

Federal Court



Cour fédérale

Date: 20220225

Docket: IMM-4270-20

Citation: 2022 FC 274

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, February 25, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

OUMAR ABANI ABBAS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Abbas is seeking judicial review of a decision of the Refugee Appeal Division [RAD] denying him refugee status on the basis of the implausibility of his story and the evasiveness of his testimony. I allow his application. I find that the RAD's implausibility findings were unreasonable, as they did not take into account the authoritarian political context in Chad, Mr. Abbas's home country. Moreover, in concluding that Mr. Abbas's testimony was

evasive, the RAD, like the Refugee Protection Division [RPD] before it, was unduly influenced by its preconceived opinion that Mr. Abbas should be excluded from refugee status because of his activities as a police officer in Chad.

I. Background

[2] Mr. Abbas is a member of the Chadian police at the rank of [TRANSLATION] “peacekeeper”, the lowest rank in the police hierarchy. After various postings, he was transferred to the river brigade, which is responsible for guarding the Chari River, which separates Chad from Cameroon, in the vicinity of the capital, N’Djamena. It should be emphasized at this point that this police force is a separate institution from the National Security Agency [ANS], which will be discussed below.

[3] Mr. Abbas bases his claim on the following events. In the course of his duties, he was called upon several times to recover bodies washed up on the banks of the river. According to a persistent rumor, these bodies were those of people killed in the ANS prison located at the presidential palace, a little further up the river. He had to take pictures of the bodies with his cell phone and then write a report. The bodies were then turned over to the judicial police, a separate entity from the river brigade, for investigation. One day, ANS officers caught him talking to his cousin in France. They seized his cell phone and found that it contained pictures of the bodies found on the banks of the river. Suspecting that he had passed on these pictures to opponents of the regime living abroad, they arrested him, tortured him and detained him for three days. Following the intervention of another cousin, he managed to escape. He then left Chad and travelled to Canada, where he claimed refugee protection.

[4] The Refugee Protection Division [RPD] rejected his refugee protection claim, primarily because it found Mr. Abbas not credible and his story implausible. In addition, the RPD pointed out that a notice was sent to the Canada Border Services Agency [CBSA] requesting the Minister's intervention in the case, but that the Minister chose not to intervene. The RPD noted that if the facts alleged by Mr. Abbas were true, there would be serious reasons to believe that he would be excluded under Article 1F of the *Convention relating to the Status of Refugees*. This provision excludes persons for whom there are serious reasons for considering that they have committed a crime against humanity or a serious non-political crime from the definition of refugee.

[5] The RAD dismissed Mr. Abbas's appeal against the RPD's decision. It found that the RAD's implausibility findings were supported by the evidence. It characterized Mr. Abbas's testimony as "evasive, lacking in detail and strained". It also upheld the RPD's finding that Mr. Abbas had contradicted himself at the hearing, about the circumstances of his release from prison.

[6] Mr. Abbas is now seeking judicial review of the RAD's decision.

II. Analysis

[7] I allow Mr. Abbas's application for judicial review. I will first consider the implausibility findings made by the RAD, and then the reasons why the RAD found Mr. Abbas not credible. Finally, I will consider whether there were any inconsistencies with respect to Mr. Abbas's release from prison that should have led to the rejection of his claim.

A. *Findings of implausibility*

[8] It is well known that the RPD and RAD are “entitled to draw conclusions concerning an applicant’s credibility based on implausibilities, common sense and rationality”: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraph 26. Nevertheless, “implausibility findings raise particular issues in the context of refugee claims, given the differing political and cultural contexts in which such claims are raised, the subjective nature of such findings, and the potential to import inapplicable Canadian paradigms”: *Al Dya v Canada (Citizenship and Immigration)*, 2020 FC 901 at paragraph 27. For these reasons, the settled jurisprudence of this Court emphasizes that findings of implausibility can be made only in the clearest of cases and after taking into account the social and political context of the country in question: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paragraph 7.

[9] In this case, there is little doubt that the government of Chad is an authoritarian regime. The latest United States State Department report on human rights in Chad notes arbitrary arrests, torture, and extrajudicial killings. Corruption is rampant and the independence of the judiciary is seriously compromised.

[10] Mr. Abbas testified to this. In particular, he described the ANS as a form of political police, separate from the national police and reporting directly to the president. The ANS would be somehow above the law. Here is what he said about this in his testimony:

[TRANSLATION]

ANS is a very powerful institution. It is an institution that is formed by the president of the republic, who controls everything in Chad, and it does what it wants and nobody can contradict the decision. If they decide to do something, they will do it.

[11] It is in this context that the following conclusion of the RAD should be analyzed:

It is true that the RPD drew a negative inference based on an implausibility, that is, that it was unreasonable that the appellant's superiors did nothing after his imprisonment. But this finding by the RPD is based on facts. The evidence shows that the appellant was praised by his superiors, that he was not discriminated against because of his ethnicity, that photographing dead bodies was part of his job, that other police officers assigned to the same tasks did not have problems and that no charges had been laid against him.

[12] In my opinion, in reaching this conclusion, the RAD has fallen into the trap of judging the situation as if it were taking place in Canada. I agree that it is highly unlikely that Canadian police officers would behave like Mr. Abbas's superiors or the ANS agents who arrested, detained and tortured him. On the other hand, in an authoritarian regime, there is nothing inherently implausible about these events and the facts mentioned by the RAD are not inconsistent with Mr. Abbas's account.

[13] Thus, since Mr. Abbas was suspected, rightly or wrongly, of working with opponents of the regime, it is quite plausible that his superiors refrained from intervening on his behalf, despite their positive assessment of his work. It is entirely plausible that no charges were brought against him in a country where arbitrary arrests are common, and that he was targeted instead of others in the same position.

[14] The RAD also concluded that after confiscating Mr. Abbas's phone, the ANS officers could have easily checked to see if he had sent photos of the bodies to unauthorized persons. Such reasoning might make sense in the context of a state governed by the rule of law, where criminal sanctions must be based on lawfully collected evidence. In the Chadian context, however, it cannot be assumed that the ANS wanted to conduct a rigorous investigation with the aim of presenting substantial evidence in court. Moreover, the RAD's conclusion is based on the assumption that the ANS agents would not have persecuted Mr. Abbas if they had failed to find evidence that he was sending photos abroad. However, it is equally possible to assume the opposite, that is, that the lack of concrete evidence to support their suspicions would have strengthened their resolve to torture Mr. Abbas.

[15] In short, Mr. Abbas's account cannot be described as implausible without speculating about what his superiors or the ANS officers should have done. This is not one of the clearest of cases contemplated in *Valtchev*. Moreover, the RAD ignored the political context of Chad and analyzed the conduct of the ANS officers in terms of what reasonable Canadian police officers would do in a similar situation, contrary to the teachings of this Court: *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 19, [2020] 4 FCR 617. In departing from the basic principles established by the jurisprudence of this Court, the RAD made an unreasonable decision.

B. *Difficulty in answering certain questions*

[16] The RAD also criticized Mr. Abbas for giving evasive testimony about the circumstances of the deaths of the people whose bodies he recovered or the fate of the people he intercepted on the river because they were not allowed to cross the border.

[17] The transcript of the RPD hearing shows that these issues are linked to the member's broader concern about Mr. Abbas's involvement with the Chadian police force. As I mentioned above, the Minister chose not to intervene in the case. Both at the beginning and at the end of the hearing, the member stated that the issue of exclusion was not at stake in this case. Nonetheless, it is apparent that a significant portion of the questions asked by the member related to the issue of exclusion and that these questions were informed by the factors set out in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678.

[18] Thus, the member asked the following question:

[TRANSLATION]

I say that the public security personnel . . . being the police officers in the different levels, those who were responsible for keeping the peace, for keeping people safe, but they did more than that. That means they could torture people. They could arrest them. They could beat them. They could commit human rights violations, et cetera. Did you know about this?

[19] Mr. Abbas initially answered no. After his lawyer clarified that the question was about the [TRANSLATION] "security force", Mr. Abbas acknowledged that he was aware of these things, but that neither he nor his department had been involved. When asked about the suppression of

demonstrations, he said that this was the responsibility of a special police unit. The member went on to ask Mr. Abbas if he was part of the [TRANSLATION] “security forces”. After answering in the affirmative, Mr. Abbas clarified that there were two kinds of police in Chad, the [TRANSLATION] “people’s police” and the [TRANSLATION] “presidential family police”, and that he was part of the former.

[20] Afterwards, Mr. Abbas was asked about his work. He stated that when his team intercepted people who tried to cross the river illegally, they were taken to the judicial police, who dealt with the case. Similarly, when a corpse was found on the banks of the river, it was handed over to the judicial police. At this point, both the commissioner and Mr. Abbas’s lawyer asked Mr. Abbas to tell what happened to the people intercepted on the river. He replied that he did not know. The member then asked the following question:

[TRANSLATION]

Were you interested in learning what happens? Maybe they took them and then killed them. Were you interested to learn, you, as a policeman, as someone there, you arrest them. You bring them to do what? Do you bring them in to imprison them, to kill them, to torture them or do you release them? Weren’t you interested in knowing what they do with the people you arrest?

[21] Mr. Abbas said that the judicial police bring these people to their prisons, and that [TRANSLATION] “they are the ones who decide to try these people and release them”. As for the bodies found in the river, Mr. Abbas said there were persistent rumors that they were people killed in the ANS prison at the nearby presidential palace. The member then asked, [TRANSLATION] “Could they be people who tried to cross the river and couldn’t?” to which Mr. Abbas replied yes, but stated it was up to the judicial police to determine the cause of death.

[22] In its decision, the RPD made the following findings:

[TRANSLATION]

The panel finds that if the claimant is credible in alleging that the bodies of the prisoners he found in the river could be those of people he and his fellow River Brigade members were intercepting and transferring to the ANS, it would have strong reason to believe that the exclusion under section 1F could apply to this case.

However, the claimant's testimony about the bodies was general, vague, and inconsistent. He repeated the content of the narrative but was unable to provide any clarification or specifics. For example, when asked how he knew that the bodies were prisoners, he replied that he had no knowledge, but that everyone said that.

[23] The RAD made the following comments:

A careful reading of the hearing transcript led me to note the extent to which the testimony eked out of the appellant is evasive, lacking in detail and strained on key aspects of his account. For example, when asked about the fate of people intercepted crossing the river without acceptable documents the appellant answered that, at his rank, he did not know what the judicial police did with those people. When the RPD asked him about this again, however, he adjusted his testimony to say that the people arrested were imprisoned by the ANS, but that was all he knew. In response to the RPD's repeated questioning, he added that *it was possible* that they were the bodies of people who had been intercepted and imprisoned when attempting to cross the river that he patrolled. . . .

In such circumstances, his inability to answer fundamental questions, including those about the bodies in the river that he had to photograph and write reports about for his job, and the lack of interest shown, undermine his credibility.

[24] It is clear that the RPD's analysis and that of the RAD have been distorted by concerns about the potential exclusion of Mr. Abbas. The RPD boiled the case down to a choice between two alternatives: either Mr. Abbas is not credible, or he is credible but is then excluded. Since the RPD had ruled out the question of exclusion from the outset, it cornered itself, so to speak, to

reach a negative conclusion about credibility. This prompted the RPD to question Mr. Abbas vigorously about where the bodies came from or what happened to the people he arrested. Since he did not give the answers it expected, the RPD found him not credible. Such a process is not fair, logical or reasonable. Specifically, it bears the following flaws.

[25] First, the credibility/exclusion dichotomy is false. It is possible that Mr. Abbas's account is true, but that his exclusion under Article 1F does not follow. In this regard, *Ezokola* requires consideration of factors such as the size and nature of the organization, the position Mr. Abbas held within it, his rank and the section to which he was assigned. Since the case will be sent back for reconsideration, I will refrain from commenting further.

[26] Second, it is quite understandable that Mr. Abbas was caught off guard by questions such as those I have reproduced above and hesitated to respond. A reading of the transcript, however, reveals no major inconsistencies in his testimony.

[27] Third, both the RPD and the RAD make much of Mr. Abbas's acknowledgement that the bodies recovered could be those of people he had intercepted and turned over to the judicial police. However, Mr. Abbas did not say or "allege" anything of the sort. I repeat the question he was asked: [TRANSLATION] "Could they be people who tried to cross the river and couldn't?" To say that a person whose body is found failed to cross a river definitely suggests drowning. While the RPD member may have wanted to ask a question about the people Mr. Abbas was intercepting, this is not what he did. The RPD and the RAD could not then fault him for his

answer, nor could they infer that the individuals Mr. Abbas was arresting in the course of his duties were subsequently killed.

[28] In short, the reasoning of the RPD and the RAD is based on the premise that Mr. Abbas should be excluded under Article 1F because of his membership in the Chadian police force and that he is lying if he does not admit the facts that would justify such an exclusion. This is not a reasonable way to make a credibility finding.

C. *Circumstances of release from prison*

[29] The Minister argued that despite the foregoing, the RAD's finding of inconsistencies between the allegations in the Basis of Claim Form [BOC Form] and Mr. Abbas's testimony is sufficient to reject his claim.

[30] In his BOC Form, Mr. Abbas wrote:

[TRANSLATION]

After three days of the worst torture and extreme suffering, I was able, thanks to my cousin Oumar Hassan, who was able to bribe an agent of the ANS to break me out of prison.

[31] The following exchange took place during Mr. Abbas's testimony:

[TRANSLATION]

BY THE MEMBER:

Your cousin, he had written a letter of support for your refugee protection claim. In the letter, he doesn't state exactly how he was able to free you from prison, but how he made all these efforts to get a visa, to hide you? Do you know how . . . what steps he had

taken to free you from the ANS prison, which is a prison with a lot of power, you say . . . or the organization has a lot of power?

BY THE CLAIMANT:

My cousin didn't explain to me how he managed to break me out of prison. All I know is that he told me about a friend, that they studied together, and he didn't tell me anything else. He did what was necessary for me to escape and I went into hiding.

BY THE MEMBER:

Did he pay any money to release you?

BY THE CLAIMANT:

Yes. Yes, there was a (inaudible). He didn't tell me how much he gave. He didn't tell me.

BY THE MEMBER:

But you didn't ask?

BY THE APPLICANT:

I asked him, but he told me, for him, what is essential is that I am out, that I am . . . he is looking for the solution so that I am not in danger.

[32] With all due deference to the RPD's findings of fact, I struggle to see any inconsistency or contradiction in this testimony, or between this testimony and the contents of the BOC Form. Mr. Abbas is essentially repeating the same thing: his cousin bribed a friend to get him out of jail, but he does not know the amount of the bribe, nor does he know anything else about it. So I find it hard to see how this finding by the RAD could lead to a rejection of the claim.

D. *New evidence*

[33] Mr. Abbas also argued that the RAD's refusal to admit new evidence was unreasonable. Since I am of the view that the decision is substantively unreasonable, it is not necessary for me to decide this issue.

III. Conclusion

[34] Since the RAD's decision is unreasonable, the application for judicial review will be allowed and the matter will be referred to another member of the RAD for reconsideration.

JUDGMENT in IMM-4270-20

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The Refugee Appeal Division’s decision dated August 20, 2020 is set aside, and the case is sent back to another member of the Refugee Appeal Division for reconsideration.
3. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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