

Federal Court



Cour fédérale

Date: 20121204

Docket: IMM-2569-12

Citation: 2012 FC 1420

Ottawa, Ontario, December 4, 2012

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**EDWARD BESONG OBEN
YVONNE KUNJU BALOGOUN
SAMUEL OBEN BESONG
ANNE BESONG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Edward Oben, his wife, Yvonne Balogoun and their two children from a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) which denied their claim to refugee protection.

[2] Mr. Oben's claim was based on an allegation of political persecution in Cameroon by virtue of his support for an opposition political party – the Southern Cameroons National Council (SCNC).

[3] At the core of Mr. Oben's risk narrative was an alleged arrest by the Cameroon police on May 30, 2009 while he was attending a political meeting. According to Mr. Oben he was held in custody for four days and beaten with batons and the edge of a gun. He was also refused water and food. He became so dehydrated that he was rushed to the hospital where he received treatment for two days. He left Cameroon for Spain on June 7, 2009 and has not returned to Cameroon. The family came to Canada on November 18, 2009 and sought refugee protection eight days later.

[4] Although Mr. Oben and his family had achieved permanent protected status in Spain prior to his alleged arrest and detention, that situation was in legal jeopardy and the Board examined their risk only against Cameroon.

[5] The Board rejected the Applicants' claims because it found that Mr. Oben's testimony was not credible. In the result it found that he was not a member of the SCNC and had not suffered any persecution because of his political activities. These findings were based on Mr. Oben's "threadbare and dispassionate account of his arrest, imprisonment and torture" and because he had failed to provide corroborating evidence that should have been readily available. The Board also noted the lack of detail surrounding Mr. Oben's ongoing involvement with the SCNC during the time when he was mostly living in Spain.

[6] The two material pieces of corroborating evidence that the Board said were missing were the hospital records verifying his injuries from torture and media accounts verifying the multiple

arrests that were allegedly made at an SCNC meeting on May 30, 2009. The Board's assessment of the significance of the missing evidence was as follows:

[25] The principal claimant testified that he was beaten with a baton and with the edge of a gun and then locked in a cupboard for almost two days without water or food. After that he was taken to hospital. He was asked if he had any medical records from the time of his stay in the hospital. He indicated that he tried to obtain them but that "they," presumably the hospital, wanted a lot of money for them. The panel does not accept this explanation. The panel does not believe that the fees, if any, that the hospital requested were so exorbitant as to be completely beyond the reach of the claimant. It is worth noting that the claimant has had sufficient funds to travel back and forth between Cameroon and Spain and to travel to Canada.

[26] The principal claimant was asked if there were any reports in the media regarding his arrest and the arrest of the twenty others. The claimant indicated that he did not have access to the media and that his lawyer did not send him any information.

[27] The panel finds it implausible that there would be no report in the media regarding the arrest of twenty or more SCNC members at a meeting that was essentially broken up by the police and that it would not be possible to obtain that report.

[7] Mr. Oben complains that he did provide a substantial amount of corroboration, which the Board failed to adequately address in its reasons. That material included a letter from the Executive Secretary of the SCNC confirming Mr. Oben's membership and verifying his account of persecution, a copy of Mr. Oben's SCNC membership card, an Order of Release from custody dated June 3, 2009 and an affidavit from Mr. Oben's lawyer in Cameroon who attested to Mr. Oben's allegations.

[8] Although Mr. Oben's Canadian counsel is correct that the Board did not expressly reject his corroborating evidence as unreliable, that is the inescapable inference that arises from its reasons and, in particular, from the following passage:

These documents cannot be dismissed out of hand. However, they must be weighed against the lack of other records such as media accounts and medical verification, the principal claimant's demeanor and particularly the lack of detail in his testimony. The latter factor is the one that most troubles the panel. The principal claimant's threadbare and dispassionate account of his arrest, imprisonment, and torture is simply not, in the panel's judgment, that of someone who has actually survived that experience.

[9] The further argument that the Board had an obligation to request the production of hospital records and relevant media accounts is untenable. Mr. Oben apparently understood the importance of his medical records because he testified that he broached the issue with his brother. The excuse that he lacked the funds to obtain this information was reasonably rejected by the Board which pointed to his ability to fly to and from Spain and later to Canada with his family. This evidence was incredible and would easily support a negative inference that the hospital records were not produced because they did not exist. This was, after all, evidence from an independent third party source and the Board cannot be faulted for giving more weight to its absence from the record than to the documents that were produced. The same can be said for Mr. Oben's failure to produce media references to the alleged mass arrests on May 30, 2009. Mr. Oben's explanation was only that he had not bothered to look. Presumably he also failed to ask his Cameroon lawyer to search on his behalf. The Board's rejection of this testimony was reasonable as was its expectation that, if an incident of this political magnitude had occurred, it would be publicly reported. Indeed, the failure by Mr. Oben's Cameroon lawyer to produce such readily available corroboration and attach it to his affidavit was a sufficient basis on its own to reject this claim.

[10] Mr. Oben's counsel would also have understood the importance of obtaining all available corroboration because that is a well-known credibility concern for the Board. Furthermore, the Board had flagged its concern about the reliability of the documents that Mr. Oben had produced because they were sent out (unsuccessfully) for authentication and, still, additional corroboration was not obtained.

[11] The burden remains on an applicant to prove his case with the strongest available evidence. The risks of not doing so were obvious to Mr. Oben, and the evidentiary shortcomings noted by the Board were a reasonable basis for its credibility findings. Having found that Mr. Oben's credibility was lacking, the Board was fully entitled to reject the documents he had tendered, particularly in the absence of available, independent and objectively reliable documents: *see Singh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 756 at para 17, [2006] FCJ no 1054.

[12] Mr. Oben's complaint about the Board's ostensible failure to warn him of the importance of producing the envelopes for the documents he submitted and for not sufficiently questioning his wife are untenable for essentially the same reasons. Mr. Oben's credibility and the reliability of his documents were clearly in issue. He was represented by counsel who was fully capable of eliciting testimony to fill in any gaps that remained after the Board had finished. It is not the fault of the Board if counsel failed to do so. The Board's observation about the failure to produce covering envelopes does not appear to have been a significant credibility concern but counsel would know that proof of how and when documents are obtained is sometimes a concern for the Board. The

issue is usually successfully addressed with an explanation that the significance of the evidence was not appreciated at the time of receipt and the evidence was therefore thrown away.

[13] For the foregoing reasons, this application is dismissed. Neither party proposed a certified question and no issue of general importance arises from these reasons.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2569-12

STYLE OF CAUSE: OBEN ET AL v MCI

PLACE OF HEARING: Toronto, ON

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REASONS FOR JUDGMENT: BARNES J.

DATED: December 4, 2012

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