

Federal Court



Cour fédérale

**Date: 20180924**

**Docket: IMM-106-18**

**Citation: 2018 FC 927**

**Ottawa, Ontario, September 24, 2018**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**JOSEPH ASUE ENONGENE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Defendant**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant is a 51-year-old citizen of Cameroon. He seeks to judicially review a decision of the Refugee Protection Division [RPD] dated December 19, 2017, which determined that he was neither a Convention refugee nor was he a person in need of protection. For the reasons that follow, the application for judicial review is allowed.

II. Background and Facts

[2] The Applicant is married and has one biological child and five adopted children; they are not part of his claim for protection. The Applicant states he fears persecution in Cameroon on account of his political opinion. He is a member of the Southern Cameroon National Council [SCNC], an Anglophone secession group. The group advocates for the secession of Anglophone provinces from the largely Francophone country. The Applicant alleges that he became involved with the SCNC in 1999 and joined the organization in 2000. The Applicant has supported the organization by distributing flyers, attending meetings, and providing translation services. Because of his political activities, the Applicant alleges that he became a target of the Cameroonian government. In July 2000, the Applicant alleges that his family home was raided by government security forces and they accused him of being a traitor which required the Applicant to move to a different part of the country to seek safety.

[3] The Applicant alleges that he was subsequently arrested by government authorities several times because of his political affiliation and activities and that he has been physically abused and tortured while in custody and held without charge. The Applicant first fled Cameroon in July 2005 for Equatorial Guinea. Two years later he was arrested and detained for not having status in the country. The Applicant secured a visitor visa for the United States, where he arrived in December 2007. He was arrested in May 2008 for using false documents to apply for employment. Upon his release from detention in June 2008 he made a claim for asylum in the United States.

[4] While in the United States, the Applicant continued his involvement with the SCNC. His refugee claim was refused and he states he was deported to Cameroon on August 21, 2012. The Applicant alleges he was arrested immediately upon landing at Douala airport in Cameroon. He alleges that he was told he was arrested because of his political activities while in the United States. The Applicant was detained for two months until he was able to escape after his uncle bribed a prison official and he hid for one month at his uncle's friend's home. The Applicant left Cameroon with the assistance of a smuggler and by using a false passport. He arrived in Canada on November 12, 2012 and made a claim for refugee protection ten days later.

[5] The RPD found the Applicant established his identity. The determinative issue was credibility. The RPD noted the presumption in *Maldonado v Canada (Minister of Employment and Immigration)*, [1979] FCJ No 248, 1 ACWS (2d) 167 at para 5 that when a claimant swears to the truth of certain allegations "that those allegations are true unless there be reason to doubt their truthfulness". The RPD concluded the Applicant failed to advance his claim with credible evidence and as a result, his claim for protection was refused. The RPD noted that none of the credibility concerns may be sufficient, on their own, to negate the claim. However when taken together there was insufficient credible and trustworthy evidence to support the Applicant's claim. In particular, the RPD found that the corroborative evidence of his involvement with the SCNC and the evidence of his wife were also not credible. The RPD based this determination in large part on the Applicant's evidence regarding his circumstances in the United States and his subsequent deportation to Cameroon.

III. Issues

[6] The Applicant submitted the following issues for review:

1. Did the RPD fail to consider the forward-looking risk to the Applicant as an Anglophone and a member of the SCNC?
2. Further and in the alternative, did the RPD err by rejecting the Applicant's corroborative documents out of hand?
3. Did the RPD make unreasonable credibility findings?

IV. Analysis

[7] This Court finds that the standard of review for questions of mixed fact and law is reasonableness. This Court must consider whether the decision is within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9).

A. *Did the RPD fail to consider the forward-looking risk to the Applicant as an Anglophone and as a member of the SCNC?*

[8] This Court notes that the Applicant has the onus of establishing a well-founded fear of persecution to satisfy the requirements of section 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. I am persuaded by the argument of the Applicant that the RPD failed to consider the forward-looking risk of the Applicant.

[9] The Applicant's own evidence was not contradicted. He set out in detail the circumstances surrounding his time in Cameroon and his reason for leaving and answered all questions that were asked at the RPD hearing. In particular, he outlined arrests and harsh treatment at the hands of Cameroonian officials which he attributed to his involvement with SCNC.

[10] The documentary evidence put forward by the Applicant to indicate that the SCNC is facing attacks from the government of Cameroon was extensive and was not disputed by the Respondent. The Respondent's main argument was that the Applicant was not an "active" member of the SCNC and therefore the Applicant's evidence of harsh treatment and torture should not be given weight.

[11] The RPD refers to his membership card in 2008 and some donations as the extent of the Applicant's involvement with the SCNC. Much more evidence was provided by the Applicant including affidavit evidence and letters from members of the SCNC in Cameroon and in the United States. This additional evidence, consisting of membership in SCNC since 2008 and his involvement with SCNC in Cameroon and the consequences of such involvement (arrests, torture), does not appear to be considered by the RPD.

[12] The evidence of the Applicant established a subjective fear of persecution that was uncontradicted. The RPD appears to have focused on what occurred after the Applicant's claim in the United States was refused. This was not a fulsome examination of the Applicant's claim and therefore this Court finds that this was not a reasonable determination for the RPD to make.

B. *Did the RPD err by rejecting the Applicant's corroborative documents?*

[13] This Court is not persuaded by the argument of the Respondent that the Applicant is seeking to have this Court re-weigh the evidence. This Court is persuaded by the argument of the Applicant that the RPD unreasonably rejected the Applicant's corroborative evidence based on adverse credibility findings. Some of the Applicant's evidence of his failed asylum claim in the United States was mentioned by the RPD but it did not explain why it rejected this additional evidence outright contrary to established jurisprudence (*Cepeda-Gutierrez v Canada (MCI)*, [1998] FCJ No 1425 (Fed. TD)(QL)).

[14] In this case the RPD rejected documents from members of the SCNC and the Applicant's lawyer. The Respondent relied on *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381 where the Court held that if a claimant was found not to be credible generally that finding is sufficient to dispose of the claim unless there is independent and credible documentary evidence capable of supporting a positive disposition of a claim. The Respondent also relied on the case of *Moriom v Canada (MCI)*, 2015 FC 588 [*Moriom*] for the authority that letters were not sufficient to support a positive disposition of an applicant's claim. That case can be distinguished from the present situation in that in *Moriom* the applicant had applied using a false name and false documentation. The RPD in that case correctly found that the applicant's evidence was therefore untrustworthy and that is why the supporting letters would not support a positive disposition.

[15] In this case there is no misrepresentation or fraudulent documentation as part of the Applicant's documentation. Although the Applicant did acknowledge using false identification to find work in the United States he did acknowledge it when questioned by the RPD and was candid in his reasons for using the false name. There was no reasonable basis for the RPD to completely disregard the additional and extensive corroborative documentation.

C. *Did the RPD make unreasonable credibility findings?*

[16] The RPD made a number of problematic findings that are not justified by the evidence. For instance it was unreasonable to base the credibility finding in large part on the Applicant's six-month delay in making an asylum application in the United States. A delay in making a claim is not "decisive" (*Nijer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1259 at para 24). The Applicant provided a reasonable response when asked why his asylum application was delayed but the response was disregarded without evidence to impugn the Applicant's credibility. He indicated that he was following the advice of people by trying to gather documents before making an asylum claim. This explanation was disregarded without sufficient explanation.

[17] The RPD also placed too much emphasis on the fact that the Applicant used a false name and documentation to gain employment. The RPD noted that "it strains credulity that he would not consider that his actions were illegal". The Applicant was forthcoming in his response by testifying that when you are hungry you do not care what happens (RPD decision, page 8). This explanation was disregarded. It is not clear as to what evidence the RPD relied on to conclude

that the Applicant's action in using a false name to find employment to feed himself is "not that of a person who fears persecution".

[18] This incident of using a false name to secure employment was also unreasonably used by the RPD to find that the Applicant's credibility was impugned when he answered "no" to the Port of Entry (POE) question as to whether he used any other name. There was no rational connection to the two incidents and uses of that information.

[19] The RPD also determined that the Applicant's timing of his asylum claim in the United States was only to avoid deportation rather than being based on his fear of persecution in Cameroon. The rationale for this determination is not clear. This determination is contrary to the Applicant's sworn testimony, the corroborative evidence and the documentary evidence about the situation in Cameroon.

[20] The RPD found that the Applicant did not provide satisfactory evidence that he was deported from the US to Cameroon in August 2012 or at any time. The RPD focussed on lack of documentation related to plane tickets but it disregarded and failed to mention evidence in the form of letters from the SCNC in Cameroon, from the Applicant's uncle and from the Applicant's cousin which all mentioned his return to Cameroon. It was unreasonable to disregard this evidence completely.

[21] The Applicant stated that he fears persecution in Cameroon because of his activities in that country. That risk was not properly assessed by the RPD. As a result this Court is of the



view that the decision of the RPD is not within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Accordingly, the application for judicial review is allowed.

[22] Neither party has suggested a question for certification and none arises.

**JUDGMENT in IMM-106-18**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed and the matter is referred back to be re-determined by a differently constituted panel of the RPD.
2. There is no question for certification.

“Paul Favel”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-106-18  
**STYLE OF CAUSE:** JOSEPH ASUE ENONGENE v MINISTER OF  
CITIZENSHIP AND IMMIGRATION  
**PLACE OF HEARING:** TORONTO, ONTARIO  
**DATE OF HEARING:** MAY 29, 2018  
**JUDGMENT AND REASONS:** FAVEL J.  
**DATED:** SEPTEMBER 24, 2018

**APPEARANCES:**

Micheal Korman FOR THE APPLICANT  
Christopher Crighton FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

Korman & Korman LLP FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario  
Attorney General of Canada FOR THE DEFENDANT  
Toronto, Ontario