Federal Court  Cour fédérale

Date: 20161220

Docket: IMM-2885-16

Citation: 2016 FC 1398

[ENGLISH TRANSLATION]
Ottawa, Ontario, December 20, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SERGE KOUASSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review under paragraph 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision by an officer of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. On June 14, 2016, under subsection 111(1) of the IRPA, the RAD dismissed the applicant's appeal, confirming the

decision of the Refugee Protection Division [RPD] of August 21, 2015, according to which he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the IRPA.

II. Facts

[2] The applicant, aged 38, is a citizen of Côte d'Ivoire and is of Dida origin. He came to Canada as a visitor on May 28, 2015, to dance in an arts festival (from 2007 to 2012, he was unemployed). The applicant claimed refugee protection in the days following his arrival, alleging that he was a victim of persecution because of his political opinions. He has a spouse and a 6-year-old son, who are still living in Côte d'Ivoire.

[3] According to the applicant, he was a militant in the youth section of the Front populaire ivoirien [FPI] (Ivorian Popular Front) party, for which he went door to door during the presidential election campaign in 2010.

[4] In August 2014, while out in the street wearing clothing that exhibited his support for the FPI, the applicant was allegedly violently manhandled by a group of individuals opposed to his political party and with ties to the party in power, the Rassemblement des Républicains [Rally of the Republicans]. The applicant claims he identified his attackers to the police, but they did not deal with his complaint.

[5] The applicant alleges that, in September or November 2014, while he was on his way to a meeting for FPI supporters, he was informed that the meeting was being raided by government

forces. He therefore avoided being forcibly arrested, unlike many of the supporters at the gathering. As a result of these events, he quickly fled Abidjan and hid for 8 months at a camp 3 km from the village of Agbahou, which is 250 km southeast of the capital, Yamoussoukro.

[6] After his arrival in Canada, individuals looking for the applicant allegedly harassed his spouse on two occasions in June and July of 2015. She was beaten and subsequently filed a complaint with the authorities.

III. Decisions

A. *Decision of the RPD dated August 21, 2015*

[7] The RPD dismissed the applicant's claim for refugee protection because he lacked credibility and because he had an internal flight alternative in Côte d'Ivoire.

[8] The RPD found that the applicant's account was not credible. First, the panel faulted his inability to provide information on his party's political platform, as he gave only vague and generic answers. Second, when questioned about the day his fellow party members were arrested and the day he fled Abidjan—September 20 or November 20, 2014—the applicant could not explain the contradictions in his Basis of Claim form [BOC] to the panel's satisfaction. Finally, the RPD concluded that his spouse's complaint following the alleged events was, in fact, fabricated, given that it contained little information on the victim, but a great deal of information on the applicant.

[9] In the alternative, the RPD believed that there was an internal flight alternative in Côte d'Ivoire for the applicant, in the village of Agbahou. First, the panel judged that there was no serious possibility of his being persecuted in Agbahou. The applicant apparently lived and worked there for several months without being recognized or bothered, and his political profile was too low for him to be persecuted there. Moreover, the objective evidence showed that, in 2014, the opposition parties had very few problems with the authorities. Second, the panel took into consideration that given his age, education and health, it would be possible for the applicant to live and work in this area.

[10] The applicant appealed the RPD's decision on September 11, 2015.

B. *Decision of the RAD dated June 14, 2016*

[11] The RAD confirmed the RPD's decision to reject the applicant's refugee protection claim under subsection 111(1) of the IRPA. After examining the reasons, listening to the recording of the RPD hearing of August 10, 2015, and analyzing all the evidence on file, the RAD concluded that the RPD had not erred in its decision.

[12] The RAD assessed the documents submitted as new evidence by the applicant under subsection 110(4) of the IRPA. It concluded that some documents could not be considered to be new evidence because they predated the RPD's rejection of the claim and because the applicant did not provide any explanation as to why these documents had not been submitted to the RPD. The RAD also concluded that the documents admitted as new evidence did not warrant holding a hearing under subsection 110(6) of the IRPA because they concern circumstances irrelevant to

the applicant's situation. The documents were therefore not central to the RAD's decision, nor could they justify allowing or rejecting the refugee protection claim.

[13] Given the applicant's limited involvement with the FPI, the RAD concluded that the RPD had committed a non-determinative error by drawing a negative inference regarding the applicant's credibility from his inability to give precise information on the party's political platform. Nevertheless, the RAD found that the applicant's contradictions concerning the date of the incident in Abidjan in the fall of 2014 as well as the fact that he hesitated several times when replying to the RPD supported the RPD's conclusions regarding his credibility, which the RAD supported. Finally, the RAD confirmed the RPD's decision to give no probative value to the complaint by the applicant's spouse to the police in 2015 because of its content—the complaint contains little information on the circumstances of the alleged incidents and focuses on the applicant. The applicant could neither explain the delay between the incidents and the filing of the complaint by his spouse nor give information on the treatment she received afterwards. Furthermore, although the applicant criticized the RPD for assessing the credibility of the Ivorian complaint by Canadian standards, he did not present any documentary evidence to support his argument.

[14] The RAD supported the conclusions of the RPD that there was an internal flight alternative for the applicant in Côte d'Ivoire and concluded that his allegations were not sufficient to prove the contrary. The RAD found that the applicant had been a mere activist and not been very active within the FPI, apart from going door to door in 2010. The RAD also considered the fact that the applicant had never had any trouble until the incident in the street in

August 2014 while he was dressed in clothing linking him to the FPI, which was an isolated act. Since it did not believe the fall 2014 incident or the 2015 complaint by his spouse, the RAD concluded that the applicant's allegations that his political enemies would find him were mere speculation. Finally, the applicant did not sufficiently support that there was no internal flight alternative, given that he is educated and was able to live and work in Agbahou for many months without being bothered.

[15] Finally, the RAD did not accept the applicant's claims that it would be risky for him to return to Côte d'Ivoire given the intercommunal conflicts brought by land disputes and the exploitation of natural resources because these concerns were not mentioned in his BOC and did not affect his region. The RAD therefore found that the applicant would not personally be subjected to a danger of torture, to a risk to his life or to a risk of cruel treatment should he return to Côte d'Ivoire. The RAD rejected the applicant's claims that he would be personally subjected to food insecurity, crime and jihadist attacks because these were generalized risks in the country.

IV. Parties' submissions

A. *Applicant's submissions*

[16] The applicant is of the opinion that the RAD erred in its decision.

[17] First, the applicant claims that the RAD unreasonably minimized the probative value of the new evidence presented and excluded this evidence without justification and without

applying the criteria in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]. He claims that the RAD erred in its interpretation of subsection 110(4) of the IRPA.

[18] Then, the applicant alleges that the RAD misassessed his credibility. The applicant insists that a refugee protection claimant's testimony should be presumed true and can only be rebutted on reasonable grounds which are not based on speculations and assumptions. The applicant deems his testimony to have been faithful and clear, but the panel speculated, misinterpreted the facts of the refugee protection claim and spent too much time on details that were not important to the case.

[19] Finally, the applicant argues that the RAD was wrong in concluding that the applicant had an internal flight alternative and faced no personalized risks in Côte d'Ivoire. The RAD's decision was essentially based on its negative assessment of the applicant's credibility and on the disproportionate weight given to details.

B. *Respondent's claims*

[20] The respondent argues that the RAD's decision to reject certain documents as new evidence was reasonable and complied with subsection 110(4) of the *Immigration and Refugee Protection Act* and subsection 29(3) of the *Refugee Appeal Division Rules*, SOR/2012-257 [RADR]. The applicant failed to meet his burden of providing a reasonable explanation as to why the new evidence was not available or why he could not present it in a timely manner for the RPD hearing. At this stage of the Federal Court judicial review, this evidence would be

irrelevant (*Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at paras 39–46 [*Figueroa*]).

[21] The respondent submits that the RAD's decision regarding the applicant's lack of credibility is reasonable. Before dismissing the appeal, the RAD carefully reviewed the RPD's decision, examined each one of the applicant's allegations, and took into account all the evidence and the applicant's testimony. The RAD was right in drawing a negative inference from the inconsistencies in the evidence and in doubting the truthfulness of the applicant's claims. Moreover, the respondent emphasizes that the applicant is attempting, during the judicial review, to present arguments based on evidence that was never attached as an exhibit to his affidavit to the Federal Court or the RAD.

[22] The respondent submits that the RAD, in light of all of the evidence, reasonably concluded that there was a valid internal flight alternative for the applicant in Côte d'Ivoire, and this, in putting aside its considerations about the applicant's credibility. Since the applicant did not present reliable evidence corroborating his allegations of fear, he did not discharge his burden of demonstrating, on a balance of probabilities, the existence of a serious possibility that he would be at risk of persecution anywhere in Côte d'Ivoire. The respondent also submits that the RAD was justified in deciding that the applicant did not meet the criteria of sections 96 and 97 of the IRPA and did not establish a personalized risk.

V. Issues

[23] In this case, the Court must address the following issues:

1. Did the RAD err in refusing certain new evidence?
2. Did the RAD err in its assessment of the applicant's credibility?
3. Did the RAD err in concluding that the applicant had an internal flight alternative?

[24] The first issue, concerning the RAD's interpretation of the IRPA provisions on the admissibility of new evidence, is subject to the standard of reasonableness (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*]).

[25] The second issue is one of fact, subject to the standard of reasonableness. The Court must show deference to the assessment of the applicant's credibility by the specialized tribunals (*Cortes v Canada (Citizenship and Immigration)*, 2015 FC 1325; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 46).

[26] The third issue, mixed in fact and law, is also subject to the standard of reasonableness (*Cruz Pineda v Canada (Citizenship and Immigration)*, 2011 FC 81).

VI. Relevant provisions

[27] In the present case, the applicable provisions are as follows.

[28] With respect to Convention refugee status and the status of a person in need of protection, sections 96 and 97 of the IRPA:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a	96. A qualité de réfugié au sens de la Convention — le

well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

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) 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.

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

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 themself 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 lawful sanctions, unless imposed in disregard of accepted international standards, and	(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) 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.
(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.

[29] With respect to the dismissal of the applicant's appeal by the RAD, subsection 111(1) of the IRPA:

Decision	**Décision**
111. (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:	**111**. (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses
(a) confirm the determination	

of the Refugee Protection Division;	instructions, l'affaire à la Section de la protection des réfugiés.
(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or	
(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.	

[30] With respect to the admission and rejection of new evidence, subsection 110(4) of the IRPA and subsection 29(3) of the RADR:

Evidence that may be presented	**Éléments de preuve admissibles**
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.
Documents — new evidence	**Documents — nouvelle preuve**
(3) The person who is the subject of the appeal must include in an application to use a document that was not previously provided an explanation of how the document meets the requirements of subsection 110(4) of the Act and how that evidence relates to the person, unless the document is being	(3) La personne en cause inclut dans la demande pour utiliser un document qui n'avait pas été transmis au préalable une explication des raisons pour lesquelles le document est conforme aux exigences du paragraphe 110(4) de la Loi et des raisons pour lesquelles cette preuve est liée à la personne, à moins que le

presented in response to evidence presented by the Minister.	document ne soit présenté en réponse à un élément de preuve présenté par le ministre.

VII. Analysis

[31] For the following reasons, the application for judicial review is dismissed.

A. *Did the RAD err in refusing certain new evidence?*

[32] The RAD's decision to reject certain new evidence was reasonable. Not only were the documents filed with the RAD either predating the RPD's decision or undated, but also no explanation of being unable to access them in a timely manner was submitted by the applicant. Under these circumstances, none of the requirements in subsection 110(4) of the IRPA were met, and the RAD did not have residual discretion to consider the *Raza* factors, as outlined by Madam Justice Strickland of this Court in *Deri v Canada (Citizenship and Immigration)*, 2015 FC 1042, and *Figueroa*, above. The Federal Court of Appeal, in the recent Singh decision, above, states the following regarding the decision-making flexibility of the RAD:

> [63] However, subsection 110(4) is not written in an ambiguous manner and does not grant any discretion to the RAD. As mentioned above (see paras. 34, 35 and 38 above), the admissibility of fresh evidence before the RAD is subject to strict criteria and neither the wording of the subsection nor the broader framework of the section it falls under could give the impression that Parliament intended to grant the RAD the discretion to disregard the conditions carefully set out therein. Moreover, this approach complies perfectly with this Court's decision in *Raza*. The criteria set out in that decision regarding paragraph 113(a), which, moreover, are not necessarily cumulative, do not replace explicit legal conditions; rather they add to those conditions to the extent that they are "necessarily implied" from the purpose of the provision, to reiterate this Court's words at paragraph 14 of *Raza*.

> Otherwise, this would mean ignoring the conditions set out at subsection 110(4) and then delving into a balancing exercise between Charter values and the objectives sought by Parliament. In the absence of a direct challenge to this legislation, it should be given effect and the RAD has no choice but to comply with its requirements.

[33] In this case, the applicant did not meet the requirements of the legislation. It was reasonable that the RAD did not accept the newly submitted evidence.

B. *Did the RAD err in its assessment of the applicant's credibility?*

[34] Both the RAD and the RPD drew adverse inferences from several elements of the applicant's testimony.

[35] It is settled law that the Court must demonstrate great deference toward the panels that have evaluated first-hand the credibility of refugee claimants, as Mr. Justice Teitelbaum reminds our Court in *Hernandez Cortes v Canada (Citizenship and Immigration)*, 2009 FC 583:

> [28] It is already well established that the Board's decisions on questions of credibility and assessment of evidence are entitled to great deference by the Court: *Zavala v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 370, at paragraph 5; *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at paragraph 38. The panel is in the best position to assess the explanations submitted by claimants for any perceived inconsistencies and implausibilities. The role of this Court is not to substitute its judgment for the panel's findings of fact relating to the credibility of claimants: *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 441, at paragraph 11. The Court will intervene only if the panel's decision does not fall within a range of acceptable and rational solutions (*Dunsmuir*, at paragraph 47).

[36] In this case, even though the RAD accepted the fact that the applicant could be an FPI activist despite his limited knowledge of the FPI's electoral platform, it did not find him to be credible. The contradictions surrounding the date of the police raid that caused the applicant to flee Abidjan in 2014; the complaint of the applicant's spouse in 2015, which seemed to be a document of convenience; and the applicant's hesitation when given the opportunity to explain these gaps are elements that led the RAD to conclude that the applicant was not credible.

[37] The Court is aware of the importance of not imposing Western standards and concepts on cultural situations to which they do not apply (*Nahimana v Canada (Minister of Citizenship and Immigration)*, 2006 FC 161). However, it is not enough to denounce the assessment of a document according to Canadian standards—in this case, the complaint made to the Ivorian authorities in 2015. It is still necessary to formulate an argument and support it with evidence.

[38] Consequently, the RAD's decision regarding the applicant's lack of credibility is reasonable.

C. *Did the RAD err in concluding that the applicant had an internal flight alternative?*

[39] The Court notes the following from the RAD's assessment of the internal flight alternative: the panel concluded that the August 2014 attack against the applicant in the street was an isolated act. The applicant failed to convince the RAD that he would be persecuted outside Abidjan for his political opinions, and that he risked being found by his political enemies in Côte d'Ivoire. He failed to prove on the balance of probabilities that the village of Agbahou

and its surroundings were unsafe for him. The neighbouring population is also of the Dida ethnic group, and the applicant lived and traded there for many months.

[40] In *Figueroa*, above, resuming the principles established by the Federal Appeal Court in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 140 NR 138, [1991] FCJ No. 1256 (QL), 31 ACWS (3d) 139, and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FCR 589, 1993 CanLII 3011 (FCA), Strickland J. recalls the burden of proof that lies on refugee protection claimants:

> [52] The burden is on the Applicants to establish on objective evidence that relocation to the IFA is unreasonable (*Argote v Canada (Citizenship and Immigration)*, 2009 FC 128 [*Argote*]. As stated by Justice Zinn in *Argote*:
>
> > 12 The applicants submit that the Board erred in its analysis because it failed to consider their unique circumstances and whether it was reasonable that they relocate. In my view, the applicants' submission is entirely misguided. Whether the relocation to the IFA is unreasonable is an objective test and the onus is on the applicants to establish on objective evidence that the relocation to the IFA is unreasonable. It is not for the Board to prove that it is reasonable, as the applicants suggest…
>
> (see also *Pidhorna v Canada (Citizenship and Immigration)*, 2016 FC 1 at paras 40-42; *Alvarez v Canada (Citizenship and Immigration)*, 2009 FC 1164 at paras 10, 15 [*Alvarez*]; *Multani v Canada (Citizenship and Immigration)*, 2012 FC 734 at para. 13 [*Multani*]).

[41] Consequently, the Court believes that the applicant did not discharge his burden of proof and concludes that the RAD's decision that an internal flight alternative exists for the applicant in Côte d'Ivoire is reasonable.

VIII. Conclusion

[42] For the reasons set out above, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. There is no question of importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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