

Federal Court



Cour fédérale

Date: 20210624

Docket: IMM-3081-20

Citation: 2021 FC 661

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 24, 2021

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

CHRISTOPHE WILLIAM NGUELIEGA LEUGA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Christophe Leuga is a citizen of Cameroon. He is seeking judicial review of a decision of a senior immigration officer dated January 16, 2020, refusing his pre-removal risk assessment (PRRA) application. The officer concluded that Mr. Leuga failed to discharge his burden of proving that he would be subjected to the risks provided for in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), if he returned to Cameroon.

[2] Mr. Leuga does not challenge the PRRA officer's findings on the merits. His application is based on the principles of procedural fairness. Specifically, Mr. Leuga criticizes the officer for two breaches of procedural fairness at his hearing. However, there is only one determinative issue in this case, namely that of Mr. Leuga's representation at the hearing convened by the officer.

[3] Considering the parties' arguments, the particular facts on the record and the evidence filed by Mr. Leuga, I find that Mr. Leuga has demonstrated fundamental problems with the competency of his representation in his PRRA process and, therefore, his right to procedural fairness. I will therefore allow this application for judicial review.

I. Background

[4] Mr. Leuga was a boxer with the Cameroon national boxing team. He alleges that he fears returning to Cameroon because he is reportedly wanted and receiving death threats by the Cameroonian authorities for having complained to the Minister of Sports on a number of occasions about the boxing system in place. Mr. Leuga also wrote to members of the Cameroon Boxing Federation expressing his dissatisfaction with the boxing system and threatened to file a complaint with the media.

[5] Central to his story is an assault that occurred at his home on March 7, 2016, by unknown assailants or thieves. He alleges that he was stabbed during the attack. The next day, Mr. Leuga reportedly tried to file a complaint against the Cameroon Boxing Federation, but the police commissioner told him not to react against decisions made by the government and threatened

him with imprisonment if he returned to the police station. Mr. Leuga allegedly left Douala, the city he was living in, and moved to the city of Bafang for five months before leaving Cameroon.

[6] On August 12, 2016, he left Cameroon for the United States, where he claimed asylum. Then, on August 7, 2019, Mr. Leuga arrived in Canada. He filed a claim for refugee protection, but on August 12, 2019, his claim was found to be ineligible under paragraph 101(1)(c.1) of the IRPA.

[7] Mr. Leuga applied for a PRRA with the assistance of his counsel, Patrizia Ruscio, on August 30, 2019.

[8] Shortly thereafter, by a decision of the Disciplinary Council of the Barreau du Québec (Barreau) dated September 4, 2019, Ms. Ruscio was temporarily disbarred by the Barreau for three months, starting on October 8, 2019. Mr. Leuga acknowledged receipt of this decision on November 18, 2019.

[9] On November 1, 2019, the PRRA officer sent a notice to appear to the applicant and his representative. The notice provided that the hearing would be held on November 20, 2019. At that point, Ms. Ruscio was unable to contact her clients and all of her files were taken into possession by the Barreau. Mr. Leuga picked up his file from the Barreau on November 18, 2019, the same day he received the notice to appear from the officer.

[10] Mr. Leuga immediately went to Ms. Ruscio's office where he met Roland Franklin, one of the office staff. Mr. Franklin explained to him that he was accustomed to representing applicants and that he would receive a percentage of the counsel's legal fees.

[11] The hearing was held on November 20, 2020. Mr. Leuga was accompanied at the hearing by Mr. Franklin. However, it is important to note that Mr. Franklin is neither a counsel nor an immigration consultant.

[12] On November 29, 2019, the PRRA officer sent a letter to Mr. Leuga in which she indicated that Ms. Ruscio was not an authorized representative and invited Mr. Leuga to proceed without a representative or to select a new authorized representative (Letter).

[13] On January 16, 2020, the officer issued her negative decision. Briefly, the officer found that Mr. Leuga's explanation that he was wanted by Cameroonian authorities was not plausible and that his fear was not well-founded. The officer referred to the inconsistencies and contradictions in Mr. Leuga's evidence and testimony at the hearing. Furthermore, the officer concluded that the applicant had not demonstrated that he would be persecuted in the city of Bafang or that it would be unreasonable for him to live there if he returned to Cameroon.

II. Analysis

[14] Mr. Leuga submits that the officer breached his right to a fair hearing and procedural fairness for two reasons, but only one of them allows me to dispose of this application. According to Mr. Leuga, the officer should have exercised due diligence and confirmed the

qualifications and competency of his representative, Mr. Franklin, before proceeding with the hearing. Mr. Leuga maintains that holding the hearing while his counsel was suspended was highly problematic and that Mr. Franklin had neither the ability nor the competency to represent him in these proceedings.

[15] Procedural fairness issues do not necessarily lend themselves to a standard of review analysis (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (*Canadian Pacific*)). The role of this Court is to determine whether the procedure is fair considering all the circumstances (*Canadian Pacific* at paras 54–56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[16] The PRRA hearing was held on November 20, 2019. The record shows that, at the time of the hearing, the officer was unaware of Ms. Ruscio’s temporary disbarment. Mr. Leuga does not dispute this fact.

[17] As I noted above, Mr. Leuga was accompanied at the hearing by Mr. Franklin. Mr. Franklin is neither a counsel nor a consultant. Mr. Leuga met Mr. Franklin on November 18, 2019, when he took it upon himself to retrieve his file from the Barreau and to seek additional information regarding his PRRA application.

[18] Mr. Leuga relied on the “Operational instructions and guidelines” guide used by Immigration, Refugees and Citizenship Canada employees for PRRA hearings (Guide). The Guide states that, at the outset of the PRRA hearing, an officer is responsible for confirming that

a signed “Use of Representative form” (IMM 5476) identifying the present counsel is on file. In addition, the Guide underscores the importance of counsel participation during the PRRA process, “that is both compliant with the Canadian Charter of Rights and Freedoms and with the principles of natural justice”. The Guide describes counsel’s role as follows:

Counsel plays a supportive role in PRRA hearings. Counsel are allowed to assist the applicant during the hearing for the purposes of clarifying questions, assisting with responses, eliciting further information, and intervening if prejudicial statements are made to clarify or correct information. In line with natural justice, it is understood that, in cases where the issues are more complex (such as those where exclusion is raised or cases dealing with vulnerable persons), counsel may play a more significant role as there may be an increased need for counsel’s assistance.

[19] I agree with Mr. Leuga that the support of a counsel is vital in this case because his PRRA application represents the only consideration in Canada of the alleged risks in Cameroon as he does not have access to the Refugee Protection Division or the Refugee Appeal Division.

[20] I have reviewed the transcript of the November 20, 2019 hearing. It is clear that the officer did not ask Mr. Franklin if he was an immigration lawyer or consultant. More importantly, she did not confirm a change in counsel or whether the required form was on file. The transcript indicates only that Mr. Leuga’s representative was [TRANSLATION] “Patrizia Ruscio, counsel (absent) – Roland Franklin, consultant, replacing Patrizia Ruscio, counsel who was unable to attend the hearing (according to Mr. Franklin), [was] present in Montréal”. Throughout the hearing, the agent refers to Mr. Franklin as [TRANSLATION] “representative”, “consultant” and “counsel”.

[21] As for Mr. Franklin, he failed to provide any factual explanation for his presence at the hearing. He failed to mention that Ms. Ruscio had been disbarred and that he did not become involved in the case until two days before the hearing. On the contrary, the transcript suggests that Mr. Franklin informed the officer that Ms. Ruscio was [TRANSLATION] “unavailable” and that he was filling in for her.

[22] On November 29, 2019, nine days after the hearing, the officer sent the Letter to Mr. Leuga. In the Letter, the officer noted that Ms. Ruscio was not an authorized representative and could not, therefore, advise or represent him in his PRRA application at that time. The officer indicated that Mr. Leuga could choose to proceed with his application without a representative or he could designate another person by submitting a new form (IMM 5476).

[23] The officer attempted to send the Letter to Mr. Leuga by email, but unfortunately she did not use the correct email address. Mr. Leuga filed a supplementary affidavit dated September 23, 2020, informing the applicant and the Court of this typographical error. As a result of this error, Mr. Leuga did not receive the Letter prior to the issuance of the officer’s negative decision and was unaware of the opportunity to review the issue of representation. The respondent does not dispute these facts.

[24] Mr. Leuga also submits that his PRRA file was not well put together and that the record showed a lack of competent representation. The PRRA submissions filed by Ms. Ruscio consist of two pages. No additional submissions were filed before or after the hearing to address the officer’s questions or concerns. The transcript of the hearing indicates that, at the hearing,

Mr. Leuga filed handwritten notes that the officer considered as being different versions of his story. Mr. Leuga believes that a competent representative ought to have filed written submissions in the days following the hearing to ensure that there were no inconsistencies or contradictions in the main aspects of his story.

[25] I have read the submissions provided by Ms. Ruscio and the evidence filed as part of the PRRA application. In my view, the state of the record supports Mr. Leuga's argument that he had inadequate representation.

[26] In short, the Guide recognizes the robust role for representation at PRRA hearings. In the case of Mr. Leuga, competent representation was particularly important because his PRRA application was his only chance to present his experiences in Cameroon and his fear of returning there. Mr. Leuga chose to pursue his application with the support of a counsel. In my view, he could have expected that he would have competent representation.

[27] Notwithstanding the foregoing, Mr. Leuga arrived at the hearing with a file that was not properly prepared and a representative who was not very familiar with the particulars of his case. Mr. Leuga was not aware that Mr. Franklin was an unauthorized representative. Mr. Franklin did not apprise the officer of the situation, and the officer failed to follow the instructions in the Guide, which would have made it possible to identify the problem immediately. The misunderstandings or mishaps continued in the days following the hearing, when the officer attempted, in good faith, albeit unsuccessfully, to inform Mr. Leuga of Ms. Ruscio's unauthorized representative status and to invite him to appoint another representative.

[28] I agree with Mr. Leuga's current counsel, who characterizes the circumstances of the hearing in this case as a series of unfortunate events that significantly affected Mr. Leuga's right to a fair hearing and PRRA process.

[29] For all these reasons, I find that Mr. Leuga's right to procedural fairness has been violated. His application for judicial review is therefore allowed.

[30] The parties have not proposed any questions for certification, and I agree that there are none.

JUDGMENT in IMM-3081-20

THIS COURT'S JUDGMENT is as follows:

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

“Elizabeth Walker”

Judge

Certified true translation
Vincent Mar, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3081-20

STYLE OF CAUSE: CHRISTOPHE WILLIAM NGUELIEGA LEUGA v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 16, 2021

JUDGMENT AND REASONS: WALKER J.

DATED: JUNE 24, 2021

APPEARANCES:

Stéphanie Valois FOR THE APPLICANT

Zoé Richard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stéphanie Valois FOR THE APPLICANT
Counsel
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec