Congo [DRC]. He worked as a chauffeur for the United Nations Development Program from February 2005 until April 2011. He claims persecution on the basis of his membership in the Union for Democracy and Social Progress [UDPS], a Congolese political party. In fact, he alleges having had a number of problems during the years 2006, 2010 and 2011.

[4] The applicant alleges having been arrested a first time in 2006 by reason of his activism. He stated that he spent three nights in a tiny cell without electricity, clothes or access to food or water.

[5] The applicant claims that on October 10, 2010, he attended a demonstration to denounce the murder of a man who had thrown a rock at the car of President Joseph Kibala and that following the demonstration he was seized, beaten and imprisoned before being released two days later without having been questioned. The authorities purportedly photographed him when he was leaving prison.

[6] On March 27, 2011, at 4 o'clock in the morning, some masked men forced their way into his home. The applicant escaped through a back window. He claims the masked men gang-raped his wife and robbed his valuable possessions while he was hiding at a neighbour's.

[7] On March 29, 2011, a friend of the applicant's brother who worked for the Agence nationale de renseignement [ANR] [the national intelligence agency] met with the applicant and handed him a photograph that had been taken when he was released. The applicant claims that this friend of his brother then told him that he needed to leave the country, because a group of four individuals with his photo had been tasked with arresting him.

[8] On April 11, 2011, the applicant obtained a visa to travel to Canada to take a training course related to his volunteering activities.

[9] The applicant reportedly telephoned his sister on May 15, 2011, and she apparently informed him that his house had been ransacked several days earlier and that his family had left the residence for parts unknown. The applicant later learned that they had taken refuge in a church in Kinshasa.

III. Decision

[10] The RPD found that the applicant had not credibly alleged material facts in support of his application. In her opinion, the applicant is unreliable, as he had lied to the panel, altered certain facts in his Personal Information Form [PIF], deliberately withheld facts and submitted false documents.

[11] According to the RPD, the applicant's testimony, as a whole, was not credible. The panel concluded that he had not participated in the October 2010 demonstration and had not been arrested afterwards.

[12] Overall, the RPD drew negative inferences from the applicant's testimony, including the following factors:

1. The applicant amended his PIF on the following manner: (i) he initially indicated that the photo submitted in which he appears surrounded by soldiers had been taken when he was arrested but later stated that it had been taken when he was released; (ii) he initially indicated that a friend of his family, an ANR officer, met with him at his sister's but later stated that it had been at his female cousin's; (iii) he changed the date of his first detention as well as the date on which he had participated in the demonstration. According to the RPD, the numerous changes to the applicant's PIF undermined his credibility;
2. The photograph submitted by the applicant as proof of his arrest shows him surrounded by soldiers. But this photo is not the type photograph taken when someone is arrested. In the RPD's view, it is not a "mug shot", but a photograph that was taken under other circumstances;
3. The applicant provided a false letter from OXFAM indicating that he was head of mission for OXFAM Québec in order to secure his entry into Canada. The RPD

concluded from this that the applicant had access to counterfeiting services that allowed him to produce false documents;

4. The RPD, observing the applicant's demeanour during his testimony, came to the conclusion that his story of the home invasion was clearly a complete fabrication. Furthermore, the letter from his wife was hardly more credible. Lastly, the RPD doubted that the applicant would have been able to escape the masked men who had burst into his home by climbing out of a back window that the group hadn't thought to keep an eye on;
5. The applicant waited three weeks after arriving in Canada before claiming refugee protection;
6. The applicant used his own passport to leave his country. The RPD pointed out that the case law establishes that the RPD may reasonably conclude from the fact that an individual used his own passport to leave his country demonstrates that he did not fear the central authorities (*Singh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 601, at para 10); and
7. The applicant applied for a U.S. visa three times, but initially concealed this information from the RPD, believing that it would jeopardize his application.

[13] The applicant asserts that he is a member of the UDPS, which the RPD accepted.

IV. Issues

[14] There are three issues:

1. Did the RPD err in its analysis of the applicant's credibility?
2. Did the RPD err by failing to mention the documentary evidence in its assessment of the applicant's credibility?
3. Did the RPD err in finding that the applicant was not at risk as a result of his membership in the UDPS?

For the purposes of this decision, I am of the view that issues 2 and 3 should be considered jointly.

V. Parties' submissions

A. *Applicant's submissions*

[15] The applicant submits that he did not lie at his hearing before the RPD.

[16] The applicant further submits that the amendment of the word "sister" for the word "cousin" in his PIF is explained by the fact that Canadians do not recognize the generic term "sister" as describing an individual's female relatives.

[17] Aside from these clarifications, the crux of the applicant's argument rests on the fact that, given that the RPD acknowledged his membership in the UDPS, it should have undertaken a more in-depth analysis of the applicant's fears in connection with his political affiliation. Thus,

the applicant contends that the mere fact of being a member of the UDPS in the DRC ought to lead the RPD to conclude that he was indeed in danger and grant him refugee status.

[18] The applicant points out that there was a substantial amount of evidence in the record indicating that UDPS members are persecuted, such as arbitrary arrests, acts of torture and abuse. The applicant further submits that the RPD should not have overlooked this evidence. The RPD should have considered material documenting the persecution of members of the UDPS (*Kaleja v Canada (Minister of Citizenship and Immigration)*, 2010 FC 252, at para 25).

[19] The applicant argues that although the RPD was not required to refer to every piece of evidence, there exists in the case law a principle by which the more relevant the evidence that was not mentioned, the more this Court will be inclined to allow the application for judicial review (*Malaba v Canada (Citizenship and Immigration)*, 2013 FC 84, at paras 19 to 23).

B. *Respondent's submissions*

[20] The respondent points out, repeating the key findings of the RPD, that given the numerous inconsistencies in the applicant's testimony, it was reasonable to cast doubt on the veracity of his testimony.

[21] The respondent submits that it was open to the panel to find that the applicant's lies regarding material facts in his statements and the fact that he provided misleading documents undermined his credibility (*Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, at para 24 [*Lawal*]).

[22] The respondent notes that the panel specifically identified in its Decision the grounds for the applicant's fear, which were based on his membership in the UDPS. The respondent further mentions that although the panel determined that he was a member of the UDPS on the basis of his membership card and a letter attesting to the fact, the RPD concluded, above all else, that nearly all of the pivotal facts related by the applicant were untrue.

[23] Citing *Alba v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1116, at paras 31-32 [*Alba*], the respondent submits that the applicant failed to establish a connection between the documentary evidence and his personal situation; the documentary evidence being insufficient in itself.

[24] Lastly, the respondent asserts that the applicant's central argument that the mere fact of being a member of the UDPS makes him a person in need of protection cannot be accepted. In particular, the respondent further submits that the evidence shows that 18 million membership cards have been issued by the UDPS and that it cannot be claimed that every person with a UDPS card is a refugee.

VI. Analysis

A. *Standard of review*

[25] The analysis of the applicant's credibility is reviewable on a reasonableness standard (*Francis v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1078, at paras 3-5). A standard of reasonableness also applies to questions raised by the applicant with respect to the assessment of evidence and consideration of the applicant's association with the UDPS (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47; *Nyembo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1058, at para 8).

B. *Credibility analysis*

[26] The RPD's analysis of the applicant's credibility is reasonable taken as a whole.

[27] It was reasonable to have drawn negative inferences from the amendments the applicant made to his PIF. I accept that the change of the term "sister" for "cousin" made by the applicant to his PIF was done to reflect the term used in Canada to designate the applicant's relationship to that person. However, it is reasonable to believe that the changes to the date of the demonstration and the date of the applicant's arrest might cause negative inferences to be made. In fact, these dates are of significant import as they ostensibly correspond to the date of the demonstration that was held to denounce the death of the man who had thrown a rock at Joseph Kibala's car. Moreover, I am perplexed as to the fact that the applicant was confused with regard to when the photograph was taken, which, according to his claims, was taken at the time of his detention. In

my opinion, there is nothing to suggest that the RPD's findings on this point were unreasonable. The RPD reasonably determined that the photograph provided by the respondent did not lead to the conclusion that he had been detained as a political prisoner.

[28] On the subject of the alleged rape of the applicant's wife, the RPD stated: "The panel was able to watch the claimant while he related these facts, and it is clear that he was lying and did not actually experience the events he was relating". The case law has established that the RPD is in a privileged position and is able to observe the demeanour of witnesses and make credibility findings (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, at para 42). I am of the view that the RPD sufficiently and rationally supported its conclusions in this regard.

[29] One of the central elements in this case is the applicant's attempts to conceal facts and mislead Canadian authorities. The applicant provided a false letter in order to pass himself off as a head of mission for OXFAM. He also concealed his three visa applications in the United States. Although I understand that a person dealing with serious persecution in his or her country of origin would try and flee by any means, both legal and illegal, the applicant's tactics to mislead the panel certainly do not weigh in favour of his credibility. As the respondent points out, the panel could reasonably infer that the fact that the respondent tried to mislead the panel affected his credibility (*Lawal*, au para 24).

C. *Consideration of the documentary evidence and the applicant's association with the UDPS*

[30] The majority of the applicant's arguments relate to the panel's inadequate consideration of the documentary evidence and the applicant's association with the UDPS.

[31] The applicant submits that the RPD erred by failing to consider documentation stating that UDPS members are persecuted. However, as the respondent notes, the applicant failed to establish a connection between the documentary evidence and his personal situation.

[32] In fact, the RPD recognized that the applicant was a UDPS member and that he sought to flee his country to escape the existing dictatorial power (Decision, at para 10); it simply did not believe his testimony in its entirety.

[33] The applicant's principal argument rests on the fact that the RPD allegedly did not adequately consider his membership in the UDPS and the documentary evidence establishing that members of this group are persecuted.

[34] This Court has recognized, in certain cases, that the fact of not directly referring to evidence is not automatically fatal if the RPD indicates that it was considered (*Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 27, at paras 12-14). Indeed, the RPD mentioned having considered the evidence and there is nothing in the Decision to suggest otherwise.

[35] A number of pieces of the documentary evidence indicate that it is UDPS members who participate in demonstrations and activities in support of the movement who find themselves the targets of persecution, for instance:

1. The UK Border Agency Operational Guidance Note (May 2012), 3.6.5. and 3.6.9., makes reference to the persecution of UDPS members who engage in unauthorized protests;
2. The UK Border Agency Country of Origin Information Report (March 2012), 16.11., also makes reference to the persecution of UDPS members who engage in unauthorized protests;
3. A press communiqué from “La voix des sans voix” [The Voice of Those Without a Voice] (September 27, 2010), Exhibit C-18, makes reference to the arrest of 28 UDPS militants;
4. Report from the Congo News – The Return of Tshisekedi: Muyej, Kimbuta and Mavungu Had a Compromise (March 16, 2013), Exhibit C-21, about the assassination of eleven UDPS militants;
5. Report from the Congo News (March 14, 2013), Exhibit C-25, also about the assassination of eleven UDPS militants;

6. Report from the “Dynamique Congolaise” political magazine (January 27, 2013), Exhibit C-26, about the arrest of fifty UDPS militants during a march protesting against the regime of Joseph Kabila.

[36] While the applicant managed to demonstrate that he is a member of the UDPS, the RPD concluded that it was implausible that he had participated in these demonstrations manifestations, or that he was involved with the UDPS as an activist. I agree with the RPD’s findings. It is not enough for the applicant to establish that he is a member of the UDPS to demonstrate a fear of persecution; the applicant needed to show that he has actively involved with the party.

[37] For the aforementioned reasons, I am of the view that the RPD reasonably concluded that the applicant failed to demonstrate that he met the requirements of sections 96 and 97 of the IRPA.

[38] I also note that the applicant left the RDC using his own passport and that, upon his arrival in Canada, the applicant intended to return to the RDC. In my opinion, these facts are telling and lead me to conclude that the applicant has not demonstrated a subjective fear of persecution.

VII. Conclusions

[39] The application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“George R. Locke”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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