

Date: 20081216

Docket: IMM-2413-08

Citation: 2008 FC 1378

Ottawa, Ontario, December 16, 2008

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

REMIGIUS CHINEDU CLETUS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicant, Mr. Remigius Chinedu Cletus, is a Nigerian citizen of the Igbo tribe, who arrived in Vancouver on August 13, 2006. Mr. Cletus subsequently made a claim for protection, under ss. 96-97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (IRPA) on the basis of his former membership in the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), a separatist group espousing Igbo unity and independence for Biafra, a region in south-eastern Nigeria.

[2] In a decision dated May 7, 2008, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) determined that the Applicant was not a Convention refugee and was not a person in need of protection. Key determinations by the Board were as follows:

- Due to contradictions, inconsistencies and omissions in the Applicant's evidence, the Board concluded that the Nigerian government did not have any particular interest in the Applicant when he was in the country and had no more interest in him since his departure.
- With respect to the Applicant's claim that his fear was based on his identity as an Igbo, the Board found no substantial evidence to establish that Igbos, as a racial group in Nigeria, were persecuted on that basis.
- With respect to the Applicant's claim under s. 97(1), the Board concluded that there was no evidence—either personal or documentary—that would provide a foundation for establishing a personal “risk” for the Applicant.

[3] The Applicant seeks an order setting aside this decision of the Board.

II. Issues

[4] This application raises the following issues:

1. Did the Board err in finding that the Applicant faced no objective risk of persecution?
2. Did the Board err in assessing the applicant's credibility?
3. Will the Applicant's right to natural justice be denied if this Court proceeds with this judicial review without a verbatim transcript of the refugee protection hearing?

III. Analysis

A. *Preliminary: Standard of Review*

[5] This application raises issues relating to the Board's credibility findings and its assessment of the Applicant's objective fear of persecution. Both are findings of fact that are reviewable on a reasonableness standard of review (*Zhan v. Canada (Minister of Citizenship and Immigration.)*, 2008 FC 711 at para. 16, *Choto v. Canada (Minister of Citizenship and Immigration.)*, 2008 FC 631 at para. 16). Therefore, the Board's findings should not be disturbed so long as they do not fall outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

[6] With respect to the natural justice issue, the appropriate standard is correctness.

B. *Issue #1: Did the Board err in finding that the Applicant faced no objective risk of persecution?*

[7] The Applicant claimed refugee protection as a Convention refugee and a person in need of protection on the basis of fear of persecution due to race (as an Igbo), membership in a particular social group (MASSOB) and political opinion.

[8] The Applicant submits that the Board erred by imposing the wrong burden on him in requiring him to prove that he was personally targeted by the Nigerian authorities. This, the Applicant alleges, is an error in law because the Board applied a higher standard than was needed under ss. 96-97. A claimant need not prove that they are personally persecuted; it is sufficient to demonstrate that reprehensible acts had been committed and will likely be committed against members of the group to which the claimant belongs (*Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250 at para. 19 (C.A.)). Here, the Applicant submits, there was ample evidence to confirm that MASSOB members continued to be persecuted by the Nigerian authorities.

[9] In addition, the Applicant submits that he had been persecuted personally as he had been beaten and had come close to arrest. The Board ignored this evidence and misunderstood the burden that had to be met.

[10] The Applicant has mischaracterized the issue. Based on my reading of the Board's decision, the error that had been committed by the RPD in *Salibian* is not present here. Specifically, the Board did not require that the Applicant prove that he had been personally persecuted. Rather, it found that membership in MASSOB or as an Igbo did not necessarily result in persecution by state authorities. In other words, the Board found that the Applicant's claim was not supportable on an objective basis. The real issue before me, then, is the reasonableness of the Board's conclusion.

[11] I begin by reiterating that the Board's decision would only be unreasonable if, based on the evidence put before it, its conclusion that the Applicant faced no risk of persecution fell outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

[12] Significant evidence was before the Board with respect to the alleged persecution of MASSOB members and of the Applicant as an alleged MASSOB member. The Board made a series of findings with respect to this evidence, none of which are disputed by the Applicant.

[13] Based on the evidence before the Board, I cannot conclude that the Board's conclusion was unreasonable. The Board reasonably found that even though riots had occurred during various MASSOB-organized protests, it did not necessarily follow that MASSOB members were persecuted by the Nigerian authorities. Thus, even if the Applicant had been a member of MASSOB, he had not persuaded the Board that MASSOB members, in general, had a well-founded fear of persecution.

[14] Moreover, the Board was reasonable in rejecting the Applicant's claim based on race, as an Igbo. There was no suggestion that Igbos were persecuted, except insofar as MASSOB was formed primarily of Igbos and riots had erupted between MASSOB and the Nigerian authorities.

C. *Issue #2: In assessing the Applicant's credibility, did the Board err by ignoring evidence?*

[15] The Applicant takes issue with each of the three negative credibility findings made by the Board. The gist of the argument is that the Board ignored the evidence provided by the Applicant to explain the apparent omissions and discrepancies. The concerns of the Applicant can be summarized in chart form as follows:

Negative credibility finding	Applicant's explanation	What the Board did
Applicant gave the wrong date for when he first joined MASSOB	He was nervous because he distrusted authority figures based on his previous encounters with them in Nigerian and the contradiction was given during his first encounter with a Canadian official	In its reasons, the Board summarized the Applicant's explanation as "he was nervous"
Applicant could not recite MASSOB's motto	He never paid attention to the motto because he did not work with MASSOB letterhead	In its reasons, the Board summarized this explanation as "he never paid attention to it"

Negative credibility finding	Applicant's explanation	What the Board did
Applicant submitted letters from a friend and MASSOB secretary to corroborate his alleged involvement with MASSOB. This conflicted with the country report evidence, in which MASSOB's lawyer stated that the organization did not provide letters to support asylum claims. The Applicant also provided a follow-up letter from the same MASSOB secretary in response to the MASSOB lawyer's statement.	The MASSOB official policy did not necessarily extend to the local levels. Furthermore, the letters did not substantiate the Applicant's refugee claim; they merely confirmed his membership	The Board preferred the country report evidence over the support letters from the MASSOB secretary, who was also one of the Applicant's friends

[16] It is trite law that tribunals are afforded substantial deference in its findings with respect to credibility (*Zhan*, above, at para. 16, *Choto*, above, at para. 16). Further, it is also well-established that the Board need not mention all of the Applicant's evidence in its reasons, as tribunals are assumed to have weighed all the evidence presented (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at para. 16 (T.D.)). However, the more important and personal a document is to an applicant, the more likely it is that a court will imply that a document that is not explicitly referenced was ignored (*Cepeda-Gutierrez*, above, at para. 17).

[17] In my opinion, the Board did not ignore the Applicant's evidence or his explanations in reaching a reasonable conclusion on credibility. The Board adequately summarized the Applicant's explanations for the contradictions in his evidence by noting that the Applicant had been "nervous" and "he never paid attention [to the MASSOB motto]". It was not necessary for the Board to also

address in their reasons why he was nervous and did not pay attention. Moreover, I accept the Respondent's submission that the Board is assumed to have weighed all the evidence presented and, therefore, did not need to mention all of the Applicant's evidence in its reasons.

[18] The Applicant also submits that the Board erred by using evidence that had been deemed to be not credible in order to further refute his credibility. The Board allegedly did this by asking the Applicant to recite the MASSOB motto, as shown on his support letters from the MASSOB secretary, in order confirm his membership in MASSOB. Since the letters had been found to be not credible, the Applicant submits that they should not have been used to further test his credibility. I disagree. The Board rejected the support letters because their content contradicted the official MASSOB policy as reported in the country reports. It does not necessarily follow from this that the Board also questioned whether the letters were written on genuine MASSOB letterhead. In any case, if the Applicant is now suggesting that the MASSOB motto is, in fact, something different or than that which was found on his own support letters, then he had the opportunity to raise this issue before the Board. Thus, I conclude that the Board did not unreasonably use the letters in reaching its negative credibility finding.

[19] Moreover, it is important to note that the Board's credibility findings in general were directed to the issue of whether the Applicant was a member of MASSOB as he claimed. After having found that the Applicant was not credible in detailing his involvement with MASSOB, the Board nevertheless engaged in an analysis of whether the Applicant faced a well-founded fear of

persecution even if it assumed that he was a member of MASSOB. This is evident from paragraph 36 of the decision:

I cannot conclude, on a balance of probabilities, that the claimant has, in the past, been a target of persecution by the Nigerian government. Even if the claimant were a youth leader in the group (which testimony I did not consider credible) the experience of the Secretary of the same group which has not included any persecution since the claimant left the country demonstrates that there would be no more than a mere possibility of persecution of the claimant if he were to return.

[20] Therefore, even if I am wrong in finding that the Board's credibility findings were reasonable, I would still dismiss the judicial review because the underlying decision did not rest solely on the credibility findings.

D. *Issue #3: Will the Applicant's right to natural justice be denied if this Court proceeds with this judicial review despite not having a verbatim transcript of the refugee protection hearing?*

[21] The Applicant submits that the unavailability of a transcript of the refugee hearing constitutes a denial of natural justice and that, therefore, a new hearing should be ordered (See *Toledo v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1572, (2005) 51 Imm. L.R. (3d) 287, *Ngugi v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 432, [2004] F.C.J. No. 532 (QL), *Ortiz v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 346, [2005] F.C.J. No. 442 (QL)). Without a record of the transcript, the Applicant argues that this Court cannot determine whether the Board's credibility findings were supported by the evidence in the record.

[22] I begin with the words of Justice Pratte in *Kandiah v. Minister of Citizenship and Immigration* (1992), 141 N.R. 232 (F.C.A.), where he stated that, “An otherwise fair hearing does not become unfair because it is not recorded; in other words, a verbatim record of the proceedings is not a condition precedent to a good trial and a good judgment”.

[23] Justice L'heureux-Dubé cited this case with approval in *Canadian Union of Public Employees, Local 301 v. Montreal (City)*, [1997] 1 S.C.R. 793 at para. 81, and went on to state that:

In the absence of a statutory right to a recording, courts must determine whether the record before it allows it to properly dispose of the application for appeal or review. If so, the absence of a transcript will not violate the rules of natural justice. Where the statute does mandate a recording, however, natural justice may require a transcript. As such a recording need not be perfect to ensure the fairness of the proceedings, defects or gaps in the transcript must be shown to raise a "serious possibility" of the denial of a ground of appeal or review before a new hearing will be ordered. These principles ensure the fairness of the administrative decision-making process while recognizing the need for flexibility in applying these concepts in the administrative context.

[24] In my view, this Court can properly dispose of the application for judicial review in spite of the unavailability of the transcript. The Applicant made his claim for refugee protection based primarily on his claim that, as a member of MASSOB, he faced a risk of persecution. His claim was largely predicated on the strength of his own evidence, as presented in his written and oral testimony. Much of this evidence was repeated in his sworn affidavit. In the written decision, the Board summarized the evidence that was before it and addressed the elements of the Applicant's claim, making specific references to omissions and contradictions which led it to question the Applicant's credibility. The omissions and contradictions raised by the Board are sufficiently

documented in the Board's decision, the Applicant's affidavit and the written submissions of counsel for both sides.

[25] More importantly, the Board noted in its decision that, even if it accepted the Applicant's version of events, there was still insufficient evidence to show that he faced more than a mere possibility of persecution if he were returned to Nigeria. In coming to this conclusion, the Board relied on findings of fact which it made based on the country reports and the Applicant's own submissions. It is important to note that the Applicant did not take issue with any of these findings of fact in this judicial review.

[26] Taken altogether, I am satisfied that there is, before me, a record of what the Board considered in reaching its final conclusion and that that record is sufficient for the purposes of this judicial review.

IV. Conclusion

[27] For these reasons, the application will be dismissed.

[28] Neither party proposed a question for certification; none will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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