

Federal Court



Cour fédérale

Date: 20110517

Docket: IMM-1865-10

Citation: 2011 FC 563

Ottawa, Ontario, May 17, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MPODE MASANGO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated March 16, 2010, wherein the applicant was determined not to be a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant requests that the decision of the Board be set aside and the claim remitted for redetermination by a differently constituted panel of the Board.

Background

[3] Mpode Masango (the applicant) was born on February 27, 1982 and is a citizen of Cameroon.

[4] The applicant states that her father was an active member of the Southern Cameroon National Council (SCNC) and she believes that he was killed because of his political involvement.

[5] The applicant became an administrative assistant for the SCNC after her father's death in 2005. She would distribute flyers and organize demonstrations.

[6] The applicant alleges that she was arrested and detained four times in Cameroon between 2006 and 2007 due to her political activities. She states that she was physically beaten during each detention. During the fourth arrest, the applicant was raped by her interrogators. The applicant was taken to the hospital from where she escaped.

[7] The applicant arrived in Canada on October 9, 2007 and made a claim for refugee protection on the basis of her political opinion.

Board's Decision

[8] The Board found that there was insufficient credible and trustworthy evidence with respect to the applicant's testimony and documents to establish that she was a member of the SCNC.

[9] The applicant's oral testimony of the date she joined the SCNC was inconsistent with what she wrote in her Personal Information Form (PIF) and in the information given to Citizenship and Immigration Canada (CIC). Her membership card and her PIF differently described her position in the SCNC and the applicant herself inconsistently explained her position.

[10] The Board drew negative inferences from the applicant's inability to spell democracy and from the fact that democracy was incorrectly spelled in two locations on the SCNC membership card that the applicant presented as proof of her membership. The word sign was also misspelled on the card.

[11] Based on the contradictory written and oral evidence, the Board gave no weight to the SCNC card.

[12] The applicant provided correspondence indicating that she was a member of the SCNC. The Board drew a negative inference from the letter's lack of detail and lack of personal information about the applicant. The Board found it was unable to conclude that the letter was authentic.

[13] The Board also found that a letter from the Human Rights Defence Group lacked credibility because it lacked personal information about the applicant.

[14] The Board had concerns about a letter from a lawyer, Mr. Samuel. The letter was not dated, witnessed or notarized and misspelled writ of *habeas corpus*. The applicant could not provide an explanation for these concerns.

[15] The Board found a letter from the former SCNC chairman not to be credible as it did not mention the applicant's father who she states was a senior advisor of the SCNC Leadership Council. It also did not contain specific details about the applicant.

[16] The Board found that the applicant had failed to establish that she was affiliated with, or a member of, the SCNC.

[17] The applicant did not provide medical evidence of the assaults she experienced in detention. The Board did not accept her explanation that she did not want to send her mother to obtain the medical reports. The applicant also had medical attention and counselling in Canada but did not provide reports from these sessions.

[18] The Board concluded that the applicant did not meet her onus to provide relevant documentation for her claim pursuant to Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228.

[19] The Board further found that the applicant's testimony on her detentions contained discrepancies. The applicant's oral evidence was inconsistent with her PIF regarding how many students were killed in one strike leading to her arrest and whether a police officer was also killed. Her testimony was further inconsistent regarding how many men had raped her during her fourth detention.

[20] The Board concluded that the applicant had failed to establish that she was detained.

[21] Based on the above, the Board found that she had failed to prove a well founded fear of persecution by reason of her actual or perceived political opinion. The Board further concluded that it was more likely than not that she would not face serious harm should she return to Cameroon.

Issues

[22] The applicant submitted the following issue for consideration:

Did the Board err in concluding that based on the evidence provided by the applicant, there was no sufficient evidence to establish the applicant's political identity and subjective fear of persecution for reasons of her membership in the SCNC and that she lacked credibility in key areas of her claim?

[23] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Was the Board's decision reasonable?

Applicant's Written Submissions

[24] The applicant submits that the Board erred by basing its credibility findings on irrelevant considerations.

[25] Even if the Board considered some aspects of the applicant's claim not to be credible, there was evidence that she would face persecution if she returned to Cameroon. This evidence was her membership in the SCNC and her past persecution based on this membership.

[26] The applicant argues that the Board did not support its findings of forgery of the applicant's documents. Further, the Board erred in requiring corroborating evidence to support the applicant's testimony of her arrests, detention and consequent physical and sexual assault.

[27] The applicant further submits that the Board did not provide clear reasons for its finding that there was no credible or trustworthy evidence to reach a positive determination and ultimately, committed a reviewable error by anchoring its credibility findings to the applicant's political identity.

Respondent's Written Submissions

[28] The respondent submits that negative decisions on a person's credibility are properly made as long as the tribunal gives reason for doing so in clear and unmistakable terms. Confusion, inconsistencies and contradictions in the applicant's evidence can create a perception of a lack of

credibility. The applicant in this case, did not provide credible and trustworthy evidence that she was a member of the SCNC. Her Port of Entry (POE) interview notes, PIF and oral testimony were inconsistent on several occasions. The applicant was unable to explain the discrepancies in a satisfactory manner and it was reasonable for the Board to conclude that the applicant failed to establish her affiliation as a member of the SCNC. This was central to her refugee claim which was based on persecution due to her political opinion.

[29] The Board provided a thorough analysis of each document of correspondence submitted by the applicant. The Board found that they contained errors, were general, and omitted important personal information about the applicant. Based on these factors and the applicant's lack of adequate explanation for the inconsistencies, it was open to the Board to give little weight to these documents.

[30] The applicant bore the burden of providing credible evidence in support of her claim. The applicant provided no documentary evidence in support of the allegation that she was detained. The Board based its finding that there was no serious possibility that the applicant would be persecuted in Cameroon on several findings:

- The applicant alleged that she received medical treatment in Cameroon and Canada as a result of her detentions but failed to provide any documents supporting this.
- The applicant stated that her second detention was reported in the media but she did not provide any news articles reporting the detention.
- None of the correspondences that the applicant submitted in support of her claim mentioned her detentions.

[31] The applicant was unable to provide a reasonable explanation for not presenting credible documents for her claim.

[32] Finally, the applicant's testimony regarding her detention and assaults was inconsistent with her PIF and it was open to the Board to draw a negative inference from the contradictions.

Analysis and Decision

[33] **Issue 1**

What is the appropriate standard of review?

It is well established that in reviewing assessments of credibility, the applicable standard of review is that of reasonableness. Assessments of credibility are essentially pure findings of fact and it was Parliament's express intention that administrative fact finding would command this high degree of deference (see *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 46). This Court must not substitute its assessments for those of the Board unless the applicant can demonstrate that the findings of fact were made in a perverse or capricious manner without regard to the material before it (see *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at paragraph 24).

[34] **Issue 2**

Was the Board's decision reasonable?

The Board's finding that the applicant did not establish that she was affiliated with, or a member of, the SCNC was based on inconsistencies and contradictions between her oral and documentary evidence.

[35] The Board found that the applicant was inconsistent in the POE interview, her PIF and her oral testimony on numerous occasions in describing when she joined the SCNC, what her position was, the details of the strike she was involved in and how many people were killed and the details of her attackers while in detention, among other facts. As Mr. Justice James Russell held in *Higbogun v Canada Minister of Citizenship and Immigration*, 2010 FC 445 at paragraph 39, "inconsistencies and contradictions create a perception of a lack of credibility". Inconsistencies in a refugee claim may be held against an applicant (see *Sun v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1255).

[36] The Board also considered the applicant's supporting documentation of her membership in the SCNC. The applicant herself noted that the Board "described all the documents which the Applicant submitted to corroborate her testimony".

[37] Based on Rule 7 of the *Refugee Protection Division Rules*, the onus was on the applicant to provide acceptable documents to establish the elements of her claim.

[38] The Board provided clear and unmistakable reasons for rejecting the SCNC membership card and the letters stating that the applicant was a member of the SCNC. The Board found spelling errors and inconsistencies in the document that the applicant submitted as her membership card.

Regarding the correspondence about her membership, the Board found that they contained errors, were general and omitted important personal information about the applicant.

[39] It was open to the Board to give little probative weight to the letters based on the errors it perceived. In *Singh v Canada (Minister of Citizenship & Immigration)*, 2008 FC 669, in considering affidavits submitted by the applicant's father, Mr. Justice Edmond Blanchard held at paragraph 28:

. . . in her reasons the Officer noted the general and vague nature of the allegations in the affidavits and that they contained little detail as to the time and frequency of the alleged incidents. The Officer also observed that the affidavits were not originals and that notary's stamp was not legible. An omission in the father's affidavit was also noted by the Officer: Mr. Kirpal Singh attested that he had personally intervened to take the Applicant's father out of police interrogation. The father's affidavit makes no mention of this event. Considering these factors on the whole, it was open to the Officer to afford little probative value to the two affidavits.

[Emphasis added]

[40] The Board further indicated that it drew negative inferences from the applicant's inability to explain the errors in her documentary evidence or the inconsistencies in her oral testimony from her PIF.

[41] The Board's conclusions concerning all of the applicant's supporting documentation were transparent and carefully explained. There was no error in assigning these documents low probative weight.

[42] In addition to finding that the applicant had not established that she was a member of the SCNC, the Board rejected that the applicant had been detained and assaulted, in part because of her inconsistent testimony but also based on a lack of corroborating documentary evidence.

[43] Mr. Justice Russell held in *Higbogun* above, that:

43 While there is no legal requirement to provide corroborating evidence, in some factual circumstances it is not unreasonable for the RPD to consider a lack of corroborating evidence in determining the well-foundedness of an applicant's fear.

[44] I find that this is one of those cases. There were clear instances where corroborating documentary evidence of the applicant's claim of detention and assault existed. These included media, medical and psychological reports. In addition, there was the potential for the correspondence she received regarding her membership to corroborate the fact that she had been detained.

[45] Pursuant to Rule 7 of the *Refugee Protection Division Rules*, an applicant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them. The Board was reasonable in finding that the applicant had not met her burden under Rule 7 to explain why the corroborating documents were not before the Board. Responding to the Board member's questioning as to why she did not produce corroborating documentation of her second arrest which she claimed was reported in the media, the applicant responded:

Claimant: I thought that maybe with information that I gave in if you had to, if there was any kind of research that had to be done on your part maybe, maybe you would be able to...

Presiding Member: We do not do the research. It is up to you to establish your case.

(certified tribunal record, page 108)

[46] It was reasonable for the Board to conclude that the applicant did not establish her membership in the SCNC nor that she had been detained or assaulted. Given this, the Board's decision that the applicant was not a Convention refugee based on her political opinion and would not face a serious possibility of persecution if she returned to Cameroon was within the range of possible, acceptable outcomes defensible on the facts and law (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47).

[47] As a result, the application for judicial review must be dismissed.

[48] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[49] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

72.(1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

...

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.

97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

...

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.

97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Refugee Protection Division Rules, SOR/2002-228

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

FEDERAL COURT
SOLICITORS OF RECORD

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- and -
MINISTER OF CITIZENSHIP
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