



**Date: 20120607**

**Docket: IMM-7804-11**

**Citation: 2012 FC 715**

**Ottawa, Ontario, June 7, 2012**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**ROMAIN TSHIMBA NTULA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Romain Tshimba Ntula seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board which found his story of persecution in the Democratic Republic of Congo (DRC) not to be credible.

[2] For the reasons that follow, Mr. Ntula has not persuaded me that the Board's decision was unreasonable. As a result, the application for judicial review will be dismissed.

## **Background**

[3] Mr. Ntula worked as Second Secretary to the Ministry of Foreign Affairs and International Cooperation of the DRC. He alleges that on May 8, 2009, he participated in a “*parlement debout*”, a public reading of the newspaper, which offers citizens without any formal education access to current events. The reading led to a heated public debate about political problems in the DRC. Mr. Ntula claims to have participated actively in the debate and to have suggested to members of the crowd that “citizen resistance” was needed to address the problems.

[4] Mr. Ntula says that he was then arrested by Special Services agents who took him to a secret detention centre. He claims to have been held and tortured for three days before being moved to the Central Prison of Makala in Kinshasa on May 11. On May 13, 2009, he was transferred under guard from the Makala prison to a hospital where he was treated for the serious injuries he says he suffered as a result of the torture.

[5] Mr. Ntula alleges that later that day he was able to escape from the hospital and go into hiding. With the help of his older brother, Mr. Ntula arranged to travel to the United States via Brussels on May 22, 2009. He says his brother bribed an airport official who accompanied him to the airport and escorted him through security and onto the plane.

[6] Mr. Ntula traveled to the United States on his diplomatic passport using a United States entry visa which was valid for the period between April 29, 2009 and July 27, 2009. The American Embassy had issued the visa to Mr. Ntula for the purpose of his attendance at a conference of the

United Nations Permanent Forum on Indigenous Issues, which was to take place in New York City between May 18 and 27, 2009.

[7] Mr. Ntula claims that when he failed to report for work as a result of his arrest and subsequent flight from the DRC, he was dismissed from his job. He further alleges that his family in Kinshasa continued to be harassed by government agents after his flight from the DRC. His brother eventually went into hiding and his father has been detained.

### **The Board's Decision**

[8] The Board concluded that Mr. Ntula had not left the DRC fleeing political persecution, but had instead traveled on his diplomatic passport pursuant to a valid US entry visa, for the purpose of attending a conference at the United Nations headquarters in New York. The Board determined that Mr. Ntula had fabricated his entire story of detention and torture to support his refugee claim in Canada.

[9] The Board found it implausible that Mr. Ntula would be able to travel on his diplomatic passport from Njili Airport if a wanted notice was indeed outstanding against him, especially given that the notice had allegedly been communicated to the airport in question. In light of this implausibility and the absence of any evidence from Mr. Ntula's brother explaining how he had bribed an airport official, the Board dismissed Mr. Ntula's version of events.

[10] The Board found it equally suspicious that Mr. Ntula had arranged to obtain a new birth certificate only weeks before his departure from the DRC. The Board did not accept his explanation

that he had required the document for a census, and concluded on a balance of probabilities that Mr. Ntula had obtained the certificate because he was planning to leave the country. The Board noted that Mr. Ntula had not provided any support for his claim to have been preparing for a census in May of 2009.

[11] The Board also found that Mr. Ntula's story regarding his escape from the hospital did not add up. On the one hand, he claimed to be in such serious condition that prison guards had taken him to the hospital for treatment. On the other hand, he was apparently well enough to take advantage of a guard's momentary inattention to flee the hospital in the middle of the night. Mr. Ntula was unable to satisfactorily explain this inconsistency at the hearing.

[12] The Board also accorded little weight to the documentary evidence that Mr. Ntula submitted to support his claim.

[13] While the Board accepted that Mr. Ntula had been dismissed from his employment with the DRC's Department of Foreign Affairs, it was not persuaded that this would place him at any risk of persecution if he were to return to the DRC. There was no evidence suggesting that other individuals dismissed from the diplomatic corps at the same time as Mr. Ntula had faced abuse or other persecution.

### **Analysis**

[14] Mr. Ntula has not persuaded me that the Board's decision was unreasonable.

[15] The Board was clearly concerned that Mr. Ntula had traveled to the United States on his diplomatic passport pursuant to an entry visa that conveniently happened to be valid at the time that he needed to flee the DRC.

[16] The Board's concern over this coincidence was compounded by the fact that Mr. Ntula had obtained a new birth certificate only weeks prior to his departure from the DRC and before his alleged arrest and torture. Mr. Ntula did not seriously challenge the implausibility of these coincidences even though they go to the heart of his claim and are obvious from an examination of the record.

[17] That Mr. Ntula would happen to have a U.S. visa valid for the precise period during which he alleges to have experienced persecution in the DRC simply falls "outside the realm of what could reasonably be expected" in the circumstances: *Isakova v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 149, 322 F.T.R. 276 at para. 11.

[18] It was also reasonable for the Board to find it implausible that Mr. Ntula would be able to escape the DRC while traveling on his own diplomatic passport. While Mr. Ntula claimed that his brother had made the travel arrangements, no evidence had been provided by the brother to explain how Mr. Ntula had been able to escape detection even though Mr. Ntula testified that he was in regular contact with his brother.

[19] As this Court observed in *Mejia v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 851, [2011] F.C.J. No. 1062 (QL) at para. 12, "[w]hen a refugee claimant's credibility is already

called into question it is justifiable for a Board to draw a negative inference from his or her failure to corroborate material elements of their story”.

[20] The failure of the Board to mention the general evidence regarding widespread corruption in the DRC was not unreasonable. Without more, this evidence does not necessarily prove that Mr. Ntula was able to use bribery to escape the DRC in the face of a wanted notice against him.

[21] Mr. Ntula has also not persuaded me that it was unreasonable for the Board to accord little weight to the documents he provided in support of his claim.

[22] The Board found that a medical certificate regarding Mr. Ntula’s stay in hospital was suspect because it was issued by a forensic specialist. The Board found that it did not make sense that a report would issue from a forensic physician in light of the fact that Mr. Ntula was allegedly being treated for kicks to his stomach. Mr. Ntula provided no real explanation for this inconsistency and the Board’s finding in this regard was reasonable.

[23] It was also reasonably open to the Board to assign little weight to the wanted notice. As the Board noted, the English word “stop” is interspersed through the French text of the document and the words “Full stop” appear at the end of the document, raising real concerns about the authenticity of the document. The Board also reasonably found Mr. Ntula’s explanation of how his brother acquired the document to be implausible.

[24] The Board also did not accept a handwritten letter purporting to come from Mr. Ntula's family's lawyer, noting that the letter was not written on letterhead, and was drafted in an informal style containing numerous grammatical errors. The Board was not convinced that the document emanated from a lawyer, thus according it no weight.

[25] Mr. Ntula argues that it was an error for the Board to compare this document to the documents filed in connection with his application for a birth certificate, relying on *Mpiana v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1675, 144 A.C.W.S. (3d) 716 at para. 11(2).

[26] The Court held in *Mpiana* that it will be an error for the Board to compare documents prepared by different people for different purposes. In this case, both documents purported to come from the same lawyer, and the Board's concerns with respect to the letter were entirely reasonable.

### **Conclusion**

[27] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

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Judge



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

**DOCKET:** IMM-7804-11

**STYLE OF CAUSE:** ROMAIN TSHIMBA NTULA v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 6, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MACTAVISH J.

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