

Federal Court



Cour fédérale

Date: 20100514

Docket: IMM-5447-09

Citation: 2010 FC 513

Ottawa, Ontario, May 14, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

BAYARD NDAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated August 28, 2009, determining that the applicant is not a Convention refugee within the meaning of section 96 of the Act, or a person in need of protection under section 97 of the Act.

[2] The applicant is a citizen of Cameroon who alleges that he will be persecuted because of his political activities should he return to his country.

[3] The panel rejected his claim on the ground that he was not credible.

[4] In matters of assessment of the evidence by the panel, the applicable standard of review is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Uppal v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 557 (F.C.) (QL)). The panel's findings with regard to a refugee claimant's credibility call for deference from the Court (*Dunsmuir*, at paragraphs 55, 57, 62 and 64; *Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698, [2008] F.C.J. No. 888 (QL) at paragraph 11).

[5] In judicial review, the Court is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[6] It is settled law that the panel is in a better position to assess the credibility of an applicant and that it is presumed to have considered all of the evidence before making its decision. It is also up to the panel to judge the reasonableness of the explanations provided by the applicant on the essential elements of his or her claim.

[7] In the case at bar, the Court finds that the panel undertook a microscopic examination of the evidence when it rejected the applicant's claim for refugee protection.

[8] Only a few examples are needed to illustrate the fact that the matter should be re-examined by another decision-maker.

[9] With regard to the applicant's detention from January 5 to 11, 2000, the panel drew a negative inference from the fact that the applicant first stated that he did not remember the name of the prison where he had been incarcerated. When questioned a second time, he stated that it was Yaoundé. He added that it was the prison of the police station in the borough of Mboa. When confronted with the prison release form issued by the central prison in Yaoundé, he stated that he had looked into this and that prison release forms were issued by the central prison, which is why he thought it had been Yaoundé. The panel did not accept this answer and criticized the applicant for his hesitation about the name of the prison where he was allegedly mistreated for six days.

[10] The Court does not believe that the applicant's explanation was unreasonable and fails to understand why the panel drew a negative inference in this regard.

[11] Furthermore, the panel claimed it did not believe the applicant when he apparently signed the prison release form without having read it. The applicant testified that he was only 17 years old at the time and did not understand the concept of conditions. He added that he was more worried about his life and that he just wanted to get out of prison (certified copy of the tribunal record, pages 276 and 278). This is a completely reasonable explanation, given the fact that he had been mistreated for six days.

[12] Later, the panel assigned no probative value to the medical certificate dated January 14, 2000. It did not believe that the applicant had received treatment at the hospital as he claimed because he did not know the name of the hospital where he was treated and did not provide enough details about the kinds of treatments he received.

[13] However, the medical certificate shows that the applicant was examined and that there were follow-up examinations between January 11 and 14, 2000. The Court finds that the panel focused on details that were peripheral and not essential to the refugee protection claim.

[14] No question was proposed for certification and none arises from this matter.

JUDGMENT

THE COURT ORDERS that the application for judicial review be allowed. The matter is referred back for redetermination by a differently constituted panel. No question is certified.

“Michel Beaudry”

Judge

Certified true translation

Sebastian Desbarats, Translator

ANNEX

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

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(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

(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.

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

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(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

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

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) 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 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) 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) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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

accepted international standards, and

iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

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

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STYLE OF CAUSE: BAYARD NADAM
and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 11, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

DATED: May 14, 2010

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