

Date: 20070306

Docket: IMM-2538-06

Citation: 2007 FC 266

Montréal, Quebec, the 6th day of March 2007

Present: The Honourable Mr. Justice Martineau

BETWEEN:

BÉNÉCLERC FÉLIX

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

(Delivered from the bench at Montréal, Quebec, on March 6, 2007.)

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the IRB dated April 20, 2006, in docket MA5-04725, in which the panel member, Donal Archambault, dismissed the applicant's refugee claim because it had been found not credible.

[2] The applicant submitted, first, that the panel member had made a reviewable error in taking into consideration the two Personal Information Forms (PIFs), even though at the hearing he had justified the need to submit a new PIF, since the first PIF had been embellished by his first representative. Although the applicant had provided an explanation for this, I do not believe that it

was inappropriate for the panel member to question the applicant on the subject of allegations made in both PIFs in order to gauge his credibility. In any case, the panel member did not base his decision on the misrepresentations contained in the first PIF.

[3] This brings me to the applicant's second ground, namely, that the panel member's general finding of non-credibility is patently unreasonable because it placed too much emphasis on peripheral or secondary elements in the applicant's account of persecution. This second criticism is equally unjustified, and I accept the respondent's arguments in this regard. The panel member was certainly entitled to question the applicant's credibility based on the various elements indicated in his decision. In particular, the contradictions or the inconsistency of the applicant's account of his stay of several months in Grande Saline and his subsequent return to Cabaret amply justify, in my humble opinion, the finding of non-credibility which, in other respects, does not seem to me to be patently unreasonable as a whole.

[4] There remain the personal reproaches addressed to Mr. Archambault. I do not believe that there was any breach of the applicant's right to a fair and impartial hearing. The applicant was duly represented at the hearing, and his counsel chose not to ask questions or to ask the applicant for additional clarification following the responses that he had already given to the panel member. Moreover, the panel member was allowed to question the applicant energetically in order to, among other things, clarify the shortcomings in the evidence and to assess his credibility. The panel member certainly made some unwarranted remarks, and he demonstrated a certain impatience at the hearing. Nonetheless, having read the transcripts closely, and having studied the question in depth,

in a realistic and practical manner, I do not believe that the general conduct or the panel member's specific remarks raise a reasonable apprehension of bias in a reasonable and right-minded person. That being said, the panel member perhaps came very close to exceeding the acceptable limits, but he did not exceed them in this case.

[5] In conclusion, the application for judicial review must be dismissed. There was no question of general importance raised, either by the parties or in the case.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed.

"Luc Martineau"

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2538-06

STYLE OF CAUSE: BÉNÉCLERC FÉLIX v. DCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 6, 2007

**REASONS FOR ORDER AND
ORDER BY:** The Honourable Mr. Justice Martineau

**DELIVERED FROM THE
BENCH ON:** March 6, 2007

APPEARANCES:

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