Federal Court  Cour fédérale

Date: 20210503

Docket: IMM-6901-19

Citation: 2021 FC 388

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 3, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

BERNABE TITO MUAMBA
LAURETE OTEKAVA SIBO MUAMBA
RODE LUKENIA SIBO MUAMBA
PEDRO AFONSO SIBO MUAMBA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The principal applicant, Bernabe Tito Muamba, and his three minor children are seeking judicial review of a decision rendered on October 30, 2019, by the Refugee Appeal Division

[RAD]. In its decision, the RAD confirmed the decision of the Refugee Protection Division [RPD] that the applicants are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicants are citizens of Angola. The principal applicant [applicant] alleges that he was persecuted due to his refusal to become a member of the ruling Popular Movement for the Liberation of Angola [MPLA] party.

[3] In the account accompanying his Basis of Claim Form [BOC Form], the applicant states that, despite his good work performance, his applications were systematically rejected when permanent positions became available in the public service because he refused to join the MPLA. As well, in 2015 a neighbour took over his studio, and the police told him that they could do nothing to help because the neighbour was an MPLA member, whereas he was not. The following year, the applicant was threatened during a telephone call after he told the caller that he did not wish to become an MPLA party member. The applicants' house was then broken into three times, but the police refused to intervene. Finally, the applicants' house was without water from January to March 2017. The applicant believes that it was a scheme by his persecutors to weaken his family and make him join the party.

[4] The applicant and the minor applicants left Angola and entered Canada in April 2017 via the United States.

[5] The RPD rejected the applicants' claim for refugee protection on July 16, 2018. It found that the applicants had failed to establish a nexus between the applicant's refusal to join the MPLA and certain alleged incidents of persecution. For example, it found that the problems related to the applicant's desired professional advancement constituted discrimination at the very most, since his salary still allowed him to adequately meet the needs of his family and even take several family trips abroad. It also found that the thefts the applicants were subjected to stemmed from a generalized risk shared by the entire Angolan population, the applicant himself having testified that his neighbourhood had been becoming increasingly dangerous and out of control, that the country's security situation had significantly deteriorated and that the crime rate had increased. Furthermore, the RPD was of the opinion that there was no evidence that the water shut-off to the applicants' residence was connected to the applicant's political position. Lastly, the RPD pointed out that the MPLA had not attempted to communicate with the applicant between May 2016, when he received the threatening telephone call, and April 2017, when he left for the United States. It found that the applicants' allegations placing all the blame on the MPLA were purely hypothetical and speculative and were not based on any concrete evidence. The RPD concluded that, taken individually or cumulatively, the incidents and the treatment described by the applicants did not constitute a form of persecution and that the applicant would not be subjected to a risk within the meaning of subsection 97(1) of the IRPA if he were to return.

[6] The applicants appealed that decision to the RAD and sought to submit additional evidence and a supplementary memorandum. The evidence was intended to show that there was an error in the interpretation provided at the hearing before the RPD. Although no submissions

were made regarding the admissibility of the evidence, the RAD accepted an affidavit from an Angolan citizen about an interpretation error, and the supplementary memorandum submitted by the applicants' new counsel. The RAD refused the other evidence, finding that it was not relevant. Despite the new evidence, the RAD dismissed the appeal. It concluded that there had been no breach of procedural fairness because the interpretation error did not in any way affect the RPD's ultimate conclusion on the merits. The RAD also confirmed the RPD's conclusion that the applicants had been subjected to discrimination rather than persecution.

[7] The applicants submit that the RAD unreasonably concluded that the error in the interpretation provided at the RPD hearing was not a breach of natural justice. They also argue that the RAD erred in law in analyzing the grounds of persecution and that it unreasonably concluded that the three thefts and the water shut-off had no connection to the applicant's political opinion.

II. Analysis

A. *Standard of review*

[8] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada established that reasonableness is presumed to be the applicable standard for decisions of administrative tribunals. This presumption can be rebutted in two types of situations. Neither applies in this case (*Vavilov* at paras 10, 16–17).

[9] This Court believes that the reasonableness standard also applies to the RAD's conclusion that there was no breach of procedural fairness before the RPD. The issue in this case is not whether the RAD breached procedural fairness but rather whether there was a breach before the RPD (*Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24; *Brown v Canada (Citizenship and Immigration)*, 2018 FC 1103 at paras 24–25; *Abuzeid v Canada (Citizenship and Immigration)*, 2018 FC 34 at para 12).

[10] When reasonableness is the applicable standard, the Court focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). The Court asks whether "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). It is not a question of a "line-by-line treasure hunt for error" (*Vavilov* at para 102). In addition, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

B. *Error in interpretation*

[11] The applicants alleged before the RAD that they were subjected to a breach of natural justice due to an error in interpretation at the hearing before the RPD. The error involved the severity of the threat received during the telephone conversation in May 2016. The interpreter translated that the applicant's attacker had threatened to [TRANSLATION] "slap or smack" him for refusing to join the MPLA. However, the applicant testified that the caller had threatened to

[TRANSLATION] “beat him up”, which is a more serious threat. The applicants allege that the error in interpretation led the RPD to underestimate the severity of the threat.

[12] It is well established that refugee protection claimants appearing before the RPD are entitled to interpretation that is continuous, precise, competent, impartial and contemporaneous. They do not require proof of prejudice to demonstrate a breach of this right (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 4 [*Mohammadian*]; *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at para 27 [*Paulo*]; *Haggar v Canada (Citizenship and Immigration)*, 2018 FC 388 at para 22 [*Haggar*]; *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at para 13 [*Gebremedhin*]; *Huang v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 326 at para 8 [*Huang*]).

[13] However, it is not necessary for the interpretation to be perfect (*Mohammadian* at para 6). For an error of interpretation to amount to a breach of procedural fairness, it must be sufficiently serious, material and non-trivial (*Paulo* at para 28; *Gebremedhin* at para 14; *Huang* at para 16).

[14] Although the refugee protection claimant need not demonstrate actual prejudice, they must nonetheless show that the alleged error was serious and non-trivial, that it hindered their ability to present their allegations and to answer questions, and that it was material to the panel’s findings. It must affect a central aspect of the RPD’s findings (*Paulo* at para 32; *Haggar* at para 22; *Siddiqui v Canada (Citizenship and Immigration)*, 2015 FC 1028 at para 72).

[15] In its reasons, the RAD agreed that there had been an error in interpretation and that the word "*porrada*" should have been translated as being "beaten up" rather than merely receiving a "slap". However, it noted that the applicant's account in his BOC Form stated that he had been threatened with being "beaten up" and that he had confirmed at the hearing that the contents of his BOC Form were true. The RAD stated that it would use this version in its analysis. In its opinion, the error in interpretation was not material to the RPD's finding since, regardless of the severity of the threat, the MPLA had had no contact with the applicant in the year before his departure and the other alleged incidents did not amount to persecution.

[16] The onus was on the RAD to assess whether the error in interpretation was sufficiently serious and material as to amount to a breach of procedural fairness. The applicants failed to satisfy this Court that the RAD's conclusion and analysis in this regard were unreasonable.

C. *Grounds of persecution*

[17] First, the applicants allege that the RAD imposed an incorrect test by stating that the primary issue in this case was the absence of a nexus between the threat received by the applicant for refusing to join the MPLA and the home break-ins and water shut-off. They argue that the threat alone was sufficient to conclude that the applicant had experienced persecution and to grant him refugee protection. The applicants submit that, once a person receives serious threats to their physical well-being on the basis of a Convention ground, in this case political opinion, they need not make or show any nexus to subsequent threats.

[18] Second, the applicants allege that the RAD's analysis is unreasonable because it dismissed their argument that the RPD failed to consider the applicant's refusal to join the MPLA as a ground of persecution within the meaning of the Convention.

[19] The Court cannot accept these arguments.

[20] Contrary to the applicants' allegations, the RAD did not seek to establish a nexus between the threat and the subsequent incidents, namely the three thefts and the water shut-off. Rather, as it stated repeatedly, the RAD sought to determine whether a nexus existed between these incidents and the fact that the applicant was apolitical, the alleged ground of persecution. It was the applicants who suggested that there was a nexus in the close timing of these incidents and the threat from the MPLA member.

[21] A refugee protection claimant who alleges persecution on a Convention ground must establish that they subjectively fear persecution and that this fear is well founded in an objective sense. The onus is on the claimant to show that there is a nexus between the persecution and the Convention ground and that the persecution is directed against the claimant, either personally or as a member of a particular group (*Canada (Attorney General) v Ward*, [1993] 2 RCS 689 [*Ward*]). The burden is on the claimant to establish a serious possibility of persecution.

[22] "Persecution" has been defined as a "sustained or systemic violation of basic human rights demonstrative of a failure of state protection" (*Ward* at 734). The dividing line between discrimination and persecution can be difficult to establish. To be characterized as persecution,

the incidents of discrimination in question must be “serious and occur with repetition, and must have consequences of a prejudicial nature for the person” (*Noel v Canada (Citizenship and Immigration)*, 2018 FC 1062 at para 29; *Balazs v Canada (Citizenship and Immigration)*, 2013 FC 62 at paras 27, 30, citing *Sagharichi v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 796, 182 NR 398 (FCA) (QL); *Nyembua v Canada (Citizenship and Immigration)*, 2015 FC 970 at para 20; *Sefa v Canada (Citizenship and Immigration)*, 2010 FC 1190 at para 10).

[23] The RAD was of the opinion that the applicants had failed to establish a nexus between the applicant’s political opinion and the home break-ins and water shut-off incidents. However, it acknowledged that three other alleged incidents had a nexus to a Convention ground: (1) the lack of promotions because the applicant refused to join the MPLA; (2) the refusal of the police to intervene when the applicant’s neighbour took over the applicant’s studio; and (3) the threat made during the telephone conversation in May 2016 that the applicant would be beaten up. It found that the lack of promotions and the refusal of the police to intervene amounted to discrimination rather than persecution. As for the threat, the RAD pointed out that no one from the MPLA had contacted or interacted with the applicant during the one-year period between the threat and the applicants’ departure from Angola. The RAD was of the opinion that the applicants’ basic rights had not been violated and that the three incidents, taken individually or cumulatively, were not sufficiently sustained or systemic to amount to persecution. It therefore agreed with the RPD’s findings.

[24] When the RAD's reasons are interpreted as a whole and in a textual way, the Court is not persuaded that the RAD applied an incorrect test for persecution.

[25] As for the applicants' second allegation, the RAD stated that it was clear that the RPD considered the applicant's refusal to join the ruling political party as falling within the Convention ground of political opinion. The analysis by the RPD and the RAD regarding a nexus between the applicant's political opinion and the alleged incidents of persecution clearly shows that they considered the applicant's apolitical nature to fall within one of the Convention grounds. The applicants' argument is therefore without merit.

D. *Absence of nexus between applicant's political opinion and certain alleged incidents*

[26] The applicants submit that the RAD unreasonably concluded that the three home break-ins and the water shut-off had no connection to the applicant's political opinion. They again suggest that the fact that the three home break-ins occurred shortly after the MPLA member's threat is sufficient, on a balance of probabilities, to establish a nexus between the applicant's political opinion and the home break-ins. They further state that the applicant also testified that his neighbours were not victims of such crimes during that time. Regarding the water shut-off for 90 days, the applicants submit that the RAD disregarded the applicant's testimony at the RPD hearing, where the applicant explained that the water shut-off was a tactic generally used by the government to put pressure on people. The applicants further state that other homes in the neighbourhood had water, demonstrating that the applicant had been targeted.

[27] The Court cannot accept these arguments.

[28] After a thorough analysis of the RPD's decision and the evidence submitted by the plaintiff, the RAD concluded that there was insufficient evidence to show a nexus between the applicant's political opinion and the break-ins and water shut-off at his home. It was of the opinion that the evidence instead showed that crime in Angola had increased during the period in question, as indicated by the national documentation and the applicant's testimony at the hearing before the RPD. The documentary evidence on Angola also confirmed that law enforcement was weak as a result of corruption and a lack of resources and training. In addition, the absence of any communication from the MPLA for almost a year before the applicants' departure from Angola demonstrated the MPLA's lack of interest.

[29] It should be noted that conclusions regarding the evaluation of evidence require a high degree of deference from this Court. Although the applicants may disagree with the conclusions of the RAD and the RPD, it is not the role of this Court to reassess and reweigh the evidence to reach a conclusion favourable to them. The role of this Court is to assess whether the decision bears the hallmarks of reasonableness. (*Vavilov* at paras 97, 99, 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). This Court finds that it does.

[30] For the reasons above, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-6901-19

THE JUDGMENT OF THIS COURT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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