

Federal Court



Cour fédérale

Date: 20151218

Docket: IMM-3070-15

Citation: 2015 FC 1399

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 18, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DJASSAHOU O KOLAWOLE LALEGBIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for leave and for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, dated June 3, 2015,

rejecting the applicant's claim for protection as a refugee or a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

II. Facts

[2] The applicant, Djassahou O Kolawole Lalegbin, is a citizen of Burkina Faso. He was born in Benin of Beninese parents.

[3] The applicant alleges that he was the president and founder of the Association pour la promotion de la formation aux métiers et à l'apprentissage (APFMA) [association for the promotion of trades training and learning], an association created in 2008 in Ouagadougou, Burkina Faso.

[4] On February 22, 2011, the applicant, as president of the APFMA, participated in a march to protest impunity and the high cost of living. On May 2, 2011, the applicant was taken to a building, beaten and tortured by people whom he believed were the presidential guard's special military personnel because of his participation in the march on February 22, 2011.

[5] Then, on July 29, 2013, there were "clandestine" arrests of youth association leaders in connection with a demonstration that had taken place that same day and that the applicant did not participate in. That evening, he learned from his wife that individuals had come to his house while he was at the office. The next day, the applicant was called from an unknown telephone number and told that he was being sought.

[6] On September 19, 2013, with a visitor's visa, the applicant left Burkina Faso and arrived in Canada on September 20, 2013, following a stopover in France. The applicant's refugee claim was filed on November 13, 2013.

[7] In a decision dated June 13, 2014, the Refugee Protection Division (RPD) rejected the applicant's refugee claim, finding that he was not a Convention refugee or a person in need of protection.

[8] The applicant appealed the decision to the RAD. The RAD, after ordering a new hearing, accepting new evidence and applying a standard of review similar to that of an appeal *de novo*, upheld the RPD decision in a decision dated June 3, 2015.

III. Impugned decision

[9] In its decision, the RAD determined that it is and was within the applicant's control to acquire Beninese citizenship, but that he did not demonstrate any willingness to take the necessary steps to acquire Beninese citizenship. Second, the RAD rejected the applicant's allegations that he would be subjected to a risk to his life or to a risk of cruel and unusual treatment or punishment if he had to appear before the Beninese authorities to make a statement to acquire Beninese citizenship. Third, the RAD found that the applicant had not rebutted the presumption of state protection in Benin.

IV. Issues

[10] The Court is of the opinion that there are two determinative issues:

(1) Did the RAD err in determining that it was within the control of the applicant to become a citizen of Benin and that he did not rebut the presumption of state protection in Benin?

(2) Did the RAD err by upholding the RPD's findings with respect to the applicant's lack of credibility?

V. Position of the parties

A. *Position of the applicant*

[11] The applicant states that it would be contrary to the spirit of the Geneva Convention to compel him to request any identity document from Benin because he has stated that he has a well-founded fear in that country. The applicant maintains that he submitted several documents and explanations as to why he feared returning to Benin and why he did not apply for Beninese citizenship. The applicant relies on, in particular, *El Rafih v Canada (Minister of Citizenship and Immigration)*, 2005 FC 831, to state that the fact that he was unaware that he was entitled to dual citizenship should not undermine his credibility. The applicant states that the RAD did not look at whether he could live safely in Benin and disregarded the political context in Africa.

Furthermore, the applicant contends that it would be contrary to the spirit of the Geneva Convention regarding an internal flight alternative to state, as the RAD did, that the applicant had an internal flight alternative in Burkina Faso and in Benin, or in Benin rather than in

Burkina Faso (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589).

[12] The applicant also argues that the RAD should have admitted the new evidence demonstrating that he is at risk in Benin. In its analysis of the applicant's credibility, the RAD could not simply follow the analysis of the RPD, which dwelled on "details" and not on the substance of the claim in its interpretation of the evidence (*Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at para 25). Thus, the RAD did not conduct an independent assessment of the applicant's credibility, which would be an error in law (*Iyamuremye v Canada (Minister of Citizenship and Immigration)*, 2014 FC 494 at para 41).

B. *Position of the respondent*

[13] The respondent contends that the RAD reasonably considered all of the material submitted by the applicant to determine its admissibility as new evidence under subsection 110(4) of the IRPA.

[14] Regarding the issue of the applicant's Beninese citizenship, the respondent argues that the RAD was correct when it stated that the applicant had, by birth, Beninese citizenship, and, that he took no steps to acquire it even though he was able to do so. The RAD then properly looked at the fear of persecution or the risk of cruel and unusual treatment in Benin. It was necessary for the applicant to assert his identity in each of his potential countries of nationality (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (*Ward*); *Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84; *Williams v Canada (Minister of Citizenship and Immigration)*, [2005] 3 FCR 429, 2005 FCA 126 at para 20 (*Williams*)). It was unnecessary for

the RPD to rule on the applicant's fear of persecution in Burkina Faso given that he could have obtained citizenship from another country, Benin. The applicant's failure to claim refugee protection in another country that offers that possibility may be fatal to the claim (*Sainnéus v Canada (Minister of Citizenship and Immigration)*, 2007 FC 249).

[15] Regarding the issue of a lack of evidence of fear of persecution and of risk, the respondent argues that the applicant never stated before the RPD that he feared the Beninese authorities and did not submit any evidence as to why he did not acquire that citizenship. The RPD was entitled to use its expertise to assess all of the evidence and select the evidence it deemed most appropriate (*Hassan v Canada (Minister of Citizenship and Immigration)* (1992), 147 NR 317, 36 ACWS (3d) 635 (CA); *Kumar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 30 at para 39; *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1304 at para 21). The applicant did not demonstrate a personalized risk in Benin, and, furthermore, the applicant's passport demonstrated that he went to Benin several times. In short, the applicant merely disagrees with the RAD's assessment of the evidence and is asking this Court to substitute its opinion for that of the RAD—which is not the role of this Court (*Paradi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 996 at para 40; *Cina v Canada (Minister of Citizenship and Immigration)*, 2011 FC 635 at para 67).

VI. Standard of review

[16] The standard of reasonableness applies to findings of fact made by the RAD regarding the applicant's ability to acquire Beninese citizenship (*Williams*, above, at para 17), and

regarding the applicant's credibility (*Canada (Minister of Citizenship and Immigration) v Kabunda*, 2015 FC 1213 at para 17).

[17] The standard of reasonableness also applies to the RAD's finding that the applicant's failure to avail himself of Beninese citizenship is fatal to his refugee claim; the RAD interpreted a statute closely connected to its functions, the IRPA (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654, 2011 SCC 61 at para 30).

VII. Analysis

A. *The applicant's Beninese citizenship*

[18] The applicant argues before this Court that he was not required to take the necessary steps to acquire Beninese citizenship; he also argued that even if he had taken the necessary steps and had acquired Beninese citizenship, he would be at risk in Benin because there is no state protection in that country.

[19] The Court notes that the case law, as the respondent pointed out, is clear that claimants must assert their identity in each of their potential countries of nationality (*Ward*, above; *Williams*, above at para 20). When a refugee claimant's claim is rejected on the ground that he or she could have acquired citizenship in another country, two issues must be assessed by this Court: (i) whether it was within the claimant's control to acquire the citizenship from the third country; and (ii) whether there is a well-founded fear of persecution in that country (*Petrov v Canada (Minister of Citizenship and Immigration)*, 2014 FC 658 at para 18).

[20] To the first question, the Court finds that it was within the control of the applicant to acquire citizenship in Benin. Namely, the RPD, in its decision, showed that it had reviewed Benin's citizenship law (*Dahomean Nationality Code*, Act No. 65-17, June 23, 1965, at Articles 7 and 8), considered that the applicant's mother and father were born in Benin, and considered that the applicant was also born in Benin; and, the RPD and the RAD found that the applicant had not submitted sufficient evidence to determine that he could not have applied for citizenship in Benin. In essence, the RAD conducted an in-depth analysis that led it to reasonably conclude that the applicant could apply for Beninese citizenship.

[21] Regarding the second question, that is, the well-founded fear of persecution in Benin, the applicant stated that the authorities in Benin and Burkina Faso have close ties because some members of the former regime in Burkina Faso now apparently live in Benin, and accordingly, the applicant is purportedly at risk in Benin. Furthermore, he states that the RAD failed to consider the documentary evidence submitted.

[22] The Court is of the opinion that the RAD conducted a reasonable assessment of the evidence in the record. In its decision, the RAD demonstrated that it took the evidence before it into account and explained why it was rejecting the applicant's arguments:

[76] I agree with the arguments put forward by the Minister's representative. I listened closely to the appellant's testimony during the hearing on May 6. I took into consideration the evidence on record as well as the submissions presented following the hearing. My conclusion is as follows. The appellant did not establish that his mother's family in Benin, even with the power of voodoo on their side, have the desire or the power to persecute him if he were to relocate to that country. He did not establish that it is more likely than not that he would be personally subjected to a risk

to his life or to a risk of cruel and unusual treatment or punishment if he were to move to that country.

[80] Again, I agree with the arguments put forward by the Minister's representative. In my opinion, the appellant's testimony and the documentary evidence submitted on appeal do not establish that today, in Benin, former dignitaries from Blaise Compaoré's regime, or even the current authorities who are governing Burkina Faso, have the desire or ability to in any way target individuals who, in the past in Burkina Faso, opposed Blaise Compaoré's regime. Consequently, I am of the opinion that the appellant did not establish that he has a well-founded fear of persecution or that it is more likely than not that he would be personally subjected to a risk to his life or to a risk of cruel and unusual treatment if he were to live in Benin.

(RAD Decision, paragraphs 76 and 80)

[23] In short, the applicant disagrees with the RAD's assessment of the evidence and is asking this Court to re-weigh the evidence and to substitute its findings for those of the RAD; that is not the role of this Court. It was reasonable for the RAD to find that the applicant did not establish a well-founded fear of persecution in Benin.

[24] Given that the applicant had the opportunity and ability to acquire Beninese citizenship and that he did not establish a well-founded fear in Benin, the RAD was not required to assess the issue of the risk of persecution in Burkina Faso. Moreover, as stated in *Ward* of the Supreme Court of Canada, the RPD was entitled to reject the applicant's refugee claim given that the applicant did not establish a fear in that country.

B. *The applicant's credibility*

[25] The applicant submits that the RAD erred by finding that he is not credible in every respect. According to the applicant, the RAD could not accept, as it did, the RPD's assessment because the RPD did not rely on the substance of his claim to find him not credible, but simply "details". The Court cannot agree with that argument. The RPD, in its decision, identified several significant contradictions on the part of the applicant:

- He stated that he never travelled with his passport before coming to Canada and that the passport that was presented was the only one he had ever obtained. However, the stamps in his passport issued on October 10, 2012, show that he went to Benin with that passport several times;
- In a visa application signed on August 13, 2013, the applicant states that his parents reside in Benin, but at the RPD hearing he stated that they live in Burkina Faso;
- The applicant testified before the RPD that his parents have lived in Fada N'Gourma, Burkina Faso since 1995, whereas in his refugee claim form the applicant states that his father and mother live in Ouagadougou, Burkina Faso; and,
- The applicant testified before the RPD that his daughter was born in Burkina Faso, but in his refugee claim at the immigration office he noted that she was born in Sakété, Benin. Furthermore, his daughter's birth certificate also states that she was born in Sakété, Benin.

[26] It is clear that the contradictions identified by the RPD are not "details". They are significant contradictions that tend to demonstrate a lack a credibility on the part of the applicant.

It was completely reasonable for the RAD, which owes deference to the RPD's credibility findings, to find that the applicant was not credible because the contradictions identified by the RPD were real as opposed to illusory:

[43] Second, contradictions in the evidence, particularly in a refugee claimant's own testimony, will usually afford the RPD a reasonable basis for finding the claimant to lack credibility, and, if this finding is reasonable, the rejection of the entire refugee claim will not be interfered with by the Court (see e.g. *Rajaratnam v Canada (Minister of Employment and Immigration)* (1991), 135 NR 300, [1991] FCJ No 1271 (FCA); *Mohacsi v Canada (Minister of Citizenship and Immigration)*, [2003] 4 FC 771, [2003] FCJ No 586 at paras 18-19 [*Mohacsi*]). That said, the contradictions which underpin a negative credibility finding must be real as opposed to illusory. Thus, the tribunal cannot seize on truly trivial or minute contradictions to reject a claim (see e.g. *Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168, [1989] FCJ No 444 at para 9; *Mohacsi* at para 20; *Sheikh v Canada (Minister of Citizenship and Immigration)*, (2000) 190 FTR 225, [2000] FCJ No 568 at paras 20-24).

(*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 43)

VIII. Conclusion

[27] Consequently, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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