

Date: 20090304

Docket: IMM-2689-08

Citation: 2009 FC 232

Ottawa, Ontario, March 4, 2009

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ALCES GABRIEL

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is challenging the legality of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated May 30, 2008 (the impugned decision), according to which his claim for refugee protection was rejected on the grounds that he is neither credible nor a “Convention refugee” or a “person in need of protection” under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] A citizen of Haiti, born in Gonaives, the applicant claims to be a member of the Christian Movement for a New Haiti (MOCHRENHA), having acted as their delegate for the Bigot zone. His

duties essentially involved promoting the party and distributing information pamphlets. The applicant claims his membership in this political group is the reason that he was forced to flee his country. The applicant alleges that armed supporters of the Lavalas political organization raided a MOCHRENHA conference held in December 2001. According to the applicant, he was struck in the forehead but managed to flee towards Port-au-Prince to rejoin members of his party there. After discovering that a similar incident had taken place in Port-au-Prince, the applicant claims that he had no choice but to leave his country and go to the Dominican Republic. Subsequently, the applicant reached the island of Saint Thomas, in the United States Virgin Islands. On February 22, 2002, the applicant filed a claim for refugee status with the United States, which was rejected. After making his way to Miami, the applicant arrived in Canada on November 23, 2006, and claimed refugee protection upon his arrival.

[3] The Board erred at one point in its decision in referring to the applicant's returning to Mexico, rather than Haiti. However, aside from this purely clerical error, the pivotal issue in this case is the applicant's credibility. In such cases, the standard of review is reasonableness. Any error in this respect must be determinative for the Court to refer the matter back for a new hearing.

[4] In the impugned decision, significant anomalies were noted by the Board with regard to the documents submitted in support of the applicant's claim for refugee protection, namely the applicant's MOCHRENHA party membership card and an attestation from the MOCHRENHA movement. The attestation in question, dated November 10, 1999, indicates that the applicant was a member of the party between November 2000 and November 2002, which is impossible, since the

attestation is dated prior to that time. As for the membership card, it incorrectly indicates that the applicant's date of birth is December 5, 1968, when it has been established that the applicant was born on September 5, 1968. These errors or anomalies cast doubt on the authenticity of these documents, thus calling into question the applicant's membership in MOCHRENHA.

[5] Furthermore, the Board notes a significant contradiction between the written account given by the applicant in his claim for refugee status in the United States on February 22, 2002, and the narrative given by the applicant on his Personal Information Form (PIF), which accompanied the claim for refugee protection he made to the Canadian authorities. In support of the refugee claim he made in the United States, the applicant stated having been taken to a police station to be interrogated about a coup against Aristide, after which he was also tortured and beaten for two days. These important events do not appear in the PIF. At the hearing before the Board, the applicant changed his version of events by explaining that the interpreter in the United States who had translated his original statement from Creole to English had been mistaken, and that he had explained it to the American judge. The Board did not accept this explanation (and neither, it seems, did the American judge).

[6] Finally, having deemed the applicant not credible as regards the essential ingredients of his claim for refugee protection, and after having considered all of the evidence, the Board adds that the applicant also failed to discharge his burden of showing that his removal to Haiti would subject him to a risk to his life, a risk of cruel and unusual treatment or punishment, or a danger of torture.

[7] The applicant submits before this Court that the explanations he provided to the Board are reasonable and should not have been dismissed by the Board, and that the Board did not perform a serious, in-depth and objective analysis of his claim for refugee protection in respect of the danger that his removal to Haiti poses for him.

[8] As for the errors that appear on the attestation from the MOCHRENHA party, the applicant submits that he had never before noticed that the date on the attestation predated his membership in the party. Furthermore, the applicant maintains that there is no contradiction in this respect, since an attestation can be issued to a person in recognition of the person's subscribing to a party's ideology, even when that person does not hold a membership card. In addition, the applicant states that he did not notice that the date of birth on his membership card was incorrect and that he cannot be held responsible for mistakes made on his membership card, since the matter of his identity was not in dispute.

[9] As for the anomalies identified between the applicant's statement made in support of his refugee claim in the United States and the PIF, the applicant states that they are entirely the result of the Creole interpreter's mistranslation. In spite of the statement signed to the effect that the written account was faithfully translated, the applicant states that he pointed out these errors to the American judge and maintains that the narrative on his PIF gives the true version of the events leading to his claim for refugee protection.

[10] In the Court's opinion, there is no need to intervene, and the application for judicial review must fail for the following reasons.

[11] First of all, the Board's overall finding of a lack of credibility is well-founded, and it has not been demonstrated to this Court's satisfaction that the finding was "based . . . on an erroneous finding of fact that [the Board] made in a perverse or capricious manner or without regard for the material before it" (subsection 18.1(4) of the *Federal Courts Act*, R.S.C. 1985, c. F-7). Therefore, it is not for this Court to replace the Board's opinion with its own as to the weight to give the evidence submitted, but rather to rule on the reasonableness of the impugned decision as regards the rejection of the applicant's claim for refugee protection for his lack of credibility, in accordance with the evidence on the record.

[12] The applicant had the onus of submitting evidence from reliable and objective sources. The weight to give such evidence depends exclusively on the Board's assessment. In the case at bar, the reasons given by the Board for doubting the authenticity of the two documents filed by the applicant in support of his membership in MOCHRENHA seem to me to be reasonable in the circumstances. In this case, on the whole of the record, the Board could reasonably determine that there was no credible evidence that could corroborate the applicant's allegations about his role in MOCHRENHA.

[13] In addition, it was not shown to the satisfaction of the Board, or that of the Court, that the statement translated in the United States from Creole to English was erroneous. The applicant

cannot simply blame the interpreter after the fact without any evidence beyond a general assertion that the interpreter made a mistake.

[14] Lastly, since the personal risk to the applicant under section 97 of the Act depends, in this case, on the credibility of his account, which has been seriously put in doubt, the Board did not commit a reviewable error in further determining that the applicant was not a “person in need of protection”.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question of general importance is raised, and none is certified by the Court.

“Luc Martineau”

Judge

Certified true translation
Sarah Burns

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2689-08

STYLE OF CAUSE: **ALCES GABRIEL**
v.
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 24, 2009

REASONS FOR JUDGMENT
AND JUDGMENT: MARTINEAU J.

DATED: March 4, 2009

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