

Federal Court



Cour fédérale

Date: 20240909

Docket: IMM-9499-23

Citation: 2024 FC 1410

Ottawa, Ontario, September 9, 2024

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

GIDEON KWEKU ACKON

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Mr. Gideon Kweku Ackon, is a 40-year-old citizen of Ghana, from the village of Breiman Essiam in Ghana's Central Region, and a member of the Asuna Family, a family within which, according to local custom, the chieftaincy of his community is to reside. Mr. Ackon's wife and two children remain in Ghana.

[2] Following the death of Mr. Ackon's grandfather, the chief of the Asuna extended family, in 2012, community elders gathered to begin the process of choosing the next chief; Mr. Ackon was one of five hopefuls from the Asuna families being considered for the chieftaincy. Not everyone was happy with the prospect of Mr. Ackon becoming chief; in 2016, Mr. Ackon's two cousins – who supported two other candidates – told Mr. Ackon that they would not support him if he became chief and threatened him with death. The community elders, unable to resolve the dispute, postponed the selection of a new chief; in the meantime, Mr. Ackon left the village and went to work as a welder in Kumasi.

[3] In August 2017, Mr. Ackon returned to his village for the enstoolment ceremony – which was to take place two days later – and was again threatened by his two cousins and their supporters; intervention by the elders again failed to resolve the dispute, leading them to delay again the decision on chieftaincy. Mr. Ackon left his village and went to live with a friend in Winneba, and then left Ghana altogether in order to find work; Mr. Ackon also sent his wife and children to live in his wife's home village during this time.

[4] Two years later, in August 2019, Mr. Ackon returned to Ghana to apply for a Canadian visa. However, the following month, in September 2019, the community elders announced that Mr. Ackon would become the next chief. On the enstoolment day in December 2019, the two cousins and their supporters again threatened to kill Mr. Ackon if he did not renounce the chieftaincy. Mr. Ackon sought the help of the local police; after a vain attempt at locating Mr. Ackon's cousins, the police refused to offer Mr. Ackon any further protection. Fearing for his life, Mr. Ackon left his village for Accra, and departed for Canada in January 2020. At the

same time, Mr. Ackon's mother, who had also been living in Breiman Essiam, moved to be close to Mr. Ackon's wife who was still living with the children in her home village.

[5] It is not clear whether the instoolment ceremony installing Mr. Ackon as chief of the Asuna extended family actually took place in December. In any event, since coming to Canada, Mr. Ackon has received no information that his cousins or their supporters have disturbed his family. Nor does it seem that the elders of the community are in a hurry to get Mr. Ackon back; it would seem that they are dealing well with their role of leaders of the community in Mr. Ackon's stead.

[6] Mr. Ackon admits that the threats to his life by his cousins would cease in the event he renounces the chieftaincy.

[7] On December 5, 2022, the Refugee Protection Division [RPD] denied Mr. Ackon's claim for refugee protection. On July 7, 2023, the Refugee Appeal Division [RAD] dismissed his appeal; it is this decision which forms the subject matter of the present application for judicial review.

[8] In its decision, the RAD accepted Mr. Ackon's factual evidence as true, on the balance of probabilities, but assessed his claim only under section 97 of the *Immigration and Refugee Protection Act* SC 2001, c. 27 [Act]. The RAD determined that in order for Mr. Ackon to be considered a Convention Refugee under section 96 of the Act, he must be targeted because of his genealogy, which was not the case here; the RAD determined that Mr. Ackon was neither a

member of a particular social group nor did he otherwise have a nexus to the Convention, as his testimony confirmed that he did not consider the chieftaincy to be religious in nature. The RAD also found that Mr. Ackon was in a position to renounce the chieftaincy and no longer face a forward-looking risk. In any event, according to the RAD's findings, Mr. Ackon had all but given up the chieftainship by moving to Canada.

II. Issue and standard of review

[9] Mr. Ackon raises three issues. His principal argument is that the RAD committed a reviewable error in refusing to consider his claim under section 96 of the Act, thus requiring him to meet the greater threshold of establishing future risk under section 97 of the Act. He also argues that a reviewable error was committed by the RAD when determining, first, that he does not face persecution or a forward-facing risk of harm if he abandons his position as chief, and second, that his right to retain his position and act as chief is not a fundamental human right.

[10] Mr. Ackon argues that I should consider the issues raised through the prism of a correctness standard. I disagree; the presumptive standard of review of a decision of the RAD is one of reasonableness, and none of the circumstances of this matter warrant a departure thereof (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). Under reasonableness review, the Court's role is to examine the reasoning of the administrative decision maker and the result obtained to determine whether the decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The Court must ask "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).

III. Assessment by the Courts

[11] Section 96 of the Act states:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;
or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

[Emphasis added.]

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[Je souligne.]

[12] Mr. Ackon argues that the RAD erred, first, in finding that he was not a member of a particular social group; he points to the test set out in *Canada (Minister of Employment and Immigration) v Mayers*, 1992 CanLII 2412 (FCA), [1993] 1 FC 154 [*Mayers*], and argues that, as

a member of the Asuna extended family, he is a member of a particular social group, as the Asunas share “basic, innate, unalterable characteristics, consciousness and solidarity” (*Mayers* at 165). According to Mr. Ackon, because the chieftainship has a religious component to it and that one can only become chief if a member of the Asuna family, his claim has a nexus to a Convention ground and should have been assessed by the RAD under section 96 of the Act.

[13] As regards the religious aspect of the chieftaincy, Mr. Ackon points me (as he did the RAD) to two items in the objective evidence for Ghana which describe chiefs in that country as owners of shrines or gods. Mr. Ackon also underscores his own evidence, accepted by the RAD, that he is genuinely – subjectively – worried that if he were to disappoint the elders by refusing the chieftaincy, he would suffer “spiritually punishment” for bringing bad luck to his community. Mr. Ackon claims to be under stress related to such fear of spiritual punishment by the elders – of becoming ill because of the magical or religious powers of the elders for disobeying them – and possibly being ostracized by his community, were he to renounce the chieftaincy. Consequently, according to Mr. Ackon, forcing him to give up the chieftaincy would be tantamount to forcing him to renounce his right to practise his religion.

[14] I remain unconvinced.

[15] The RAD acknowledged the objective evidence which, admittedly, only spoke of chiefs in Ghana generally and did not mention Mr. Ackon’s village in particular, but preferred the oral testimony of Mr. Ackon who, himself, described the role of the chief as representing the people of the village and being the arbiter of disputes within the community; no mention was made of a

religious component in respect of the role of chief of his community. I see nothing unreasonable with such a finding.

[16] As to Mr. Ackon's fear of spiritual punishment if he were to renounce the chieftaincy, even if the subjective requirement for the establishment of a well-founded fear, as set out in *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 [*Ward*], may arguably be met, the fear must also "be well-founded in an objective sense" (*Ward* at 723). The RAD found that although Mr. Ackon may loathe and possibly fear disappointing the community elders, his subjective fear of persecution, or prospective fear for his life, on the basis that the elders would somehow cause Mr. Ackon to fall ill or bring spiritual and social persecution upon him if he renounced the chieftaincy, was nonetheless speculative from an objective perspective. Mr. Ackon conceded that his absence from Ghana has failed to bring spiritual punishment upon him because, it would seem, the elders are not necessarily displeased with the state of affairs created by his absence. In any event, for my part, I do not see anything unreasonable with the findings of the RAD; it is certainly not my role to reweigh the evidence.

[17] In addition, and even if I were persuaded that membership in the Asuna family constitutes a particular social group, I remain unconvinced that this would be sufficient to trigger section 96 of the Act; the provision of the statute requires that fear of persecution must be "for reasons of race, religion, nationality, membership in a particular social group" [emphasis added]. Mr. Ackon is not targeted because he is a member of the Asuna family; in fact, his agents of persecution are also members of the Asuna family who support other candidates of the Asuna

family. The reason why Mr. Ackon is being targeted is that he has been selected by the community elders to be chief; membership in the Asuna family is simply a required coincidence.

[18] Accordingly, nor am I convinced of the unreasonableness of the RAD's determination that a prospective risk had not been established or that Mr. Ackon was not being deprived of his fundamental human rights.

JUDGMENT in IMM-9499-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: GIDEON KWEKU ACKON v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Jonathan Gruszczynski FOR THE APPLICANT

Mathieu Laliberté FOR THE RESPONDENT

SOLICITORS OF RECORD:

EMJLegal Inc. FOR THE APPLICANT
Westmount, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montreal, Quebec