Federal Court  Cour fédérale

Date: 20090813

Docket: IMM-2-09

Citation: 2009 FC 829

OTTAWA, Ontario, August 13, 2009

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

EKENE UDEH

Applicant

and

THE 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 Board), rendered on November 21, 2008, which determined that the applicant, who is a citizen of Nigeria, was excluded from the definition of Convention refugee pursuant to section 98 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for having taken residence in Venezuela within the meaning of section E of article 1 of the Refugee Convention. Furthermore, the Board rejected the applicant's claim for refugee status with respect to Venezuela and determined that he was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the Act. The Board

noted numerous contradictions in the applicant's testimony and determined that he was lacking in credibility and that his account of events was highly implausible.

[2] The applicant is a citizen of Nigeria. He allegedly faced persecution in Nigeria due to his affiliation with the Movement for the Actualization of the Sovereign State of Biafra, the MASSOB. After fleeing Nigeria, the applicant sought refuge on April 9, 2004 in Venezuela. He submits that on August 23, 2005, he was granted non-permanent status in Venezuela where he again allegedly faced persecution. During his stay in Venezuela the applicant was allegedly threatened, and, on several occasions, physically persecuted by agents of the father of his lover. The applicant was then forced to flee Venezuela. The applicant entered Canada on December 26, 2005 and on the same day claimed refugee protection against both Nigeria and Venezuela.

[3] In its decision, the Board set aside the applicant's claim against Nigeria and focused its analysis on whether the applicant was a resident of Venezuela within the meaning of section E of article 1 of the Refugee Convention and whether his fear of persecution in that country was well-founded. The Board considered (1) whether the applicant had taken residence in Venezuela and maintained it; and (2) which date between the date of the applicant's arrival to Canada or the date of the hearing before the Board, should be considered to determine the applicant's right of return to Venezuela.

[4] The Board found that the applicant had acquired residence in Venezuela within the meaning of section E of article 1 of the Refugee Convention. In its analysis, the Board referred to a Response to an Information Request (RIR) from the Research Directorate of the Board dated March 9, 2006, (*Venezuela: Obtaining permanent resident status and the rights associated with that status (2005 –*

February 2006), VEN101087.FE) according to which a resident of Venezuela receives an identity card referred to as a *cedula* that is valid for a period of 10 years after which it must be renewed. The March 9, 2006 RIR further indicates that foreign residents enjoy the same rights as Venezuelan citizens except for the right to vote. They have no travel restrictions. The Board noted that the applicant's testimony confirmed that he had received such a resident card, although it was not provided at the hearing because it had been seized by the Venezuelan authorities. As well, the Board noted that the applicant's passport indicated that he had become a resident of Venezuela on August 23, 2005 and that his residence in Venezuela is valid until August 23, 2010.

[5] Secondly, the Board found that the applicant held permanent residence in Venezuela when he arrived in Canada and that he had maintained the residency at the time of the hearing before the Board and could have returned to Venezuela without any difficulty. After a thorough review of the relevant caselaw, the Board subscribed to the line of jurisprudence that holds that the date of the hearing before the Board is the relevant date in determining the applicant's right of return (*Shamlou v. Canada (Minister of Citizenship and Immigration*), [1995] F.C.J. No. 1537; *Wassiq v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 468; *Shahpari v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 429; *Canada (Minister of Citizenship and Immigration) v. Choovak*, [2002] F.C.J. No. 767; *Canada (Minister of Citizenship and Immigration) v. Manoharan*, 2005 FC 1122; *Binyamin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 263). As opposed to the date of arrival in Canada *(Hakizimana v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 223; *Parvanta v. Canada (Minister of Citizenship and Immigration*), 2006 FC 1146). As the applicant's *cedula* was valid until August 23, 2010, the Board, applying the caselaw previously stated, concluded that the applicant had not discharged his burden

of proof of establishing that at the time of the hearing before the Board, he could not apply for renewal of his return visa to Venezuela.

[6] Finally, with regards to the applicant's claim against Venezuela, the Board identified major credibility weaknesses justifying its refusal to recognize the applicant as a refugee or a person in need of protection. For example, the applicant could not give details such as the name and the occupation of his persecutor in Venezuela although he was involved in a relationship with the daughter of this individual for several months. As well the Board determined that the account of the episodes of persecution that the applicant suffered lacked in credibility.

[7] The applicant now seeks to judicially review the Board's findings, submitting that due to his affiliation to the MASSOB in Nigeria and as a victim of persecution and target of death threats in Venezuela, he is a person in need of protection and a Convention Refugee. Thus, the applicant submits that the Board's conclusions concerning the applicant's residence in Venezuela were based on erroneous findings of facts made in a capricious manner and without regard for the material before it as no evidence was submitted to confirm that the applicant's *cedula* was in fact valid until August 23, 2010. Furthermore the applicant submits that the Board erroneously presumed that the "Residencia" document in the applicant's passport also confirmed the validity of his resident status in Venezuela until August 23, 2010. The applicant further submits that the Board ignored other readily available documentary evidence and based its decision on an erroneous finding of fact in discarding without reason crucial evidence further explaining the value of the previously stated "Residencia" document establishing that the applicant did not have the right to return to Venezuela at the time of the hearing before the Board.

[8] The decision of the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (*Dunsmuir*)) has not modified the standard of review applicable to the Board's decisions involving the application of the exclusion clauses under the Refugee Convention. Thus, the Board's analysis of the facts giving rise to the application of the exclusion clause under section E of article 1of the Refugee Convention is to be reviewed on a standard of reasonableness. Furthermore, the Board's further analysis involving questions of laws in determining the application of the exclusion clause are to be reviewed on a standard of correctness (*Binyamin v. The Minister of Citizenship and Immigration*, 2008 FC 263 at para. 22)

[9] The assessment of the weight placed on the evidence by the Board and how it interpreted that evidence at the hearing is a question of fact. Accordingly, it should also be reviewed on a standard of reasonableness (*Dunsmuir*). Provided the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law", this Court will not intervene (*Dunsmuir* at para. 47; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 *(Khosa*) at para. 59). Moreover, unless the credibility findings were made capriciously or without supporting evidence, and had the Board not provided sufficient reasons in clear and unmistakable terms to conclude as it did, this Court would owe these findings the highest degree of deference (section 18.1(4)(d) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, as further confirmed in *Dunsmuir* (*Khosa* at para. 46).

[10] For the following reasons, this application for judicial review must be dismissed. The Board's overall conclusion regarding the applicant's lack of credibility is entirely reasonable and does not warrant this Court's intervention.

[11] Section E of the Refugee Convention is incorporated into Canadian law under section 2(1) of the Act. It reads as follows:

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

[12] The purpose of section E is to limit refugee claims to individuals who clearly face a threat to persecution and are in need of international protection, the whole in accordance with the purpose of the Refugee Convention (*Paravanta v. Canada (Minister of Citizenship and Immigration*), (2006) 300 FTR 103; *Velasquez v. Canada (Minister of Citizenship and Immigration*) 2009 FC 109).

[13] The applicant submits that it is unclear where and how the Board was provided with the information regarding the applicant's *cedula* as no copies of the *cedula* were provided to the Board. The applicant further submits that according to his file, and the evidence submitted, nothing leads to the conclusion that he had permanent status in Venezuela.

[14] As previously stated, in determining the applicant's resident status, the Board relied on Responses to an Information Request (RIR) from the Research Directorate of the Board:

> [15] Two exhibits were filed concerning the rights of a resident in Venezuela: Exhibits P-21 and M-5. These two documents are responses to information requests from the Research Directorate of the Immigration and Refugee Board (IRB). According to Exhibit P-

> 21, residence is granted after two years of actual residency and can be lost after two years of absence. The claimant explained that he had been granted amnesty although he had not yet lived in Venezuela for two years. Exhibit P-21 is dated December 31, 2003.
>
> [16] Exhibit M-5 is more recent and is dated March 9, 2006. According to this information, a resident of Venezuela receives an identity card (*cedula*) that is valid for 10 years. This is what the claimant was issued, according to his testimony. With this card, there are no travel restrictions. There was no indication that the status would expire after two years of absence. However, the resident visa did have to be renewed every five years. The document also indicates that residents have the same rights as citizens, except the right to vote.
>
> [17] The claimant partially confirmed these facts at the hearing. He stated that he could renew his residence after five years, but he did not know the process for obtaining citizenship. He could take any type of employment except government jobs.
>
> [18] The panel finds that the claimant acquired residence in Venezuela within the meaning of article 1E of the Convention.

[15] Further remarks of the Board with regard to the applicant's *cedula* and passport do not render the decision reviewable and have to be read together with the complete reasons given by the Board in its decision.

> [11] The claimant became a resident of Venezuela on August 23, 2005, and his residence was valid until August 23, 2010, as confirmed by the indications to that effect on page 13 of his passport.
>
> […]
>
> [48] In the present case, the claimant clearly held permanent residence in Venezuela when he came to Canada. His passport shows that he left his residence card, or *cedula*, in Venezuela.
>
> [49] He could have returned to Venezuela without difficulty when he was released in February 2006. The evidence shows that he had been a permanent resident since August 2005 and that this status was valid for five years and could be renewed. Two documents relate to the nature of this residence in Venezuela, Exhibits P-21 and M-5.

> Exhibit P-21 is dated December 31, 2003, and indicated that residence can be lost after two years of absence from Venezuela. Exhibit M-5 is a more recent document (March 9, 2006) that indicates that there are no travel restrictions. The panel concludes that the latter document must prevail since it was written more recently. In the alternative, if only Exhibit P-21 is to be considered, the claimant produced no evidence that it would be impossible to renew his residence after two years of absence. He made no such application or, in any event, did not inform the panel of any such application.

[16] Thus, after carefully reviewing the Responses to an Information Request (RIR) from the Research Directorate of the Board dated December 31, 2003 (*Venezuela: Information on obtaining permanent resident status, and the rights associated with that status*, VEN42273.E) and March 9, 2006 as well as the applicant's documentation such as his passport, Personal Information Form and Notes of the Immigration Officer the Board determined that the applicant had taken residence in Venezuela within the meaning of section E. It is not for this Court to reassess the evidence submitted. Both the documentary evidence and the applicant's testimony confirmed that he had been issued a *cedula* the content of which could not be reviewed by the Board. In the present case it was reasonably open to the Board to infer from the documentation available if the applicant had thus maintained residence in Venezuela up to the date of the hearing before the Board. There is no reason for this court to intervene.

[17] The applicant further submits that the Board erred in ignoring Exhibit P-25, the affidavit of Ms. Delphine Mauger, assistant to the applicant's legal counsel, dated June 11, 2007. Ms. Mauger's affidavit describes a communication between her and Mr. Thomas Salcerod, head of the Venezuelan consular office. During this conversation Ms. Mauger was allegedly told that a "Residencia" document such as the one found in the applicant's passport, did not confer permanent resident status to the holder and that such a temporary status must be renewed and can be lost after a period of time

spent out of Venezuela. The applicant submits that the information contained in this affidavit was crucial and central with regards to the issue at stake and should have been at least acknowledged in the Board's decision (*Castillo v. The Minister of Citizenship of Minister*, 2004 FC 56 at paras. 9-10). Thus, the applicant submits that the Board's failure to explain the reasons why the evidence was not given any weight renders the decision reviewable.

[18] There is no obligation for the Board to refer specifically to evidence which was not given any probative value (*Singh v. Canada (Minister of Citizenship and Immigration*), 2008 FC 408 at para. 15). In the present case, there was no obligation for the Board to specifically refer to Ms. Mauger's affidavit or to explain why, according to the Board, it did not establish that the applicant did not have the right to return to Venezuela. The decision states the documentation upon which the Board determined that the applicant had taken residence in Venezuela and had maintained it up to the date of the hearing before the Board. In addition, there is no ground for this Court to intervene and to reassess the evidence submitted in light of the Board's thorough analysis.

[19] I am satisfied that the credibility findings of the Board were reasonable.

[20] I must, once again, state that findings of credibility as well as evaluation of the evidence lie squarely within the Board's jurisdiction, thus the Board has complete jurisdiction to make such findings. For all of the above, this application for judicial review is denied.

JUDGMENT

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

No question of general importance has been submitted by the parties for certification.

"Max M. Teitelbaum"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2-09
STYLE OF CAUSE:	Ekene Udeh v. M.C.I.
PLACE OF HEARING:	Montreal, Qc
DATE OF HEARING:	July 14, 2009
REASONS FOR JUDGMENT:	TEITELBAUM D.J.
DATED:	August 13, 2009

APPEARANCES:

Me Annick Legault	FOR THE APPLICANT
Me Mario Blanchard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Annick Legault 400 McGill, 2nd floor Montreal H2Y 2G1	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT