Date: 20090430

Docket: IMM-3825-08

Citation: 2009 FC 422

Ottawa, Ontario, April 30, 2009

PRESENT: The Honourable Mr. Justice Orville Frenette

BETWEEN:

WARDOUGOU AHAMAT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision dated August 7, 2008, in which the Refugee Protection Division (RPD) of the Immigration and Refugee Board determined that the applicant was neither a "Convention refugee" nor a "person in need of protection" within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and consequently rejected the applicant's refugee claim.

Facts

[2] The applicant, Wardougou Ahamat, is a 24 year-old Chadian citizen from the Goran ethnic group. His mother, sister and three brothers are still living in Chad.

[3] The applicant's father, a career soldier and commander in the national army of Chad, was apparently targeted by the government in place following a show of dissent on the part of a former defence minister of Goran origin. On June 2, 2007, the applicant's father left on a mission in eastern Chad, and on June 5, 2007, he deserted the Chadian army to join the Union of Forces for Democracy and Development, a rebel movement. The father has not returned home since, and is no longer looking after his family.

[4] On June 7, 2007, soldiers from the country's Presidential Guard and agents from its National Security Agency broke into the applicant's family's home in N'djamena, searched through the house, roughed up the people who were present and accused the applicant's father of treason. The applicant then left Chad using false documents, and arrived in New York City (United States of America) on August 5, 2007. The applicant's mother, sister and brothers have continued to live in Chad since his departure and have had no major problems, apart from their fears and subsistence-related concerns.

[5] On September 15, 2007, the applicant arrived in Canada and claimed refugee status.

The impugned decision

[6] The RPD determined that the applicant was neither a "Convention refugee" nor a "person in need of protection". It analyzed the evidence and expressed the view that the applicant was not credible and that his narrative was implausible. In its determination, the narrative was made up for the purposes of his claim, and he came to Canada simply to continue his studies.

[7] In the RPD's determination, the applicant claimed to be in danger because his father had deserted the army to join a rebel movement. At the hearing, he said that all members of his family had been arrested; in addition, in his Personal Information Form (PIF), he stated the following: [TRANSLATION] "the soldiers beat my uncles Maidé Ahamat and Hemchi Ahamat and my cousin Ali Adoum; they restrained them and humiliated them in front of the family."

[8] The RPD identified various contradictions and implausibilities in the applicant's account and in the manner in which he testified; this is why it deemed him not to be credible. The RPD found that the applicant had made up his story to justify his refugee claim, and that he came to Canada to pursue his studies.

Issue

[9] Is the RPD's decision reasonable?

The applicable standard of review

[10] The standard of review applicable to decisions involving questions of fact or questions of mixed fact and law is reasonableness *simpliciter*. Where questions of pure law or the application of

the principles of natural justice are involved, the correctness standard applies (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190).The decision in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, reminds us that decisions of administrative bodies regarding factual questions require deference.

Analysis

[11] The applicant submits that the RPD made determinative factual errors and perverse and capricious findings.

[12] Before analyzing these allegations, I feel it is essential to consider the RPD's determination regarding the applicant's credibility and the contradictions and implausibilities that were raised.

[13] First of all, the applicant admitted that he fled Chad using false documents. In my opinion, the use of such a method is one of numerous factors that can serve to determine a person's credibility. This type of cheating can leave doubts as to credibility.

[14] Secondly, when the applicant was asked, at the hearing, to explain the risk in Chad, he said that on June 7, 2007, soldiers and agents of the National Security Agency [TRANSLATION] "beat, restrained and arrested members of [his] family". However, in his PIF, he does not mention that they were arrested, even though it is a very important point, and one that he made during his testimony.

[15] Thirdly, the applicant's mother and brothers have remained in Chad without any particular risk other than financial difficulties. The applicant's uncle is a businessman who lives in Nigeria. Another of the applicant's uncles is living and studying in Chad without any problems. According to the applicant, he studied in Ghana in 2006 and 2007 and could have returned there to study, the only obstacles being financial.

[16] Fourthly, the applicant obtained a U.S. student visa and went to the United States for a week, but did not claim refugee status there.

[17] The RPD considered all these factors and the applicant's demeanour at the hearing. It found that the applicant tried to adjust his answers to the questions that he was asked, and concluded that his narrative or account was not credible.

[18] The applicant submits that the RPD unreasonably interpreted the facts regarding the following five points: (1) the arrests of his uncles and cousin; (2) his failure to claim protection in the United States; (3) refuge in Ghana; (4) the fact that his mother, sister and brothers are still in Chad; and (5) the RPD's impartiality.

[19] With respect to the first point, the applicant refers to use of the word [TRANSLATION] "restrained" in his PIF, as opposed to the use of the word [TRANSLATION] "arrested" at the hearing.

[20] With respect to the second point, the applicant complains that the RPD disregarded his assertion that he had always intended to come to Canada, but he did not explain why he decided to obtain a U.S. student visa instead of a Canadian one, even though he claims that he wished to study in Canada.

[21] With respect to the third point, the applicant explains that he did not seek refuge in Ghana because he could not afford to study there. And yet, he said that he came to Canada to study.

[22] With respect to the fact that his mother, sister and brothers live in Chad, the applicant did not assert that they were at risk, but merely referred to the general documentary evidence.

[23] As for the panel’s impartiality, the applicant submits that the RPD had preconceived notions about children originating from Francophone African countries. The respondent contests this allegation, explaining that the reference to Francophone African countries does not constitute sufficient evidence of an appearance of bias based on the test articulated by the Supreme Court of Canada in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at pages 394-395. In my opinion, the respondent is correct and this allegation of bias is outlandish.

[24] Upon analyzing the applicant's challenges against the RPD's decision on microscopic points, one must conclude, for the following reasons, that they are not well-founded in fact or in law.

[25] The RPD saw and heard the applicant; it was entitled to consider his demeanour, the manner in which he testified, and the contradictions and implausibilities raised above (*Aguebor v. Minister*

of Employment and Immigration (1993), 160 N.R. 315 (F.C.A.); *Jarada v. Minister of Citizenship and Immigration*, 2005 FC 409; *Singh v. Minister of Citizenship and Immigration*, 2007 FC 62). The RPD was also entitled to cite common sense and reason in assessing the credibility and plausibility of a claimant's statements (*Mahamat v. Minister of Citizenship and Immigration*, 2009 FC 157; *Singh v. Minister of Citizenship and Immigration*, 2008 FC 408).

[26] The refugee claimant bears the burden of establishing both the subjective and the objective elements of his fear of returning to his country of origin (*Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593; *Gilgorri v. Minister of Citizenship and Immigration*, 2006 FC 559).

[27] "Asylum shopping" is not a permitted course of conduct for refugee claimants. The applicant could have sought protection in the United States, but did not do so. Why Canada? The applicant should have sought protection at the first opportunity (*Saleem v. Minister of Citizenship and Immigration*, 2005 FC 1412, at paragraph 28; *Reyes v. Minister of Citizenship and Immigration*, 2005 FC 418; *Samseen v. Minister of Citizenship and Immigration*, 2006 FC 542).

[28] The applicant complains that the RPD did not consider or refer to all the oral, written or documentary evidence before it. But in order for that complaint to be valid, the applicant would have needed to rebut the presumption that the panel considered all the evidence, and this, he did not succeed in doing (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (C.A.) (QL); *Ahmad v. Minister of Citizenship and Immigration*, 2003 FCT 471, at paragraph

26). Moreover, the decision-maker was not required to specify every facet of the evidence in support of its decision.

[29] The Court cannot assess the evidence anew and simply substitute its opinion for that of the panel (*Chen v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 551 (C.A.) (QL); *Zrig v. Canada (Minister of Citizenship and Immigration)*, [2003] 3 F.C. 761 (C.A.); *Ahmad*, above; *Singh v. Minister of Citizenship and Immigration*, 2006 FC 743; *Arizaj v. Minister of Citizenship and Immigration*, 2008 FC 774).

[30] The possibility that a few minor errors or inaccuracies may have made their way into the understanding of the evidence resulting from the applicant's confused or ambiguous testimony is not a ground for review unless those errors are important, which they are not in the case at bar (*Kar v. Minister of Citizenship and Immigration*, 2009 FC 143, at paragraph 32; *Anwar et al v. Minister of Citizenship and Immigration*, 2008 FC 305, at paragraph 26; and *Ielovski v. Minister of Citizenship and Immigration*, 2008 FC 739, at paragraph 9).

Conclusion

[31] The applicant has failed to show that the RPD's decision was erroneous in fact and in law. For these reasons, the application for judicial review is dismissed.

JUDGMENT

The Court orders that:

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated August 7, 2008, is dismissed.

No question will be certified.

" Orville Frenette"
Deputy Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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