

Federal Court



Cour fédérale

**Date: 20120713**

**Docket: IMM-463-12**

**Citation: 2012 FC 881**

**Ottawa, Ontario, July 13, 2012**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**MBOUDU, ALI  
a.k.a. MODOU, ADAM ALI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr Ali Mboudu fears political persecution in Chad, his country of citizenship. In 2010, he sought refugee protection in Canada, but a panel of the Immigration and Refugee Board dismissed his claim for a lack of credible evidence.

[2] Mr Mboudu argues that the Board's credibility findings were unfounded and its conclusion unreasonable. He asks me to quash the Board's decision and order a new hearing. I agree that the Board's adverse credibility findings were unwarranted on the evidence and, therefore, that its conclusion was unreasonable. Accordingly, I must allow this application for judicial review.

[3] The sole issue is whether the Board's decision was unreasonable considering the evidence before it.

## II. Mr Mboudu's Allegations

[4] In 2009, when returning from studies in Egypt, Mr Mboudu says he was detained and questioned for an hour at the airport in N'Djamena, the capital of Chad. Members of the Agence Nationale de sécurité [ANS] suspected him of being a member of the Union des Forces pour la démocratie et le développement [UFDD] because of his youth, ethnicity (Gorane), and association with Egypt (where many UFDD supporters reside).

[5] A week later, the ANS summoned him for further questioning. It continued to suspect him of involvement in the UFDD.

[6] About three weeks later, the ANS summoned Mr Mboudu again. Fearing the outcome of another interrogation, he refused to comply. The ANS came looking for him but he was not at home. His uncle informed him that an arrest warrant had been issued for him, and helped him to

leave Chad. Mr Mboudu attended the US embassy with his uncle and obtained a visa. His uncle then smoothed his exit through the airport on a day when a friend was on duty.

[7] Mr Mboudu arrived in the US in September 2009, then travelled to Canada in February 2010.

### III. The Board's Decision

[8] The Board had four main concerns about Mr Mboudu's account of events:

[9] First, the Board doubted Mr Mboudu's description of what transpired at the US embassy in Chad when he obtained his visa. When he arrived at the port of entry to Canada, he told an immigration officer that he had been fingerprinted at the embassy, but had not been questioned. However, at the hearing, Mr Mboudu gave somewhat inconsistent testimony, but ultimately confirmed that US officials had interviewed him. He explained the discrepancy by stating that the immigration officer had not asked him whether he had been interviewed. The Board drew a negative inference from Mr Mboudu's evidence.

[10] Second, the Board questioned Mr Mboudu's lack of knowledge about a man called Adoum Mahamat Dady, whose name appears on Mr Mboudu's visa. At the port of entry, Mr Mboudu stated that his uncle asked Dady to help get Mr Mboudu out of the country. At the hearing, Mr Mboudu testified that he only knew Dady as his agent. The Board surmised that Mr Mboudu had been asked about Dady at the embassy, given that the visa stated that he was required to travel with him. During

that questioning, the Board believed, Mr Mboudu must have provided sufficient information about Dady to satisfy US officials; otherwise he would have been denied a visa. Therefore, he must have been untruthful both at the port of entry and at the hearing when he said he did not know Dady well.

[11] Third, the Board did not believe Mr Mboudu could leave Chad on his own passport while the ANS had an arrest warrant out for him. Mr Mboudu testified that he passed through the airport on a day when a friend of his uncle was on duty. But the Board doubted Mr Mboudu could have evaded the ANS so easily.

[12] Fourth, the Board did not accept Mr Mboudu's claim that, after his flight from Chad, his uncle was arrested. This claim was supported by a letter from Mr Mboudu's brother. However, a human rights blogger, who had reported on Mr Mboudu's difficulties with the ANS, had surprisingly not published any information about his uncle. Since the Board did not believe Mr Mboudu's uncle had been arrested, it also dismissed Mr Mboudu's contention that his uncle could not provide supporting documentary evidence.

[13] The Board concluded, therefore, that Mr Mboudu's allegations were not credible, and dismissed his claim.

#### IV. Was the Board's Decision Unreasonable?

[14] The Minister argues that the Board's credibility findings were based on the evidence and, therefore, were reasonable. I disagree. In the main, its findings were not justified on the evidence.

[15] The Board's first area of concern appears valid. Mr Mboudu gave conflicting evidence about whether he had been interviewed at the US embassy when he applied for a visa. But this was a small point on a peripheral issue.

[16] The Board's finding about Dady was speculative. Mr Mboudu had stated that Dady was an agent and he knew little about him. The Board dismissed that possibility on the basis that Mr Mboudu must have given detailed and reliable information about Dady to US officials in order to obtain his visa. However, there was no evidence about what was said about Dady at the embassy by Mr Mboudu, by his uncle, or by Dady himself. Mr Mboudu's testimony was not so implausible that the Board could dismiss it out of hand.

[17] Regarding Mr Mboudu's exit from Chad, the Board again reasoned away from the evidence. Mr Mboudu testified that he was able to get through the airport undetected with the assistance of a friend of his uncle. The Board felt that was unlikely. However, there was no evidence before the Board about the enforcement of arrest warrants in Chad or the security arrangements at the airport; documentary evidence confirmed that corruption in Chad is rife.

[18] The Board's conclusion that Mr Mboudu's uncle had not been arrested did not take account of relevant evidence. The Board did not mention a letter provided by the West African Refugee and Internally Displaced Persons Network [WARIDPN] which stated that the uncle had been arrested and detained in an unknown location in Chad. In addition, contrary to the Board's findings, the

blogger who wrote about Mr Mboudu's detention also reported that the uncle's whereabouts were unknown.

[19] The Minister suggests that the Board was entitled to ignore the WARIDPN letter because the organization used the blogger as one of its sources and the Board had concerns about his credibility because there were some (unidentified) inconsistencies in his account of Mr Mboudu's detention. In reality, however, because it did not explain its reasoning, we do not know why the Board overlooked this evidence.

[20] Therefore, most of the Board's adverse credibility findings were not rooted in the evidence. I also note that none of them actually affected the core of Mr Mboudu's claim that he was at risk in Chad based on his suspected involvement in the UFDD. Therefore, I find that the Board's conclusion did not represent a defensible outcome based on the facts and the law. It was unreasonable.

#### V. Conclusion and Disposition

[21] Most of the Board's adverse credibility findings were unsupported by the evidence. In addition, they related to areas of the evidence that were not central to Mr Mboudu's claim. Accordingly, I find that the Board's conclusion was unreasonable, and must allow this application for judicial review and order a new hearing before a different panel. 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. The matter is referred back to the Board for a new hearing before a different panel.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-463-12

**STYLE OF CAUSE:** ALI MBOUDU (A.K.A. MODU, ADAM ALI)  
v  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** July 3, 2012

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

**DATED:** July 13, 2012

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