

Federal Court



Cour fédérale

Date: 20150521

**Dockets: IMM-1055-14
IMM-1056-14**

Citation: 2015 FC 662

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 21, 2015

PRESENT: The Honourable Mr. Justice Locke

Docket: IMM-1055-14

BETWEEN:

MOLUMBO MOBA

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Docket: IMM-1056-14

AND BETWEEN:

MOLUMBO MOBA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the cases

[1] These are two applications for judicial review of two decisions dated December 6, 2013, and issued by the Director of Case Determination, Charles Lajoie (the officer). The first application for judicial review concerns a decision of the Minister of Public Safety and Emergency Preparedness rejecting the applicant's pre-removal risk assessment (PRRA) application under subsection 112 (3) of the *Immigration and Refugee Protection Act* (SC 2001, c. 27) (IRPA). This review application is associated with docket IMM-1055-14. The second judicial review application (the one associated with docket IMM-1056-14) is in regard to a decision of the Minister of Citizenship and Immigration rejecting the applicant's permanent residence application based on humanitarian and compassionate considerations (H&C application). The officer determined that the applicant would not be subjected to a danger of torture within the meaning of the IRPA nor to a risk to his life or a risk of cruel and unusual treatment or punishment should he return to the Democratic Republic of the Congo.

II. Facts

[2] The applicant is a citizen of the Democratic Republic of the Congo (DRC). His spouse and two children are Canadian citizens.

[3] From 1996 to 1999, the applicant worked in the DRC as an immigration officer at the Direction générale de l'immigration (DGM). His principal tasks consisted of screening visas at the point of entry to Congolese territory.

[4] The applicant contends that certain individuals questioned his loyalty towards the regime in power at the time because he was from the central part of the country and did not speak Swahili.

[5] The applicant alleges that while he was still in the Congo, he was suspected by the authorities of associating with opponents of President Kabila. In July 1999, the applicant was purportedly arrested and detained by reason of his alleged ties to members of the Zairian Armed Forces (Forces armées Zaïroise) (FAZ), a rebel military group.

[6] On November 15, 1999, the applicant was sentenced by a military court (the Cour d'Ordre Militaire du Congo) to eight years in prison and to forced labour for a three-year period. Shortly after his sentencing, the applicant was apparently locked in a room for several hours, before being led to a house by one of the [TRANSLATION] "commanders" who informed the applicant that he had been tasked with helping him escape from prison. With the assistance of his family and a smuggler, the applicant finally left the DRC.

[7] The applicant arrived in Canada on December 20, 1999. He immediately claimed refugee protection.

[8] On May 7, 2001, the Convention Refugee Determination Division (CRDD) rejected the applicant's refugee protection claim on the basis of Article 1 F(a) of the *Convention Relating to the Status of Refugees* (the Convention), due to the applicant's employment from 1996 to 1999.

In that decision, the CRDD noted:

[TRANSLATION]

The claimant described his uniform as having a badge on it bearing the letters DGM identifying his work, but in Exhibit M-13, paragraph 14, there are no badges on the uniforms. His participation was voluntary, he was not obliged in 1996, after his business was looted and no longer operating; he joined voluntarily and three (3) years ago and he was there under two (2) regimes, Mobutu and Kabila, which were extremely repressive. He claims that he was purely a functionary, which is completely false; he held a very important position, he was the point of entry who referred people to the inspector of the ANR and who later sent them to organizations guilty of the worst abuses. He was the first person to see arrivals and transferred them to ANR inspectors, and he therefore had very significant responsibilities.

[9] Further on in the same decision, the CRDD stated:

[TRANSLATION]

Given the circumstances, the panel does not recognize you as a Convention refugee in Canada. Furthermore, the panel finds that there is no credible basis for the claim under section 69.1 (9.1) of the *Act*. We declare that you are ineligible to claim refugee status, and we order your exclusion from Canada.

[10] On October 1, 2001, this Court dismissed the application for judicial review of the CRDD decision.

[11] On December 22, 2003, the applicant filed a first H&C application included with the applications of his spouse and son. On September 12, 2006, the applicant filed a first PRRA

application. On November 20, 2006, his spouse and son's H&C applications were allowed but his was refused. In addition, on November 20, 2006, the applicant's first PRRA application was rejected. Applications for judicial review of those decisions were filed with this Court, but were ultimately referred back for reassessment on consent of the parties.

[12] The applicant claims that when he left the Congo, he was sought after by the authorities and that after he applied for his passport from Canada in 2006, his sister was arrested, beaten and killed because she knew the applicant was in Canada.

[13] The applicant alleges that since he arrived in Canada, he has participated in various protest actions and that he is known as an opposition activist. The applicant claims that his nephew died in 2012 as a result of his protest activities. Thus, the applicant contends that he would be persecuted and that his life would be in danger if he were to return to the DRC, as the authorities in that country perceive him to be a political opponent who is associated with rebel groups.

III. Analysis

[14] A number of issues were raised in this application, but only one need be considered:

1. Did the officer err in his assessment of the risks the applicant would face if he were to return to the DRC?

[15] A reasonableness standard of review is applicable to findings made in PRRA and H&C applications that involve questions of mixed fact and law: *Kandel v Canada (Citizenship and*

Immigration), 2014 FC 659 at para 17; *Hamida v Canada (Citizenship and Immigration)*, 2014 FC 998 at para 36. In accordance with the principles of *non-refoulement*, PRRA officers must not remove refugee claimants to countries where they would be at risk of torture, persecution and other “impermissible outcomes”: *Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 at para 17. In an H&C application, the officer must also determine whether the applicant would face unusual and undeserved, or disproportionate hardship if he was required to return to the DRC: *Ariyaratnam v Canada (Citizenship and Immigration)*, 2010 FC 608 at para 39.

[16] The respondent argues that the officer conducted an exhaustive analysis of the evidence adduced by the applicant and reasonably concluded on that basis that he had not demonstrated that he would be at risk if he were to return to the DRC. For the reasons that follow, I cannot agree with this position.

[17] The officer was of the view that the applicant simply reiterated the alleged risks before the CRDD. However, the CRDD conducted no analysis of the risk the applicant would face upon his return to the DRC. Although the officer acknowledged that political opponents and people who criticize the government may be subject to reprisals, he concluded that the applicant’s political involvement was insufficient to find that he would be persecuted upon returning to the DRC. Yet the applicant submitted an article from the *le Potentiel* newspaper from July 17, 1999, that corroborated most of the main allegations in his claim for refugee protection. The article confirms that the applicant was: (i) a military prisoner, (ii) suspected of having acted as an intermediary with rebel groups in the DRC, and (iii) he was therefore directly targeted by the Kabila government as he was perceived to be a political opponent. The officer raised no grounds

for doubting the authenticity of the article. In fact, in both of the decisions under review in this application, the officer rejected this piece of evidence on the ground that it was not sufficient to overturn the CRDD's finding which stated that the applicant's refugee protection claim had no credible basis. According to my understanding of the CRDD's decision, that finding was based on the applicant's involvement in major crimes of the Mobutu and Kabila regimes, and did not indicate any consideration of the article's authenticity. Indeed, the CRDD used the article as a basis on which to conclude that the applicant had significant involvement in such crimes. Given that the CRDD conducted no risk analysis, this piece of evidence was disregarded without reason.

[18] Indeed, the CRDD's decision rests exclusively on the applicant's ineligibility for political asylum on the basis of Article 1 F(a). It was solely on this ground that the CRDD concluded that there was no credible basis for the claim for protection under the former *Immigration Act*, RSC (1985), c I-2. As a result, the risk of return analysis in both decisions under review in this application was based on a faulty premise: that the risk had initially been assessed in the CRDD's decision.

[19] The erroneous analysis justifies allowing the present application for judicial review.

JUDGMENT

THE COURT OREDERS AND ADJUDGES that:

1. The present applications for judicial review are allowed and the matters are referred back for redetermination by a new officer.
2. There is no serious question of general importance to certify.

“George R. Locke”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-1055-14 AND IMM-1056-14

DOCKET: IMM-1055-14

STYLE OF CAUSE: MOLUMBO MOBA v THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

AND DOCKET: IMM-1056-14

STYLE OF CAUSE: MOLUMBO MOBA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 18, 2015

JUDGMENT AND REASONS: LOCKE J.

DATED: MAY 21, 2015

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