

Federal Court



Cour fédérale

Date: 20160708

Docket: IMM-5812-15

Citation: 2016 FC 774

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 8, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

DJINDE KOITA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is challenging a decision rendered by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board (IRB) denying his appeal of a decision rendered by the IRB's Refugee Protection Division (RPD), which found that he is neither a refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, chapter 27 (the Act).

[2] The applicant is a citizen of Mali. He left Mali for Canada in January 2015 to seek refugee protection there on the grounds that he feared reprisal from two thugs who, in 2011, allegedly stole the motorcycle of one of his brothers (Dougoutigui) and who, after having been tried for this crime and having subsequently escaped from prison, allegedly sought revenge on the applicant's family. He claims in this regard that:

- (i) his troubles began in July 2014 when the two escaped thugs allegedly showed up at his family's home, located in the city of Bamako, and with Dougoutigui gone, targeted him;
- (ii) following this incident, Dougoutigui allegedly went into hiding and then left Mali;
- (iii) in September 2014, the two thugs were allegedly seen in the applicant's neighbourhood, which prompted the applicant and his parents to move to another part of the city of Bamako;
- (iv) in mid-December 2014, the applicant and another of his brothers (Drissa) allegedly returned to their old neighbourhood and ran into the two thugs, who allegedly shot Drissa, leaving him with gunshot wounds;
- (v) on December 31, 2014, one of the applicant's male cousins, hearing noises, allegedly came to an intersection in the applicant's new neighbourhood and was gunned down and killed there; and
- (vi) a few days after this incident, the applicant's parents allegedly decided to move again, this time near a city of 2.5 million residents, the city of Kayes, located more than 600 kilometres from Bamako. The applicant opted not to follow them and instead went to live with a friend in order to continue his studies in Bamako.

[3] The RPD denied the applicant's refugee protection claim on the grounds that his account of the events that allegedly led him to leave Mali was not credible and that, in any case, the applicant had an internal flight alternative in Kayes. More specifically, the RPD deemed that the

applicant's story included contradictions and inconsistencies, particularly regarding the fact that, unlike with the incident in mid-December 2014, no complaint was filed with the police following the murder of the applicant's cousin. Also, the fact that the applicant opted to remain in Bamako to continue his studies instead of accompanying his parents to a safer location seems inconsistent with the behaviour of a person who fears for his life. The RPD also gave no weight to the death certificate for the applicant's cousin, given that this certificate included no information regarding the circumstances of death and given that no complaint was filed with the authorities following this incident, which was much more serious than the previous incident for which a complaint had been filed.

[4] The applicant criticizes the RPD for having deemed his story to lack credibility on the basis of irrelevant and insignificant considerations. The RAD, before which the applicant produced no new evidence, refused to intervene after hearing the recording of the hearing before the RPD and reading and analyzing the body of evidence in the file, finding that the RPD's decision was well-founded.

[5] The applicant argues that the RAD, for its part, erred in three ways, namely (i) by being overzealous in assessing his testimony and by ascribing an inordinate amount of importance to elements of secondary importance; (ii) by finding that the applicant had an internal flight alternative; and (iii) by finding that section 96 of the Act did not apply in this instance despite the fact that Dougoutigui, whose motorcycle was stolen in 2011, was granted refugee protection in Canada.

[6] The question here is whether the RAD, in deciding as it did, made an error justifying the Court's intervention pursuant to section 18.1 of the *Federal Courts Act*, R.S.C., 1985, chapter F-7. It is well established that the RAD's decision must be reviewed using the standard of reasonableness, which means that in order to intervene, the Court must be satisfied that the RAD's findings in this case do not "fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47, [2008] 1 SCR 190; *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, at paragraphs 32, 35; *Ghauri v. Canada (Citizenship and Immigration)*, 2016 FC 548, at paragraph 22).

[7] The applicant has not convinced me that there is any reason to intervene. Both the RPD and the RAD, which conducted its own assessment of the evidence, noted inconsistencies in the applicant's story and I cannot say that these findings are unreasonable. The Court must avoid substituting its own interpretation of the facts for that of the RAD—an administrative tribunal that specializes in appeals—and must show deference to the RAD's findings, especially since they confirm the findings made by the RPD, whose mandate and expertise centre on assessing refugee claimants' testimonies and credibility (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at paragraph 89, [2009] 1 SCR 339; *Quintero Sanchez v. Canada (Citizenship and Immigration)*, 2011 FC 491, at paragraph 12; *Touileb Ousmer v. Canada (Citizenship and Immigration)*, 2012 FC 222, at paragraph 15; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No. 1425, at paragraph 14, 157 FTR 35).

[8] In particular, in my opinion, it was open to the RAD to question the credibility of the applicant's story on the basis of the applicant's decisions, first, not to file a complaint following his cousin's murder, when he had already approached the authorities (with some success) for less serious incidents, and second, to remain in Bamako after this incident, instead of leaving the city with his parents, given that he said he feared for his life. It was also open to the RAD to give little weight to the fact that the applicant had decided not to leave Bamako at that time, in order to continue studies which he had stated in his immigration form had ended in June 2014. Lastly, the RAD could reasonably conclude that the applicant had failed to establish that his cousin's death on December 31, 2014, was related to him or to the two thugs who had stolen his brother Dougoutigui's motorcycle. In this regard, the RAD could reasonably expect the applicant's testimony regarding such a connection to be supported by some form of stronger corroborating evidence than simply his cousin's death certificate.

[9] More importantly, even if the applicant's fears had been determined to be founded, I see no reason to intervene given the RAD's findings regarding the possibility of an internal flight alternative in Kayes, the city the applicant's parents have lived in since the beginning of January 2015. This city, located in the centre of a region with 2.5 million inhabitants, is located, I reiterate, more than 600 kilometres from Bamako and the applicant, on whom the burden rested (*Aguilar Suarez v. Canada (Citizenship and Immigration)*, 2011 FC 1474, at paragraph 8; *Sandoval Aramburo v. Canada (Citizenship and Immigration)*, 2013 FC 984, at paragraph 13), failed to demonstrate that the two thugs had the interest, the motivation or even the ability to search him out there. The standard for ruling out an internal flight alternative is stringent: it requires real and conclusive evidence of the existence of conditions that jeopardize the refugee

claimant's life or safety (*Perez v. Canada (Citizenship and Immigration)*, 2011 FC 8, at paragraph 15). Yet not only was this evidence not provided, but the applicant also indicated that his parents did not seem to have been bothered since moving to Kayes. As the Court noted in *Perez*, above, international protection is provided only if the country of origin cannot offer adequate protection throughout its territory (*Perez*, at paragraph 15). The RAD found that such protection was available to the applicant in Kayes. This finding appears to me to be unimpeachable, and in itself fatal in all aspects to the applicant's appeal, even having regard to the argument brought forth regarding section 96 of the Act.

[10] This case does not raise, as the parties at the hearing noted, any serious questions of general importance justifying the certification of a question to the Federal Court of Appeal.

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. There is no question to be certified.

“René LeBlanc”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5812-15

STYLE OF CAUSE: DJINDE KOITA v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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