

Federal Court



Cour fédérale

Date: 20190829

Docket: IMM-5582-18

Citation: 2019 FC 1120

Ottawa, Ontario, August 29, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

FRANCK KORE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of the decision of an Immigration Officer of the Immigration Section of the High Commission of Canada in Ghana [Officer], dated September 16, 2018, denying his application for a permanent resident visa as a member of the Convention refugee abroad class or country of asylum class.

[2] For the reasons that follow, the application is dismissed.

II. Facts

[3] The Applicant is a citizen of Côte d'Ivoire. He left his home country for Ghana in 2011, where he was granted refugee status. He currently resides at the Egyeikrom Refugee Camp in Ghana.

[4] On September 10, 2018, the Applicant was interviewed by the Officer regarding his request for a permanent resident visa. The interview was conducted exclusively in French.

[5] During the interview, the Applicant stated he had campaigned for former President Laurent Gbagbo in Côte d'Ivoire's elections in 2010 by hanging posters and distributing t-shirts for the candidate. After M. Gbagbo was arrested in April 2011, supporters of the Ivorian Popular Front [IPF] were hunted down. While the Applicant was seeking refuge elsewhere, his family home was targeted by gunfire and his cousin was killed. Fearing for his life, the Applicant fled Côte d'Ivoire for Ghana.

[6] The Applicant stated he feared for his safety because his cousin and a friend had been killed and because of the shooting at his home. When questioned by the Officer, he acknowledged that he was not a member of IPF and had never been arrested or detained.

[7] The Officer informed the Applicant that a final decision would not be made that day, but that the Officer had concerns about the Applicant's request. The Officer stated that the

conditions in Côte d'Ivoire had changed since the Applicant's departure and that a significant number of refugees had returned to Côte d'Ivoire over the course of the past few years. He noted that M. Gbagbo's ex-wife had recently been granted amnesty by the president of Côte d'Ivoire. He also noted that the Applicant was not a member of the IPF and that the Applicant had a limited role in M. Gbagbo's campaign. In response, the Applicant maintained that it was dangerous for him to return, and that he could be arrested, imprisoned or even killed. He further stated that he feared being targeted because he was a member of an ethnic group, the Bété.

III. The Officer's Decision

[8] By letter dated September 16, 2018, the Officer rejected the Applicant's application stating that he was not satisfied that the Applicant was a member of the Convention refugee abroad class or country of asylum class. The Officer noted that numerous Ivoirians had returned voluntarily to Côte d'Ivoire and that the conditions in Côte d'Ivoire had improved significantly since 2011, leading to overall stability in the country.

[9] According to the Officer's Global Case Management System notes, the Officer relied on extrinsic country condition evidence showing the Ivorian president had granted amnesty to hundreds of Ivoirians who had been convicted following the post-election crisis, including Mme. Gbagbo. The documents also established that the government encouraged Ivoirians abroad to return to their home country, a process overseen by the United Nations High Commissioner for Refugees.

[10] The Officer concluded the Applicant's involvement in the electoral campaign of 2010 was insufficient to raise him to the profile of a person at risk. The Officer also concluded the Applicant's fear of persecution in Côte d'Ivoire for reasons of race, religion, nationality, membership in a social group, or political opinion was not well-founded.

IV. Issues

[11] Counsel for the Applicant raised two issues at the hearing. While counsel took issue with the reasonableness of the Officer's decision, his arguments focussed primarily on whether the Officer violated the Applicant's right to procedural fairness.

V. Standard of Review

[12] There is no dispute between the parties regarding the standard of review to be applied in this case. Whether the Applicant was denied procedural fairness is reviewed on the standard of correctness. Whether the Applicant meets the requirements for a permanent resident visa as a member of the Convention refugee abroad class or country of asylum class is reviewed on the standard of reasonableness, meaning this Court must determine whether the Officer's decision is justifiable, transparent, and intelligible, and whether the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law.

VI. Analysis

A. *Procedural Fairness*

[13] Counsel for the Applicant submitted at the hearing that the Officer's evidence collection process was effectively one-sided and procedurally unfair. Counsel claims that the Applicant was not advised to bring evidence to support his application nor offered an opportunity to conduct research. The Applicant further claims the Officer did not allow him to counter his concerns regarding current conditions in Côte d'Ivoire before and after the interview. These allegations are not borne out by the evidence before me.

[14] The Applicant did not file an affidavit in support of the application. He relies instead on the affidavit of his uncle, which is replete with hearsay and does not speak to any issue of procedural fairness.

[15] It was the Applicant's burden to demonstrate that he satisfied the requirements for a permanent resident visa as a member of the Convention refugee abroad class or country of asylum class: see *Qurbani v Canada (Minister of Citizenship and Immigration)*, 2009 FC 127 at para 18; see also *Salimi v Canada (Minister of Citizenship and Immigration)*, 2007 FC 872 at para 7. This included demonstrating that the conditions in Côte d'Ivoire were such that he remained at risk of harm if he were to return there.

[16] The uncontradicted evidence before the Court is that the Applicant was given notice of the Officer's concerns regarding his claim during the interview and that he was afforded an

opportunity to respond to them. At the end of the interview, the Officer asked the Applicant whether he had anything to add and the Applicant simply replied “*Non. La paix n’y est pas. La haine totale.*”

[17] The Applicant takes issue with the Officer’s failure to disclose the specific sources on which the Officer relied in reaching his decision. However, as stated by Madam Justice Marie-Josée Bédard in *Stephenson v Canada (Minister of Citizenship and Immigration)*, 2011 FC 932, at para 39: “[...] when considering an officer's obligation to disclose, the question is not whether the impugned document was available to the applicant, the question is whether the information contained in that document was available to the applicant.”

[18] In this present case, the Officer relied on documentary material which was publicly available online. Even if the Applicant was unable to access the documents, the content of the information contained in the documents was disclosed by the Officer to the Applicant during the interview and he was provided an opportunity to respond to the Officer’s concerns. In the circumstances, I see no breach of procedural fairness in this case.

B. *Reasonableness of the Officer’s Decision*

[19] As for the reasonableness of the Officer’s decision, the Applicant’s main complaint is that the Officer overemphasized the Applicant’s low profile in the political campaign of M. Gbagbo in reaching his decision. The Applicant’s argument only goes to weight of the evidence, which is within the Officer’s jurisdiction.

[20] The Officer acknowledged in the GCMS notes, the Applicant's allegations regarding his fear of persecution due to his involvement in the political campaign of M. Gbagbo and his Bété background. The record reveals the Officer considered the Applicant's circumstances fully, relying on current country information and the absence of facts to support the Applicant's claims.

[21] The Officer's decision was justifiable, transparent, and intelligible, falling within a range of outcomes defensible in respect of the facts and law.

VII. Conclusion

[22] For the above reasons, the Court is not satisfied that the Officer's decision was procedurally unfair or unreasonable. The application is accordingly dismissed.

[23] Neither party proposed a question for certification and no question is certified.

JUDGMENT IN IMM-5582-18

THIS COURT'S JUDGMENT is that the application is dismissed.

"Roger R. Lafrenière"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5582-18

STYLE OF CAUSE: FRANCK KORE v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 26, 2019

JUDGMENT AND REASONS: LAFRENIÈRE J.

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APPEARANCES:

Ryan Hardy

FOR THE APPLICANT

Laoura Christodoulides

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ryan Hardy, Barrister & Solicitor
Rexdale Community Legal Clinic
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT