

Federal Court



Cour fédérale

Date: 20170630

Docket: IMM-5285-16

Citation: 2017 FC 627

Montréal, Quebec, June 30, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MATTHEW YEBOAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS
(rendered on the bench)

I. Nature of the matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Appeal Division [RAD] dated November 29, 2016, wherein the RAD dismissed the Applicant's appeal and

confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection.

II. Background

[2] The Applicant, aged 44, is a citizen of Ghana. His spouse [Mrs. Sarpong] fled Ghana in September 2013 and was granted refugee status in Canada on December 23, 2013. The Applicant then claimed refugee status in Canada on the same factual basis as his spouse, on November 28, 2014.

[3] According to their narrative, when her grandmother died in March 2013, Mrs. Sarpong was expected to become her successor as Queen Mother of their village. Mrs. Sarpong accepted this traditional role until she became aware that she would have to perform a stool ritual, which included female genital mutilation [FGM] for both her and her young daughters. As Mrs. Sarpong refused to become the next Queen Mother, this role would pass to a rival family and her family would lose its privileged status and wealth. This is why the Applicant and his spouse began to be threatened and persecuted by the elders of her family's village in July 2013. A complaint to the police was unsuccessful.

[4] Mrs. Sarpong, then, long into her pregnancy, fled her village before seeking refugee status in Canada. Soon after, the Applicant became the target of the elders' threats, who accused him of pressuring his wife to decline the role of Queen Mother and of revealing the ritual. He entrusted their two young children to the care of his aunt and went into hiding in Ghana, but to no avail, as he kept being found by his persecutors. When another complaint to the authorities

did not result in intervention on part of the police, he fled to Canada. The Applicant fears his spouse's family now wants the Applicant's eldest daughter to become the next Queen Mother.

III. Impugned Decision

[5] The Applicant's claim was refused by the RPD on February 13, 2015, for lack of credibility and this decision was upheld by the RAD on December 17, 2015. The first decision of the RAD was set aside by Justice René L. Leblanc of the Federal Court on July 8, 2016, and was returned for redetermination (*Yeboah v Canada (Citizenship and Immigration)*, 2016 FC 780).

[6] A *de novo* appeal was presented before a second panel of the RAD in respect of the RPD decision that the Applicant is not a Convention refugee or a person in need of protection was confirmed anew on November 29, 2016.

[7] First, the second RAD decision addressed the concerns raised by Justice Leblanc in paragraphs 26-29 of his judgment that the first RAD panel had failed to properly consider the RPD decision granting the Applicant's spouse refugee status in December 2013.

[8] The RAD panel in the case at bar noted the Federal Court's current jurisprudence confirming that the RPD is not automatically bound by decisions of other members, even when family relatives rely on similar facts (*Arias Garcia v Canada (Minister of Citizenship and Immigration)*, 2006 FC 310; *Rahmatizadeh v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 578). The RAD held that the RPD panel which heard Mrs. Sarpong's claim was willing to set aside omissions in her written forms and gave much weight to

her significant testimonial evidence. Given that the Applicant left Canada over a year later and had more time to collect evidence at his hearing, the RAD agreed with the RPD that he should have been able to provide corroborating documents for the central element of his story that is the death of his spouse's grandmother. The RAD also noted, with regard to the time when his spouse had become aware of the rituals tied to the Queen Mother position, of discrepancies between the notes of the Applicant's interview with a CBSA Officer upon his arrival in Canada and his BOC narrative, once he had met with his counsel in Canada. As the RPD did, the RAD noted that the Applicant's spouse is a highly educated professional woman, the couple did not live in her village; both were well-known members of a Christian Church and the evidence did not suggest that the Applicant's spouse was a person subject to village custom and tradition; furthermore, the RAD did not find credible that the Applicant would leave his two young daughters at risk of FGM in Ghana and flee the country without them. Finally, the RAD found that the RPD did not err in considering that documentary evidence; and, did not support the Applicant's allegations that a person refusing the position of Queen Mother would be at risk of cruel or unusual treatment or punishment. Consequently, the RAD did not find that the RPD erred by not following the decision rendered in his spouse's case.

[9] Second, the RAD member rejected the Applicant's claims that the RPD gave more importance to documentary evidence than to his testimony and that the RPD gave no weight to the documentary and personal evidence he had filed. After reviewing all relevant objective documentation as well as the documents submitted by the Applicant, the RAD found, as did the RPD, that the Applicant was not credible. The panel member noted that the Applicant, despite a long period of answering leading questions by his counsel, was unable to explain his allegations

during the hearing and the problems raised by the evidence: a) Queen Mothers are considered to be wise elders who have a function of mediation and conflict resolution in their villages with respect to women's matters; b) there is no impartial evidence that husbands or young girls would be forced to suffer genital mutilation and accept the position of Queen Mother; c) there is no evidence that persons who refused the position of Queen Mother were harmed physically; and d) the Applicant did not explain why he left his eldest daughter in Ghana if she was in danger of being kidnapped. The RAD confirmed the RPD finding that the Applicant's testimony and documents did not address the problems raised by the evidence.

[10] Third, the RAD considered the weight given by the RPD to the decision granting asylum to the Applicant's spouse. The RAD determined that the RPD member's decision to grant Mrs. Sarpong asylum was based on her testimony, despite the lack of documentary evidence before it. The Applicant's testimony was not deemed credible by the RPD. The RAD found the RPD member was entitled to examine the documentary evidence to determine whether there was objective evidence to support the Applicant's claim and to rule that the objective evidence did not support his allegations. Since the Applicant failed to answer valid concerns central to his claim, the RPD was entitled to find the Applicant not credible and to give little weight to the RPD's decision granting his spouse refugee status.

IV. Issues

[11] In the case at bar, the Court is to determine if the RAD committed a reviewable error when determining the appeal of the RPD decision anew. The standard of review applicable to the

RAD decision is that of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 32, 35).

V. Analysis

[12] The Applicant contends the board member rendered an unreasonable decision considering the lack of assessment as to the key issue of the Queen Mother's profile and the likelihood of Mrs. Sarpong's nomination; that is in light of the assessment as to the nomination of the Queen Mother and the custom and tradition, thereon. The dispute as to the qualifications for the chieftaincy must take into account the decision of Justice Leblanc as to the evidence which he discusses. Although the Applicant was unable to provide proof of the female Applicant grandmother's death, significant evidence was nevertheless provided in respect of key elements of the narrative of the Applicant, in addition to the consequences which he faced and further feared as per uncontradicted testimony.

[13] The Respondent argues that the RAD provided sufficient reasons to support its decision, not to follow the RPD decision, rendered in Mrs. Sarpong's case; and, had reached reasonable conclusions with respect to the Applicant's lack of credibility.

[14] Although each decision is rendered on a case by case basis, the Court finds that it was incumbent for the RAD to ensure adherence to the judgment of Justice Leblanc; that was not done. As the facts are almost identical to the elements of persecution that remain of pertinence, Justice Leblanc's decision is most relevant. As the first decision of the RAD was set aside as specified in paragraph 5 of Justice Leblanc's judgment, the Court, in this current judgment,

again, notes that failure to file corroborating evidence on the issue specified is not fatal in such case, when the testimony of a subjective nature is corroborated, in large measure, by the objective evidence. In addition, the subjective evidence which is of a personal nature, thereon, as per that provided by the church of the Applicant (page 41 of the Applicant's record) specifically addresses the most significant facts of the case. The key allegations of the Applicant were not contradicted whatsoever by any evidence on file (significant reference is made to *Ahortor v Canada (Minister of Employment and Immigration)*, 65 FTR 137, 41 ACWS (3d) 863 at para 46).

VI. Conclusion

[15] As per paragraph 29 of Justice Leblanc's decision:

... Had it (the RAD) reviewed the Applicant's testimony in light of the RPD's decision granting Mrs Sarpong refugee status, it may have come to a different conclusion. The matter will therefore be sent back to another member of the RAD for redetermination.

[16] Therefore, just as in Justice Leblanc's decision, this matter is returned for determination anew by another member of the RAD.

JUDGMENT in IMM-5285-16

THIS COURT'S JUDGMENT is that the application for judicial review be granted, the decision of the RAD be set aside and the matter is to be determined by a differently constituted panel for a decision anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: MATTHEW YEBOAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 22, 2017

JUDGMENT AND REASONS: SHORE J.

DATED: JUNE 30, 2017

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