

Cour fédérale



Federal Court

Date: 20140430

Docket: IMM-793-13

Citation: 2014 FC 381

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, April 30, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

EDGARD DEYO

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary comments

[1] The Court is very aware of the fact that major abuses have been perpetrated against foreign domestic workers in certain embassies in Canada.

[2] This is a concern given known cases in which such abuse has led tribunals to conclude that certain employees, in certain embassies, were mistreated to such an extent that Canada's Department of Foreign Affairs, Trade and Development temporarily prohibited certain embassies from bringing domestic workers to Canada and issued a news release setting out the legal rights of domestic workers that must be respected by foreign embassies in Canada.

[3] According to the missing evidence, that was not the situation in this case. The applicant's record was finalized by the Court without a conclusion regarding the "investigation" to be held as promised by the authorities in the applicant's country of origin. Hopefully, an impartial investigation will indeed be conducted in fact and in law.

II. Introduction

[4] The Court reiterates that administrative tribunals have a broad discretion when it comes to questions of fact (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)). It is therefore not the role of this Court to substitute its reasoning for that of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [Board] or to reweigh the evidence in this case.

[5] Justice Michael Phelan clearly stated the following in *Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2007 FC 6:

[17] There is no strict legal requirement that the Board members must follow the factual findings of another member. This is particularly so where there is one of the "reasonableness" standards in play – reasonable people can reasonably disagree. [Emphasis added.]

[6] This is an application for judicial review of a decision rendered by the RPD on December 14, 2013, by the RPD in which it held that the applicant was neither a refugee within the meaning of section 96 nor a person in need of protection within the meaning of section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

III. Facts

[7] The applicant, Edgard Deyo, is a citizen of Benin. His wife and two children are still living in Benin.

[8] The applicant arrived in Canada on January 22, 2008, to work in the Embassy of Benin in Canada as a cook.

[9] From January 22 to June 30, 2009, the applicant was allegedly subjected to abuse by the Ambassador, and, more specifically, his spouse, who hit him and threatened him on several occasions. The applicant describes his experience as one of “slavery”.

[10] On June 30, 2009, the applicant quit the Embassy and filed a complaint with Canada’s Department of Foreign Affairs and International Trade [DFAIT]. A few days later, the applicant made a claim for refugee protection.

[11] On May 27, 2012, Benin’s Head of State allegedly contacted the applicant, through Ms. Dossa, an accountant at the Embassy, to inform him that she was conducting an

investigation into the complaints filed against the Embassy, and to ask him to come and testify about his experience at the Embassy. The applicant refused to participate in this investigation.

[12] On December 14, 2012, the RPD rendered its decision, concluding that the applicant was neither a refugee nor a person in need of protection.

[13] On January 30, 2013, the applicant filed this application for judicial review against that decision.

IV. Decision under review

[14] The RPD concluded that the applicant was neither a Convention refugee nor a person in need of protection within the meaning of section 97 of the IRPA because he had failed to establish that he would be subjected to a risk of persecution in Benin directly or indirectly by the Ambassador or his spouse. The evidence submitted by the applicant relating to corruption in Benin and the mistreatment suffered by its citizens was considered inadequate, and even non-existent.

[15] The RPD also found that it was unreasonable of the applicant to refuse the protection offered by Benin's Head of State after filing his complaints with DFAIT. The RPD was of the view that the Beninese authorities had considered his complaints as serious and important, even inviting him to participate in an investigation.

V. Issues

[16] The issues in this case are as follows:

- (a) Did the RPD err in determining that the applicant's objective fear was not well founded?
- (b) Did the RPD ignore the evidence before it?

VI. Relevant legislative provisions

[17] Sections 96 and 97 of the IRPA apply in this case:

Convention refugee

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.

Définition de « réfugié »

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.

Person in need of protection

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

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

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

(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,

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

(iv) the risk is not caused by the inability of that country to provide

Personne à protéger

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

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

(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) 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) la menace ou le risque ne résulte pas de l'incapacité du pays de

adequate health or medical care.	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.

VII. Standard of review

[18] The standard of review applicable to findings regarding state protection and the balance of evidence is reasonableness (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004; *Canada (Minister of Citizenship and Immigration) v Carrillo*, 2008 FCA 94, [2008] 4 FCR 636; *Chaves v Canada (Minister of Citizenship and Immigration)*, 2005 FC 193; *Villicana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1205, 357 FTR 139).

VIII. Positions of the parties

[19] The applicant submits that the RPD erred in concluding that he had failed to establish a well-founded objective fear of persecution by the Beninese authorities. The applicant notes that he filed sufficient documentary evidence illustrating the corruption and abuse in Benin and that the RPD should have analyzed this evidence more carefully.

[20] The applicant submits that the RPD also ignored two affidavits filed by other employees of the Embassy. The applicant states that the facts in the case of one of these witnesses before the

RPD were very similar to those in his case and that the RPD should have considered the decision in that case in reaching its decision.

[21] Finally, the applicant alleges that the RPD erred in analyzing the conditions of another country—Haiti—in its decision. The applicant is basing his argument on the incorrect reference to this country at paragraph 35 of the decision.

[22] The respondent submits that the RPD reasonably concluded that the applicant had failed to establish a well-founded objective fear of persecution in the event of his return to Benin. The applicant did not rebut the presumption of state protection; he did not provide clear and convincing evidence that Benin was unable to protect its citizens.

[23] The respondent also states that the RPD did not analyze the conditions of another country. According to the respondent, the RPD merely made a typographical error that does not justify this Court's intervention.

IX. Analysis

A. *Did the RPD err in determining that the applicant's objective fear was not well founded?*

[24] The test to establish fear of persecution is bipartite: a claimant must subjectively fear persecution and this fear must be well founded in an objective sense (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689).

[25] In this case, the RPD accepted that the applicant had a genuine subjective fear of persecution; however, it held that it was not well founded in an objective sense because he failed to rebut the presumption of state protection.

[26] The Court considers this decision entirely reasonable.

[27] It is well established in the relevant case law that there exists a presumption that the state is capable of protecting its citizens. To rebut this presumption, a claimant for refugee protection must adduce relevant, reliable and convincing evidence that demonstrates, on a balance of probabilities, that the state protection is inadequate (*Carrillo*, above, at para 30).

[28] In this case, the applicant did not adduce sufficient evidence that the state was unable or unwilling to protect him. In fact, the only evidence in the record relating to the applicant's personal circumstances demonstrates that he was offered protection by the Beninese authorities, which he refused. It is presumed that this protection will be offered upon his return to his country of origin; however, this final chapter has yet to be written and remains to be confirmed by the authorities of his country of origin.

[29] Justice Yves de Montigny noted in *Navarro v Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, that a state “must at least be offered a real opportunity to intervene before one can conclude that it is unable to provide the protection required by one of its citizens” (at para 17). [Emphasis added.]

[30] The applicant submits that he refused to participate in the investigation into the complaints against the Embassy because he was afraid to go to the Embassy to provide his testimony. While it is plausible that the applicant feared returning to the Embassy, the Court does not consider this argument sufficient to establish that the state could not reasonably provide protection, given the status of this Embassy in Canada and its reputation within diplomatic circles.

[31] The Court agrees with the RPD that it was unreasonable for the applicant to refuse to participate in the investigation. As it pointed out at the hearing and in its decision, the applicant could have invited a witness, such as a DFAIT staff member, to accompany him to the Embassy if he were concerned about going by himself.

[32] The Court is also of the view that the documentary evidence on Benin in the record is also inadequate to rebut the presumption of state protection. The documentary evidence shows that Benin has gained a reputation as being one of the most stable countries in Western Africa (Applicant's Record [AR], Tab 17). It reveals that there were no politically motivated disappearances or murders and no political detainees in Benin in 2011 (AR, Tab 16). While it is possible that the situation in Benin is not perfect, the Court is not faced with a situation in which the state is incapable of protecting its citizens should it wish to do so.

[33] The Court agrees that the RPD could have said more about the documentary evidence on Benin in the record, but this alone does not constitute a reviewable error, particularly given the evidence in the record that supports its conclusion. According to *Newfoundland and Labrador*

Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708, a court is not required to make an explicit finding on each constituent element of its reasoning leading to its final conclusion. On the whole, the Court finds that the RPD's decision was clear, legally sound and supported by the evidence.

[34] This Court is of the view that the RPD did not err in analyzing the conditions of another country in its analysis of the applicant's application. The reference to Haiti at paragraph 35 of the decision appears to have been inadvertent. The Court does not accept the applicant's submission that this error is comparable to those in *Fernandez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 536 and *Landaverde Canada (Minister of Citizenship and Immigration)*, 2005 FC 1665 (also, *Earl v Candaa (Minister of Citizenship and Immigration)*, 2011 FC 312 at para 25). Unlike in those two cases, there was no confusion regarding the country at issue. It is clear from a reading of the decision that the RPD was indeed talking about Benin. In fact, the sole reference to Haiti appears in the conclusion; the analysis refers only to Benin. This does not invalidate the decision. In the words of Justice James Russell in *Petrova v Canada (Minister of Citizenship and Immigration)*, 2004 FC 506, 251 FTR 43: "[w]hen a mistake is typographical in nature, the Court should not interfere with the decision, especially if the error does not appear to have been a misunderstanding of the evidence" (at para 52).

B. *Did the RPD ignore the evidence before it?*

[35] The Court is of the view that the RPD did not fail to consider the affidavits filed by the two other Embassy employees. The RPD explicitly dealt with these affidavits at paragraphs 31-34 of the decision.

[36] In any case, it seems that what the applicant is really objecting to is the weight ascribed by the RPD to a decision rendered by another member of the Board regarding the claim for refugee protection of one of these employees.

[37] The Court reiterates that administrative tribunals have broad discretion in relation to questions of fact (*Aguebor*, above). It is therefore not for this Court to substitute its reasoning for that of the RPD or to reweigh the evidence in this case.

[38] Justice Phelan clearly set out the following in *Siddiqui*, above:

[17] There is no strict legal requirement that the Board members must follow the factual findings of another member. This is particularly so where there is one of the “reasonableness” standards in play – reasonable people can reasonably disagree.
[Emphasis added.]

[39] In light of this case law, the Court cannot conclude that the RPD’s failure to take into account the decision of another member of the Board constitutes a reviewable error.

X. Conclusion

[40] For all the foregoing reasons, the applicant’s application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the applicant's application for judicial review is dismissed without any question of general importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-793-13

STYLE OF CAUSE: EDGARD DEYO v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 14, 2014

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

DATED: APRIL 30, 2014

APPEARANCES:

Negar Achtari FOR THE APPLICANT

Adrian Bieniasiewicz FOR THE RESPONDENT

SOLICITORS OF RECORD:

Negar Achtari FOR THE APPLICANT
Counsel
Ottawa, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario