Date: 20080521

Docket: IMM-4834-07

Citation: 2008 FC 631

Ottawa, Ontario, May 21, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

CONSTANTINE CHOTO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant, a citizen of Zimbabwe, claimed refugee status and protection based on perceived political opinion and risk to returnees from abroad. The claim was denied and this is the judicial review of that claim.

II. BACKGROUND

[2] The Applicant alleged that his family had been persecuted by the ZANU-PF since 1983, when his grandfather (a colonial police officer) was killed for being an alleged anti-Mugabe dissident. His uncle (an outspoken journalist) was arrested, detained and tortured in 1999; he subsequently left the country and claimed asylum in the U.S. (One of the Applicant's sisters also succeeded in claiming asylum in the U.S. in 2007, while another sister allegedly fled to Botswana.)

[3] The Applicant claimed that he narrowly escaped an attack by the ZANU-PF youth militia against his school in December 1999. He also alleged that a group of ZANU-PF youth came to the family home in March 2005 and threatened them because they were not registered members of the ZANU-PF party and were thus believed to be supporters of the opposition.

[4] In May 2005, the government razed an entire neighbourhood; among the homes destroyed, the Applicant alleged, was his family's, which thus led to their dispersal.

[5] The Applicant went to the U.S. in 2001 to study biology and chemistry on a merit scholarship at the University of South Maine.

[6] On May 27, 2006, he was arrested in Minneapolis upon suspicion that he was using a stolen credit card (he testified at the hearing that he shared the card with his cousin, who is now allegedly in the U.K.). He was apparently uncooperative with the police and was arrested and charged with obstruction (during the altercation, the police used mace to subdue him).

[7] According to his former U.S. counsel, he had been offered a plea bargain, which he rejected.

[8] A jury trial (it is not clear if this was only related to the obstruction charge) was scheduled on August 29, 2006, but the Applicant did not appear in court; a bench warrant remains outstanding.

[9] The Applicant arrived in Canada on June 29, 2006 and made his refugee claim at the border, where he was interviewed by a CBSA officer, who asked him about the U.S. criminal charges (which were described as forgery and assault).

[10] The Applicant stated that the assault charge was amended to obstruction and the forgery charge was dropped. This was after the officer had reviewed the refugee application form with the Applicant, who had answered “no” when asked if he had ever been arrested or detained by the police in any country.

[11] The Refugee Protection Division (RPD) rejected the Applicant’s claim on the basis of his failure to testify in a straightforward manner, lack of credible evidence regarding the allegations of persecution, and lack of an objective basis to fear returning to Zimbabwe.

[12] The RPD reviewed the evidence and testimony with respect to the criminal charges and the U.S. and found that the Applicant attempted to misrepresent the situation with Canadian

immigration officials, which raised doubts in the RPD's mind about the Applicant's motive for seeking protection in Canada.

[13] As to the other aspects of the Applicant's claim, the RPD found that he had produced insufficient credible or trustworthy evidence to support his claim. For example, the Applicant relied upon his sister's successful refugee claim but produced no records to substantiate its relevance, especially as there was a sexual abuse component to the sister's case. Further, the Applicant's allegation that he was attacked in 1999 by ZANU-PF youth militia was not credible because the militia did not exist until 2001. The RPD had cogent reasons for not accepting each of the factual underpinnings of his subjective fear of persecution.

[14] On the issue of his fear as a returning Zimbabwean, the RPD held that since the Applicant had admitted that neither he nor his family were involved in politics nor were they supporters of the opposition or MDC, the Applicant would not come to the attention of the authorities nor would he face a serious possibility of persecution.

[15] As to the alleged possibility that he would be detained or interrogated for being a "sell out", the RPD concluded that he could justify his absence from Zimbabwe based on his studies in the United States.

III. ANALYSIS

[16] With the clarification on standard of review expressed in *Dunsmuir v. New Brunswick*, 2008 SCC 9, the applicable standard in this instance is reasonableness, particularly as the findings in this case are based on credibility. The type of findings in this case, based in part on observation, consistency and documentary evidence (or lack thereof) are deserving of a measure of deference so long as there is a proper and reasonable connection to the conclusion.

[17] In view of the problems with the Applicant's evidence, the RPD's conclusion as to credibility should not be disturbed. The RPD performed a thorough analysis of the Applicant's evidence and gave cogent reasons for finding it wanting.

[18] As to the RPD's findings on objective fear – that which might be faced by all returnees in the same position as the Applicant - firstly, I find that the RPD did conduct a s. 97 analysis. As I held in *Balakumar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 20, the form in which a s. 97 analysis appears is considerably less important than that it be done and done properly. The RPD turned its mind to the s. 97 issues in the Applicant's case.

[19] The evidence of the risk to returnees is found in the 2007 U.K. Home Office Report on Zimbabwe and relates to those Zimbabweans rejected by the U.K. with whom the Mugabe government has had a "strained" relationship – in fact, an openly hostile one on the part of Mugabe.

[20] The Applicant produced no evidence that returnees from the U.S. or Canada, *qua returnees,* were subject to the same treatment. Add to that fact the non-political nature of the Applicant and his family and the RPD's decision is reasonable in the sense of being within a range of reasonable conclusions.

[21] Lastly, the Court has examined the decision as a whole, and even taking into account the somewhat tentative conclusion that the Applicant could be less than forthright about the reason for his absence (U.S. schooling only), the decision is reasonable and should not be overturned.

IV. CONCLUSION

[22] Therefore, this judicial review will be dismissed. I concur with counsel that there is no issue for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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