

Federal Court



Cour fédérale

Date: 20120509

Docket: IMM-3546-11

Citation: 2012 FC 562

Ottawa, Ontario, May 9, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BABACAR DIALLO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Babacar Diallo claims he was persecuted in Guinea because of his sexual orientation. He says that when he was 12 he was sexually abused by a teacher at his school, which later caused him to be sexually attracted to men. In 2009, police found him being sexually intimate with another male and arrested and beat him. As a result, he claims he was shunned by his family and community. He went to live with an aunt, but a mob burned her house down. Mr. Diallo was treated in hospital, moved to another city, and then fled to Canada.

[2] A panel of the Immigration and Refugee Board considered Mr. Diallo's claim for refugee protection, but rejected it because of a lack of reliable evidence. Mr. Diallo argues that the Board treated him unfairly by demonstrating a hostile attitude toward him. He also suggests that the Board unreasonably doubted his credibility and ultimately rendered an unreasonable decision. He asks me to quash the Board's decision and order another panel to reconsider his claim.

[3] In my view, the Board did not treat Mr. Diallo unfairly and had valid grounds for questioning his credibility in certain areas. However, the Board erred in its treatment of important evidence supporting Mr. Diallo's claim. Accordingly, I must overturn the Board's decision and allow this application for judicial review.

[4] There are two issues:

1. Did the Board treat Mr Diallo unfairly?
2. Was the Board's decision unreasonable?

II. The Board's Decision

[5] The Board had concerns about Mr. Diallo's credibility. For example, he was unable to state clearly the years he had been at school. He was also unable to provide evidence that the allegedly abusive teacher was employed at the school at the relevant time.

[6] Mr. Diallo claimed to be vulnerable and traumatized by the alleged abuse, but provided no evidence to support that allegation. In addition, he claimed that he was hospitalized for two weeks after the attack on his aunt's home and left on crutches. However, the medical report he provided stated that he was discharged after a week with a neck brace. The Board, therefore, questioned Mr. Diallo's claim that he had been persecuted in Guinea.

[7] Mr. Diallo gave evidence about his time in Canada, but was unable to identify most of the gay bars he said he frequented. He also supplied a letter from a community centre stating that he was part of a support group, but the letter did not identify the particular group to which he belonged. In addition, while he provided photographs taken with two friends, neither of them provided supportive affidavits.

[8] Based on this evidence, the Board found that Mr. Diallo was not homosexual and, therefore, that there was no basis for his refugee claim. In addition, the Board found that Mr. Diallo would not face a risk of torture or other serious mistreatment if he returned to Guinea.

III. Issue One – Did the Board treat Mr. Diallo unfairly?

[9] Mr. Diallo argues that the Board was sarcastic and hostile, and prevented counsel from presenting evidence in Mr. Diallo's favour.

[10] Having reviewed the record, I find that Mr. Diallo's concerns are not entirely unfounded. Some of the Board's comments were sarcastic and inappropriate. For example, the Board stated that

Mr. Diallo was not particularly young when he was sexually abused at age 12. In addition, the Board interrupted repeatedly when counsel made submissions on Mr. Diallo's behalf. However, overall, the Board entertained and considered counsel's submissions. Indeed, counsel conceded that "things seemed to balance out". The Board's conduct cannot be praised or even condoned, but it did not suggest bias or a lack of impartiality.

[11] In my view, looking at the evidence as a whole, the Board conducted a fair hearing, and reasonably considered the evidence in Mr. Diallo's favour.

IV. Issue Two – Was the Board's decision unreasonable?

[12] Mr. Diallo argues that the Board unreasonably expected him to prove his sexual identity. Mr. Diallo also contends that the Board failed to acknowledge documentary evidence showing that homosexuals are persecuted in Guinea, and that he was involved in the homosexual community in Toronto. The real issue is whether the Board reasonably concluded that Mr. Diallo had not established his sexual orientation or the basis for his refugee claim. In my view, the Board's conclusions were unreasonable.

[13] Before the Board was a letter from the 519 Church Street Community Centre which stated that Mr. Diallo had been an active member of the Lesbian-Gay-Bisexual-Transgendered [LGBT] Refugee Support Group since 2010. The Board gave little weight to the letter because the Centre accepts members both from within and without the LGBT community. But the letter explicitly

stated that Mr Diallo was a member of the LGBT support group, suggesting that he was, indeed, gay.

[14] The medical report before the Board indicated that Mr. Diallo had received a serious head injury, which Mr Diallo confirmed in oral evidence. His memory of the treatment he received was unclear. He said he may have been given a neck brace while in hospital and, when discharged, given crutches. The medical records did not contradict his testimony.

[15] The Board also overlooked some evidence. For example, the medical report noted that Mr. Diallo's family and community disapproved of his lifestyle. Witnesses provided letters corroborating Mr. Diallo's version of events. The Board did not refer to those documents.

[16] Clearly, there were problems with some areas of the evidence. Mr. Diallo's testimony was inconsistent in some respects. Evidence was lacking in certain areas. Witnesses who could have given helpful testimony were not called.

[17] However, given the errors described above, I am satisfied that the Board's conclusion was unreasonable given that it did not take account of important evidence in Mr. Diallo's favour.

V. Conclusion and Disposition

[18] While the Board did not treat Mr. Diallo unfairly, it did misconstrue and overlook some important evidence. As a result, the Board's conclusion that Mr. Diallo's claim was unsupported by

the evidence was unreasonable. I must, therefore, allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3546-11

STYLE OF CAUSE: BABACAR DIALLO
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 14, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: May 9, 2012

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