

**Date: 20061116**

**Docket: IMM-1268-06**

**Citation: 2006 FC 1375**

**Ottawa, Ontario, the 16th day of November 2006**

**Present: The Honourable Mr. Justice Shore**

**BETWEEN:**

**AMEYO HOUSSOU, KOKOE DAVY FLEUR AMEH,  
ZOKUI GUY NOEL AMEH, APELETE PATRICK AMEH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] There are two types of evidence which can be used to determine if the applicants have a genuine fear of persecution. The first type of evidence is specific to the applicant's claim and corroborates the applicant's evidence. The second type is general in form (documentary evidence) and does not specifically deal with the applicant's claim, but which generally deals with country conditions. (*Jordanov c. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 367 (QL), at paragraph 11.)

[2] . . . This Court as well as the Supreme Court of Canada has made reference in a number of cases to the subjective and objective components necessary to satisfy the definition of Convention Refugee. The subjective component relates to the existence of the fear of persecution in the mind of the refugee. The objective component requires that the refugee's fear be evaluated objectively to determine if there is a valid basis for that fear.

(According to the Federal Court of Appeal in *Rajudeen v. Canada (Minister of Employment and Immigration)*, [1984] F.C.J. No.° 601 (QL), the fear of persecution has a subjective component and an objective one).

[3] It is trite law that the voluntary return of a claimant to his or her native country is behaviour which is inconsistent with the existence of a subjective fear of persecution: (*Gonzales v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1417, [2005] F.C.J. No. 1727 (QL), at paragraph 10; *Monteiro v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1258, [2002] F.C.J. No 1720 (QL), at paragraph 18; *Vaitialingam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1459, [2004] F.C.J. No. 1760 (QL), at paragraphs 24-27; *Bogus v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1455 (QL).)

## **NATURE OF THE LEGAL PROCEEDING**

[4] 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 dated February 1, 2006, of the Immigration and Refugee Board (Board), which concluded that the applicants are not Convention refugees (section 96 of the Act) or persons in need of protection (section 97 of the Act).

## FACTS

[5] The principal applicant, Ameyo Houssou, was born on December 19, 1953, in the city of Lomé, in Togo. Her three claimant children are Zokui Guy Noël Ameh, born on December 25, 1976; Apelete Patrick Ameh, born on January 6, 1983; and Kokoe Davy Fleur Ameh, born on September 20, 1985. An elder son lives with his father in Libreville, Gabon. Ms. Houssou married Toglo Adjeni Ameh in 1984. He has been working as a builder for the government authorities in Gabon since 1978. He still lives there.

[6] Ms. Houssou alleges that she and her three children cannot return to their country of origin because they are Christians, belong to the Mina-speaking ethnic group, and are considered to be “Southerners”. The rulers of Togo are mainly of the Kabye ethnic group and come from the north of the country. The applicants allege that “Southerners” are systematically persecuted by “Northerners” because they are Christians. According to them, the “Northerners” engage in voodoo rituals to make them sick and put curses on them.

[7] Ms. Houssou and her three children allege that as Christians and Southerners they are liable to be victims of serious assaults resulting in bodily harm or even death if they return to Togo. In addition, women and young girls are in constant danger of being kidnapped, forcibly confined and raped in this country. Moreover, Ms. Housseau and her three children have already been threatened and harassed. In addition, their homes have been watched and even ransacked.

[8] Ms. Houssou states that her family was spared some of the hardships suffered by the Togolese people thanks to their privileged living conditions, which allowed them to travel

frequently to other countries. However, since Ms. Houssou's husband, who has been living for several years in Gabon, has run into financial difficulties, she is of the opinion that she and her three children cannot return to Togo, where their lack of financial means would make life unsafe.

[9] Ms. Housseau's three children alleged that, should they return to Togo, they would be in danger of being subjected to the same traditional animistic voodoo rituals to which they were subjected during their childhood by some family members and which severely affected and traumatized them.

[10] Ms. Houssou and her three children have travelled a lot. They mostly visited Gabon and France and often went back to Togo.

[11] The applicants arrived in Canada on different dates from September 2001 to September 2003, as visitors and students. They claimed refugee protection together on January 31, 2005. The claim for refugee protection was heard on January 10, 2006, and was rejected on February 1, 2006.

### **CONTESTED APPLICATION**

[12] On the basis of all the testimony and written evidence, the Board concluded that the applicants did not satisfactorily discharge their burden of establishing that they are Convention refugees (financial and economic difficulties are not Convention grounds). In addition, the Board rejected the claim made by Ms. Houssou and her three children, ruling that their subjective fear of persecution should they return to their native country was not credible.

## ISSUE

[13] Did the Board make a patently unreasonable error warranting intervention by this Court?

## STANDARD OF REVIEW

[14] It is up to the Board, as trier of fact, to assess the credibility of a claimant. On this point, the Board has well-established expertise to decide issues of fact and, more specifically, to assess the credibility and subjective fear of persecution of claimants for refugee protection. (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (QL), at paragraphs 3-4; *Brar v. Canada (Minister of Employment and Immigration)*, [1986] F.C.J. No. 346 (QL).)

[15] Intervention by this Court is warranted only if the finding of fact is patently unreasonable on the basis of the evidence adduced. Moreover, the Court must show considerable deference, because it is up to the Board to weigh the testimony of the applicants and assess the credibility of their affirmations. If the Board's conclusions are reasonable, no intervention is warranted. However, the Board's decision must be based on the evidence and must not be made in a perverse or capricious manner, on the basis of an erroneous finding of fact, or without regard for the material before it. (*Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, [2005] S.C.J. No. 39 (QL), at paragraph 38; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL), at paragraph 14.)

## ANALYSIS

[16] The Court has studied the written and oral submissions of the parties and heard the submissions of counsel.

[17] Ms. Houssou and her three children are contesting the conclusion of the Board and argue that it essentially erred on two issues: (1) in reaching a erroneous finding of fact as to the credibility of the applicants; and (2) in weighing the evidence submitted by the applicants.

### (1) Credibility is an question of fact within the Board's jurisdiction

[18] Ms. Houssou and her children allege that the Board did not properly weigh the evidence and made a mistaken finding of fact when it ruled that “[o]verall, the panel did not find the claimants’ testimonies credible”.

[19] After having studied all the evidence on record, including the transcript of the hearing, the Court is not satisfied that the Board rendered a patently unreasonable decision, considering that its decision was based on significant contradictions and implausibilities in the written evidence and testimony submitted by Ms. Houssou and her three children, which went directly to the crux of the claim:

(a) The Board found that the testimony of Apelete Patrick Ameh was not credible. He had lived in Gabon with his father from 1988 to 2002. He came to Canada in 2003 to continue his college studies. He admitted that when he was studying in a sanctuary in Vogan, his father’s native village, he had not run into any problems. However, while he was on holidays in Lomé, he was attacked because he was different. He stated that Southerners had

darker skin. He gave very little information in support of his allegations, and his explanations were very short and inadequate (Reasons for Decision, at page 9; Hearing Transcript, at pages 615-616.)

(b) The Board concluded that the testimony of Kokui Davy Fleur Ameh was inconsistent with that of a person whose life is in danger and who fears genuine persecution. She lived and studied in Paris from September 1998 to June 2001. In September 2001, she came to Canada to continue her studies in the field of tourism and hotel management. When questioned about her fear of returning to Togo, she stated fearing everything that had happened to her brothers. When questioned as to why she returned there on several occasions if she thought her safety was in danger, she answered that she only went there for short periods of time, to visit her paternal grandmother. She added that she had nevertheless feared something would happen to her, as she had felt prying eyes following her all the time. (Reasons for Decision, at page 8).

(c) The Board found that the narrative of Zokui Guy Noël Ameh was not credible. He claims to have been arrested and detained around the month of June 1994 by a soldier who was the father of a friend who went to the same private Catholic school as he did. According to him, the soldier practiced voodoo, and when he found out that he was a Christian because of his name, he was allegedly arrested and detained for approximately 10 days. He was released after his father paid approximately \$2,000. The Board was surprised that a father who sent his daughter to a Catholic school would persecute the friend of his daughter who went to the same school, simply because he was Catholic. In addition, Mr. Noël did not give any credible details to how the alleged arrest, detention and torture unfolded. Furthermore,

he could not remember the name of his classmate and was uncertain of how old he was at the time of the alleged incident. (Reasons for Decision, at page 9; Hearing Transcript, at pages 592-597, 604 and 606.)

(d) The principal applicant, Ms. Houssou, could not explain why she did not claim refugee protection at the first possible opportunity in France or even in Canada. The applicant stated that her husband had not previously had the financial difficulties that he now has and that he had not needed protection. In addition, as shown by the numerous stamps in her passport, the applicant travelled to visit her children, her husband and other family members. When questioned as to why she and her family would be in danger if they were to return to their country of origin, she explained that she feared the voodoo rituals which were prevalent everywhere in the country and added that she did not feel safe because of general street crime and because her children would be in danger of being abducted. Her testimony was generally confused and only and merely reflected fears of potential crime rather than persecution as such. (Reasons for Decision, at pages 8 and 9; perfection the application, at pages 6-10).

[20] The Board reasonably found that the testimony of the applicants was not credible because Ms. Houssou and her three children were unable to give the details expected from an applicant in the same position. (*Hidri v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 949, [2001] F.C.J. No.1362 (QL), at paragraph 29; *He v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1256, [2001] F.C.J. No. 1723 (QL), at paragraphs 11 and 13.)



[21] It is not the role of the Court to re-assess the evidence or to take the place of the Board. Judicial review is not an appeal. It is up to the Board to assess and rule on the credibility and plausibility of the evidence submitted. The Board has jurisdiction as a specialized tribunal of first instance, and this Court may intervene only if the Board exceeds its jurisdiction in a manner that is unreasonable, capricious or malicious or that lacks inherent logic, which is not the case here.

(2) Burden of proof

[22] In this case, contrary to the allegations of the applicants, the Board reasonably concluded that the fear of persecution was unfounded.

[23] Ms. Houssou and her children have the burden of establishing before the Board that they are “Convention refugees” or “persons in need of protection” within the meaning of the Act.

[24] Section 96 of the Act reads as follows:

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

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

**96.** A qualité de réfugié au sens de la Convention — le 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) 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.

[25] Under section 97:

**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 themselves 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

(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,

that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care

(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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[26] To be considered to be Convention refugees, Ms. Houssou and her children must first of all satisfy the Board that they have a well-founded fear of persecution should they return to Togo.

According to the Federal Court of Appeal in *Rajudeen, supra*, fear of persecution has a subjective component and an objective one:

. . . This Court as well as the Supreme Court of Canada has made reference in a number of cases to the subjective and objective components necessary to satisfy the definition of Convention Refugee. The subjective component relates to the existence of the fear of persecution in the mind of the refugee. The objective component requires that the refugee's fear be evaluated objectively to determine if there is a valid basis for that fear.

[27] In the case at bar, the subjective component is the fear of persecution in the minds of Ms. Houssou and her three children, if they return to Togo. However, it appears that, in spite of their fear, they returned to Togo on several occasions:

(a) Zokui Guy Noël Ameh came to Canada in July 2003 on a student visa to continue his university studies. During this period, he travelled to France, Togo and Gabon.

(b) Apelete Patrick Ameh lived in Gabon from 1988 to December 2002. Over a period of approximately one year, he went to Togo twice. He came to Canada in January 2003 to continue his studies.

(c) Kokui Davy Fleur Ameh studied in Paris from September 1998 to June 2001. She came to Canada in January 2003 to continue her studies. She returned to Togo on several occasions to visit her grandmother. She does not allege having been subjected to any ill treatment whatsoever.

(d) Ms. Houssou also travelled often to visit her relatives.

[28] It is trite law that the voluntary return of a claimant to his or her native country is behaviour that is inconsistent with a subjective fear of persecution. (*Gonzales, supra; Monteiro v. Canada (Minister of Citizenship and Immigration), supra; Vaitialingam, supra; Bogus, supra.*)

[29] Furthermore, the Board reasonably drew a negative conclusion from the failure of Ms. Houssou and her children to claim refugee protection at the first available opportunity in France or in Canada. They arrived in Canada on various dates from September 2001 to September 2003. They claimed refugee protection on January 31, 2005. They did not adequately explain the reasons for this delay. On this point, Ms. Houssou stated that previously her husband's situation allowed them to avoid trying situations and that she and her family did not need to claim refugee protection.

[30] On this point, the Federal Court of Appeal has already ruled that a delay in claiming refugee protection is an important factor that the Board must take into consideration in its analysis. This delay seems to show that there is no subjective fear of persecution, as there is a presumption that a person with a genuine fear of persecution would claim refugee protection at the first opportunity. (*Espinosa v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324, [2003] F.C.J. No. 1680 (QL), at paragraph 16.)

[31] Considering the evidence, a reasonable person must be able to conclude that there is a “reasonable chance” or more than a “mere possibility” that the applicants will be persecuted if they have to return to Togo. Considering the preceding, the Court is satisfied that the Board was correct in deciding that the evidence submitted by Ms. Houssou and her three children does not establish more than a “mere possibility” of persecution should they return to their native country.

[32] On this point, the Federal Court has already ruled that a finding of a lack of a well-founded fear **in itself** warrants a rejection of the claim for refugee protection, because the two components of an alleged fear of persecution, subjective and objective, must be proven to meet the definitions of “refugee” and “person in need of protection” within the meaning of the Act. (*Kamana v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1695 (QL); *Fernando v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 759, [2001] F.C.J. No. 1129 (QL), at paragraph 3.)

[33] Accordingly, it was reasonable for the Board to conclude that the applicants did not satisfactorily discharge their burden of showing a serious possibility of being persecuted on one of

the Convention grounds and that they did not establish on a balance of probabilities their return to Togo would subject them personally to any risk whatsoever.

(3) The Board considered all the evidence

[34] There are two types of evidence which can be used to determine if the applicants have a well-founded fear of persecution. The first type of evidence is specific to the applicant's claim and corroborates the applicant's testimony. The second type is general (documentary evidence) and does not specifically deal with the applicant's claim, but generally deals with conditions in the country in question. (*Jordanov, supra*, at paragraph 1.)

[35] The Court is of the opinion that, contrary to the allegations made by Ms. Houssou and her three children, the Board considered all the evidence.

[36] First of all, there is a presumption that the Board considered all the evidence before it. In this case, the applicants did not submit any evidence rebutting this presumption. (*Chowdhury v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 363, [2002] F.C.J. No. 477 (QL).)

[37] The Board studied the documentary evidence showing that Southerners are persecuted in Togo and reasonably concluded that the documents submitted do not show any systematic persecution against Christian ethnic groups living in the southern part of the country:

The documentary evidence does not support the claimants' statements. The panel pointed out that its requests for information on the religious and interethnic conflicts in Togo between Christians in the south and other groups in the north of the country did not bring to light any religious persecution as such. The claimants merely stated that they only knew what they had seen. The panel also considered other sources of information on the socio-political situation in Togo, which, despite the obvious

finding of a flagrant lack of respect for human rights in a number of areas, do not reveal any systematic persecution of Christian ethnic groups living in the south. The documentary evidence states that the government generally respects freedom of religion, as provided for in the Togolese Constitution. Three major religions, Roman Catholicism, Protestantism and Islam, are officially recognized and practised there.

(Reasons for Decision, at page 9)

[38] Accordingly, the decision of the Board was rendered on the basis of the evidence on the record and is not unreasonable.

## **CONCLUSION**

[39] To sum up, the findings of fact made by the Board were reasonable and well supported by the evidence submitted by the parties. Considering the preceding, the intervention of this Court is unwarranted.

**JUDGMENT**

**THE COURT ORDERS that**

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
Michael Palles



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

**DOCKET:** IMM-1268-06

**STYLE OF CAUSE:** AMEYO HOUSSOU, KOKOE DAVY FLEUR AMEH,  
ZOKUI GUY NOEL AMEH, APELETE PATRICK AMEH  
v. THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** November 6, 2006

**REASONS FOR JUDGMENT BY:** THE HONOURABLE MR. JUSTICE SHORE

**DATED:** November 16, 2006

**APPEARANCES:**

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