

**Date: 20070208**

**Docket: IMM-3269-06**

**Citation: 2007 FC 138**

**Ottawa, Ontario, the 8th day of February 2007**

**PRESENT: THE HONOURABLE MR. JUSTICE BEAUDRY**

**BETWEEN:**

**AJEMA MOLEBE  
LESLIE KAKRA  
NAOMI MOTEMONA AMBA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the tribunal), delivered on May 16, 2006, that the applicants, a mother and her two minor daughters, were neither “Convention refugees” nor “person[s] in need of protection”.

[2] In a related file (IMM-3034-06), the Minister applied for judicial review of the exclusion of the principal applicant (the applicant) pursuant to paragraphs 1(F)(a) and 1F(c) of the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137 (the Convention). Although the facts are the same, the issues are different. Consequently, the reasons for judgment will be delivered separately.

## **ISSUE**

[3] Were the tribunal's findings concerning the applicant's credibility made in a perverse or capricious manner or without regard for the material before it?

[4] For the following reasons, the answer to this question is negative. The application for judicial review will therefore be dismissed.

## **FACTS**

[5] The applicant is a citizen of the Democratic Republic of Congo (DRC). She arrived in Canada on December 15, 2002, with her child Leslie Kakra, who was then one year old and of American nationality. In August 2005, her daughter, Naomi Motemona, who was 12 years old at the time and had been living in Belgium with her father for three years, came to join the applicant. All three claimed refugee protection in Canada as refugees from the DRC, under section 96 and subsection 97(1) of the Act.

[6] The applicant alleged that she is wanted for murder for having killed a member of the military in a car accident. She claimed that she was arrested and imprisoned but was released after Colonel Kapend intervened.

[7] The applicant also stated that she is afraid of what will be happen to her when she returns to the DRC because Colonel Eddy Kapend was accused and sentenced to death in January 2003 for the assassination of President Laurent-Désiré Kabila on January 13, 2001.

[8] The applicant also submitted that she is suspected of having helped Rwandans to leave Kinshasa. Finally, as a member of the Movement for the Liberation of Congo (MLC), the applicant would be associated with those who fought against the regime of President Laurent-Désiré Kabila in 1999. Furthermore, she claimed to have transported sealed envelopes on behalf of the MLC to different countries in Africa while working as a flight attendant for Air Zaïre.

[9] However, the tribunal dismissed their claim. They are challenging that decision by means of the present application for judicial review.

### **IMPUGNED DECISION**

[10] The claims of the minor children were dismissed because of the children's nationalities (Leslie – American, Naomi – Congolese-Belgian). Neither of them has a fear of persecution in their respective countries, namely, the United States and Belgium. As for the applicant, she was unable to show that she had a well-founded fear of persecution or that her life would be in danger in the DRC. In fact, the tribunal dismissed the applicant's claim on the basis of her lack of credibility.

[11] The tribunal made seven negative findings regarding the applicant's credibility.

- (a) Although the applicant claimed to fear persecution for having killed a member of the military in a car accident, the applicant denied this version of her story during the hearing, stating that the immigration officer had misunderstood her. The tribunal found that she had nothing to fear if she had not killed the serviceman in question.
- (b) The applicant contradicted herself by testifying that she was afraid DRC authorities would reopen her file, but she did not specify what was in the file. Questioned more closely on the subject, the applicant claimed that the immigration officer had misunderstood her. The tribunal was not satisfied by this explanation.
- (c) Despite her claims of having worked as a messenger for the MLC, the applicant was not able to give a clear and consistent answer regarding the number of times she carried out this task. Her answer varied from every week to six or seven times to three times. The tribunal was troubled by the fact that she could not give a straight answer on this subject.
- (d) The applicant alleged that she feared being arrested and convicted for complicity in the assassination of President Laurent Kabila, by reason of her romantic involvement with Colonel Kapend. The documentary evidence showed that all those accused of the assassination had already been tried at Kinshasa. The evidence before the tribunal revealed that the applicant's name did not appear anywhere on the lists of accused or wanted persons.
- (e) Although claiming that she has been wanted for murder since 1998, the applicant did not leave the DRC until 2001. The explanation for this delay did not convince the tribunal.

- (f) The documentary evidence showed that the applicant went to Brazzaville at least twice during the period that she was allegedly wanted by authorities without being apprehended. She said she was able to return freely and voluntarily to her country because her children remained there at her home. The tribunal drew a negative inference from this.
- (g) As for the applicant's fear for her safety relating to the assistance she allegedly gave Rwandans in Kinshasa, the tribunal found it unlikely that she would continue to be afraid in 2006, two years and nine months after transitional institutions were set up in June 2003, when the belligerents united. This change in circumstances does not in any way support the applicant's claim. The tribunal noted that the current party in power in the DRC is the Congolese Rally for Democracy (RCD), the majority of members of which are Congolese of Rwandan origin.

[12] As for the psychological report filed by the applicant, the tribunal found that this document could not support a testimony deemed not credible.

[13] The tribunal also considered whether the applicant would be danger if she were removed to her country pursuant to subsection 97(1) of the Act but found that there was no element of credibility that would make a positive finding possible.

## ANALYSIS

### *Standard of review*

[14] When the issue is the refugee protection claimant's credibility, the appropriate standard of review is patent unreasonableness. In *Aguebor v. (Canada) Minister of Employment and Immigration*, [1993] F.C.J. No. 732 (QL), the Federal Court of Appeal stated the following at paragraphs 2 to 4:

In his memorandum, counsel for the appellant relied on the decision of this Court in *Giron v. Minister of Employment and Immigration* in support of his argument that a court which hears an application for judicial review may more easily intervene where there is a finding of implausibility. Because counsel are using *Giron* with increasing frequency, it appeared to us to be useful to put it in its proper perspective.

It is correct, as the Court said in *Giron*, that it may be easier to have a finding of implausibility reviewed where it results from inferences than to have a finding of non-credibility reviewed where it results from the conduct of the witness and from inconsistencies in the testimony. The Court did not, in saying this, exclude the issue of the plausibility of an account from the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is "plausibility" or "credibility".

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, [sic] of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

*Lack of credibility*

[15] The tribunal raised a number of doubts concerning the applicant's credibility and gave her the opportunity to explain herself. Responses were often contradictory or even implausible.

*Lack of reasons concerning important evidence*

[16] Counsel for the applicant submits that, in its reasons, the tribunal failed to refer to certain pieces of important and relevant evidence that could justify the claim for refugee protection. He cites *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (F.C. Trial Division) (QL).

[17] A thorough review of the file does not support this contention.

[18] The Court finds that there is nothing to warrant intervention in this case.

[19] The parties did not submit a question to be certified, and there is none in the case.

**JUDGMENT**

**THE COURT ORDERS that:**

1. The application for judicial review of file IMM-3269-06 be dismissed. There is no question to be certified.

“Michel Beaudry”

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Judge

Certified true translation  
Gwendolyn May, LLB

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3269-06

**STYLE OF CAUSE:** **AJEMA MOLEBE LESLIE KAKRA NAOMI  
MOTEMONA AMBA v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 8, 2007

**REASONS FOR JUDGMENT BY:** The Honourable Mr. Justice Beaudry

**DATED:** February 8, 2007

**APPEARANCES:**

Luc R. Desmarais FOR THE APPLICANTS

Annie van der Meerscen FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Luc R. Desmarais FOR THE APPLICANTS  
Montréal, Quebec

John Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec