Federal Court  Cour fédérale

Date: 20180413

Docket: IMM-3179-17

Citation: 2018 FC 403

Ottawa, Ontario, April 13, 2018

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

EBENEZER AWUNGAFAC NTEBO

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Under review in this case is a decision of the Immigration Division of the Immigration and Refugee Board of Canada [ID], dated July 5, 2017, whereby the ID found the Applicant to be inadmissible to Canada under paragraphs 34(1)(f) and 34(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The combined effect of these paragraphs is to make a permanent resident or a foreign national inadmissible on security grounds for being a

member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in the act of engaging in or instigating the subversion by force of any government.

[2] The Applicant is an English-speaking citizen of the Republic of Cameroon. He entered Canada in June 2015 and claimed refugee protection two months later on the ground that he is being targeted by the Cameroonian authorities due to his human rights work.

[3] On March 31, 2016, a report issued under paragraph 44(1) of the Act was transmitted to the Respondent Minister. The report determined that the Applicant was inadmissible to Canada under paragraph 34(1)(f) due to his membership in the Southern Cameroons Youth League [SCYL] as there are reasonable grounds to believe that the SCYL engages, has engaged or will engage in the act of instigating the subversion by force of any government. The Minister, pursuant to paragraph 44(2) of the Act, then referred the matter to the ID for an inadmissibility hearing.

[4] It is not disputed that the Applicant joined the Southern Cameroons National Council [SCNC] in 2005 and, as he was a youth at the time, that he was also considered a member of the SCYL, SCNC's youth wing. Although the Applicant does not deny membership in the SCYL, he claims that the Anglophone movement in Cameroon is fractured and that he was never a member of the SCYL faction that engaged in the actions referred to in paragraphs 34(1)(b) and (f) of the Act. In particular, he contends that he was never a member of the SCYL faction that took over a radio station in December 1999 – Radio Buea – and declared independence for Southern Cameroon.

[5] The ID dismissed the Applicant's claim. First, it found that there was sufficient evidence to conclude that the SCYL chose subversion and the use of force in its pursuit of independence for the Anglophone minority in Cameroon and that it was prepared to resort to violence to advance its cause. It further found that the takeover and occupation of Radio Buea by the SCYL in December 1999, as described in the documentary evidence, constituted instigating subversion or the overthrow of the government by force. There were therefore reasonable grounds to believe that the SCYL engaged in or instigated acts aimed at overthrowing the Cameroonian government.

[6] Then, the ID rejected the Applicant's arguments that he joined the SCYL a few years after the Radio Buea occupation, at a time where the SCYL had gone through some profound transformation into clear and distinct entities, some loyal to a pacifist approach, some not. Though the ID noted that there were tensions within the Anglophone Cameroonian movement from its inception which led to the creation of separate groups, those groups or factions and their leaders remained interconnected.

[7] In coming to this conclusion, the ID relied on statements made by the Applicant in his refugee protection's Basis of Claim form as well as during his testimony, on affidavits submitted by the Applicant, and on documentary evidence. Notably, the ID relied on evidence that one of the signatories of the condemnation of the Radio Buea occupation was also one of the individuals responsible for the occupation and that the current president of the SCNC faction which supposedly remains faithful to the principle of non-violence is associated with more violent individuals within the movement.

[8] The ID therefore determined that the Applicant was inadmissible under the combined effect of paragraphs 34(1)(b) and (f) of the Act and issued a deportation order against him.

II. Issue and Standard of Review

[9] The Applicant contends that the ID, in concluding as it did, committed a reviewable error by selectively relying on the evidence that supported its findings and by failing, as a result, to assess relevant evidence that supported his case.

[10] The Applicant made no submissions regarding the applicable standard of review while the Minister submits that the applicable standard of review is reasonableness. Given that issues regarding inadmissibility raise questions of mixed facts and law for which the ID has specialized knowledge and expertise, I agree with the Respondent that the applicable standard of review is reasonableness (*Najafi v Canada (Public Safety and Emergency Preparedness*), 2014 FCA 262 at para 56; *Canada (Citizenship and Immigration*) *v USA*, 2014 FC 416 at para 13; *Qureshi v Canada (Citizenship and Immigration*), 2009 FC 7 at para 16). As such, the Court shall only intervene if the ID's decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v New-Brunswick*, 2008 SCC 9 at para 47).

III. Analysis

[11] Again, it is uncontested that the Applicant was and is a member of the SCNC and the SCYL. The sole issue in the present case is whether there is more than one distinct SCYL group.

The Applicant submits that the SCYL splintered into two groups in 1997: (1) the SCYL group under the leadership of Akwanga Ebenezer which advocates for the use of force and (2) the SCYL under the SCNC. The Applicant argues that the group the ID considers subversive is the first while he belongs to the second. The question is whether it was reasonable for the ID, based on the evidence before it, to conclude that the SCYL groups were not distinct from each other.

[12] The Applicant alleges that in reaching its conclusion, the ID failed to consider evidence contrary to its conclusion. It is trite law that the ID is presumed to have considered all the evidence before it and not obliged to refer to every piece of evidence (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Hassan v Canada (Employment and Immigration)* (1992), 147 NR 317 (FCA)). However, the Applicant argues that in *Campos Quevedo v Canada (Citizenship and Immigration)*, 2011 FC 297 [*Campos Quevedo*], the Court found that general statements that all evidence has been considered were not sufficient enough to permit the ID to discard relevant evidence, particularly if that evidence was contrary to its findings (*Campos Quevedo* at para 8). The ID's decision can be distinguished from the Immigration and Refugee Board's decision in *Campos Quevedo* which contained contradictory statements, a theoretical rather than concrete assessment of the possibility of state protection, and a reliance on only the elements of the evidence that supported its conclusion despite clear contradiction of those conclusions in the documents cited.

[13] I find no support for the Applicant's contention that the ID discarded relevant evidence and testimony in the present case. In determining that the SCYL had not undergone a "profound and permanent transformation" or splintered, the ID relied primarily on evidence submitted by

the Respondent. However, it expressly noted in its reasons why it preferred the conclusion it reached over the Applicant's explanation that there is a violent SCYL faction that has splintered from, and is distinct from, the non-violent SCYL faction of which he is a member. The ID's assessment of the evidence before it is reasonable in that respect.

[14] For example, despite the January 8, 2000, Special Resolution of the SCNC in which it declared that the takeover of Radio Buea was inconsistent with the organization's pacific approach, and disassociated itself with the SCNC and SCYL factions whose leaders, Justice Ebong and Akwanga Ebenezer, respectively, were involved in the occupation of Radio Buea (*SCNC Special Resolution*, Certified Tribunal Record [CTR] at 464), the ID concluded that the Southern Cameroon independence groups remained interconnected and did not condemn the SCYL's actions. This conclusion is based on the fact that one of the signatories of the SCNC Special resolution, Chief Ayamba Ottun, was also one of the individuals involved in the occupation of Radio Buea (*Message of the SCYL secretariat*, New Year 2010, CTR at 68; *Unrepresented Nations and Peoples Organisation. Southern Cameroon: SCNC leader Chief Ayamba Passes Away At The Age of 91, 20 June 2014*, CTR at 212).

[15] The ID also noted that the current SCNC president, Mr. Nfor Ngala Nfor, who wrote a letter attesting that the violent faction of the SCYL under Akwanga Ebenezer splintered off in 1997 and that the Applicant is a member of SCNC youth league which remained non-violent (Affidavit of Nfor Ngala Nfor in support of the Applicant's refugee claim, CTR at 467), is associated, in the documentary evidence, with individuals in more violent factions. Mr. Nfor is listed as co-leader of one of the SCNC factions with Chief Ayamba Ottun who, as previously

mentioned, was involved in the takeover of Radio Buea (*Immigration and Refugee Board Canada Responses to Information Requests, 2 April 2008,* CTR at 204). Furthermore, when Justice Frederick Aobwede Ebong, a SCNC activist with close ties to the SCYL who took over Radio Buena in 1999, was made Chairman of the SCNC in 2000, Mr. Nfor was elevated to the position of Vice-Chairman within the organization (Konigs, P and Nyamnjoh, F.B., *Negotiating an Anglophone Identity: A Study of Politics of Recognition and Representation in Cameroon*, CTR at 371).

[16] With regard to the evidence presented by Mr. Nkea in particular, I find issue with the Applicant's statement that Mr. Nkea "provided lengthy expert testimony in the hearing" before the ID, as Mr. Nkea does not appear to have been introduced as an expert witness. Nowhere in the documents submitted by the Applicant or in the ID hearing transcripts is there any reference to Mr. Nkea as an expert witness. Furthermore, though the List of Witnesses submitted by the Applicant lists Mr. Nkea and his qualifications as a barrister, solicitor, notary and judge, there is no description of his qualifications as an expert on the structure and factions of the SCNC-SCYL that is required by paragraph 32(1)(d) of the *Immigration Division Rules*, SOR/2002-229.

[17] In his written statement and testimony, Mr. Nkea explained how he was the founding member of the SCYL, which was formed as the youth wing of the SCNC to complement its activities in seeking the restoration of statehood to the former British Cameroon. He further stated that two SCYL factions emerged in 1997, one which was part of the mainstream SCNC which seeks to reach its objective through dialogue, while the other took a different approach and was responsible for the occupation of Radio Buea. There is no debate that the ID did not

specifically address each aspect of Mr. Nkea's written statement or testimony in its decision. However, as examined in the previous paragraphs, the ID clearly addressed why it chose not to adopt the Applicant's and Mr. Nkea's positions.

[18] The fact that the ID was not convinced by the evidence and testimonies before it that there is more than one distinct SCYL group, but came to no conclusion that the Applicant and Mr. Nkea were not credible, does not render the ID's decision unreasonable. It further does not permit a conclusion that the ID failed to assess all of the evidence before it.

[19] With regard to the Applicant's contention that the ID appears to have lowered the burden of proof when concluding that the SCYL was not splintered into factions, I disagree. The Applicant states that "[t]he Board rejects the testimony [of the Applicant and Mr. Nkea] outright and completely because it does not demonstrate 'clearly and *definitely*' that the group is a 'whole other entity'" (Applicant's Memorandum at para 12). However, the ID wrote that "[t]he explanations given by Mr. Ntebo and by Mr. Nkea and the written statements (A-5 and A-10) on the splintering of the group does not demonstrate that this is clearly and definitely a whole other entity" (ID decision at para 22).

[20] I cannot conclude that the ID's statement indicates that it applied the wrong burden of proof. Though this statement could be ambiguous, I read it as meaning that the ID found that the testimonies of the Applicant and Mr. Nkea did not demonstrate that the SCYL group which advocates for the promotion of its cause through any possible means and the SCYL group to which the Applicant claims to be is a member are distinct entities. The evidence submitted by the

Applicant and Mr. Nkea was not sufficient to counteract other evidence before the ID that the groups are interconnected. Furthermore, the rest of the ID's decision demonstrates a clear understanding that the applicable burden of proof is "reasonable grounds to believe", notably at paragraphs 12, 14 and 18 of the decision.

[21] The Applicant did not press this issue at the hearing of the present judicial review application.

[22] In sum, after a careful review of the evidence on record, I find that the ID's conclusion that the factions of the SCYL remain interconnected and that, as a result, the Applicant's membership in that organization triggers the application of paragraphs 34(1)(b) and (f) of the Act, is reasonable as it falls within a range of possible, acceptable outcomes.

[23] Neither party advances that this case raises an issue of general importance for appeal. I agree.

JUDGMENT IN IMM-3179-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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