

Federal Court



Cour fédérale

Date: 20131022

Docket: IMM-1002-13

Citation: 2013 FC 1059

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Montréal, Quebec, October 22, 2013

PRESENT: The Honourable Mr. Justice Shore [AuthorLongF]

BETWEEN:

MOHAMED CONDE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated January 9, 2013, in which the RPD concluded that the applicant was neither a Convention refugee within the meaning of section 96 nor a person in need of protection within the meaning of section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Facts

[2] The applicant, Mohamed Conde, born in Conakry in 1986, is a citizen of Guinea. He is of Malinke origin.

[3] The applicant explained that, after leaving school in 2008, he became a merchant in Conakry to provide for his family. On September 10, 2010, he started having problems with another merchant (of Peul origin) called “Guirguis”. He allegedly reported Guirguis to the authorities for selling poisoned water in his community.

[4] At the same time, the applicant explained that a basketball team associated with the Guinean armed forces [ASFAG] attempted to recruit him, but he refused to join the team as he thought it was an attempt to get him to join the Guinean army.

[5] On September 15, 2010, Guirguis’s family came to his home uttering death threats. At that point, he decided to leave the country.

[6] The applicant allegedly left Guinea the night of September 28, 2010, on board a merchant ship. He stated that he lived in a small cabin on this ship for almost five months, without being able to go outside.

[7] The applicant allegedly arrived at an unknown port in Canada on February 26, 2011, and did not encounter any Canadian officials on leaving the ship. He claimed refugee protection two days later.

[8] On January 9, 2013, the RPD rejected the applicant's refugee claim.

III. Decision under judicial review

[9] The RPD found that the applicant was not credible because of omissions in his Personal Information Form (PIF), and implausibilities or contradictions in his testimony.

[10] In particular, the RPD concluded that the applicant had failed to mention a key fact in the narrative supporting his allegation that he was afraid of the police in Conakry. The applicant did not mention in any of the immigration documents submitted with his claim for refugee protection that his mother had received two notices asking him to report to the police station in August 2011. In the absence of a satisfactory explanation for this omission, the RPD noted that the applicant was possibly attempting to exaggerate his narrative by introducing this information at the hearing.

[11] The RPD also found that the applicant's allegations against the Guinean army carried little weight. The RPD concluded that, since military service is not mandatory in Guinea, it was unlikely that the applicant would be obliged to participate or play in a team associated with the army.

[12] The RPD further concluded that it was unlikely that the applicant succeeded in having the water vendor arrested by the police but was then unable to report the death threats made against him

by the same person to the police. The RPD therefore made a negative credibility finding regarding the applicant's fear of the water vendor.

[13] The RPD noted that it had "serious doubts" about the applicant's credibility with regard to the itinerary of his trip to Canada. The RPD noted, for example, that it was unlikely that the applicant would be able to cross the territorial limits of the port he arrived at without encountering any Canadian officials.

[14] In light of these adverse findings regarding the applicant's credibility, the RPD concluded that the applicant had not discharged his burden of establishing a well-founded fear of persecution. For this reason, the RPD rejected his claim.

IV. Issue

[15] Was the RPD's credibility analysis reasonable?

V. Relevant statutory provisions

[16] Sections 96 and 97 of the IRPA apply to this case:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VI. Standard of review

[17] Past decisions of this Court clearly establish that RPD credibility and plausibility findings are questions of fact and are therefore reviewable against a standard of reasonableness (*Aguebor v (Canada) Minister of Employment and Immigration* (1993), 160 NR 315 (FCA)).

[18] When the standard of reasonableness applies, the Court may intervene only if the RPD's reasons are not "justified, transparent or intelligible". To satisfy this standard, a decision must fall in the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

VII. Positions of the parties

[19] The applicant alleges that the RPD made many reviewable errors in its assessment of his credibility, particularly in the assessment of the evidence filed regarding his fear of the police, the Guinean army and the water vendor.

[20] The respondent submits that the RPD did not err in its assessment of the facts. The respondent submits that the applicant was not credible: there were major gaps in his evidence and several implausibilities. Furthermore, the respondent argues that the applicant's fear is not supported by any documentary evidence and is not compatible with some of his allegations.

VIII. Analysis

[21] Following a review of the documentary and testimonial evidence, the Court is of the opinion that the RPD's assessment that the applicant's version of the facts lacked credibility was reasonable.

[22] Contrary to the applicant's submissions, the RPD considered all of the evidence and all the explanations provided by the applicant, in addition to explaining clearly why it did not find him credible.

[23] First, the RPD concluded that the applicant's omission to mention before the hearing that his mother had received two notices for him to report to the Conakry policy seriously undermined his credibility. The RPD also found it unlikely that the applicant would be required to participate or play in a basketball team associated with the army given that military service is not mandatory in Guinea. Moreover, the RPD concluded that it was unlikely that the applicant could not report the death threats made by the water vendor to the police given that the police had already dealt with him very effectively. The RPD added that it had "serious doubts" that the applicant arrived in Canada in the manner he explained, without encountering any Canadian officials. He had, after all, arrived on a merchant ship.

[24] The Court finds this assessment of the evidence to be reasonable, especially without any evidence to the contrary. The RPD was entitled to rely on the omissions and implausibilities in the applicant's narrative to draw an adverse conclusion regarding the applicant's credibility (*Cortes v Canada (Minister of Citizenship and Immigration)*, 2009 FC 583; *Tejeda v Canada (Minister of Citizenship and Immigration)*, 2009 FC 421; *Peti v Canada (Minister of Citizenship and Immigration)*, 2012 FC 82). The Court cannot intervene simply because the applicant disagrees with the RPD's decision.

[25] It is not this Court's role to substitute its own appreciation for that made by the RPD (*Martinez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 441). The RPD is a tribunal that is specialized in assessing the credibility and plausibility of the facts described by refugee claimants. The Court therefore cannot amend a decision of the RPD unless this decision was based on an erroneous finding of fact that it made in a perverse or capricious manner or without

regard for the material before it (*Bobic c Canada (Minister of Citizenship and Immigration)*, 2004 FC 1488, at para 3; *Jabbour v Canada (Minister of Citizenship and Immigration)*, 2009 FC 831).

[26] In addition, the Court may not dissect the RPD's decision as the applicant did in the matter at bar. The decision must be viewed as a whole, taking into account the context of the evidence and the record (*Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 644; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708; *Leahy v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 227 at paras 120-21), as the Court ruled in *Borate v Canada (Minister of Citizenship and Immigration)*, 2005 FC 679:

[1] Just as a specialized tribunal must not examine facts out of context, simply eager to point out contradictions with "microscopic zeal"; a party at a judicial review hearing must not dissect each sentence in the reasons of a decision of a specialized tribunal. [Emphasis added.]

[27] In the matter at bar, the RPD's general finding that the applicant lacked credibility meets the test of reasonableness. The intervention of this Court is therefore unwarranted.

IX. Conclusion

[28] For all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the applicant's application for judicial review be dismissed;
there is no question of general importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation
Johanna Kratz, Translation

FEDERAL COURT

SOLICITORS OF RECORD

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