

Federal Court



Cour fédérale

Date: 20150105

Docket: IMM-2729-14

Citation: 2015 FC 8

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 5, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

NZOLANI MWANAMP JULIO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated February 28, 2014, which found that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The applicant is a citizen of Angola. This young man worked as a businessman in his country. In his testimony he explained that he had never been involved in politics, but on September 3, 2011, on the invitation of some students, he attended a political demonstration as part of 300 participants who denounced the lack of freedom of expression and the extreme poverty suffered by the population. He was arrested by the police, along with several other demonstrators. However, the applicant was allegedly held at the headquarters of the National Direction of Criminal Investigation (Direction nationale des enquêtes criminelles) for over three months, during which he was tortured and interrogated, his torturers demanding to know the names of the demonstration's organizers. On December 10, 2011, after his hospitalization, he managed to escape and seek refuge at his uncle's home. That same month he made efforts to obtain a U.S. visa. In May 2012, he travelled to the United States and remained there until August 10, 2012, when he claimed refugee status at a Canadian border crossing.

[3] The applicant's credibility is at the heart of the decision under review. The RPD concluded that the applicant's narrative was "a fabrication" and rejected his claim for refugee protection. The applicable standard of review in this case is reasonableness. This application for judicial review must be dismissed.

[4] The RPD found a certain number of contradictions and implausibilities. One major contradiction noted by the RPD was that the applicant testified that he had been detained for three months, but indicated in his Claim for Refugee Protection Form that he had been detained for a little over one month. The applicant attributed this apparent contradiction to a mistake made

by the interpreter, but in the absence of evidence that the translation was inaccurate, it was open to the RPD to disregard the applicant's explanation.

[5] But there is more. The RPD doubted that the applicant had been tortured for 3 months, as other demonstrators who had been arrested had simply been convicted after a quick trial. On its face, the RPD's implausibility finding is not gratuitous and is based on the evidence in the record. A newspaper article filed by the applicant describes 17 demonstrators who were arrested and who were all convicted and sentenced to 45 days in jail, while the *Country Reports on Human Rights Practices for 2012* in the National Documentation Package indicates that detainees are informed of the charges against them and of their rights. The applicant was provided with an opportunity at the hearing to explain why he would have been treated more harshly than the other demonstrators who had been arrested by the police, but was unable to come up with a reasonable explanation. His testimony was no more convincing when he affirmed that no member of his family was concerned about his disappearance or made any effort to locate him in the three months during which he was allegedly detained. It was open for the RPD to find implausible his explanation that his family knew that he was often away on business trips (which were generally for one month according to his testimony).

[6] The applicant's learned counsel today claims that the RPD erred in determining that it was not plausible that the applicant was detained and tortured for 3 months. Even if the article in question speaks of 17 demonstrators who were arrested and convicted, it is possible that other persons had been arrested and that these people had not all been given trials. The RPD further erred by considering only that part of the documentary evidence which indicated that detainees

are informed of the charges against them within five days, without taking into account that part of the evidence indicating that illegal and arbitrary arrests and detentions remained a serious problem. The applicant concludes that the RPD's analysis is incomplete and erroneous, which would warrant the intervention of this Court.

[7] Before the Court, the applicant's counsel is only reiterating the same explanations provided by his client to the RPD and he is for all intents and purposes asking the Court to substitute its judgment for that of the RPD. However, the RPD is in the best position to determine the applicant's credibility (*Aguebor v Canada (Minister of Employment and Immigration)*, 160 NR 315, [1993] FCJ No 732 (FCA) at para 4). This Court sits in judicial review. This is not an appeal and it is not the role of the Court to re-weigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 61 and 64; *Canada (Attorney General) v Almon Equipment Limited*, 2010 FCA 193 at para 62; see *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 35-38; *Nimer Obeid v Canada (Citizenship and Immigration)*, 2008 FC 503 at paras 9-11; *Trevino Zavala v Canada (Citizenship and Immigration)*, 2009 FC 370 at para 5; *Hernandez Cortes v Canada (Citizenship and Immigration)*, 2009 FC 583 at para 28).

[8] The applicant has not demonstrated that the RPD's findings were unreasonable. For these reasons, the application for judicial review must be dismissed. No question of general importance was proposed by counsel and none is certified by the Court.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2729-14

STYLE OF CAUSE: NZOLANI MWANAMP JULIO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: MARTINEAU J.

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