

Date: 20070914

Docket: IMM-4477-06

Citation: 2007 FC 911

Ottawa, Ontario, September 14, 2007

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

EMMANUEL MONOH HOWBOTT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Howbott is a citizen of Liberia who claims to be entitled to refugee protection. His claim was heard by the Refugee Protection Division of the Immigration and Refugee Board (RPD), which found him to be excluded from protection by application of Article 1F(a) of the United Nations Convention Relating to the Status of Refugees (Convention). That article excludes from protection those for whom there are serious reasons for considering that they have committed a crime against peace, a war crime, or a crime against humanity (all as defined in certain international instruments).

[2] In the present case, the RPD found that as a member, and as an informant, of the National Patriotic Party (NPP) there were serious reasons for considering that Mr. Howbott was complicit in a war crime and in crimes against humanity. The specific war crime was found to be ensuring that child soldiers would be forced to fight. No challenge is made by Mr. Howbott to this finding. While doubt exists that a war crime can occur in the context of a civil war (See: *Bermudez v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 860 (T.D.)), I am satisfied that this finding was mere surplusage and not material to the RPD's decision which turned on the issue of complicity in crimes against humanity. The specific crimes against humanity were found to include murder, rape, and torture. Mr. Howbott does not challenge the RPD's finding that the NPP committed acts of murder, rape, and torture that were directed against the civilian population on a widespread and systematic basis.

[3] For the reasons that follow, I have concluded that this application for judicial review should be dismissed because the findings of fact made by the RPD were not patently unreasonable, the RPD properly considered the extent of Mr. Howbott's participation in the NPP, and the RPD properly considered whether Mr. Howbott was a personal and knowing participant in the crimes against humanity committed by the NPP.

[4] During oral argument, it was submitted on Mr. Howbott's behalf that the RPD erred in the following respects:

1. The RPD failed to find that on two occasions Mr. Howbott tried to leave the NPP.

2. The RPD failed to consider that the NPP was not engaged in a civil war in 1997 when Mr. Howbott became a member.
3. The RPD failed to consider what specific acts Mr. Howbott committed and failed to consider the "good things" he had done for his people.
4. The RPD provided an insufficient analysis for its conclusion that Mr. Howbott was a knowing participant in the NPP - an organization that was committing human rights abuses against civilians on a widespread and systematic basis.

[5] Counsel for Mr. Howbott advised that he was not pursuing the argument raised in his written materials that the RPD erred by failing to consider whether Mr. Howbott was a protected person but for the application of Article 1F(a). This was an appropriate concession, given jurisprudence such as *Xie v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1142 at para. 38 (C.A.), and *Gonzalez v. Canada (Minister of Employment and Immigration)*, [1994] 3 F.C. 646 (C.A.).

[6] I turn to each asserted error.

1. Did the RPD err by failing to find that on two occasions Mr. Howbott tried to leave the NPP?

[7] In his oral testimony, Mr. Howbott testified that he tried to leave the NPP in 1999 and again in 2000, but each time he stopped providing information he was arrested and beaten. Mr. Howbott said he was afraid he would be tortured if he stopped providing information to the NPP. The RPD

rejected this testimony for two reasons. First, Mr. Howbott had not mentioned any attempt to leave the NPP when interviewed at the port of entry or when he completed his Personal Information Form (PIF). In his PIF, Mr. Howbott simply said he left the movement "in August 2003, when Charles Taylor was removed from power. I felt that there was no future with this movement for me". Second, Mr. Howbott testified that even after he was arrested he was still considered to be a reliable informant. The RPD found it to be implausible that Mr. Howbott would still be considered trustworthy after any attempt to leave the NPP. In my view, neither inference can be said to be patently unreasonable. The RPD was entitled to find that, if Mr. Howbott had truly made efforts to leave the NPP, he would have mentioned this in his PIF or at the port of entry as opposed to the information that he did provide, which indicated that he left after concluding that there was no future for him with the movement.

[8] Mr. Howbott argues that it was patently unreasonable for the RPD to reject his oral testimony that he tried to leave the NPP when, in finding that he was aware of the brutal nature of the NPP, it relied upon his stated fear of torture if he quit. I agree that the RPD ought to have explained why it accepted the truth of his stated fear of torture when it rejected his evidence about efforts to leave the NPP. However, there was an abundance of evidence to support the RPD's finding that Mr. Howbott was aware of the brutal nature of the NPP. In this regard, Mr. Howbott testified that: his own mother had been tortured by the National Patriotic Front of Liberia, the predecessor to the NPP; when he joined the NPP, he knew that it had committed atrocities because he had witnessed the commission of such atrocities; he knew that, after the NPP came into power, it continued to commit human rights abuses; and he was aware that lots of people were arrested and tortured by the NPP.

2. Did the RPD err by failing to consider that the NPP was not engaged in a civil war in 1997 when Mr. Howbott became a member?

[9] As noted above, Mr. Howbott was unequivocal in his testimony that he knew when he joined the NPP that it had committed atrocities because he had witnessed the commission of such atrocities. In view of this evidence, it was not necessary for the RPD to consider whether the NPP was engaged in a civil war in 1997.

3. Did the RPD fail to consider what specific acts Mr. Howbott had committed and fail to consider the "good things" he had done for his people?

[10] The RPD did not fail to consider what specific acts Mr. Howbott had committed. It made findings of fact that Mr. Howbott:

- (i) was an informant for the NPP from 1999 to 2003. He gathered information concerning anyone who posed a threat to the NPP and conveyed the information either to another informant or to a military colonel;
- (ii) worked as an adjutant, who assigned soldiers to work on the border with the Ivory Coast, and he went to the front to defend against "the enemies". He also took part in a gun battle;
- (iii) gathered information about soldiers that were harassing civilians and looting;

- (iv) stayed at a checkpoint in order to ensure that soldiers did not retreat and he informed on soldiers;
- (v) provided “timely intelligence” to the NPP-controlled government, and the information directly supported the security forces’ and the NPP's efforts in the civil war; and
- (vi) supervised other informants.

[11] As for his "good works", Mr. Howbott testified that he assisted in an election campaign and encouraged people to vote for the NPP. He also testified that, after he informed on soldiers who were looting, the looted goods were returned to civilians. The RPD rejected the latter evidence because it contradicted information Mr. Howbott himself had provided at the port of entry. I am satisfied, however, that the RPD committed no reviewable error by failing to dwell upon Mr. Howbott’s alleged "good works". The RPD properly directed its attention to whether Mr. Howbott was complicit in crimes against humanity.

4. Did the RPD provide insufficient analysis for its conclusion that Mr. Howbott was a knowing participant in the NPP - an organized nation that was committing human rights abuses against civilians on a widespread and systematic basis?

[12] As noted above, it was conceded that the NPP committed human rights abuses against civilians on a widespread and systematic basis. The remaining issue is whether the RPD provided sufficient analysis for its conclusion that Mr. Howbott was a knowing participant. Mr. Howbott complains that the RPD failed to consider whether the information he provided actually resulted in any human rights abuse and says that there was insufficient evidence that he was present at, or had any knowledge of, atrocities committed by the NPP.

[13] In my view, there is no merit to either complaint. The Federal Court of Appeal has held that it is not necessary to establish that the crimes against humanity committed by an organization be necessarily and directly attributable to specific acts or omissions of a refugee claimant. In the case of an informant, the Court has written “[w]hen an informant such as the respondent has knowingly directed those at the most violent point in the chain of command to their victim, it hardly lies in his mouth to say ‘you can’t prove anyone I informed on was actually killed or tortured’”. See: *Sumaida v. Canada (Minister of Citizenship and Immigration)*, [2000] 3 F.C. 66 at paras 31, 36 (C.A.).

[14] As to Mr. Howbott's knowledge of the atrocities committed by the NPP, his admissions, as noted above, were unequivocal.

[15] As to the adequacy of the RPD's analysis, I agree with counsel for the respondent that the reasons of the RPD were poorly structured. As well, while the RPD properly reviewed the evidence at length and made a number of findings of fact, the analysis of the evidence, particularly the application of the facts to the relevant law, was not as detailed as one would hope to see. However, I believe that it is clear from a reading of the reasons as a whole that:

- (i) the RPD looked for more than mere membership in the NPP;
- (ii) the RPD found that the NPP committed crimes against humanity, including murder, rape and torture, against civilians on a widespread and systematic basis;
- (iii) the RPD found that Mr. Howbott clearly knew of the human rights abuses committed by the NPP including the murder, rape, and torture of civilians;
- (iv) the RPD accepted that, as an informant, Mr. Howbott facilitated the commission of murder, rape, or torture by identifying persons including civilians who should be targeted by the NPP; and
- (v) the RPD did not accept Mr. Howbott's evidence that he attempted to disengage himself from the NPP. Rather, it found that he remained a member until Charles Taylor lost power, and Mr. Howbott saw no continued future with the movement.

[16] In my view, as a matter of law, those findings justified the conclusion of the RPD that Mr. Howbott was a person excluded from protection by Article 1F(a) of the Convention because he was complicit in crimes against humanity.

[17] It follows that the application for judicial review will be dismissed. Counsel posed no question for certification, and I am satisfied that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4477-06

STYLE OF CAUSE: EMMANUEL MONOH HOWBOTT, Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 5, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: SEPTEMBER 14, 2007

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