

Date: 20091002

Docket: IMM-2133-05

Citation: 2009 FC 1001

Halifax, Nova Scotia, October 2, 2009

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

REJOYCE ENNIAH CHOTO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), dated March 15, 2005, which determined that the respondent is neither a Convention refugee nor a person in need of protection.

[2] The applicant seeks an order setting aside the decision and referring the matter for redetermination by a differently constituted panel of the Board.

Background

[3] This matter was deferred until after a decision was made in the series of cases dealing with reverse order questioning. As a result of the decision in the reverse order questioning cases, that argument was discontinued in the present case.

[4] Rejoyce Enniah Choto (the applicant) is a citizen of Zimbabwe. She came to Canada on a student visa in September 2001. She returned to Zimbabwe for a two-month visit in the summer of 2003. Her student visa to Canada was extended until May 30, 2005. Everything was fine until August 2004 when she heard from a family friend that her mother had been attacked in Zimbabwe by men from the ruling party and their home had been vandalized. She then learned from her father that the whole family is at risk because he supports the opposition party, Movement for Democratic Change (MDC), and the applicant's mother is a member of the MDC. Until then, the applicant did not know that her parents were involved in the MDC. The applicant has no political affiliation herself.

[5] As a result of these events, the applicant fears returning to Zimbabwe. On September 7, 2004, the applicant claimed refugee protection on the basis of perceived

political opinion and membership in a particular social group. On March 15, 2005, the Board denied the claim because it did not believe the applicant's story.

Reasons for the Board's Decision

[6] The Board found several omissions and inconsistencies which impugned the applicant's credibility. First, the applicant failed to mention in her Personal Information Form (PIF) that from 1998 to 2003 her father was a diplomat of President Mugabe's government in Zimbabwe and after 2003, he was posted to the Ministry of Foreign Affairs. This information was provided in the applicant's Canadian visitor visa file, and it also was given in her oral testimony. The Board found this to be a significant omission because the applicant's claim was based on political grounds. [Her father holding a high-ranking position in government while her mother was a member of the opposition party would have greatly increased the risk that the family faced in Zimbabwe at the hands of the ruling party].

[7] Second, the applicant testified at the hearing that it was not until October 2004 that she learned from her mother that her father had been fired from his government position due to her mother's membership in the MDC. That was the applicant's explanation as to why information about her father's profile in government was missing from her PIF which she had signed in October 7, 2004. The Board did not find this to be a reasonable explanation. The Board noted that no information about the father's

position or his dismissal from that position was in the e-mail sent by the applicant's mother on February 23, 2005 and tendered in support of the applicant's claim. The only mention in the e-mail of any problems that the applicant's father might have faced was the statement, "It has been rough for my husband but by the grace of God we are still surviving". The Board stated that the applicant's mother's "failure to mention the profile of her husband and the punitive action taken against him is a key reason why I find her communication contrived and untrustworthy".

[8] Third, the applicant's mother stated in her e-mail that "Because our home phone was destroyed on the day of the attack, I only managed to speak with my daughter after about three weeks after the attack". The Board found this statement to be inconsistent with the allegation that the applicant's mother was in the hospital for the six weeks following the attack.

[9] Fourth, despite the great risk that the applicant's family faced in Zimbabwe, the applicant did not provide persuasive evidence that her family had seriously tried to leave and she was unaware as to whether they had any intention of leaving. There was also no indication in the applicant's mother's e-mail that the family wished to leave Zimbabwe.

[10] The Board also addressed the concerns of applicant's counsel with respect to the forced conscription of youth in the government's militia which had begun in 2000. The Board found that the risk it posed to the applicant was minimal. The Board based this

conclusion on the documentary evidence and the fact that the applicant was not afraid to return to Zimbabwe in 2003, the applicant's parents did not express concern about the militia in their communications with her, and the applicant's sister was within the catchment age and there was no persuasive evidence that she had been approached to join the youth militia.

Issues

[11] The applicant raised the following issues:

1. Was the Board's overall assessment of the totality of the evidence patently unreasonable, perverse and capricious?
2. Did the Board misapprehend material evidence?
3. Did the Board decide the case on the basis of its own conjecture and speculations and not based on the evidence before it?
4. Did the Board take extraneous factors into consideration in its assessment of the applicant's credibility?

[12] The issue is whether the Board erred in finding that the applicant was neither a Convention refugee nor a person in need of protection.

Applicant's Submissions

[13] The applicant submitted that the Board erred in substituting its own speculative views as to what was plausible in place of the applicant's evidence.

[14] The applicant submitted that the Board erred in reading the applicant's mother's e-mail as though it should have been an exhaustive account of their family experiences.

[15] The applicant submitted that the Board erred in concluding that it was implausible for the applicant's father to work for the government and to support the opposition at the same time. The applicant submitted that there was no evidence that the family's support for the opposition was known to the government until the family was attacked and the applicant's father was dismissed from his position.

Respondent's Submissions

[16] The respondent submitted that it was reasonable for the Board to disbelieve the applicant on the basis of the omissions, inconsistencies and contradictions noted in the applicant's story.

[17] The respondent submitted that the fact that the applicant's father was a diplomat of the Mugabe government from 1998 to 2003 and posted to the Ministry of Foreign Affairs thereafter was extremely relevant to the applicant's claim. The respondent submitted that the applicant seriously undermined her credibility by omitting this crucial element from her PIF.

[18] The respondent submitted that the dismissal of the applicant's father due to the applicant's mother's membership in the opposition party would have meant that the government was informed of the political involvement of the family and would have demonstrated that the applicant and her family were at greater risk. The respondent submitted that the Board was well founded to conclude that the omission of this information from the applicant's mother's e-mail undermined the credibility of the applicant's story.

Analysis and Decision

Standard of Review

[19] The standard of review applicable to credibility determinations is the standard of patent unreasonableness (see *Keleta v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 56 at paragraph 11). The standard has now become the standard of reasonableness since the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

Issue

[20] Did the Board err in finding that the applicant is neither a Convention refugee nor a person in need of protection?

[21] The applicant's claim is that she fears persecution by the ruling party in Zimbabwe because her mother is a member of the opposition party, MDC, and her father was fired from his position with the government due to her mother's political involvement. The Board found that the applicant's story was contrived, mainly because the fact that the applicant's father had a high-ranking position with the government—a fact which was crucial to the applicant's politically-based claim—was missing from her PIF and from her mother's e-mail filed in support of the claim. The e-mail written by the applicant's mother in February 2005 stated that she had been attacked by the ruling party because of her membership in the MDC, but made no mention of the fact that her husband had a position in the government or had been fired from his position because of their involvement with the MDC.

[22] The Board found that when the applicant was confronted with this omission of information at the hearing, she could not provide a reasonable explanation for it. I shall reproduce the relevant portion of the transcript below, as shown at pages 257 to 259 of the tribunal record:

PRESIDING MEMBER: Do you think, and I'm just asking for your opinion here, do you think that your father and your mother would be at a greater risk of trouble with the government, given that your father was a member of the government and was a supporter of the MDC? Would this put them at greater risk?

CLAIMANT: Well, at this time, yes, because my father has already lost his job. He no longer works for the Foreign Affairs since they discovered that his spouse was a member of the MDC.

PRESIDING MEMBER: How do we know that? Where did you tell us that? When did he lose his job?

CLAIMANT: After the incident.

PRESIDING MEMBER: Your mother didn't say that in the letter either, in the email.

CLAIMANT: No, I only realized - like, I was told that my father lost his job after I already made -

PRESIDING MEMBER: Anyway, you haven't answered my question. My question was, would you think there would be a greater risk for your mother and father, being supporters of the MDC, while your father was a member of the government.

CLAIMANT: Yes.

PRESIDING MEMBER: It would be, wouldn't it? But see, you haven't said that in your form, that all of this risk affects your mother and father, and by extension, presumably, affects you and your sisters.

CLAIMANT: Yes.

PRESIDING MEMBER: So why wouldn't you have said that in your form?

CLAIMANT: Because my father lost his job after I had already made my claim here.

PRESIDING MEMBER: No, you're still not - okay.

RPO: Why did your mother, why did she join the MDC?

CLAIMANT: Because of the changes that were going on in my country. Like, she used to support the Zanu PF, but because of the many promises and the changes that were going on, she was also looking for a change and hoping that, with the situation that was back

home, things might change for the better if she joined a different party, because since the other party wasn't doing much –

PRESIDING MEMBER: When did you say you heard that your father lost his job? When did you hear that?

CLAIMANT: In October.

PRESIDING MEMBER: October of 2004?

CLAIMANT: October 2004.

PRESIDING MEMBER: See, your mom's email is dated 23rd of February 2005.

CLAIMANT: Because my mother had written a letter, like in person, but then because when she tried to send the documents to me the post opened the letters and they said she couldn't sent [sic] it directly to me because whatever information was contained in it was a risk. And that's when I later on contacted my mother and I told her, if I couldn't get the letter on time she could at least write me an email.

PRESIDING MEMBER: Well, you know, she's writing this obviously on your behalf. It's a To Whom It May Concern letter, and I would have thought that if her husband was a member of the government and had been fired because they found out that he or she was supporting the MDC, that that would have been an additional strong point for her to mention in this communication to you, because it's not for your knowledge. This is a To Whom It May Concern letter. It's for my knowledge.

CLAIMANT: Yes.

PRESIDING MEMBER: You see?

CLAIMANT: Well, I don't think - I don't know, she might have not-

[23] In my view, the omission of this crucial information from the applicant's evidence, coupled with the lack of a satisfactory explanation for this omission, is a sufficient basis on which to find

that the applicant's story was not credible. It was therefore not unreasonable for the Board to conclude that the applicant lacked a well-founded fear of persecution if returned to Zimbabwe.

[24] I would therefore find that this application for judicial review be dismissed.

[25] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[26] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

ANNEX**Relevant Statutory Provisions**

Immigration and Refugee Protection Act, S.C. 2001, c. 27

<p>95.(1) Refugee protection is conferred on a person when</p> <p>(a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;</p> <p>(b) the Board determines the person to be a Convention refugee or a person in need of protection; or</p> <p>(c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection.</p> <p>(2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).</p> <p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality,</p>	<p>95.(1) L'asile est la protection conférée à toute personne dès lors que, selon le cas :</p> <p>a) sur constat qu'elle est, à la suite d'une demande de visa, un réfugié ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection;</p> <p>b) la Commission lui reconnaît la qualité de réfugié ou celle de personne à protéger;</p> <p>c) le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).</p> <p>(2) Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).</p> <p>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</p>
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membership in a particular social group or political opinion,

sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(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

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.

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 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.

(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,

(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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2133-05

STYLE OF CAUSE: REJOYCE ENNIAH CHOTO

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

**DATE OF HEARING and
BY PERSONAL APPEARANCE:** February 1, 2006 and April 15, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: October 2, 2009

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