

Federal Court



Cour fédérale

Date: 20150414

**Dockets: IMM-8253-13
IMM-8254-13**

Citation: 2015 FC 462

Montréal, Quebec, April 14, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

MELEDJE CLÉMENT ESMEL ESSIS

Applicant

and

**THE MINISTER OF CITIZENSHIP &
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

[1] This decision concerns applications for judicial review of two decisions of a Senior Immigration Officer (the Officer) of Citizenship and Immigration Canada. One decision rejected an application for permanent residence from within Canada on humanitarian and compassionate grounds (the H&C application). The other decision denied an application for a Pre-Removal Risk Assessment (the PRRA application).

[2] For the reasons set out below, I have concluded that both applications should be dismissed.

I. Background

[3] The applicant is a citizen of Côte d'Ivoire who came to Canada in 2004. He left Côte d'Ivoire in 1998 and was in the United States until his arrival in Canada. He made a refugee claim upon his arrival in Canada which was rejected in 2005.

[4] The applicant belongs to the Adjukru ethnic minority of the Akan group in Côte d'Ivoire, and is a Catholic Christian. He also claims to be a member of the Ivorian Popular Front (FPI) and a supporter of the former president of Côte d'Ivoire, Laurent Gbagbo. The applicant argues that because of these factors he faces risks if returned to Côte d'Ivoire. He cited these risks in support of both the H&C application and the PRRA application.

II. H&C Application

[5] In support of the H&C application, the applicant raised two additional issues over and above the asserted risks mentioned above. These additional issues are his establishment in Canada and the best interest of his children.

A. *Applicable test for an H&C application*

[6] A key argument by the applicant in support of his assertion that the rejection of his H&C application should be set aside is that the Officer applied the wrong test in assessing the

application. The correct test is stated near the beginning of the Officer's impugned decision:
"The applicant has the burden of proving that his personal situation is such that the hardships which would result from a refusal to grant [the H&C application] would be unusual and undeserved or disproportionate."

[7] Unfortunately, on a couple of occasions in the reasons for the impugned decision, the Officer suggested that the applicant had the burden of proving not just that the risks he asserts if he is returned to Côte d'Ivoire are personal to him, but also that they would affect him differently than others in Côte d'Ivoire:

[...] this evidence describes general country conditions and does not demonstrate that the applicant's situation is specific to him or different from that of other Ivorians. [p. 6 of the decision]

[...] he has not established to my satisfaction that his personal situation is special and different from that of the rest of the Ivorian population. [p. 7 of the decision]

[Emphasis added.]

[8] The applicant argues that the Officer inappropriately applied the requirement under subparagraph 97(1)(b)(ii) of the *Immigration and Refugee Protection Act* that the asserted risks are "not faced generally by other individuals in or from the country." However, there is a distinction between this requirement that the risks affect the applicant in a way that is different from the rest of the population, and the requirement imposed in an H&C application that the asserted risks have a personal effect on the applicant rather than a general effect that may not actually impinge on the applicant. That is to say, even if the effect is generalized, it must be shown to affect the applicant personally. The former requirement is inapplicable in the present

case, but the latter must be considered. The subtleness of this distinction may be what led the Officer to state the requirement in a way that was open to misinterpretation.

[9] In the end, however, I am satisfied that, despite the foregoing misstatements, the Officer understood the correct test and applied it. The Officer quoted from the decision of Justice Frenette in *Rahman v Canada (Citizenship and Immigration)*, 2009 FC 138, which dealt with this distinction. Moreover, the Officer's analysis was correctly concerned with whether the applicant was likely to be personally affected by the risks he asserted.

[10] Because I have concluded that the Officer applied the correct test, it is not necessary for me to decide on the proper standard of review for this issue.

B. *Assessment of risks*

[11] The parties are agreed that the standard of review of the Officer's assessment of the H&C application is reasonableness. I agree: *Kanhasamy v Canada (Citizenship and Immigration)*, 2013 FC 802 at paras 10-11.

[12] As regards the assessment of the risks asserted by the applicant, the Officer concluded that there was insufficient evidence either to support the assertions or to indicate that the applicant would be personally affected.

[13] The Officer noted several articles describing conditions in Côte d'Ivoire and accepted that the evidence indicated that the human rights situation there is not ideal. However, the

Officer was not satisfied that the applicant risked being personally affected by this situation if he was returned. He found that the evidence did not indicate that members of his ethnic group or his religion are targeted for persecution or ill-treatment. The applicant has not convinced me that this finding was unreasonable.

[14] With regard to the applicant's assertion that he is a member of the FPI and a supporter of former president Gbagbo, the Officer noted that there was no evidence to support either assertion. Though he claimed to have participated in related forums and meetings, he failed to provide any corroborating documentation. The applicant argues that the Officer made veiled findings of a lack of credibility here and that the Officer's decision should be set aside because the applicant was not invited to respond to such credibility concerns. The applicant argues that, in the absence of a determination as to credibility (which is not present here), an applicant's evidence is presumed to be true: *Cho v Canada (Citizenship and Immigration)*, 2010 FC 1299 at para 24. However, the respondent notes that this presumption of veracity applies only to allegations made under oath, and further that the presumption is rebuttable where corroborating evidence is insufficient: *Adetunji v Canada (Citizenship and Immigration)*, 2012 FC 708 at para 46. For these reasons, it is my view that it was reasonable for the Officer to expect some sort of documentary support for these assertions by the applicant.

[15] The applicant also claims that his house in Côte d'Ivoire was expropriated by supporters of the current president, and that his family was forced to flee. Again, the Officer was concerned about a lack of documentation. I agree with the applicant that it may be unreasonable to expect the applicant to obtain documentation concerning the extra-judicial expropriation of his house by

political opponents in a country like Côte d'Ivoire. However, in my view, it was nonetheless reasonable for the Officer to note the absence of any evidence at all concerning these events and to draw conclusions from that absence.

[16] The applicant also argues that he faces a risk upon return to Côte d'Ivoire as a failed refugee claimant. At the hearing before me, applicant's counsel clarified that he is not asserting that failed refugee claimants face a greater risk than others returning to Côte d'Ivoire. Rather, I understand his argument to be a restatement of the assertion that Côte d'Ivoire is a dangerous place and that he will face risks if he is returned there. I have seen no evidence that failed refugee claimants face risks as such upon return to Côte d'Ivoire.

C. *Establishment in Canada*

[17] The applicant argues that the Officer's analysis of the applicant's establishment in Canada was inadequate. I disagree.

[18] The Officer noted the applicant's continued employment, his ability to live in Canada without the support of the public and to pay his taxes, his ownership of a car and other assets in Canada, his involvement with his church, his volunteering, and his respect for the law. However, the Officer found these to be insufficient to demonstrate that his departure to Côte d'Ivoire would cause hardship that is unusual and undeserved or disproportionate.

[19] As mentioned above, the Officer was also not satisfied with the evidence in support of the assertion that the applicant's house had been expropriated and his family displaced.

[20] In my view, the Officer's conclusions as regards the applicant's establishment in Canada were reasonable.

D. *Best interests of the children*

[21] The applicant claims that he supports a step-daughter in Canada and a son in Côte d'Ivoire, and that he has built a solid family relationship in Canada. The Officer noted that there is no evidence of this support.

[22] The applicant's argument concerning the lack of evidence here is similar to that discussed above. My conclusion is the same: having recognized the obligation to consider the best interests of the children, it was open to the Officer to conclude that the evidence was insufficient to grant the H&C request on that basis.

III. PRRA Application

[23] The applicant's arguments in respect of the PRRA application are similar to those raised in the context of the H&C application concerning the risks he faces if returned to Côte d'Ivoire. My conclusions as to the reasonableness of the Officer's findings of insufficiency of the evidence and the adequacy of the Officer's analysis apply equally here.

IV. Conclusion

[24] For the reasons provided above, I conclude that the applications for judicial review of the H&C application and the PRRA application should be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present applications for judicial review are dismissed.
2. No serious question of general importance is certified

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-8253-13, IMM-8254-13

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OF CITIZENSHIP & IMMIGRATION CANADA

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