

Federal Court



Cour fédérale

Date: 20120111

Docket: IMM-2852-11

Citation: 2012 FC 36

Ottawa, Ontario, January 11, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

ANTHONY ARUBI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Anthony Arubi (the Applicant), pursuant to section 72(1) of the *Immigration and refugee Protection Act*, SC 2001 [IRPA], for judicial review of the decision of the Immigration and refugee Board (the Board) dated April 11, 2011, concluding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *IRPA*.

[2] For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] The Applicant was born on June 7, 1969, in Delta State, Nigeria.

[4] In 1999, the Applicant started working as an assistant in his uncle's private investigation business.

[5] In June 2004, the Applicant was introduced to Nuhu Ribadu, Chairman of the Economic and Financial Crime Commission [EFCC] of Nigeria by an acquaintance, Ahmed Bello, who worked for the EFCC. At the time, the Applicant was investigating mostly cheating spouses or dishonest employees.

[6] Mr. Ribadu offered him a contract position to work on cases involving corrupt government officials. According to the Applicant, he was hired because the EFCC needed agents that were not corrupted. One of his assignments was to collate information on former Delta State Governor, Chief James Onanefe Ibori, and more specifically his corrupt practices during his tenure as governor. The information would then allow convicting Mr. Ibori on charges of money laundering and misuse of public funds.

[7] The Applicant started gathering evidence to establish that Mr. Ibori was involved in illegal money transfers to different companies used as covers for money laundering. The Applicant then submitted his findings to Mr. Ribadu through Mr. Bello, who was supervising his work.

[8] In 2008, the Applicant started to receive strange calls and death threats from Julius Agambi. Mr. Agambi vowed to kill the Applicant for his role in bringing charges of corruption against Mr. Ibori.

[9] In September 2008, the Applicant was shot at in a car, by men that were following both him and his friend. The Applicant managed to protect himself by crawling and hiding into a gutter. The attack occurred close to the Applicant's residence on Victory Avenue, in Warri. After the shooting, the Applicant went to the police to file a statement but he was turned back because there was no officer to take his statement. The Applicant returned to the station a second time but was told that it was probably the act of armed robbers.

[10] The Applicant felt that his identity was compromised. Mr. Bello, his immediate supervisor at the EFCC, suggested he move to Makurdi, in Benue State. One evening, the Applicant went out with Mr. Bello for a drink. While in the washroom, Mr. Bello was shot and killed by unidentified men. The Applicant witnessed the scene and managed to escape the bar. He did not go to the police because he felt they would not be of any help.

[11] Believing that his life was in danger, the Applicant fled to Lagos where arrangements were made for his flight to Canada. In Canada, the Applicant filed a refugee protection claim.

[12] The Board found that the Applicant was neither a Convention refugee nor a person in need of protection in light of the many issues concerning the Applicant's credibility and inability to provide persuasive evidence to support his allegations.

[13] The Board also determined that the Applicant did not demonstrate, on balance of probabilities, that he would face harm under subsection 97(1) of the *IRPA* if he were to return to Nigeria.

III. Legislation

[14] Sections 96 and 97 of the *IRPA* provide as follows:

Convention refugee	Définition de « réfugié »
<p>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,</p> <p>(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</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is</p>	<p>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 :</p> <p>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;</p> <p>b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence</p>

unable or, by reason of that fear, unwilling to return to that country.

habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

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

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

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

(iii) la menace ou le risque ne résulte pas de sanctions

lawful sanctions, unless imposed in disregard of accepted international standards, and

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.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Issues and standard of review

A. Issues

1. Did the Board err in finding that the Applicant was not credible?

2. Did the Board misconstrue the Applicant's evidence or misrepresent certain facts?

B. Standard of review

[15] A credibility finding is a question of fact that is reviewable on a standard of reasonableness (see *Lawal c Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, [2010] FCJ No 673 at para 11).

[16] It is also clear that questions of fact finding and assessment of the evidence fall within the Board's area of expertise and are reviewable on a standard of reasonableness (see *Theophile v Canada (Minister of Citizenship and Immigration)*, 2011 FC 961, [2011] FCJ No 1177 at paras 16-17; *Dunsmuir v New-Brunswick*, 2008 SCC 9 at paras 51 and 53 [*Dunsmuir*]). The reviewing Court must determine "whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir*, cited above, at para 47).

V. Parties' submissions

A. Applicant's submissions

[17] The Board writes, in paragraph 10 of its decision, that "As well, if indeed the EFCC Director, Nuhu Ribadu, had concerns with having his staff investigate James Ibori, he could have turned to the Criminal Investigation Department of the Nigerian Police, who conduct investigations into fraud, as opposed to relying on an inexperienced person, like the claimant, to do the work". It is submitted by the Applicant that the Board's inference, with respect to the EFCC appointing an

inexperienced person to conduct an investigation instead of referring Mr. Ibori's case to the Nigerian police, is an exhibition of ignorance of the process and powers of the EFCC in Nigeria.

[18] The Applicant alleges that the Board misconstrued evidence when it writes, in paragraph 8 of its decision, that "the [Board] finds it implausible that the Director of a high profile national agency would hire a 25 year old inexperienced private investigator, whose experience essentially was made up of spying on cheating spouses and dishonest employees, to investigate a senior government official suspected of committing major fraud and misuse of public funds". It is submitted by the Applicant that he was actually 35 years old when he was employed by the EFCC. The Applicant further submits that he already had 5 years of experience as a private investigator prior to receiving his assignment for the Commission.

[19] The Board comments on the evidence adduced by the Applicant, in paragraph 9 of its decision, that :

the letter ... does not provide any dates as to when the claimant actually performed these duties on behalf of the EFCC or the period he was employed by the EFCC. The letter itself does not appear to be authentic. The EFCC logo on the letter appears to be cut off at the top and is visibly different from the logo as it appears both in an article in one of the claimant's exhibits, as well as, on the EFCC official website. The address line in the letterhead has the city of Port harcourt spelled with the "h" in lowercase as opposed to uppercase, as it appears in official references to the city. The claimant's counsel argued that the problems with the letter are simply a reflection of the lower standards in Nigeria ... The Panel is not persuaded that a national agency such as the EFCC would not care about, or be able to ensure the quality of its official stationary.

[20] The Applicant argues that the Board applied the Canadian standard to the Nigerian system in its assessment of the authenticity of his letter.

[21] The Applicant claims the Board made a clerical error when it wrote, in paragraph 4, that “James Agambi vowed to kill the [Applicant]” instead of Julius Agambi. As much as it may be a minor error, the Applicant alleges that this confusion, with respect to Mr. Agambi’s name, is a clear indication of the quality of the Board’s decision.

[22] In paragraph 15 of its decision, the Board states that “no evidence was presented to allow the Panel to conclude that the subsequent shooting of Ahmed Bello in Makurdi, in anyway, involved the claimant, or that he was also targeted ... One would have expected assassins to have struck either before or after the claimant left to go to the washroom if in fact he was also being targeted”. The Applicant alleges that the Board is making unreasonable assumptions that assassins all work the same way by making sure their target is where they anticipated it would be.

[23] The Applicant submits that he established a reasonable likelihood of persecution (see *Adjei v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 67, [1989] 2 FC 680).

[24] Finally, the Applicant alleges that the Board failed to properly consider the Applicant’s fear of the influence that James Ibori and his followers have in Nigeria.

B. Respondent’s submissions

[25] The Respondent submits the Board reasonably determined that the Applicant’s allegations of persecution were not credible.

[26] The Respondent alleges that given the nature of the Applicant's experience as a private inspector, it was open for the Board to find that it is implausible that the Chairman of the EFCC would have hired him to investigate a state governor for money laundering and misuse of public funds. Respondent further reminds the Court that the Board is entitled to rely on common sense in assessing the plausibility of an Applicant's allegations.

[27] The Respondent argues that it is unlikely that the Chairman of the EFCC would have relied on the Applicant to investigate Mr. Ibori as opposed to turning to the Criminal Investigation Department [CID] of the Nigerian Police, who specializes in investigating economical crimes.

[28] The Respondent underlines the shortcomings and irregularities in the letter filed by the Applicant to corroborate his employment with the EFCC. The Board noted several shortcomings in the letter. Firstly, it failed to provide the date of the Applicant's employment. Secondly, the EFCC's logo appeared to be cut off of the letter and was visibly different from the logo of the EFCC's official website and several exhibits submitted by the Applicant. Finally, the city of Port Harcourt was spelled in the lowercase "h". The Respondent argues that the Board properly weighed and assessed the veracity of the document and reasonably concluded that it was not authentic.

[29] Furthermore, no evidence was presented before the Board to establish that the shooting in Makurdi involved the Applicant. Respondent claims the Board reasonably concluded that the Applicant would also have been struck before or after he went to the washroom if he really was targeted.

[30] Applicant's testimony was rejected and his documentation was found to be unreliable by the Board. Thus, the Applicant's claim of persecution must fail since it is impossible to establish a link between his claim and the evidence adduced.

[31] The Applicant argues that the Board misconstrued evidence and misrepresented facts as his age is incorrect in the decision and James Ibori's agent is not James Agambi but Julius Agambi. However, the Respondent responds that the Board's errors are minor and immaterial as it is clear that it understood and grasped the issues raised by the Applicant's claim. These errors do not affect the reasonableness of the decision as a whole.

[32] Finally, the Respondent submits that, in rejecting the Applicant's claim under section 96 of the *IRPA*, the Board found there was no nexus between the harm feared by the Applicant and one of the Convention grounds. The Board concluded that the attack in Warri was anything other than an act of criminality. That finding is not challenged by the Applicant.

VI. Analysis

1. Did the Board err in finding the Applicant was not credible?

[33] The Board found that the presence of credibility issues in areas central and material to the claim were sufficient to refuse the Applicant's written narrative and oral testimony with respect to

the events on which he based his claim. The Applicant's lack of credibility lead the Board to determine there was no nexus to Convention grounds under section 96 of the *IRPA*.

[34] One of the most important issues dealt with the authenticity of the letter corroborating the Applicant's employment with the EFCC. The Applicant argues that the Board applied the Canadian standard to the Nigerian system when it concluded that the letter presented several discrepancies. In *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587, [2004] FCJ No 715, Justice Martineau writes, in paragraph 19 of his decision: "I am ready to accept that the basic rule in Canadian law is that foreign documents (whether they establish the identity or not of a claimant) purporting to be issued by a competent foreign public officer should be accepted as evidence of their content unless the Board has some valid reason to doubt of their authenticity". In order for the Board to doubt of the authenticity of a document, "there must be some evidence before the Board on which to base a finding that a document is not genuine, unless the problem is apparent on the document's face (*Kashif v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 179)" (*Jacques v Canada (Minister of Citizenship and Immigration)*, 2010 FC 423, [2010] FCJ No 487 at para 14 [*Jacques*]). In *Jacques*, Justice O'reilly writes, at para 16:

[16] As I read these cases, they stand for the simple proposition that in deciding whether a document is genuine, the Board must rely on some evidence. In some cases, the evidence will come from other documentary evidence or testimony at the hearing. In others, the necessary evidence will be on the face of the document itself. In either case, the essential question will be whether the Board's conclusion was reasonable in light of whatever evidence was before it"...

[35] The facts in the present case are somewhat analogous to the ones in *Jacques* which dealt with the authenticity of a letter of corroboration. The Board based part of its finding on

imperfections in the appearance of the letter and clerical errors that are not necessarily determinative in the assessment of a fraudulent document. The Board did not impose a Canadian standard to the Nigerian system, but it failed to take in consideration that clerical errors are possible even in countries where public administration have access to vast resources. The Court acknowledges that the Board made an error but it is not sufficiently material to completely undermine the Board's decision.

[36] As to the issue of Applicant's experience as a private investigator, the Board concluded that it is "implausible that the Director of a high profile agency would hire a 25 years old inexperienced private investigator, whose experience essentially was made up of spying on cheating spouses and dishonest employees, to investigate a senior government official suspected of committing major fraud and misuse of public funds". "A lack of credibility can be based on implausibilities, contradictions, irrationality and common sense" (see *Sun v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1255, [2008] FCJ No 1570 at para 5). In this case, this conclusion was open to the Board.

[37] The Board's credibility findings with respect to the shooting in Warri is also reasonable. In *Kaur v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1120, [2006] FCJ No 1399 at para 9, Justice Lemieux writes that :

[9] It is settled law that credibility findings made by the Refugee Protection Division are findings of fact where the reviewing court can intervene only if it finds the tribunal "based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it" as set out in subsection 18.1(4)(b) of the *Federal Courts Act*, a standard which is equivalent to the standard of patent unreasonableness.

[38] The Board's conclusion is reasonable since there was no evidence brought forward by the Applicant to demonstrate that an attempt was made on his life in Warri. The Applicant alleges he went to the police but no police report was issued. They advised him that the men who attacked him were likely armed robbers. It was reasonable for the Board to conclude that the Applicant was unable to provide any persuasive evidence to support his allegations.

[39] This issue is central to the Board's credibility finding as it demonstrate that, even if the Applicant had worked for the EFCC, he did not face any risk to his life. It also supports the Board's conclusion on Applicant's claim under section 97 of the *IRPA*.

[40] The Board concluded the Applicant had failed to demonstrate that, it is more likely than not, that he would face a risk to his life, a risk of cruel and unusual treatment or punishment, or a danger of torture should he return to Nigeria. The Board determined the Applicant was not involved in the attacks in Warri or in Makurdi. The Board also noted the Applicant's presence in the washroom when Mr. Bello was assassinated in Makurdi. It consequently concluded that the Applicant was not targeted since he would have been shot by the assassins.

[41] The Board was entitled to rely on common sense and rationality to reject evidence that is not consistent and improbable (see *A.M. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 964, [2011] FCJ No 1187 at para 50). It was reasonable for the Board to determine that assassins would have struck at the same time if indeed the Applicant was targeted.

[42] According to the Board, the Applicant would not be subjected to an individualized risk of harm under section 97(1) of the *IRPA*. The Board's finding is reasonable and falls within the range of possible and acceptable outcomes.

2. *Did the Board misconstrue the Applicant's evidence or misrepresent certain facts?*

[43] The Board did not err in its assessment of the evidence and did not misrepresent certain facts.

[44] The Applicant alleges that the Board erred in its decision when it misrepresented certain facts of the case. The Board writes that the Applicant has 25 years of age instead of 35. It also writes that James Agambi vowed to kill the Applicant instead of Julius Agambi.

[45] These errors are not misrepresentation of the facts of the case. The Board incorrectly referred to the Applicant as being 25 years old rather than 35. Its reasoning with respect to the implausibility that the EEFC would have hired the Applicant is based more on his lack of experience in investigating high profile public official than his age. Similarly for Mr. Agambis first name. These errors are not determinative in the Board's decision and do not undermine its conclusion.

VII. Conclusion

[46] The Board's errors do not ultimately affect its decision. Consequently, the Board's decision is reasonable and the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. this application for judicial review is dismissed; and
2. there is no question of general importance to certify.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2852-11

STYLE OF CAUSE: ANTHONY ARUBI
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 24, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** SCOTT J.

DATED: January 11, 2012

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