Date: 20060330

Docket: IMM-4312-05

Citation: 2006 FC 416

Ottawa, Ontario, March 30, 2006

PRESENT: THE HONOURABLE MR. JUSTICE BLAIS

BETWEEN:

NAM TCHOUGLI TOLIGARA NAZAIRE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of the decision by Jacqueline Schoepfer, Pre-Removal Risk Assessment Officer (PRRA Officer), dated June 23, 2005, that Nam Tchougli Toligara Nazaire (the applicant) was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

RELEVANT FACTS

[2] The applicant is a citizen of Togo who is married and the father of four children. All of his family lives in Togo.

[3] The applicant alleges that he worked as a rural community worker in an organization called Jeunesse agricole rurale et catholique [“Catholic Agricultural and Rural Youth”] (JARC) in his diocese of Dapaong, north of Togo. In October 1997, he had been elected as Managing Director of the International Movement of this organization (MIJARC), whose head office is in Brussels, in Belgium.

[4] The applicant alleges that he is a Union of Forces for Change Party (UFC) sympathizer and he says that he became a member in 1999. On January 13, 2001, the applicant alleges that he wanted to organize a demonstration with other members of the UFC. However, the prefect of Dapaong prohibited it. Two days later, police officers came to search the applicant’s home in his absence. On January 18, they came back and warned his wife that he had to report to the police station. Fearing for his safety, the applicant crossed the Benin border. He later learned that his wife had been detained at the police station for two days. Upon her release, she left with the children for an unknown destination.

[5] From Benin, the applicant took a plane to Belgium and arrived in Canada on February 5, 2001, where he claimed refugee status. He had his passport as well as a Canadian visa issued on September 15, 2000, valid until March 14, 2001.

[6] On February 18, 2002, the Immigration and Refugee Board (the Board) determined that he was not a Convention refugee. On March 4, 2002, the applicant submitted a risk assessment application (PDRCC) which had not been analyzed. On December 16, 2004, the Canada Border Services Agency warned him that his application had been automatically transferred to the new PRRA program that came into effect with the new Act on June 28, 2002.

[7] On April 4, 2005, there was a negative finding on his PRRA application. His application for an immigrant visa exception on humanitarian and compassionate grounds was also denied.

[8] On May 24, 2005, the applicant made a second application for protection in Canada, on the basis of his political opinion.

[9] At the beginning of the hearing, the Court noted the absence of the applicant, who was representing himself.

[10] However, a verification of the record indicates that the applicant had moved from Montréal to Toronto and that the proceedings were sent to him at his new address.

[11] Given the applicant's absence, the Court heard respondent's counsel and refers to the applicant's written arguments.

ISSUES

1. Was there a breach of the principles of natural justice because the Officer responsible for the first PRRA application was also responsible for the second?

2. Did the Officer err in finding that the applicant was not credible?

ANALYSIS

1. Was there a breach of the principles of natural justice because the Officer responsible for the first PRRA application was also responsible for the second?

[12] The applicant raised the fact that the applicant filed evidence regarding the situation in Togo which was not submitted to the Officer. That evidence is found on pages 34 to 56 of the applicant's record.

[13] The evidence that was not submitted to the PRRA Officer cannot be considered in the context of this judicial review (*Naredo v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 742; *Owusu v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1505). To review a decision relying on new evidence would transform the judicial review into an appeal. Accordingly, the Court will not take into account the evidence that is found in pages 34 to 56 of the applicant's record.

[14] The applicant claims that in this case, the fact that the Officer responsible for the first PRRA application was also responsible for the second is a breach of the principles of natural justice because there is a lack of impartiality.

[15] In *Ahani v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1114, the Court of Appeal decided on the ability to be impartial when a person is called to decide on two occasions:

> The impartiality of the Trial Judge has been challenged in this Court, but I am of the view that there is no merit in the arguments raised. Merely because the Trial Judge was involved in an earlier decision involving this appellant did not impair his ability to be impartial. Justice MacGuigan, of this Court in *Arthur v. Canada*, [1993] l F.C.R. 94, at p.102, stated:
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> > Where the double participation in decision-making has been on the part of a judge, the principle has not seemed to have any great difficulty.
>
> His Lordship relied on earlier authority to the same effect in this Court. (*Nord-Deutsche Versicherungs Gesellschaft v. The Queen*, [1968] l Ex. C.R. 443, at 457 per Jackett P.); See also Mullan, *Administrative Law*, l C.E.D. (3d) §54, p.3-130). At page 105, MacGuigan J.A. stated:
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> > The most accurate statement of the law would thus appear to be that the mere fact of a second hearing before the same adjudicator, without more, does not give rise to reasonable apprehension of bias, but that the presence of other factors indicating a predisposition by the adjudicator as to the issue to be decided on the second hearing may do so. Obviously one consideration of major significance will be the relationship of the issues of the two hearings, and also the finality of the second decision. If, for instance, both decisions are of an interlocutory character, such as two decisions on detention (as in Rosario), it may be of little significance that the matter in issue is the same, but where the second decision is a final one as to a claimant's right to remain in the country, the avoidance of a reasonable apprehension of bias may require greater distinction in the issues before the tribunal on the two occasions.

[16] In principle, the officer responsible for the first PRRA application could be responsible for the second, but there are rules to follow so that the officer does not fail to observe the principles of natural justice and impartiality. In *Bhallu v. Canada (Solicitor General)*, 2004 FC 1324, [2004]

F.C.J. No. 1623, Mr. Justice Yvon Pinard stated the requirements for an allegation of reasonable apprehension of bias to succeed:

> In order for an applicant to successfully claim that there was a reasonable apprehension of bias in the processing of his claim, he or she must demonstrate that an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the decision-maker would not decide fairly (*Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369). In the absence of any evidence to the contrary, it must be presumed that a decision-maker will act impartially. To rebut this presumption, the applicant must present more than vague allegations as to bias, which has not been done in this instance. The applicant admits that the fact that the same officer processed both claims is not sufficient to give rise to such a claim. However, I do not think that the fact that both decisions were made on the same day should negate them. The Officer's reasons leave nothing wanting. She deals with all the evidence presented and comes to reasonable conclusions in both instances.

[17] The respondent claims that the Officer could not make a fair decision because the Federal Court sanctioned her first decision. After the negative finding on the first PRRA application, the applicant tried to raise new facts justifying the granting of protection. That is contrary to the applicable law and Mr. Justice Simon Noël had told the applicant that he [TRANSLATION] "must file a new application for judicial review if there is a negative decision on the second PPRA application" (see the decision by the Federal Court in docket IMM-2693-05, at page 77 of the Tribunal Record). The applicant claims that this decision by Noël J. sanctioned the first decision by the Officer. I do not agree, Noël J. simply wanted to direct him to the appropriate remedy and did not want to sanction the Officer.

[18] In this case, the applicant failed to establish that an informed person, viewing the matter realistically and practically, and having thought the matter through, would determine that it was more likely than not that the decision-maker had not decided fairly. I find that the applicant failed to establish that the decision-maker showed a lack of objectivity and impartiality.

3. 2. Did the Officer err in finding that the applicant was not credible?

[19] In *Figurado v. Canada (Solicitor General)* 2005 FC 347, [2005] F.C.J. No. 458, Mr. Justice Luc J. Martineau indicated the manner in which the PRRA process should be qualified:

> It is important to underline the fact that the PRRA process is not an appeal of the Board's decision, but rather is intended to be an assessment based on new facts or evidence which demonstrates that the person at issue is now at risk of persecution, risk of torture, risk to life, or risk of cruel and unusual treatment or punishment. In short, the purpose of the PRRA application is not to re-argue the facts which were originally before the Board or to do indirectly what cannot be done directly - i.e. contest the findings of the Board. The Court notes, in this regard, that pursuant to subsection 113(*a*) of the IRPA, "new evidence" is evidence that arose after the rejection of the refugee claim or was not reasonably available at that time, or that the applicant could not have reasonably been expected to have presented in the circumstances.

[20] The applicant contends that he has a well-founded fear of returning to Togo given the government's practice of assassinating opposition party partisans. However, because his fear was based on the fact that he is a political activist, the applicant had to establish through new evidence that he was indeed a political activist.

[21] The Officer noted several inconsistencies that cast doubt on the credibility of the applicant's story. The applicant had submitted photos of the ransacked home to support his submissions, however, during the hearing, he contradicted himself on the location of the ransacking. Further, the conduct of his wife, who moved to another neighbourhood but not from the village and who is still living in the same place, demonstrated rather that he was not constantly harassed, as the applicant claimed. The applicant's brother allegedly died during the events related to the ransacking. However, the photo of the funeral filed by the applicant does not establish any more than that the

ceremony was held and gives no indication of the deceased's identity. The Officer did not have any credible evidence on which she could rely to find that the applicant was a political activist.

[22] In *Bilquess v. Canada (Minister of Citizenship and Immigration)* 2004 FC 157, [2004] F.C.J. No. 205, at paragraph 7, Pinard J. discusses the standard of review in relation to questions of credibility:

> The PRRA officer found, like the panel that preceded her, that the applicants were not credible. The evaluation of credibility is a question of fact and this Court cannot substitute its decision for that of the PRRA officer unless the applicant can show that the decision was based on an erroneous finding of fact that she made in a perverse or capricious manner or without regard for the material before her (see paragraph 18.1(4)(*d*) of the *Federal Court Act*, R.S.C. 1985, c. F-7). The PRRA officer has specialised knowledge and the authority to assess the evidence as long as her inferences are not unreasonable (*Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315 (F.C.A.)) and her reasons are set out in clear and unmistakable terms (*Hilo v. Canada (M.E.I.)* (1991), 15 Imm.L.R. (2d) 199 (F.C.A.)).

[23] The fact that the Officer had determined that the applicant was not a political activist, a factor that is at the heart of his refugee claim, is not a patently unreasonable decision. The applicant failed to establish that the Officer's decision was based on an erroneous finding of fact made in a perverse or capricious manner.

[24] Even if there is no objective evidence of a risk of persecution tied to his personal situation, the applicant contends that the conditions in Togo are so unpleasant that it is reasonable for him to have a fear of a risk of persecution if he were removed.

[25] The applicant cannot rely on the deterioration of the situation in his country unless he can link the objective evidence to his personal situation. In *Al-Shammari v. Canada (Minister of*

Citizenship and Immigration) (2002), 23 Imm. L.R. (3d) 66, at paragraph 24,

Mr. Justice Edmond P. Blanchard states:

> This Court has repeatedly held that a claimant must establish a credible link between his claim and the objective situation prevailing in a country in order to be granted Convention refugee status (*Canada (Secretary of State) v. Jules*, (1994), 84 F.T.R. 161). Accordingly, it will not suffice for an applicant to present evidence showing problems encountered by some of this fellow-citizens. He must also establish a connection between his claim and the objective situation in his country.

[26] Even if the situation in a country may be particularly difficult, especially in terms of human rights or safety in general, the applicant's personal situation must still be such that he could have an objective fear that he would be in danger of being persecuted, tortured, or threatened.

[27] In this matter, the applicant has failed to persuade me that the impugned decision must be reversed.

ORDER

THE COURT ORDERS that

1. The application for judicial review be dismissed;
2. No question will be certified.

"Pierre Blais"

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4312-05
STYLE OF CAUSE:	**NAM TCHOUGLI TOLIGARA NAZAIRE v. MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Montréal
DATE OF HEARING:	March 21, 2006
REASONS FOR ORDER AND ORDER:	BLAIS J.
DATE OF REASONS :	March 30, 2006

APPEARANCES:

No appearance	FOR THE APPLICANT
Patricia Deslauriers	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nam Tchougli Toligara Nazaire – Montréal – representing himself	FOR THE APPLICANT
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