Date: 20080611

Docket: IMM-5149-07

Citation: 2008 FC 585

Montréal, Quebec, June 11, 2008

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

ERIC FRANCIS TCHOUMBOU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated November 9, 2007, in which the panel determined that the applicant is not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the IRPA). The panel found that there were serious reasons to believe that the applicant had been complicit or had committed crimes against humanity as well as a serious non-political crime and that he had acted in a manner

contrary to the purposes and principles of the United Nations; the panel, therefore, determined that he came under the exclusions set out in subsections 1F(*a*), (*b)* and (*c*) of the Convention.

FACTS

[2] The applicant was born on May 18, 1985, in Douala, Cameroon. In August 2003, he joined the [TRANSLATION] "Youth Section" of the Cameroon People's Democratic Movement (YCPDM), a political party affiliated with the current head of state of the country, President Paul Biya.

[3] The applicant claims that he met the President's cousin at a friend's birthday and joined the YCPDM after several subsequent meetings with him. The applicant explained that his main task within the YCPDM was to find girls for the President's cousin, and he did that roughly ten times over a nine-month period.

[4] In his Personal Information Form (PIF), the applicant also wrote that he infiltrated the political opposition parties that demonstrated against President Biya's government in order to identify the organizers, those who encouraged the demonstrators to disturb the peace or defeat the current government. However, at the hearing before the panel on November 9, 2007, he denied having played this role.

[5] In May 2004, a member of the YCPDM allegedly took the applicant to a room where police officers were beating opposition militants. He was asked to participate in the beatings, but he refused and left the room.

[6] On May 18, 2004, government agents went to the applicant's home and arrested him. He says that he was beaten and tortured for refusing to carry out the orders he had been given.

[7] On May 20, 2004, a prison guard told the applicant that he had received an order to kill him. That night, the guard released him and suggested that he flee Cameroon if he wanted to stay alive. The applicant took refuge at the home of a friend in Bafang, where he hid for more than a year. On September 10, 2005, the applicant left Cameroon with his own passport and arrived in Canada where he requested asylum.

IMPUGNED DECISION

[8] After reviewing the documentary evidence on the situation in Cameroon, the panel noted that President Paul Biya violently repressed those who challenged his power and did not hesitate to use torture frequently.

[9] However, the panel noted that the applicant was a member of the YCPDM from August 2003 to May 2004 and that his membership card indicated that he was part of the [TRANSLATION] "party militia". The panel also pointed out that the applicant himself stated in his PIF that he had infiltrated the political opposition parties at various demonstrations in order to identify the organizers.

[10] At the hearing, the applicant denied infiltrating any group, but the panel found that the explanations he provided to justify these contradictions were unsatisfactory.

[11] With respect to the reference to his membership card, which indicates that the applicant was a member of the “party militia”, the panel rejected the explanation that the term “militia” in Cameroon simply means that a person is a member of a party. The panel found that the applicant was a part of a paramilitary organization whose goal was to keep President Biya’s party in power.

[12] The panel commented on the fact that the applicant spoke of his “superiors”, who allegedly were secret agents, at the interview with an immigration officer. The applicant’s explanation that he meant “elders” was considered improbable because in the French-speaking world in general, the expression “my superiors” has no connection at all to the term “elders”.

[13] As for the torture that the applicant claims to have suffered, the panel concluded that he had not established on a balance of probabilities that this incident really happened or that it caused the applicant to leave his country.

[14] The panel noted that this was not the first time that the applicant had made arrangements to come to live in Canada; he had applied for a student visa between January and April 2004.

[15] The panel also dismissed the applicant’s arguments that he knew nothing about the repression in his country when he lived there. Since he is educated and lived in one of the largest cities in the country, it is difficult for him to plead ignorance.

[16] The panel therefore concluded that the applicant had personally and knowingly participated in persecutorial acts committed by President Biya's party by joining the YCPDM in 2003, with full knowledge of the situation.

[17] Since the "militia" to which the applicant belonged worked alongside the secret police to repress opponents of the regime and since the secret police had a brutal purpose, the panel determined that mere membership in this organization implied personal and knowing participation by the applicant in persecutorial acts committed by the organization.

[18] Despite this finding, which would in itself have been determinative, the panel continued its analysis. It concluded that the applicant was complicit by association in crimes against humanity because he had to have been aware of the abuses committed and the torture of the opponents to the regime whom the applicant identified by infiltrating the opposition parties. Consequently, the panel found that the exclusions set out in paragraphs 1F(*a*) and 1F(*c*) of the Convention applied.

[19] The panel also determined that the applicant came under paragraph 1F(*b*) of the Convention because he was involved in procuring, which is an offence under section 212 of the *Criminal Code*. In exchange for pocket money, good meals in restaurants and being part of the entourage of President Biya's cousin, the applicant found girls, who may sometimes have been minors, so that this cousin could have sexual relations with them.

[20] The panel concluded that the applicant could not qualify as a refugee or a person in need of protection, and therefore it dismissed the application. The applicant has brought an application for judicial review of this negative decision.

ANALYSIS

(1) What is the applicable standard of review?

[21] As a result of the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, there are only two standards, correctness and reasonableness. However, this recent change does not appear to alter the standards of review applicable to the questions at issue in this case. In fact, the Supreme Court established that reviewing courts must first ascertain "whether the jurisprudence has already determined in a satisfactory manner the degree of deference" (at para. 62).

[22] The question of whether certain acts fall within the definition of crimes against humanity is a question of law; according to the jurisprudence, the appropriate standard for this question was correctness: see *Pushpanathan v. Canada (Minister of Citizenship and Immigration*), [1998] 1 S.C.R. 982; *Mendez-Leyva v. Canada (Minister of Citizenship and Immigration*), 2001 FCT 523, [2001] F.C.J. No. 846 (QL); *Gonzalez v. Canada (Minister of Employment and Immigration)*, [1994] 3 F.C. 646.

[23] The finding regarding the applicant's exclusion is a mixed question of fact and law, which required the Court's intervention in cases where the decision was unreasonable: see *Harb v. Canada*

(Minister of Citizenship and Immigration), 2003 FCA 39, [2003] F.C.J. No. 108 (QL); *Salgado v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1, [2006] F.C.J. No. 1 (QL).

[24] Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process as well as whether the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law (*Dunsmuir*, above, at para. 47).

(2) Did the panel err in finding that the applicant was excluded from the definition of Convention refugee and person in need of protection under subsections 1F(*a*) and (*c*)?

[25] The applicant submits that the panel did not specifically identify the crime against humanity that he committed and that there was no evidence to connect him, directly or indirectly, to the crimes committed by President Biya. He contends that he did not have the requisite *mens rea* to commit a crime against humanity and that his mere membership in a political party was not sufficient. Accordingly, the Minister did not discharge his burden of demonstrating the applicant's personal and knowing participation.

[26] In *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, the Supreme Court of Canada established the elements of a crime against humanity. A proscribed act must have been committed as part of a widespread or systemic attack. The attack must have been directed against a civilian population or an identifiable group. Last, the person committing the act

must have known of the attack and knew or took the risk that his or her act comprised a part of the attack.

[27] In this case, the panel determined that President Biya, through members of his party and the police, violently repressed those who challenged his power and that he did not hesitate to torture dissidents. The panel relied on reports published by human rights organizations which all denounce the excessive use of brutal methods to repress dissidents, i.e., members of the Cameroon opposition, journalists and human rights activists.

[28] As I stated above, a crime against humanity involves a systematic attack on a civilian population or an identifiable group. In *Sumaida v. Canada (Minister of Citizenship and Immigration)*, [2000] 3 F.C. 66, [2000] F.C.J. No. 10 (QL), at para. 19, the Federal Court of Appeal determined that such a group could be composed of students in the United Kingdom who were members of the Al Da'wa group and their families in Iraq. Similarly, I am of the view that dissidents of the Cameroon regime as well as human rights activists who were targeted and tortured by the authorities qualify as an "identifiable group" under the definition of "crimes against humanity".

[29] The panel found that the "militia" to which the applicant belonged was an organization with a brutal purpose and that, therefore, mere membership in it was sufficient for an inference to be drawn that the applicant personally and knowingly participated in persecutorial acts (*Ramirez v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 306 [*Ramirez*]). In reaching this

conclusion, the panel referred to the *Larousse* dictionary, which defines the term “militia” as follows: [TRANSLATION] “a paramilitary organization which is a basic component of certain totalitarian parties or dictatorships”.

[30] Although it is possible that the militia of President Biya’s political party is an organization that is principally directed to a limited, brutal purpose, the panel did not conduct a comprehensive analysis in reaching this conclusion. The jurisprudence has determined that “if one is going to conclude that membership in, or close association with, a group automatically leads to a conclusion of complicity in crimes against humanity committed by members of that group, the evidence concerning the characterization of the organization must be free from doubt.” (*Canada (Minister of Citizenship and Immigration) v. Hajialikhani*, [1998] F.C.J. No. 1464 (QL) at para. 24). [Emphasis added.]

[31] The panel’s analysis of the militia’s objectives consisted of noting the definition of the term “militia” and stating that it operated alongside the secret police to repress opponents. Although the jurisprudence has determined that secret police may, in fact, be an organization with a brutal purpose (see *Ramirez*, above, at para. 16; *Sumaida*, above, at para. 24) and that a member’s personal participation can be inferred, it is not sufficient, in my view, to note the definition of militia and to state that the party worked with the secret police to make a finding that the militia was also such an organization.

[32] Thus, in the absence of indisputable evidence to reach this conclusion, I am of the view that mere membership in the militia is not sufficient to determine that the applicant was complicit.

[33] Notwithstanding the foregoing, the applicant may be considered complicit by association if he personally and knowingly participated in the crimes committed by an organization or knowingly tolerated them (*Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 [*Sivakumar*]). The panel pursued its analysis along those lines.

[34] To make a finding that the applicant was complicit by association, the panel had to determine "the existence of a shared common purpose and the knowledge that all of the parties in question may have of it." (*Ramirez*, above, at para. 26).

[35] The applicant's direct or indirect participation must be knowing and personal, which implies a common intention. A refugee claimant is excluded for complicity if the claimant is a member of a group that has committed a crime against humanity, has knowledge of the group's activities, actively supports the group and has failed to disengage himself or herself from it at the earliest opportunity (*Penate v. Canada (Minister of Employment and Immigration)*, [1994] 2 F.C. 79). Moreover, the case for an individual's complicity in a crime against humanity committed by his or her organization is stronger if the individual member in question holds a position of importance within the organization. The methods of recruitment, the applicant's position and rank in the organization, the nature of the organization, the applicant's knowledge of atrocities, the length of time in the organization and the opportunity to leave the organization are also relevant (*Plaisir v.*

Canada (Minister of Citizenship and Immigration), 2007 FC 264, [2007] F.C.J. No. 391 (QL), at para. 18; *Fabela v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1028, [2005] F.C.J. No. 1277 (QL)).

[36] Given the scope of repression in Cameroon, the applicant's level of education and the role that he played as infiltrator to identify the opponents of the regime, the panel determined that he had to have been aware of the abuses committed against the opponents after he identified them, which led to their arrest, detention and torture.

[37] In my opinion, it was reasonable for the panel to infer that the applicant had a shared common purpose because he joined the CPDM's militia between August 2003 and May 2004, infiltrated the opponents of the regime and was unable to establish that he left the CPDM because he was against the repression. He stated the following in his PIF:

> [TRANSLATION]
> I was a member of the youth section of the political party called the "Cameroon People's Democratic Movement" (YCPDM) of President Paul BIYA who is the current head of state of my country. The leader of the YCPDM put me in with a group of members that had to do certain tasks for the government.
>
> First, the President's cousin started using me to call or find girls for him; then, I would be sent to infiltrate the political opposition parties that were demonstrating against the government in order to identify the organizers and those who incited the others to take to the street. I also identified those who were sounding alarms and who encouraged the demonstrators to do anything they could to disturb the peace and to defeat the current government's actions.

[38] It is difficult to subsequently contend that he never infiltrated opposition parties and that his only task was to find girls for the President's cousin. He described in detail his role in identifying members of the opposition, and therefore I believe that the panel was justified in determining that the applicant was not credible when he attempted to say the opposite at the hearing.

[39] As for failing to disassociate himself from the group at the earliest opportunity, the applicant alleged that he was arrested and tortured because he refused to follow the orders to beat opposition members in May 2004. The panel determined that he was not credible on this point considering his statements at the port of entry and in his PIF as well as the confused explanations he provided when he testified at the hearing.

[40] Since the applicant had to have been aware of the abuses committed, including the torturing of opponents whom he identified once they were arrested and detained and since he did not establish in a credible manner that he disassociated himself from the group at the earliest opportunity, it was reasonable for the panel to conclude that there were serious reasons to believe that he was complicit in crimes against humanity and in actions that were contrary to the purposes and principles of the United Nations.

[41] Given that the exclusion pursuant to paragraph 1F(*a*) and 1F(*c*) is well founded, it is not necessary to examine the validity of the exclusion under paragraph 1F(*b*).

CONCLUSION

[42] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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