Federal Court Cour fédérale

Date: 20170720

Docket: IMM-303-17

Citation: 2017 FC 706

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 20, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

HIPOLITO MBENGANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Hipolito Mbengani, is a citizen of Angola. He entered Canada on November 21, 2013, and claimed refugee protection a few days later. He claims that the Angolan authorities issued a warrant for his arrest and suspect him of supporting the rebel group Front for the Liberation of the Enclave of Cabinda, which opposes the party in power, the Popular Movement for the Liberation of Angola [MPLA].

[2] The Refugee Protection Division [RPD] rejected the refugee protection claim on March 31, 2014. It found the applicant not credible because of contradictions and omissions concerning elements central to his refugee protection claim, specifically, that he was summoned and detained by the Angolan authorities and that an arrest warrant was issued against him. The RPD also found a lack of evidence corroborating the applicant’s commercial activities that were apparently the source of his problems. It therefore did not give any weight to the notices to appear, to the release warrant or to the arrest warrant submitted by the applicant in support of his refugee protection claim.

[3] On November 4, 2014, the Refugee Appeal Division [RAD] upheld the RPD’s decision. That decision was the subject of an application for leave and judicial review, which was dismissed by the Court on September 2, 2015.

[4] On December 16, 2015, the applicant filed a pre-removal risk assessment [PRRA] application based on the same risks as those raised before the RPD. His application was accompanied by various documents. In particular, the applicant submitted (1) a release warrant dated March 18, 2013; (2) a notice to appear dated May 1, 2013; (3) a notice to appear dated March 13, 2013; (4) an arrest warrant dated May 5, 2013; (5) a summons to appear dated March 23, 2013; (6) the affidavit of Mr. De Figueiredo dated May 25, 2015; (7) a copy of a national identity card; (8) a statement by Mr. Ayoko dated May 20, 2015; (9) a statement by Mr. Martins, undated; (10) a letter from the applicant’s uncle, Mr. Antonio, the date of which is uncertain; (11) copies of black and white photographs; and (12) a letter from Amnesty International dated July 30, 2015.

[5] On November 30, 2016, the PRRA officer denied the application. He found that the release warrant, the notices to appear dated March 13 and May 1, 2013, and the arrest warrant did not constitute new evidence because they were all put before the RPD, and the RPD did not give them any weight. Concerning the summons to appear dated March 23, 2013, the officer was of the opinion that the applicant's explanation that he did not put it before the RPD because he did not have it in his possession does not constitute a justification that establishes that that evidence meets the criteria of paragraph 113(a) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [IRPA]. Regarding the other documents, the officer accepted them as new evidence, but after he analyzed them, he assigned them little or no weight. The officer found that the applicant did not submit any element justifying a reconsideration of the RPD's findings regarding the credibility of his allegations or justifying a finding of any risk pursuant to sections 96 and 97 of the IRPA. The officer also found, after examining the objective documentation, that the country conditions had not changed such that the applicant would be more at risk than he was when the RPD examined his case.

[6] The applicant contests the decision. He argues that the officer erred in his assessment of the evidence, in particular by rejecting, without a valid reason, the affidavit of Mr. De Figueiredo and by disregarding the documentary evidence on the general situation in Angola.

[7] The standard of review that applies to the PRRA officer's decision and to his assessment of the evidence is reasonableness (*Ince v Canada (Citizenship and Immigration)*, 2017 FC 283 at para 16; *Kathirkamanathan v Canada (Citizenship and Immigration)*, 2016 FC 761 at para 14).

[8] When the reasonableness standard applies, the role of the Court is to determine whether the decision falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law”. As long as “the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility”, it is not open to this Court to substitute its own view of a preferable outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[9] It is well established that it is not the role of the PRRA officer to re-examine evidence assessed by the RPD or to consider evidence that could have been put to it. The role of the PRRA officer is to examine only new evidence that arose after the rejection of the refugee protection claim or was not readily available, or that the applicant could not reasonably have been expected in the circumstances to have presented (*Massudom v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 14 at para 11; *Yousef v Canada (Citizenship and Immigration)*, 2006 FC 864 at para 20).

[10] The applicant criticizes the officer for failing to provide a valid reason for refusing to give weight to the affidavit of Mr. De Figueiredo, a former Angolan police officer who attested to the authenticity of the notices to appear, the summons to appear and the arrest warrant, and to the risk of torture if the applicant returned to Angola. The applicant claims that the affidavit provides new insight into the evidence put before the RPD and that it was unreasonable for the officer to refuse to reassess the evidence on the basis that the identity card that accompanied the

affidavit was illegible. The applicant stated that he told the officer in his submissions that the originals were available for consultation.

[11] The Court finds that the officer's decision to give little weight to the affidavit of Mr. De Figueiredo was not based on the sole fact that the identity card was illegible. His decision was instead based on the lack of evidence corroborating Mr. De Figueiredo's identity and his qualifications as a former Angolan police officer.

[12] The officer noted that Mr. De Figueiredo stated in his affidavit (1) that he was a former Angolan police officer who served in police forces for several years before fleeing to Canada; (2) that he witnessed situations of detention, torture or abuse of power by the Angolan authorities; and (3) that he was of the opinion that the applicant would be arrested, detained and severely harmed by the authorities if he should return to Angola because anyone who is the subject of an arrest warrant, like the one issued against the applicant, faces serious risks.

[13] The officer noted that the identity card that accompanied the affidavit and that was submitted to establish the identity and expertise of the affiant is of poor quality and the name of the holder and the other identity information on it is illegible. The officer was of the opinion that the identity card could not corroborate the identity information of Mr. De Figueiredo, or confirm that he served in Angolan police forces. The officer noted that the applicant did not submit any other documents to demonstrate that Mr. De Figueiredo is a police officer or that he witnessed situations of detention, torture or abuse of power as alleged. In the absence of such evidence, the officer found that Mr. De Figueiredo's testimony cannot be understood as coming from a subject

matter expert. The officer also considered the fact that Mr. De Figueiredo does not have personal knowledge of the applicant's case or of the facts underlying his refugee protection claim, as he was put in contact with the applicant in Canada by counsel for the applicant. The officer thus gave little weight to Mr. De Figueiredo's affidavit.

[14] The applicant contended otherwise in his reply and at the hearing, and presented the police officer's affidavit to prove the authenticity of the notices to appear, the release warrant and the arrest warrant. He referred to the affidavit as "expertise" in his submissions to the officer and in his memorandum to this Court. The Court finds that it was reasonable for the officer to expect the applicant to clearly establish his affiant's expertise considering that it appears from the affidavit that Mr. De Figueiredo only worked as a police officer for four years before he left Angola in January 1987, that he does not have personal knowledge of the applicant's situation and that his statements rest on impressions that were based on a summary conversation with the applicant.

[15] Regarding the applicant's argument that the officer should have asked him for the original identity document, notices to appear and arrest warrant, the applicant was responsible for ensuring that he submitted the best evidence in support of his application, or at least, that the copies submitted in support of the affidavit were legible (*Tovar v Canada (Citizenship and Immigration)*, 2015 FC 490 at para 21 [*Tovar*]; *Ormankaya v Canada (Citizenship and Immigration)*, 2010 FC 1089 at paras 29-30 [*Ormankaya*]; *Jiang v Canada (Citizenship and Immigration)*, 2009 FC 794 at para 21). It was also up to the applicant to persuade the officer of the probative value of his evidence (*Mbaraga v Canada (Citizenship and Immigration)*,

2015 FC 580 at para 29). The officer was not required to tell the applicant that his evidence was insufficient or ask the applicant to provide him with additional evidence (*Tovar* at para 21; *G.M. v Canada (Citizenship and Immigration)*, 2013 FC 710 at para 53; *Ormankaya* at para 31).

[16] In light of the fact that the officer assigned little weight to Mr. De Figueiredo's affidavit, it was reasonable for the officer to refuse to reconsider the notices to appear, the release warrant and the arrest warrant submitted to the RPD. The submission of a new affidavit does not in itself rebut the RPD's findings if it cannot prove that the facts as of the date of the PRRA application are materially different from the facts as found by the RPD (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 17; *Nagendram v Canada (Citizenship and Immigration)*, 2015 FC 514 at para 14; *Bengabo v Canada (Citizenship and Immigration)*, 2009 FC 186 at paras 24-25 [*Bengabo*]; *Elezi v Canada (Citizenship and Immigration)*, 2007 FC 240 at para 27). Regarding the notice to appear that was not put before the RPD, the officer reasonably found that the applicant did not adequately explain why that document was not previously submitted.

[17] The applicant also criticizes the officer for refusing to give weight to a letter from Amnesty International, which specifies that the removal of the applicant to Angola would violate his fundamental rights. The applicant states that Amnesty International is one of the largest international human rights organizations, that its credibility is recognized, and that the officer could not reject that evidence on the pretext that the organization did not have personal knowledge of the incidents alleged by the applicant.

[18] The Court cannot accept the applicant's argument. The officer did acknowledge the expertise of the organization and admitted that it is a [TRANSLATION] "competent and reliable source when it comes to the issues and general conditions in Angola". However, the officer was correct in finding that the letter does not reverse the applicant's credibility problems or establish the fears alleged by the applicant. As the officer noted, the tone of the letter is very general and the letter provides very few details on the applicant's personal situation. The letter also does not demonstrate that the organization has personal knowledge of the applicant's case and its facts apart from what was stated by the applicant himself, which was deemed not credible by the RPD.

[19] Regarding the other evidence submitted by the applicant, the Court finds that the officer had legitimate reasons for assigning little weight to the statements of Mr. Ayoko, Mr. Martins and the applicant's uncle. The officer noted that the translation of those documents was not certified, meaning that the consistency of the information contained therein cannot be confirmed, that the statements were vague, brief and provided very little information on the alleged risks of return and past incidents, and, lastly, that the statements were not accompanied by proof of mailing, which makes it impossible to establish their origin. After examining the documents, the Court is of the opinion that that finding is reasonable and that the documents do not corroborate the applicant's allegations of risk.

[20] Regarding the photographs of the applicant, they were submitted in black and white and are so dark that the Court is unable to see anything on them. Considering that the applicant did not provide any explanation justifying the poor quality of the photographs, it was not unreasonable for the officer to not assign them weight.

[21] The applicant also submits that the officer erred by not considering the documentary evidence on the situation in Angola to assess his fear of persecution upon return. He maintains that the risks he alleges are recognized by Amnesty International and the U.S. Department of State and that the articles filed in evidence confirm that law enforcement officers use questionable practices against suspected opponents of the power of the MPLA.

[22] It is apparent from the decision that the officer examined the situation in Angola in light of the documentary evidence. The officer noted that human rights advocates and critics of the government can be the subject of repression and excessive and arbitrary force. However, the officer found that the applicant failed to demonstrate that the conditions in the country have changed such that he would be more at risk than he was when the RPD and the RAD examined his case. The officer also found that the situation affects the general population and the applicant did not discharge his burden of proving that he would be persecuted in Angola by reason of one of the five Convention grounds or that he would be personally subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment.

[23] While the applicant does not agree with the officer's findings, it is not for this Court to reassess and weigh the evidence to make a finding in his favour (*Khosa* at para 59).

[24] The applicant raises the constitutionality of the PRRA system in his written memorandum. The Court does not intend to elaborate on that argument because the applicant did not focus on it at the hearing.

[25] Lastly, the applicant tried to file in evidence before this Court a certificate from a physician who he consulted after the PRRA decision was made. The Court refused, however, to consider it because it is well established that decisions in judicial review must be assessed on the basis of the documents that were before the decision-maker. The applicant failed to demonstrate that his situation is an exception to the rule (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20; *Bengabo* at para 29). The onus was on the applicant to provide the officer with all the evidence necessary for the officer to make a decision (*Luse v Canada (Citizenship and Immigration)*, 2017 FC 464 at para 5).

[26] In conclusion, the Court is of the opinion that the officer's decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and that it is justified in a manner that meets the test of transparency and intelligibility of the decision-making process (*Dunsmuir* at para 47).

[27] The application for judicial review is dismissed. No question of general importance was submitted for certification and the Court is of the opinion that this case does not give rise to any.

JUDGMENT in IMM-303-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The style of cause is amended to replace "The Minister of Immigration, Refugees and Citizenship" with "The Minister of Citizenship and Immigration";

3. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-303-17
STYLE OF CAUSE:	HIPOLITO MBENGANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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