

Date: 20060928

Docket: IMM-513-06

Citation: 2006 FC 1153

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 28, 2006

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

GLORIA MONGOZA NAKATELITE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for leave regarding a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Panel), whereby the applicant, a citizen of the Democratic Republic of the Congo (the DRC), is not credible. Therefore, the Panel found that the applicant was not a “refugee” pursuant to section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) or a “person in need of protection” under section 97 of the Act.

[2] The applicant alleges that she was wanted by the military as part of investigations into the assassination of Congolese President Laurent-Désiré Kabila. More specifically, the applicant alleges that her uncle, Mr. Razzak, has been wanted by DRC authorities since January 2001 because he was suspected of being complicit in the assassination of President Kabila.

[3] The applicant claims that she thus left the DRC following the arrest of her brother in July 2003. He was also accused of sheltering rebels and being complicit in the assassination of President Kabila due to his family ties to Mr. Razzak.

[4] After having assessed all the submitted evidence, the Panel did not believe that there was a fear of persecution as alleged by the applicant for three main reasons. First, the applicant's behaviour was incompatible with the alleged fear in that she went through two countries that are signatories to the Convention, Côte d'Ivoire and Morocco, but did not apply for refugee status. Second, Mr. Razzak is not on the list of convicted persons, while all of President Kabila's presumed assassins, including those who were absent, were convicted in January 2003. In addition, the Panel found it unlikely that the Congolese authorities would have sent her a passport if she was wanted by them as she claimed.

[5] It is very well established that the standard of review for decisions affecting credibility is patent unreasonableness. "A patently unreasonable decision has been described as 'clearly irrational' or 'evidently not in accordance with reason'": *Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 SCR 247, at paragraph 52. In this case, the only issue is to determine whether the Panel's conclusion of a lack of credibility is patently unreasonable.

[6] The applicant first argues that the Panel erred by drawing a negative inference from her failure to apply for refugee status in the Convention signatory countries and, alternatively, that she ought to have been interrogated as to the reasons why she did not apply for refugee status in those countries. However, it is very well recognized by this Court that, although this factor is not a determinant, the Panel is entitled to consider, when assessing the story's credibility, the applicant's failure to apply for refugee status in the Convention signatory countries: *Ilie v. Canada (Minister of Citizenship and Immigration)* (1994), FTR 220 (FC Trial Division); *Ali v. Canada (Minister of Citizenship and Immigration)* (1996), 112 FTR 9 (FC Trial Division); *Skretyuk v. Canada (Minister of Citizenship and Immigration)* (1998) 47 Imm. L.R. (2d) 86 (FC Trial Division); *Foka v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1556, [2004] FCJ no. 1887 (QL).

[7] In her factum, the applicant remarks to the Court that this is the second time that she must address the Court for a judicial review of a negative decision regarding her application for protection.

[8] She claims that the Panel repeated the same error that it had made during the first decision, in which the Panel drew a negative inference from the fact that Mr. Razzak's name did not appear on the list of accused.

[9] The respondent maintains that the list to which this administrative tribunal referred in its reasons is not the one to which Gauthier J. referred in her judgment. In fact, Gauthier J. found that the Panel had made an error by drawing a negative inference from the fact that Mr. Razzak's name

was not on the list of people who had been arrested since the applicant's uncle had never been arrested and was still wanted. In this case, the Panel did not consider the list of arrested persons, but rather the list of those who were convicted based on the documentary evidence that highlighted the fact that all of President Kabila's presumed assassins, even those who were absent, were convicted "*in absentia*" on January 21, 2003.

[10] In those circumstances, the Panel was able to rightly draw a negative inference as to the credibility of the applicant's story from the fact that the name of her uncle, Mr. Razzak, was not on the list of convicted persons (*Adu v. Canada (Minister of Employment and Immigration)*, [1995] FCJ no. 114 (C.A.)(QL)).

[11] As for her passport, the applicant alleges that the Panel's conclusion is only supported by its own opinion and that there is no evidence to support it. However, the documentary evidence (exhibit 2.7) reported the following:

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Both parties reported that even for ordinary passports, it would be unthinkable to appear before the governmental authorities, without taking high risks, to ask for the passport of another person who is wanted by the security forces.

[12] Thus, the Panel's conclusion that it was unlikely that the authorities would have sent a passport to the applicant while she claimed to be wanted was supported by the documentary evidence and therefore cannot be described as being patently unreasonable.

[13] The applicant also alleges that the Panel failed to consider one of the reasons that made her fear a possible return to the DRC, which was the escape of her brother and sister, who were also likely wanted. In that regard, the applicant maintains that the Panel erred by making no reference to her sister's testimony, since that testimony was corroborating, and the story told by her sister received a positive decision from the IRB.

[14] In reply, the respondent argues that since the Panel did not believe the main allegation of the applicant's application for refugee status, i.e. that Mr. Razzak was wanted, it did not have to elaborate further on the other allegations, since they stemmed from the main allegation. In fact, the applicant alleged that her sister and her brother had been detained due to their family ties to Mr. Razzak.

[15] I concur with the respondent. Given the Panel's conclusions regarding the applicant's uncle, the Panel was not obligated to conduct an analysis of the escape of her brother and her sister because their story relied on their family ties to Mr. Razzak.

[16] As for the three letters entered into evidence by the applicant to show that she was in hiding during the two years that followed her sister's arrest, the Panel's conclusion that those letters were able to establish that in 2003, the applicant had a well-founded fear, cannot be qualified as clearly "irrational" or "not in accordance with reason" such that it is patently unreasonable. I recall that it is not up to the Court to reassess the elements of evidence that were at the Panel's disposal on the grounds that it may reach a different conclusion.

[17] As a result, this application for judicial review is dismissed.

JUDGMENT

The application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-513-06

STYLE OF CAUSE: GLORIA MONGOZA NAKATELITE

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 18, 2006

REASONS FOR JUDGMENT: TREMBLAY-LAMER J.

DATED: September 28, 2006

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