Date: 20071115

Docket: IMM-246-07

Citation: 2007 FC 1187

Ottawa, Ontario, the 15th day of November 2007

Present: The Honourable Mr. Justice Shore

BETWEEN:

KELETY DOUMBOUYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

PRELIMINARY COMMENTS

[1] The Charter should not be used to cry wolf at every opportunity. Its importance is such that indiscriminately crying wolf at every opportunity would make a mockery of its intrinsic value. The Charter is the central theme running through the Canadian Constitution. It keeps watch over and addresses the fragility of the entire human condition. The Charter reflects our existence as a society, led by principles designed to ensure the inviolability of the human person along with the protection of community interests. This does not reveal a paradox but rather proposes and seeks to achieve balance between these two aspects.

[2] Crying wolf to undo a fair and reasonable decision would be unfair to society, which is also made up of a group of individuals, who would be wronged individually and collectively by the arguments of those who cry wolf for no valid reason.

INTRODUCTION

[3] The pre-removal risk assessment (PRRA) officer noted that the Refugee Protection Division (RPD) had not believed the applicant was involved with the Rally for the People of Guinea (RPG). After referring to the requirements set out in paragraph 113(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), she stated that she would not consider the allegations made by the applicant, Kelety Doumbouya, concerning his involvement in founding a youth movement (Peace and Love) and his involvement in the RPG because these were not new facts within the meaning of the Act. She noted that all the facts and allegations relied on by Mr. Doumbouya concerning his past activism in the RPG had already been analysed by the RPD, which had found that he was not credible as regards his very involvement in the movement, the dates and duration of that involvement and his flight, which was uncorroborated in terms of time, travel documents and even the route he took.

[4] The PRRA officer concluded that the applicant had not discharged his burden of proving that he would be personally persecuted if he returned to Guinea (section 96 of the Act) or that he would be subject to torture, a risk to his life or a risk of cruel and unusual treatment or punishment as defined in section 97 of the Act. The PRRA officer reached this conclusion after carefully analysing the evidence before her.

COURT PROCEEDINGS

[5] The Court has before it an application for leave and for judicial review under subsection 72(1) of the Act concerning a decision made on November 24, 2006 by the PRRA officer, Chantal Roy, rejecting the applicant's application for protection (Department of Citizenship and Immigration record (CICR), pp. 1-10).

[6] On September 6, 2007, prior to the hearing on September 18, 2007, Mr. Doumbouya served on the respondent a notice of constitutional question raising the following points:

(a) As regards his right to be heard, he submits that paragraph 113(*b*) of the Act and section 167 of the Regulations violate the right of every person to give *viva voce* evidence before a decision-maker. According to Mr. Doumbouya, PRRA applicants are entitled to a *viva voce* hearing only in limited circumstances and, given that this jeopardizes the rights provided for in section 7 of the *Canadian Charter of Rights and Freedoms*, Part I, Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11 (Charter), Parliament should not be authorized to deny applicants a full hearing on the merits of their application for protection in this way.

(b) As regards the restrictions on admissible evidence set out in paragraph 113(*a*) of the Act, Mr. Doumbouya argues that this provision violates [TRANSLATION] "the rules of fundamental justice and fairness (section 7 of the Charter and Canadian Bill of Rights)" since it limits the admissible evidence in the PRRA context to new evidence that arose after the claim was rejected by the RPD, that was not reasonably available at the time of the rejection or that the applicant could not reasonably have

been expected in the circumstances to have presented to the RPD. According to Mr. Doumbouya, paragraph 113(*a*), which thus prevents PRRA applicants from presenting all relevant evidence in support of their application for protection, requires the decision-making officer to exclude evidence that would otherwise be relevant and/or conclusive in assessing the application for protection.

Mr. Doumbouya argues that, since these restrictions have a direct impact on the right of PRRA applicants to life, liberty and security, paragraph 113(*a*) is not consistent with the principles of fundamental justice guaranteed in section 7 of the Charter. For this reason, he argues, paragraph 113(*a*) must be invalidated.

(c) Mr. Doumbouya also submits that the PRRA procedure is constitutionally invalid because it denies PRRA applicants the right to be heard by an independent and impartial tribunal with regard to their application for protection. In support of this argument, Mr. Doumbouya simply submits that the pre-removal risk assessment is made by an officer of the Department of Citizenship and Immigration Canada (CIC). He argues that the relationship between PRRA officers and CIC gives rise to a reasonable apprehension that such officers are biased and not independent.

[7] The Court notes that Mr. Doumbouya does not argue anywhere in his memorandum of argument dated February 16, 2007 that the PRRA procedure is constitutionally invalid because it denies PRRA applicants the right to be heard by an independent and impartial tribunal.

[8] The allegation that a *viva voce* hearing should be granted in every case to respect the applicant's right to be heard is made only in paragraphs 77, 78 and 81 of Mr. Doumbouya's memorandum of argument, but the Court is not asked to declare paragraph 113(*b*) of the Act and section 167 of the Regulations constitutionally invalid for this reason. In his memorandum of argument, Mr. Doumbouya asks the Court only to allow his application for leave and for judicial review. Moreover, the memorandum is not accompanied by a notice of constitutional question, since that notice was not served on the respondent until September 6, 2007. Without such a notice, Mr. Doumbouya could not ask the Court to declare paragraph 113(*b*) of the Act and section 7 of the Regulations unconstitutional (see, *inter alia*, *Bekker v. Canada*, 2004 FCA 186, [2004] F.C.J. No. 819 (QL), paras. 7-9).

[9] As for Mr. Doumbouya's argument that the restrictions on admissible evidence set out in paragraph 113(*a*) of the Act mean that that provision violates [TRANSLATION] "the rules of fundamental justice and fairness (section 7 of the Charter and Canadian Bill of Rights)", that argument is not found anywhere in his memorandum of argument of February 16, 2007.

[10] Moreover, Mr. Doumbouya did not file a supplementary memorandum as he was authorized to do by this Court in its order of May 10, 2007 allowing the application for leave.

[11] The respondent served and filed his supplementary memorandum on July 19, 2007.

[12] In the circumstances, the respondent had an opportunity to reply to the above-mentioned new arguments by Mr. Doumbouya.

FACTS

[13] Mr. Doumbouya is a 28-year-old citizen of Guinea.

[14] He arrived in Canada on December 8, 2002 and claimed refugee status in Canada the same day.

[15] His claim for refugee protection was heard on September 2 and October 15, 2003. The RPD rejected his claim on December 17, 2003. His application for leave and for judicial review of that decision was dismissed on April 6, 2004.

[16] Before the RPD, Mr. Doumbouya alleged that he had been involved with the Peace and Love group, which organized cultural and sporting activities and information workshops.

[17] That group was allegedly affiliated with the Party for Unity and Progress (PUP) and supported the party's candidate and the election of President Lasana Conté.

[18] After the elections, the PUP allegedly did not keep its promises, and Peace and Love decided to support the opposition RPG in May 2000.

[19] Mr. Doumbouya was then allegedly arrested and released in June 2000 and went to Côte d'Ivoire, where he stayed for more than two years.

[20] He then went to the United States before coming to Canada. The RPD wrote the following about this:

> . . . When asked why he did not try to file a claim in the United States, Mr. Doumbouya said that his objective was to come to Canada. However, the claimant travelled with a fake passport, he had no legal status in the United States and he made no claim. That behaviour is deemed inconsistent with that of a person who fears being persecuted in his country and risks being sent back because of his illegal status in the United States.

(CICR, p. 252)

[21] With regard to Mr. Doumbouya's so-called membership in the RPG, the RPD did not believe he was a member and wrote the following:

> . . . there is no document after 1998 that confirms the claimant's presence in Guinea. **The RPG membership card, seized by Immigration, has been altered.** The analysis of that card revealed other factors that led the panel not to give it any probative value. Also, someone tried to "correct" the date indicated on the membership card--instead of 2003, it says 2000. The claimant could not or would not provide any reasonable explanations for that finding. (Emphasis added)

(CICR, p. 251)

[22] In the context of his PRRA, Mr. Doumbouya referred to the general political instability in the country, especially for members of the opposition and those who criticize the government in power (applicant's record (AR), p. 7).

[23] Mr. Doumbouya also argued that his so-called activism in the RPG, both past and current, was reason for Canada to grant him protection following the PRRA (CICR, p. 4).

ISSUES

[24] (a) Did the officer err in her risk assessment by finding that the documents submitted by the applicant did not constitute new evidence within the meaning of paragraph 113(*a*) of the Act?

(b) Did the officer have to interview the applicant?

(c) Are the officer's reasons sufficient?

(d) Did the officer refuse to exercise her jurisdiction?

(e) Did the officer err in law in considering the impact of the general documentary evidence concerning Guinea?

(f) Is the PRRA officer's decision, considered overall and as a whole, reasonable?

(g) Is paragraph 113(*b*) of the Act consistent with the principles of fundamental justice?

(h) Are the restrictions on admissible evidence set out in paragraph 113(*a*) of the Act constitutional?

(i) Can the relationship between PRRA officers and CIC give rise to a reasonable apprehension that those officers are biased and not independent?

ANALYSIS

Applicable standards of review

[25] Purely factual questions decided by the PRRA officer in reaching the impugned decision are reviewable on the standard of patent unreasonableness (*Yousef v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 864, [2006] F.C.J. No. 1101 (QL), para. 17; *Chir v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 765, [2006] F.C.J. No. 960 (QL), para. 12; *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, para. 38; *Stadnyk v. Canada (Employment and Immigration Commission)* (F.C.A.), [2000] F.C.J. No. 1225 (QL), para. 22; *Harb v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 39, [2003] F.C.J. No. 108 (QL), para. 14).

[26] On the other hand, when the PRRA officer must determine whether the documents submitted meet the requirements of paragraph 113(*a*) of the Act, the officer is considering a question of mixed law and fact subject to the reasonableness *simpliciter* standard of review. This standard also applies in reviewing the ultimate decision on the PRRA as a whole (*Elezi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 240, [2007] F.C.J. No. 357 (QL), paras. 21-22; *Herrada v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1004, [2006] F.C.J. No. 1275 (QL), para. 24).

[27] Moreover, when a question arises about new evidence, it must be determined whether the officer properly interpreted paragraph 113(*a*). The standard of correctness applies to this question of law (*Elezi*, *supra*, para. 22).

The officer considered all the evidence

(i) Documents from before the rejection

[28] Paragraph 113(*a*) provides for three categories of new evidence, namely evidence that arose after the rejection, evidence that was not reasonably available at the time of the rejection and evidence that Mr. Doumbouya could not reasonably have been expected in the circumstances to have presented at the time of the rejection. These are distinct types of evidence (*Elezi*, *supra*, para. 26).

[29] The officer clearly identified the documents from before the rejection that she would not consider (AR, p. 9).

[30] This conclusion was consistent with the applicable principles, since those documents did not meet the requirements of the second or third category, namely new evidence that was not reasonably available at the time of the rejection or that the applicant could not reasonably have been expected in the circumstances to have presented to the RPD.

(ii) Applicant's involvement in the RPG

[31] The officer also found that letters submitted by Mr. Doumbouya in support of his PRRA application, although they post-dated the decision of the Immigration and Refugee Board (IRB), basically set out facts that existed prior to that decision and had been considered by the IRB. She found that they therefore did not set out any new facts.

[32] The officer summarized the allegations made by Mr. Doumbouya before the RPD with regard to his involvement in the RPG as follows. First, he was involved with Peace and Love, which organized cultural and sporting activities and information workshops. That group was affiliated with the PUP and supported the party's candidate and the election of President Lasana Conté. After the elections, the PUP did not keep its promises, and Peace and Love decided to support the opposition and the RPG in May 2000. Mr. Doumbouya was arrested and released in June 2000. He left for Côte d'Ivoire, where he stayed for more than two years before coming to Canada (AR, p. 7).

[33] Mr. Doumbouya submits that various documents he filed with the PRRA officer confirm:

1. His political activities, the fact that he is wanted as an RPG mobilizer, his problems with the PUP and the way he or his family was treated:

- Letter by Cissoko Siaka, May 7 or 8, 2004 (P-17) (AR, p. B-95)
- Letter by the RPG, May 4, 2004 (P-22) (AR, p. B-96)
- Letter by the RPG, June 15, 2004 (P-22A) (AR, p. B-97)
- Affidavit of Amara Kaba (P-33) (AR, p. B-60)
- Affidavit of Salomba Camara (P-34) (AR, p. B-64)
- Affidavit of Siaka Cissoko (P-35) (AR, p. B-67)
- Acknowledgment from the administrative secretary of the RPG (P-36) (AR, p. B-10)
- Acknowledgment from the secretary general of RPG-Canada (P-37) (AR, p. B-12)

- Affidavit of Mr. Doumbouya (P-38) (AR, p. B-14)

2. His political involvement in Canada and the risk that, as a result, he will be arrested if he returns:

- Acknowledgment from the administrative secretary of the RPG (P-36) (AR, p. B-10)
- Acknowledgment from the secretary general of RPG-Canada (P-37) (AR, p. B-12)
- Affidavit of Siaka Cissoko (P-35) (AR, p. B-67)

3. The arbitrary arrest and detention and persecution of RPG members:

- General documentation on the crisis situation in Guinea (P-23 to P-32) (AR, pp. B-98 *et seq.*) (P-39 to P-53) (AR, pp. B-19 to B-53, B-122 to B-144)
- Amnesty International report (P-69) (AR, p. B-151)
- Other listed documents (applicant's memorandum of argument, para. 13)

[34] It is not sufficient that the "new" evidence confirms the facts relied on by Mr. Doumbouya before the RPD.

[35] Evidence does not fall within the first category of evidence under paragraph 113(*a*) of the Act just because it is dated after the decision, for otherwise a PRRA application could easily become an appeal of the RPD's decision; Mr. Doumbouya could gather "new" evidence to counter

the RPD's findings and support his application; this is why judges have insisted that the new evidence relate to new developments either in country conditions or in Mr. Doumbouya's personal situation (*Elezi*, *supra*, para. 27).

[36] The new evidence cannot be a mere repetition of the evidence submitted to the RPD; the nature of the information it contains, its significance for the case and the credibility of its source are all factors to be taken into consideration in determining whether it can be considered new evidence (*Elezi*, *supra*, paras. 39 and 41).

[37] The PRRA process is intended to assess new risk developments between the IRB hearing and the scheduled removal date (*Ould v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 83, [2007] F.C.J. No. 103 (QL), para. 19; *Quiroga v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1306, [2006] F.C.J. No. 1640 (QL), para. 12; *Klais v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 783, [2004] F.C.J. No. 949 (QL), para. 14).

[38] When considering evidence from the standpoint of the new evidence criterion, the PRRA officer must ask whether the information it contains is significant or significantly different from the information previously provided (*Elezi*, *supra*, para. 29; *Raza v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1385, [2006] F.C.J. No. 1779 (QL), paras. 22-23).

[39] A careful reading of the exhibits listed in point 1 of paragraph 33 makes it clear that the purpose of the documents in question, as Mr. Doumbouya states, is to confirm the evidence

presented before the RPD. The last of these exhibits, Mr. Doumbouya's affidavit, also seeks to challenge the RPD's decision (AR, pp. B-14 to B-18).

[40] However, as the Court stated in *Elezi*, *supra*, a PRRA application is not and must not become an appeal of the RPD's decision. The applicant challenged that decision in the Federal Court, and his application was dismissed.

[41] The officer also noted that the people who signed the above-mentioned letters, which discuss events allegedly experienced by Mr. Doumbouya, do not say that they personally witnessed those events, which decreases the probative value of the letters (AR, p. 9).

[42] She noted that the new evidence was not evidence that had not been reasonably available, or that Mr. Doumbouya could not reasonably have been expected in the circumstances to have presented, at the time of the rejection (AR, p. 7).

[43] In this regard, Mr. Doumbouya argues that the new evidence was not filed with the IRB because it required research, effort and the cooperation of third parties to attest to the alleged facts (applicant's memorandum of argument, para. 11).

[44] However, this explanation is not sufficient to make the evidence in question new evidence. It was up to Mr. Doumbouya to prove his claim for refugee protection. If he considered it appropriate to request time to obtain additional evidence, he should have done so at the proper time.

In the context of a PRRA, he could not complete his evidence by filing documents he could have obtained at the time.

[45] If he believed that the evidence he presented to the PRRA officer fell within the second or third category of evidence referred to in paragraph 113(*a*) of the Act, it was up to him to explain this to convince the officer that the evidence met the requirements of that paragraph. It was up to the officer to assess the explanations in light of the circumstances of the case.

[46] The officer did not have to take account of evidence that did not involve any new developments.

[47] The officer noted that the RPD had not believed Mr. Doumbouya was involved in the RPG. After referring to the requirements of paragraph 113(*a*) of the Act, she stated that she would not consider Mr. Doumbouya's allegations concerning his involvement with Peace and Love and the RPG because they were not new facts within the meaning of the Act. She noted that all the facts and allegations relied on by Mr. Doumbouya concerning his past activism in the RPG had already been analysed by the RPD, which had found that **he was not credible** (AR, pp. 8-9).

[48] The officer also reviewed the evidence concerning Mr. Doumbouya's involvement in the RPG since his arrival in Canada. She concluded that this evidence was not sufficient to establish that he would be at risk if he returned. It is therefore not correct to say that the RPD ignored this evidence (AR, p. 9).

[49] It was not the officer's role to review the RPD's findings on Mr. Doumbouya's credibility with regard to his involvement in the RPG in Guinea (AR, p. 9). The officer's conclusion that the evidence on Mr. Doumbouya's involvement in the RPG in Canada was not sufficient to establish that he would be at risk if he returned (AR, p. 9) must be understood in this context.

[50] The officer made due mention of the evidence in question, which she listed (AR, p. 9):

- Acknowledgment from the administrative secretary of the RPG (P-36) (AR, p. B-10);
- Acknowledgment from the secretary general of RPG-Canada (P-37) (AR, p. B-12);
- Rally for the People of Guinea: letters dated May 4, June 11 and June 15, 2004 (P-22 and P-22A) (AR, pp. B-96 and B-97);
- Affidavits of Amara Kaba, Salomba Camara and Siaka Cissoko dated July 26, 2004 (P-33 to P-35) (AR, pp. B-60 to B-69).

[51] In the first of these exhibits, found at page B-10 of the applicant's record, the signatory begins by stating that Mr. Doumbouya was a member of the RPG in Guinea. However, this premise, which the RPD did not accept, was not taken into consideration by the officer, with good reason. In the circumstances, it was not patently unreasonable for the officer to find that the mere statement that Mr. Doumbouya was active in the Canadian section of the RPG was not enough.

[52] The same is true of Siaka Cissoko's affidavit at pages B-67 and B-68, Salomba Camara's affidavit at pages B-64 and B-65 and Amasa Kaba's affidavit at pages B-60 and B-61 of the applicant's record.

[53] None of the persons who signed these three documents backs up his assertion that Mr. Doumbouya would be persecuted because of his role in the RPG in Canada.

[54] The respondent reiterates that, in the circumstances, it was not patently unreasonable for the officer to find that the mere statement that Mr. Doumbouya was an activist in the Canadian section of the RPG was not enough.

[55] In finding that these documents were not sufficient in themselves, the officer provided an adequate explanation of her reasons, which must be read as a whole and not subjected to a microscopic examination.

(iii) The officer did not err by focusing her analysis on the documentary evidence relating to country conditions in Guinea

[56] It was not until after she explained why the other evidence was not new evidence based on the criteria in paragraph 113(*a*) of the Act and her assessment of the sufficiency of the subsequent evidence that the officer stressed that her analysis would relate to the documentary evidence on conditions in Guinea (AR, p. 9). This was the evidence that had not yet been examined and, for all practical purposes, the only evidence that remained.

[57] With regard to general conditions in Guinea, Mr. Doumbouya had to prove a connection between conditions in his country and his personal situation, which he failed to do. It will be

recalled that his lack of credibility with regard to his involvement in the RPG, as found by the RPD, did not have to be questioned.

[58] As Mr. Justice Michel Beaudry noted in *Ould*, *supra*, citing with approval the following passage from *Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, [2005] F.C.J. No. 506 (QL):

> [28] That said, the assessment of the applicant's potential risk of being persecuted if he were sent back to his country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual. . . .

[59] The new documentary evidence must not merely echo articles previously submitted by Mr. Doumbouya (*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 872, [2004] F.C.J. No. 1134, para. 38).

[60] It has not been established that the officer's decision on the facts is patently unreasonable or that the decision considered overall and as a whole is unreasonable.

[61] Moreover, the officer based her conclusion on the documentary evidence showing, *inter alia*, that an RPG leader in exile for two years had recently decided to return to Guinea.

[62] This evidence, in itself, supports the officer's conclusion that Mr. Doumbouya had not discharged his burden of proving an individualized risk and that the protection provided for in sections 96 and 97 of the Act could not be granted to him (AR, p. 12).

[63] In light of all the evidence and the officer's findings, this conclusion is reasonable.

(a) The officer did not confuse new evidence and new facts

[64] The officer did not confuse new evidence and new facts. It can be seen from paragraph 3 of the reasons, page 3, to which Mr. Doumbouya refers, that the officer clearly bore in mind the three categories of evidence referred to in paragraph 113(*a*). She explained her thinking by adding that, to be considered, the evidence in question could not have been available at the time of the rejection. She noted that the evidence concerning Mr. Doumbouya's political profile and status had been exactly the same at the time of the RPD's decision. She stated that, in her opinion, the RPD had taken that evidence into account (AR, p. 8).

[65] As already noted, paragraph 113(*a*) of the Act concerns new developments, new risks and information that is significant or significantly different from the information previously provided. Whether the officer characterized the evidence as new facts or new evidence has no bearing. She obviously interpreted paragraph 113(*a*) correctly. At page 4 of her reasons (AR, p. 9), she correctly noted that the facts in question had been analysed by the RPD.

The officer did not violate the principles of fundamental justice

[66] Mr. Doumbouya argues that the officer should have interviewed him before making her PRRA decision, since, relying on the IRB's findings, she [TRANSLATION] "obviously questioned" his credibility on key points of his application (applicant's memorandum of argument, paras. 15, 71-73).

[67] The officer did not have to hold a hearing in this case, since she herself did not make any finding concerning Mr. Doumbouya's credibility (*Aivani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1231, [2006] F.C.J. No. 1559 (QL); *Sen v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1435, [2006] F.C.J. No. 1804 (QL), para. 23).

[68] The officer found that there were no new facts or new risks related to Mr. Doumbouya's involvement in Peace and Love and the RPG and that the RPD had properly taken account of the facts presented to it in this regard.

[69] The officer's decision was based on an assessment of the evidence in light of the criteria in paragraph 113(*a*) of the Act and the sufficiency of the evidence she was able to consider. In the circumstances, Mr. Doumbouya did not satisfy the statutory tests for holding a hearing set out in section 167 of the Regulations, as subsequently amended:

167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:	**167.** Pour l'application de l'alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise:
(*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	*a*) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(*b*) whether the evidence is	*b*) l'importance de ces

central to the decision with respect to the application for protection; and	éléments de preuve pour la prise de la décision relative à la demande de protection;
(*c*) whether the evidence, if accepted, would justify allowing the application for protection.	*c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[70] Here, the officer did not make any finding concerning Mr. Doumbouya's credibility but rather found that she could not give him a favourable answer based on the new evidence and the documents he had submitted.

[71] In the circumstances, the PRRA officer did not err by not granting Mr. Doumbouya a hearing.

(b) Paragraph 113(*b*) of the Act is consistent with the principles of fundamental justice

[72] Mr. Doumbouya submits that paragraph 113(*b*) of the Act and section 167 of the Regulations violate the right of every person to give *viva voce* evidence before a decision-maker. According to Mr. Doumbouya, PRRA applicants are entitled to a *viva voce* hearing only in limited circumstances and, given that this jeopardizes the rights provided for in section 7 of the Charter, Parliament should not be authorized to deny applicants a full hearing on the merits of their application for protection in this way.

[73] It is true that paragraph 113(*b*) of the Act clearly establishes that the Minister or the Minister's delegate is not obliged to grant an interview and that a hearing is held in the PRRA context only in exceptional circumstances, on the basis of the factors set out in section 167 of the Regulations. These tests are conjunctive, meaning that if the applicant's situation does not meet one test, the hearing is not held (*Aoutlev v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 111, [2007] F.C.J. No. 183 (QL), paras. 33, 35; *Kaba v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1113, [2006] F.C.J. No. 1420 (QL), para. 25; *Kaba v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 647, [2007] F.C.J. No. 874 (QL), para. 50).

[74] A hearing may be held where the applicant's credibility is an issue that could result in a negative PRRA decision. The intent of section 167 of the Regulations is to allow an applicant to face any credibility concern which may be put in issue (*Lupsa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 311, [2007] F.C.J. No. 434 (QL), para. 31).

[75] However, it must be noted that the right to a hearing is not an absolute right and that, where the process of reviewing a PRRA application does not include a meeting between the decision-maker and the applicant, the process nonetheless complies with the principles of fundamental justice set out in the Charter if it allows the applicant to present all of his or her arguments in writing, as was the case here (*Aoutlev*, *supra*, para. 35; *Lupsa*, *supra*, paras. 34-35; *Kaba*, 2006, *supra*, para. 30).

[76] Indeed, the Supreme Court of Canada recognized in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 (at para. 121), that a hearing is not required in every case and that the procedure provided for in section 113 is consistent with the principles of fundamental justice set out in the Charter. In the vast majority of cases, it will be enough if the applicant has an opportunity to make his or her arguments in writing (*Aoutlev, supra*).

[77] For these reasons, paragraph 113(*b*) of the Act is consistent with the principles of fundamental justice.

(c) The officer's reasons are sufficient

[78] According to Mr. Doumbouya, [TRANSLATION] "insufficient reasons are provided" for the officer's decision.

[79] To support this argument, Mr. Doumbouya attacks the following paragraph of the decision-maker's reasons, at page 4:

> [TRANSLATION] . . . Finally, even if the applicant had established that he has been active in the RPG since his arrival in Canada, I am not of the opinion that this would be sufficient to establish the existence of a potential risk in returning.

[80] Mr. Doumbouya argues that the decision-maker did not explain why she considered the evidence insufficient to establish the existence of a potential risk in returning.

[81] In this regard, it should be noted that the officer stated (at page 7 of her reasons) that even the president of the RPG, who had been in exile for more than two years, had returned to his country.

(d) The officer did not refuse to exercise her jurisdiction

[82] At paragraphs 53 and 56 of his memorandum of argument, Mr. Doumbouya submits that the officer refused to exercise her jurisdiction because she refused to take account of his arguments concerning errors allegedly made by the RPD of the IRB in its decision on his claim.

[83] The officer was perfectly correct on this point, since a PRRA officer does not sit on appeal or review of the RPD's decision (*Herrada*, *supra*, para. 31).

[84] Accordingly, the officer did not refuse to exercise her jurisdiction as Mr. Doumbouya argues.

(e) (f) Alleged error of law concerning the impact of country conditions

[85] Mr. Doumbouya argues that the officer erred in writing the following at page 7 of her reasons:

> [TRANSLATION] . . . **The general information on country conditions cannot be sufficient to demonstrate the risk potentially faced by the applicant.** It is therefore from this standpoint that I have dealt with the documents submitted by the applicant. (Emphasis added)

[86] There is no doubt that what the decision-maker meant by this was that the general information about Guinea cannot be sufficient to demonstrate the risk potentially faced by the applicant because that evidence does not indicate that people who are members of the groups to which the applicant claims to belong are all persecuted without exception, like the Tutsis in Rwanda or the Isaac Tribe in Somalia during the respective genocides in those two African countries in the modern era.

[87] Accordingly, the officer did not make the error of law alleged by Mr. Doumbouya.

(g) (h) The restrictions on admissible evidence set out in paragraph 113(*a*) of the Act are constitutional

[88] According to Mr. Doumbouya, paragraph 113(*a*) of the Act violates [TRANSLATION] "the rules of fundamental justice and fairness (section 7 of the Charter and Canadian Bill of Rights)" since it limits the admissible evidence in the PRRA context to new evidence that arose after the claim was rejected by the RPD, that was not reasonably available at the time of the rejection or that the applicant could not reasonably have been expected in the circumstances to have presented to the RPD.

[89] According to Mr. Doumbouya, paragraph 113(*a*), which thus prevents PRRA applicants from presenting all relevant evidence in support of their application for protection, requires the decision-making officer to exclude evidence that would otherwise be relevant and/or conclusive in assessing the application for protection.

[90] Mr. Doumbouya argues that, since these restrictions have a direct impact on the right of PRRA applicants to life, liberty and security, paragraph 113(*a*) is not consistent with the principles of fundamental justice guaranteed in section 7 of the Charter. For this reason, he argues, paragraph 113(*a*) must be invalidated.

[91] Paragraph 113(*a*) is worded as follows:

113. Consideration of an application for protection shall be as follows:	**113.** Il est disposé de la demande comme il suit:
(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

[92] Parliament did not act contrary to the principles of fundamental justice or fairness by limiting the types of evidence a PRRA officer may consider, since the officer's role is not generally to review the RPD's findings of fact, including those relating to the applicant's credibility. Apart from evidence that was not reasonably available at the time of the RPD hearing or that the applicant could not reasonably have been expected in the circumstances to have presented to the RPD, the new evidence must therefore relate only to new developments either in country conditions or in the

applicant's personal situation, for otherwise a PRRA application could easily become an appeal of the RPD's decision (*Elezi*, *supra*, paras. 27, 29).

[93] Accordingly, paragraph 113(*a*) does not deny Mr. Doumbouya the opportunity to present all evidence relevant to his PRRA.

[94] This provision is therefore consistent with section 7 of the Charter and with the *Canadian Bill of Rights*, S.C. 1960, c. 44.

(i) The relationship between PRRA officers and CIC cannot give rise to a reasonable apprehension that those officers are biased and not independent

[95] Mr. Doumbouya submits that the PRRA procedure is constitutionally invalid because it denies PRRA applicants the right to be heard by an independent and impartial tribunal with regard to their application for protection.

[96] In support of this argument, Mr. Doumbouya simply submits that the pre-removal risk assessment is made by a CIC officer.

[97] However, Parliament may delegate decision-making authority to a member of the executive. Thousands of decisions are made by the executive branch, and those decisions are subject to intervention by the judicial branch. Decision-making by the executive is lawful and not in itself a violation of the Charter (it is a standard based on the separation of powers among the three branches

of government) (*Suresh*, *supra*, para. 121; *Satiacum v. Canada (Minister of Employment and Immigration)* (C.A.), [1985] 2 F.C. 430, p. 437).

[98] In the Immigration Manual, paragraph 5.14 of Chapter PP3, Pre-removal Risk Assessment, published by CIC on December 14, 2005, asks PRRA officers to keep the following guidelines in mind when making their decisions:

> It is important to show that PRRA officers have carefully analyzed the case, weighed all of the evidence, and **balanced** the treatment they have given to the evidence considered. The decision should be based on the evidence presented and researched, supported by the factual weight of the evidence itself. **The decision should not be based on any preconceived bias or information.** The research should be fresh and show that the PRRA officer has addressed the individual case. Each applicant in the PRRA process is entitled to a fully independent assessment of the facts.
>
> Les agents d'ERAR doivent démontrer qu'ils ont soigneusement analysé le dossier, apprécié la preuve et considéré **équitablement** les éléments de preuve examinés. La décision devrait être fondée sur les éléments de preuve déposés et documentés et s'appuyer sur les éléments de preuve factuels. **Elle ne doit pas reposer sur la partialité ou sur des préjugés.** La recherche doit être récente et démontrer que l'agent a étudié un dossier précis. Dans le processus de l'ERAR, chaque demandeur a droit à un examen indépendant complet des faits.
>
> (Emphasis added)

[99] The relationship between the decision-making officer and CIC cannot give rise to a reasonable apprehension of institutional bias, especially given that, at the time the impugned decision was made in this case, the PRRA unit at CIC was insulated from the enforcement and removal functions of the Canada Border Services Agency (CBSA) (*Lai v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 361, [2007] F.C.J. No. 476 (QL), para. 74; *Kubby v.*

Canada (Minister of Citizenship and Immigration), 2006 FC 52, [2007] F.C.J. No. 172 (QL), para. 9; *Say v. Canada (Solicitor General)*, 2005 FC 739, [2005] F.C.J. No. 931 (QL), paras. 29-32, aff'd 2005 FCA 422, [2005] F.C.J. No. 2079 (QL)).

[100] Moreover, both this Court and the Federal Court of Appeal found that the PRRA unit had the necessary institutional independence even when it was part of the CBSA rather than CIC (*Kubby*, *supra*, referring to *Say*, *supra*).

[101] PRRA officers are subject to the constraints imposed by the fact that their decisions are quasi-judicial (*Lai*, *supra*, para. 75).

[102] Mr. Doumbouya's argument based on the bias or lack of independence of PRRA officers is therefore unfounded.

CONCLUSION

[103] The officer's decision in this case contains no reviewable error and is not vitiated by a lack of natural justice.

[104] Moreover, paragraphs 113(*a*) and (*b*) of the Act and section 167 of the Regulations are considered constitutional.

JUDGMENT

THE COURT ORDERS the dismissal of the application for judicial review and confirms the constitutional validity of paragraphs 113(*a*) and (*b*) of the Act and section 167 of the Regulations.

"Michel M.J. Shore"
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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