

Federal Court



Cour fédérale

**Date: 20120522**

**Docket: IMM-4479-11**

**Citation: 2012 FC 616**

**Ottawa, Ontario, May 22, 2012**

**PRESENT: The Honourable Mr. Justice Near**

**BETWEEN:**

**FRANCIS RUSERE CHIKEREMA**

**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 of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 16, 2011. The Board found that the Applicant, Francis Rusere Chikerema, was not a Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons set out below, the application is dismissed.

I. Facts

[3] The Applicant is a citizen of Zimbabwe. He was a member of the Zimbabwe African People's Union (ZAPU). He alleged that the Zimbabwe African National Union – Patriotic Front (ZANU-PF) perceived him as a supporter of an opposition party, such as the Movement for Democratic Change (MDC), and destroyed his property.

[4] He left Zimbabwe for the United States (US) in 2001. He made an asylum claim but remained in the country illegally for eight years. He alleged that during this period he created the United National Democratic Alliance (UNDA) as an opposition political party in Zimbabwe.

[5] On February 25, 2009, the Applicant came to Canada and made a refugee claim based on a history of political involvement.

II. Decision under Review

[6] The Board found no persuasive evidence that the Applicant was politically active prior to moving to the US in 2001. He would be expected to have a membership card or some document to display his loyalty to the party. Moreover, there was no persuasive evidence that UNDA is a recognized and legitimate party in opposition to the ZANU-PF. The Board did not accept the Applicant's claim that he was mentioned as a suspect in connection with a bombing of a police

station in Harare as he did not have a copy of the newspaper article referring to him. It also attributed little weight to letters discussing his involvement with UNDA.

[7] The Applicant's failure to make an asylum claim in the US in a timely manner added support to the Board's finding that he lacked subjective fear.

[8] While the Board acknowledged that the ZANU-PF demonstrates hostility towards certain opposition party members and there is instability within the government, it found the Applicant "has never been involved in politics, he has been outside the country for eight years and has made no effort to be involved politically on any level as a member of the *diasporas* therefore he has no allegiance to either party at this time."

[9] The Board concluded:

Since the claimant has been unable to persuade the panel with reliable and trustworthy evidence that he has had in the past or possesses in the present any political profile in Zimbabwe, I find that, even taking into consideration the current situation in Zimbabwe, his claim to a fear of persecution on political grounds is not well-founded. Therefore, the claimant does not face a serious possibility of persecution nor does he face a danger of torture or serious harm should he return to Zimbabwe.

### III. Issues

[10] The Applicant raises the following issues:

- (a) Did the Board ignore evidence?

(b) Did the Board make unreasonable findings?

IV. Standard of Review

[11] Questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 51). The Court will only intervene where the decision fails to demonstrate justification, transparency and intelligibility or falls outside the range of acceptable outcomes (*Dunsmuir*, above at para 47).

V. Analysis

[12] The Applicant asserts that the Board ignored evidence as to his past political activities, including informal support for opposition groups. These details were documented in his Personal Information Form (PIF) and oral testimony. There was also information regarding his father's political involvement in Africa. He was never asked to explain why he did not approach MDC or ZAPU offices.

[13] According to the Applicant, there is a presumption of truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA)). The Board did not identify any inconsistencies in his testimony and has a duty to explain why it did not take all of this evidence into consideration.

[14] However, I must agree with the Respondent that the Board's analysis of his past political activities was reasonable in the circumstances.

[15] The primary concern was a lack of corroborating evidence of his history of political involvement and alleged incidents of property destruction. While the Board specifically referred to a membership card, it also considered the possibility of some other document that would support his claims. The Board "may take account of the absence of corroborative evidence in circumstances where one would expect it to exist" (see *Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ no 114 (CA); *Canada (Minister of Citizenship and Immigration) v Bacsa*, 2005 FC 1376, [2005] FCJ no 1803 at para 8).

[16] In addition, the Board acknowledged the past political profile of the Applicant's father. As the Respondent notes, there is no reference in related documentary evidence to the Applicant. Although the Applicant presumes this evidence will lead the Board to the conclusion that he is also politically active, a different, yet reasonable, outcome does not suggest this evidence was ignored.

[17] In general, the Applicant was aware that credibility was an issue for the Board. There is no requirement for the Applicant to be made aware of vagueness or specific weaknesses identified in the assessment of his claim (see for example *Kutuk v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ no 1754 at para 7; *Khorasani v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 936, [2002] FCJ no 1219 at para 35). The Board was ultimately not persuaded of his past political profile given the lack of "reliable and trustworthy evidence."

[18] The Applicant further alleges that the Board ignored evidence as to his involvement in the founding of UNDA and unreasonably concluded that he was not politically active. He points to letters provided from members of UNDA, his blog, and the letters purportedly written to Zimbabwean President Robert Mugabe. Given all of the evidence related to his efforts to register the UNDA as a party and to express political opposition, he maintains that the Board should not have dismissed his current political activities.

[19] Letters related to his involvement in UNDA were, however, given relatively detailed consideration. The Board simply accorded them lesser weight than would be preferred by the Applicant. That is not a basis on which the Court can intervene.

[20] The Applicant's suggestion that other documents were not specifically mentioned similarly does not amount to a reviewable error (see *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (CA)). As the Respondent maintains, it was unclear if the Applicant's blog had been updated since its creation or if letters to Mugabe were actually sent to or received by him. Lacking sufficient credible evidence, the Board was justified in casting doubt on the nature of the Applicant's current political involvement.

[21] As regards the Board's consideration of the delay in claiming in the US, I see no issue with the overall approach. Delay is a relevant factor in the Board's assessment of the Applicant's claim (*Duarte v Canada (Minister of Citizenship and Immigration)*, 2003 FC 988, [2003] FCJ no 1259). More recent jurisprudence goes as far as to suggest that delay can be fatal to a claim, absent a

satisfactory explanation, even where the credibility of an applicant's claims has not otherwise been challenged (see *Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923, [2010] FCJ no 1138 at para 28).

[22] In this case, the Board merely suggested that the delay in claiming in the US supported previous findings. It stated the Applicant's "failure to claim in a timely manner, or to even make efforts to find out if a claim was possible earlier, while living in a democratic nation which accepts refugees, supports my finding that he did not possess a subjective fear of persecution" and "this adds support for my finding of a lack of credibility to the overall claim."

[23] The Applicant takes issue with this finding because it does not specifically address his explanation for the delay in making a claim. However, that is not what occurred in this instance. While the Board's finding regarding delay does not refer back to his explanations, they were addressed at the outset of the decision. The Board states the Applicant thought he "had missed his opportunity to apply for asylum." He was also "afraid to apply as he was aware that other Zimbabweans who had been living illegally were deported back to Zimbabwe."

[24] The finding of Justice James O'Reilly in *Jumbe v Canada (Minister of Citizenship and Immigration)*, 2008 FC 543, [2008] FCJ no 691 at para 12 that "it was not enough for the Board simply to state that the failure to claim elsewhere, in itself, proved an absence of subjective fear" does not apply to the Board's merely supportive finding of delay in a different facts scenario involving Zimbabwe. Moreover, the Board was entitled, after considering his explanations, to

consider them insufficient (see *Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87, [2004] FCJ no 188 at para 10).

[25] Contrary to the Applicant's submissions, the Board also considered his argument that he would be compelled to speak out regarding his political beliefs once in Zimbabwe and this would put him at risk. The Board found there was "no corroborative evidence describing his civil society activities or any examples of his willingness to speak out for human rights." It proceeded to discuss documentary evidence that those who are not politically active are not at risk of mistreatment. The Board's concern was the lack of corroborating evidence of his political activities. As the Respondent suggests, the Applicant's position is contradictory. He wants recognition as a refugee in Canada because of his political beliefs but at the same time insists if he returns he will have to formally advocate for those beliefs, presumably putting him further at risk.

## VI. Conclusion

[26] The Applicant has not demonstrated that the Board ignored material evidence or otherwise made unreasonable findings regarding his past and present political profile. As a consequence, his application for judicial review is dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

“ D. G. Near ”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4479-11

**STYLE OF CAUSE:** FRANCIS RUSERE CHIKEREMA v MCI

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** APRIL 4, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** NEAR J.

**DATED:** MAY 22, 2012

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