Federal Court  Cour fédérale

Date: 20121019

Docket: IMM-8603-11

Citation: 2012 FC 1221

Ottawa, Ontario, October 19, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ANTONIO CAMILO AYONG ANGUE ONDO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant challenges the decision of the Refugee Protection Division of the Immigration and Refugee Board that found that he was not a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. For the reasons that follow, his application is dismissed.

Background

[2] The applicant is a citizen of Equatorial Guinea. He claims that the government of Equatorial Guinea is attempting to detain or assassinate him because of his involvement in an opposition political party, the Progress Party, which began in 1992 when he claims to have been detained without charge for two weeks and tortured for having participated in a student protest. In subsequent years, he held positions of increasing leadership within the party.

[3] The applicant says that his father was jailed, without a fair trial, from 1995 to 1998 for speaking out against electoral irregularities. His father's physical and emotional health were broken in prison, and he believes that his father's death in 2007 was a direct result of this imprisonment and his treatment.

[4] The applicant also says that his mother died when her house was fire-bombed by government supporters in March 2005. At the hearing, though not in his Personal Information Form (PIF), he stated that he believed that the attackers thought he was with his mother that day, and that he was the real target of the attack.

[5] In April 2005, the applicant claims to have been arrested and held without charge for three days during which time he was beaten. He says that he was released when townspeople convinced the military chief that he was not engaging in any political activities. This arrest and beating were not mentioned in the PIF.

[6] At the hearing, he stated that in 2006 to 2007 he started working at a bank but was fired because of his involvement in the party. In his PIF, he claimed that he worked there in 1993 to 1995.

[7] The applicant also claims he was arrested for one night in January 2007, but was released because he did not have any opposition party materials with him. This arrest was not mentioned in the PIF.

[8] On the night of March 21, 2008, the applicant claims he was visited at his home by a Lieutenant Colonel in the police who gave or showed him a list. The list, dated March 20, 2008, was on the letterhead of the Office of the President of Equatorial New Guinea (the March 2008 List). It reads as follows and states that the persons named were forbidden from leaving the country:

> Through this document, the members of the Progress Party of Equatorial Guinea, whose names appear below, are accused of holding clandestine meetings and possessing weapons as well the issuance of personal documents to them is prohibited: passports, N.I.D. at all national police agencies. This communiqué is forwarded to all security forces and institutions of the State, and they are forbidden from leaving the country, until further notice.

"Antonio Camilo Esono Ayong Angue Ondo" was one of the eight individuals on the March 2008 List.

[9] At the hearing, the applicant stated that his fear arose upon seeing the March 2008 List because an individual on that list was killed.

[10] The applicant submitted the March 2008 List as documentary evidence, although he was not asked nor did he testify as to how he came to have a copy of the document. Hand-written notations were placed after each name except for the applicant's name which had none. Each had the word "jail" after it, except for one which had the phrase "assassinated 02/05/08" after it.

[11] Immediately after being shown the list, the applicant left Equatorial Guinea for one week, travelling to and around Cameroon. Thereafter, he returned to Equatorial Guinea. He did not return home but stayed on a farm near Malabo for eight months while he obtained the documents necessary to get out of the country.

[12] On November 30, 2008, once travel documents were arranged, the applicant left for Spain, where he remained for two months while he could raise the money and make the other arrangements necessary to leave Spain. In his PIF, the applicant stated that he "knew [he] could not stay [in Spain] because of the rising insecurity for Equatorial Guineans living in Europe." He provided a similar explanation at the hearing.

[13] The applicant also submitted a memorandum purportedly from the Ministry of National Security, dated November 27, 2008, ordering that the applicant be eliminated (the Kill Memo). It reads as follows:

> All security forces and institutions of the State located at the borders of Equatorial Guinea are ordered to physically eliminate the General Coordinator of the Sub-Saharan Area of the Progress Party of Equatorial Guinea, D. Antonio Camilo Esono Ayong Angue Ondo. In case of flight, shoot to kill.

A hand-written note directed to the applicant was at the bottom of the Kill Memo. It reads:

> Brother: If at all possible, leave Spain as soon as possible as those bastards are coming there to look for you in France and in Spain. Do everything possible to leave Spain.

[14] On February 1, 2009, the applicant departed Spain for Italy, en route to Canada where he arrived on February 3, 2009.

[15] The Board rejected the applicant's claim for protection on the basis of its finding that he lacked credibility, he had no subjective fear of persecution, and he had no personalized risk.

Credibility

[16] The Board mentioned several credibility concerns.

[17] First, although the applicant testified that his father was released from the jail at Evinayong around 1998, the death certificate showed that his father died at the public jail of Evinayong, in 2007.

[18] Second, the Board found the applicant's testimony to be inconsistent with the arrest warrant he provided. The arrest warrant, dated August 27, 2004, ordered the national security forces to capture the applicant and others. However, he testified that he had two brief periods of arrest after this warrant was issued but both times he was quickly released. This was found to be inconsistent with the warrant or the notion that the applicant was wanted for his political activity.

[19] Third, the Board also did not believe that the applicant would have been able to work in plain sight at two family businesses up until March 2008 if he was a target of the government.

[20] Fourth, the Board found the applicant's testimony regarding being fired from a bank in 2007 to be remarkably inconsistent with his PIF in which stated he worked at that bank in roughly 1993 to 1995. It did not accept his explanation at the hearing that he was simply "confused."

[21] Fifth, the Board also cast doubt on the March 2008 List, which allegedly triggered the applicant to depart from Equatorial Guinea. The Board assumed that the hand-written notation "02/05/08" listed beside the "assassinated" individual was May 2, 2008, and it found it "implausible that the list [dated March 20, 2008]… would have foretold of a murder that took place more than 5 weeks later."

Subjective Fear

[22] The Board found that the applicant's travels subsequent to March 2008 were inconsistent with a subjective fear of persecution. Regarding his week-long stay in Cameroon, the Board found that Cameroon had a "robust refugee program which grants asylum to tens of thousands of persons" and noted that the applicant had travelled freely throughout the country between major centres while he was there. Similarly, the Board found his return to Equatorial Guinea for eight months, to a location nearer the capital, to be inconsistent with a subjective fear of persecution.

[23] Regarding his time in Spain, the Board felt that if the applicant was truly at risk, he would have claimed protection there, noting the documentary evidence as to Spain, and the lack of

objective evidence presented to support his claim that Spain was not a safe place to claim asylum. The Board noted the explanation at the hearing that he did not remain in Spain because it was not a safe place for nationals of Equatorial Guinea but further observed that Italy would have been another safe destination and saw that the failure to claim there was another indicator that the applicant did not have a subjective fear of persecution.

Personalized Risk

[24] The Board found that the applicant had not established that he faced a personalized risk. The evidence of his treatment and dealings in Equatorial Guinea ran counter to any finding of personalized risk according to the Board:

> Notwithstanding an allegedly long-standing political involvement in a banned political party, for which he was known to the police, and actively sought for arrest and detention from 2004, [the applicant] continued his life largely untrammelled until March 2008 and again for 8 months in the vicinity of the national capital from March until November 2008.

Issues

[25] The applicant raises four issues:

1. Did the Board breach the duty of fairness by not giving the applicant a chance to respond to issues it identified in both the March 2008 List and the father's death certificate?
2. Were the Board's credibility findings unreasonable in light of the evidence?
3. Did the Board err in determining that the applicant's failure to claim protection in Cameroon, Spain, and Italy and his reavailment implied a lack of subjective fear?

4. Was the Board's assessment of the applicant's risk made without regard to the evidence?

1. Duty of Fairness

[26] The applicant submits that fairness dictates that the Board was required to give him an opportunity to respond to its concerns about the March 2008 List and his father's death certificate.

[27] He says that the Board assumed that the "02/05/08" inscription on the March 2008 List meant May 2, 2008, which led to its implausibility finding but says that the inscription could have referred to February 5, 2008, which pre-dated the preparation of the March 2008 List. He states that had he been given the opportunity to address this issue, "he would have been able to explain to the Board Member the date-writing convention of Equatorial Guinea and thereby [resolve] the issue for him." He continues saying that:

> He would also have been able to address any other credibility concerns the Board Member might have had about the document in question such as how he came to have a copy of the document in Canada, who made the hand-written annotations on it and when, and other questions that generally get asked about a claimant's documentary evidence. (This line of questioning may have been especially significant as the Applicant testified both at the hearing and in his PIF that he was only *shown* the list in March, 2008, and that it was not actually given to him until he obtained the copy of it later which he presented in evidence.) [emphasis in original]

[28] I find these submissions less than convincing. First, it is noted that the applicant does not suggest or present any evidence that there is a different convention as to dates in Equatorial Guinea. Indeed, a statement to this effect is conspicuously absent. Second, although he argues that the Board should have fully questioned him about how he came to have the list, who made the

inscriptions on it, etc. he ignores that this was not the Board's obligation. It was his burden to adduce evidence relevant to his claim. His counsel did not ask him any questions about how he came into possession of this list, or indeed about many other important issues, nor does he presently provide any answers to these questions. Third, the suggestion that the inscribed date may have been February 5, 2008, is equally problematic because the list was prepared on March 20, 2008, and one must question the genuineness of a state-prepared list that includes the name of an individual it assassinated a month and a half earlier. Fourth, despite the assertion that the applicant "testified both at the hearing and in his PIF that he was only *shown* the list in March, 2008" which carries with it the implication that the hand-written annotations could have been made after that, it is clear that the annotations must have been on the list at the time it was shown to him. This is because he testified at the hearing that he became afraid when he realized that one of the people on the list had already been assassinated. His current suggestion that the hand-written assassination annotation might *not* have been on the list at the time it was shown to him in March 2008 flies in the face of the evidence he gave at the hearing.

[29] Even if the Board incorrectly assumed that the date inscribed was May 2, 2008 – and there is presently no allegation that the Board in fact erred in so doing, only the mere possibility that it so erred – its finding nevertheless fell within a range of reasonable outcomes having regard to the evidence before it because the March 2008 List would have been no more credible if the inscribed date was February 5, 2008.

[30] The applicant also submits that he should have been given an opportunity to respond to the Board's concern about the place of death on his father's death certificate, the Evinayong jail, in light

of the testimony given at the hearing that his father had been released from that jail nine years earlier. He says that his father "could, for instance, have been a visitor, a chaplain, or an employee of the jail" at the time of his death and that his testimony was not, therefore, necessarily contradictory. The applicant does not actually attest that his father was a "visitor, chaplain, or employee" of that jail. Moreover, he testified at the hearing that his father was an employee of the Post Office his whole life and accordingly, his present suggestion that his father "might" have been an employee at the prison at this time of his death therefore flies in the face of his own testimony before the Board.

[31] In *Kumarasekaram v Canada (Minister of Citizenship & Immigration)*, 2010 FC 1311, at paragraph 14, this Court said that "[a] visa officer is not required to bring to an applicant's attention every adverse conclusion that the officer may draw from the evidence submitted by the applicant. Such a duty could arise when the adverse inferences arise from facts or information not otherwise known or available to the applicant." Although decided in a different context, the same rationale is applicable here. The striking coincidence as to the prison term and time and place of death were, or ought to have been known by the applicant. He submitted his father's death certificate into evidence and he would have known that his father died at that very same jail. Had the Board realized the apparent discrepancy at the time of the hearing, it would, of course, have been preferable that the issue be raised. However, a negative inference was clearly and reasonably open to the Board.

2. Unreasonable Credibility Findings

[32] The applicant submits that the Board's credibility findings were unreasonable. He focuses on the Board's negative finding regarding the state's inconsistent arrest behaviour toward him (which he submits was based on plausibility), and on ignored evidence. He says that plausibility findings "should be made only in the clearest of cases, i.e. if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant:" *Valtchev v Canada (Minister of Citizenship and Immigration*, [2001] FCJ No 1131, at para 7.

[33] He says that the material before the Board showed that it is not unusual in Equatorial Guinea for political opponents to be subjected to periods of fairly minor harassment, punctuated by occasional incidents of serious persecution. He points out that "what may seem implausible here [in Canada] is clearly not so in Equatorial Guinea" and that the Board erred by importing its own western notions into the plausibility assessment.

[34] I am not persuaded. I agree with the applicant, the documentary evidence does indeed show that political opponents may be subjected to periods of fairly minor harassment, punctuated by occasional incidents of serious persecution. However, there is no evidence that political opponents subject to an arrest warrant are arrested on multiple occasions, held briefly, and then released. Had there been such evidence in the record, then the applicant's submission that the Board was importing western notions in its assessment of the evidence may have been given some weight.

[35] Further, the Board made several other reasonable negative credibility findings. As noted above, it made negative credibility findings about the March 2008 List, which with the father's

death certificate were pivotal pieces of evidence for the applicant. It also made a negative credibility finding about the significant discrepancy in dates the applicant provided relating to his employment at the bank, a discrepancy that he presently describes as "minor." It was not minor. The applicant relied on his dismissal from the bank both in his PIF and at the hearing as evidence of hostility by the state toward him. Accordingly, the discrepancy was of serious importance.

[36] The applicant also submits that the Board ignored the Kill Memo in its decision. As noted above, the hand-written note directed to the applicant made at the bottom of the Kill Memo said:

> Brother: If at all possible, leave Spain as soon as possible as those bastards are coming there to look for you in France and in Spain. Do everything possible to leave Spain.

[37] When asked by the Board why he left Spain, the applicant made no reference to the Kill Memo as one might have expected. Instead, he stated that he did so because the Spanish government is more interested in the oil in Equatorial Guinea than human rights. When probed later whether he had any evidence that the government was still interested in him in 2011, he said:

> Yes, there is a document that was sent to me from Spain which they tell me that. Those who are interested in finding me, you know, finding anyone, they come to Spain or to France. And when it comes to me, they could come to Spain or France to kill me.

[38] This apparently oblique reference to the Kill Memo is unconvincing. First, it has nothing to do with 2011, but deals with 2008. Second, while the applicant says the document was sent to him *from* Spain, it appears that the document was sent from outside of Spain, i.e. from Equatorial Guinea because the relevant portion of the hand-written note says: "… leave Spain as soon as possible as those bastards are coming *there* to look for you … [emphasis added]."

[39] The applicant did not testify at the hearing as to how or when he came across the Kill Memo, or who sent it to him, either in response to the Board's questions, or voluntarily. Nor did he allude to receiving such an alarming communication in his PIF. On the contrary, the PIF only indicates that there was "rising insecurity" for Equatorial Guineans living in Europe. However, the Kill Memo, if genuine, would have been alarming and distinctly memorable: it purported to be a direction to execute the applicant, and was apparently sent to him while he was in Spain. But he never cited this alarming communication as a reason why he left Spain. The Board was entitled to give little or no weight to the Kill Memo.

3. Lack of Subjective Fear

[40] The Board found that the travel pattern of the applicant after receiving the March 2008 List was not indicative of subjective fear. He submits that his particular explanations as to his post-March 2008 travel pattern were either ignored or unreasonably rejected and thus that the finding of subjective fear was made unreasonably.

[41] There is no disagreement between the parties as to the *potential* relevance of the applicant's failure to claim protection in Cameroon, Spain, and Italy. However, the Board based its finding of a lack of subjective fear both on the applicant's travel to these countries and his failure to make a claim for protection and on its concerns about the credibility of his evidence including whether the March 2008 List was genuine. The applicant provided explanations as to why he did not claim protection in any of these three countries; however, it was open to the Board to assess those

explanations in light of the evidence he gave as to the existence of persecution or risk in the first place, which was found to be not credible.

4. Lack of Personalized Risk

[42] The applicant submits that he provided evidence as to the risk facing him, namely the March 2008 List and the 2005 and 2007 arrests. The Board reasonably found that his allegations as to the risk facing him since at least 2004, especially the March 2008 List, were not credible. It was entitled to find that he did not face a particularized, forward-looking risk, and did not need to repeat its reasoning in relation to the credibility of his evidence.

Conclusion

[43] The Board's decision was reasonable and procedurally fair. Accordingly, the application must be dismissed.

[44] Neither party proposed that a question be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Patricia Wells	FOR THE APPLICANT
Alex C. Kam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

PATRICIA WELLS Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT