Date: 20061013

Docket: IMM-1232-06

Citation: 2006 FC 1202

Ottawa, Ontario, October 13, 2006

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

SEYIDNA ALY CHEIKHNA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated February 8, 2006. The panel determined that the applicant was not a "Convention refugee" or a "person in need of protection", since the situation in his country changed after he left Mauritania on March 8, 1991.

I. Issue

[2] Did the panel err in finding that the conditions in Mauritania had changed to such an extent that the applicant's fear of persecution was no longer justified?

[3] For the following reasons, the answer to this question is negative. As a result, this application for judicial review is dismissed.

II. Factual background

[4] A citizen of Mauritania, the applicant is a Black Moor born on July 25, 1954.

[5] He completed his post-secondary studies in 1979 and did two internships in France in 1981. He began his political activities in Mauritania with the *Mouvement National pour la Démocratie* (MND). He attended several pro-democracy and black rights demonstrations. He then became an active member of the *Mouvement pour la libération des Africains en Mauritanie* (FLAM) and the *Alliance Nationale pour la Démocratie* (AND).

[6] The applicant was arrested, humiliated and tortured on two different occasions because of his race and political activities. In September 1986, he was incarcerated and tortured for a week and then released without charges being laid. In April 1989, during a bloody campaign against citizens of African origin by the regime of dictator Ould Taya, the police arrested him again and interrogated him under torture.

[7] In late 1990, a large wave of arrests of pro-democracy activists swept the country; many Blacks were arrested and tortured. The applicant was warned by a friend, who was a soldier, that his life was in danger. He fled to the United States on March 8, 1991. His refugee claim in the US was rejected, and his appeal was dismissed in 2001.

[8] In the ten years he spent in the U.S., the applicant continued his political activism against the abuses of General Taya's bloody regime. He campaigned for liberty and equality in his country. In 2000, he became a member of Conscience et Résistance, an organization whose members are being sought by the Taya government. He attended public demonstrations in Cincinnati, Ohio, and Washington, D.C.

[9] In December 2004, the applicant came to the Canadian border and submitted a claim for refugee protection. This judicial review concerns the rejection of the claim.

III. Impugned decision

[10] The panel determined that the applicant did not establish he would be persecuted and/or threatened if he returned to his country because he is a Black African. In addition, the panel was of the opinion that the applicant would not be subject to any risk if he returned to his country. The panel's reasons were as follows:

- The applicant left his country before the multi-party system was introduced;
- The applicant has not been a member of FLAM since 1989;
- The political party (AND) of which he was a member before he fled no longer exists;

- As a civil servant of the Mauritanian government, the applicant did not have any problems in the two years before he left Mauritania, except that he alleges that he lived in hiding in the three months leading up to his departure, after he was told that his life was in danger;
- There was a change in government on August 3, 2005. In September 2005, the new president of Mauritanian granted amnesty to all Mauritanians sentenced for political crimes and offences.

[11] The panel did not come to any negative conclusions regarding the applicant's credibility. On the contrary, the panel concluded that the applicant had given credible and trustworthy evidence when he alleged that he had had difficulties in Mauritania in 1986 and 1989. With respect to the incidents in 1989, the panel believed that the applicant may have been arrested and detained when he was trying to find out what had happened to his friend, a Black African soldier.

IV. Relevant legislation

[12] Paragraph 108(1)(*e*) of the Act reads as follows:

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances: . . . (*e*) the reasons for which the person sought refugee protection have ceased to exist.	**108.** (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants : […] *e*) les raisons qui lui ont fait demander l'asile n'existent plus.

V. Analysis

Standard of review

[13] In *Fernandopulle v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91, [2005] F.C.J. No. 412 (F.C.A.) (QL), the Federal Court of Appeal established the standard of review applicable to applications for judicial review relating to the issue of a country's changed circumstances. At paragraphs 22 and 23, the Court stated that recognizing changes in a country is a question of fact:

> The same point is made in *Yusuf v. Canada (M.E.I.)* (1995), 179 N.R. 11 (F.C.A.), per Hugessen J.A., speaking for the Court at paragraph 2:
>
> > We would add that the issue of so-called "changed circumstances" seems to be in danger of being elevated, wrongly in our view, into a question of law when it is, at bottom, simply one of fact. A change in the political situation in a claimant's country of origin is only relevant if it may help in determining whether or not there is, at the date of the hearing, a reasonable and objectively foreseeable possibility that the claimant will be persecuted in the event of return there. That is an issue for factual determination and there is no separate legal "test" by which any alleged change in circumstances must be measured. The use of words such as "meaningful" "effective" or "durable" is only helpful if one keeps clearly in mind that the only question, and therefore the only test, is that derived from the definition of Convention Refugee in s.2 of the Act: does the claimant now have a well founded fear of persecution? Since there was in this case evidence to support the Board's negative finding on this issue, we would not intervene.
>
> The principle established by these cases is correctly summarized as follows in paragraph 10 of the reasons of the judge in this case:
>
> > I agree with the Respondent [the Minister] that past persecution is insufficient of itself to establish a fear of future persecution, although such persecution is capable of forming the foundation for present fear.

> With respect to the impact of changed country conditions, the Federal Court of Appeal has indicated that there is no separate legal test to be applied when considering a Convention refugee claim where there has been a change in country conditions in an applicant's country of origin, and that the only issue to be determined is the factual question of whether, at the time of the hearing of the claim, there is a well-founded fear of persecution in the event of return (*Yusuf v. Canada (M.E.I.)* (1995), 179 N.R. 11 at p. 12 (F.C.A.).

[14] To succeed, the applicant must demonstrate that a patently unreasonable error was made.

[15] The applicant claims that the panel had no valid reason to find that the conditions in his country had changed to such an extent that he would be able to return to his country without running the risk of being persecuted. He alleges that the coup occurred only four months before his hearing. In a similar case, *Thiaw v. Canada (Minister of Citizenship and Immigration)* 2006 FC 965, [2006] F.C.J. No. 1233 (F.C.) (QL), Justice Blais had to determine whether the panel erred in finding that the conditions in Mauritania had changed. The hearing in that case was held only two months after the coup. Justice Blais decided not to intervene.

[16] According to an analysis of the decision in this case, the panel weighed the applicant’s testimony and was sensitive to the terrible events that marked Black Africans in Mauritania. However, the panel found that the situation had improved, so much so that there were now many Mauritanian refugees who were voluntarily returning to their country.

[17] In referring to the evidence, the panel was at liberty to determine that the change in government resulting from a bloodless coup on August 3, 2005, was sufficient to disregard all the

applicant’s reasons for fearing persecution upon his return to his country. It was therefore not unreasonable for the panel to allow such evidence as media interviews with the new state leader and the blanket amnesty he announced a few weeks after he came to power.

[18] The panel did not rely solely on statements of the new state leader, but also on documentary evidence found at the end of the decision.

[19] The Court’s intervention is not required in this case.

[20] The parties did not submit any questions to be certified.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Michel Beaudry"
Judge

Certified true translation
Jason Oettel

SOLICITORS OF RECORD

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