

B E T W E E N:

FRANK KOBENA BERKO

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

WETSTON, J.:

The applicant, a 45 year old male from Ghana at the time of the hearing, was the Chair of the Sampa District Committee for the Defense of the Revolution (CDR). He had held this position for seven years, having previously served as a member of the CDR for one year. As part of his duties, the applicant regularly heard complaints against the militia and meted out minor punishments such as the imposition of fines.

In January 1991, the applicant was beaten and warned not to interfere with the militia. In June 1992, he was arrested and detained by members of the Ghana Bureau of National Investigation for criticising a militia shooting in correspondence to the regional secretary of the CDR. He was beaten during his detention, and upon his escape in August 1992, he fled to Canada.

Pursuant to section Article 1F(a) of the *United Nations Convention Relating to the Status of Refugees* (the "Convention")(incorporated as a schedule to the *Immigration Act*, R.S.C. 1985, c. 28 (4th Supp.), s. 2(1)), the Board found that the applicant was excluded from protection as a "refugee" because it found serious reasons

for considering that the applicant was complicit in the commission of crimes against humanity.

The Board nonetheless went on to conclude that the applicant did not have a well-founded fear of persecution, should he be returned to Ghana, because of documented improvements in Ghana's human rights record, as well as its political and legal institutions.

The issues to be considered in this review are:

1. whether the Board failed to afford natural justice to the applicant by directing applicant's counsel not to question him further to establish his credibility; and
2. whether the Board erred in law by its characterization of whether the applicant committed, or was complicit in, crimes against humanity.

1. Natural Justice

The applicant alleges that the Board directed the applicant's counsel not to question the applicant further to establish his credibility. I disagree with the applicant's submission that he was denied natural justice. The applicant was fully aware that credibility was an issue in this proceeding. For the applicant to draw an erroneous conclusion from an alleged direction of the Board that credibility was no longer an issue does not, in this case, constitute a reviewable error by the *Refugee Division*. In my view, credibility was an issue throughout the hearing. The applicant was not deprived of the opportunity to establish his credibility and to make full submissions with respect thereto.

2. Exclusion

The Board determined that it did not believe the applicant when he insisted that he was "a paragon of virtue" in the midst of the institutions of a brutal regime. While it

did accept that the applicant had been punished on two occasions for speaking out against human rights abuses, it also noted the length of his tenure as CDR Chair, and the opportunities to leave that position, of which he did not take full advantage. The Board further noted that the applicant's omission of his purported self-employment on his PIF indicates that he had profited from his role as CDR Chair.

Based on the documentary evidence before it, the Board also found that the CDR and militias were instrumental in perpetrating various crimes against humanity in Ghana, and that their institutional relationship was not as the applicant had described. Although the applicant did not admit to his complicity in human rights abuses, his testimony that such abuses did take place nonetheless corroborated the documentary evidence that the CDR and militia did perpetrate such crimes on a systematic basis.

It is important to note that the Board is not required to base its exclusion finding on evidence sufficient to prove, on a balance of probabilities, that the applicant committed crimes against humanity. Rather, it need only have serious reasons for considering that such behaviour took place (*Ramirez v. M.E.I.*, [1992] 2 F.C. 306 (F.C.A.)). The board may rely on general documentary evidence, even though it may contradict an applicant's sworn testimony.

In this case, the Board had sufficient evidence before it to find that the CDR was involved in "systematic and grave human rights abuses." Given the applicant's lengthy tenure in a CDR leadership role, the fact that he had voluntarily joined the CDR and had accepted his acclamation as Chair, as well as his failure to step down when afforded the opportunity to do so, the Board was entitled to draw an inference that the applicant was sufficiently aware of his organisations involvement in such crimes to have been found complicit in their commission (*Sivakumar v. M.E.I.*, [1994] 1 F.C. 433 (F.C.A.) at para. 10).

Given my conclusions above, there is no need, at this time, to consider whether the Board erred in determining that the applicant had a well-founded fear of persecution if returned to Ghana. There is no question for certification.

The application shall be dismissed.

Toronto, Ontario
September 29, 1997

"H. Wetston"
Judge

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-4462-96

STYLE OF CAUSE: FRANK KOBENA BERKO

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

DATE OF HEARING: SEPTEMBER 16, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: WETSTON, J.

DATED: SEPTEMBER 29, 1997

APPEARANCES:

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For the Applicant

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For the Respondent

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For the Respondent

FEDERAL COURT OF CANADA

Court No.: IMM-4462-96

Between:

FRANK KOBENA BERKO

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