

Federal Court



Cour fédérale

**Date: 20100825**

**Docket: IMM-6305-09**

**Citation: 2010 FC 843**

**Toronto, Ontario, August 25, 2010**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**GABRIEL ALONGE OKITO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Gabriel Alonge Okito is a Congolese citizen whose claim for refugee protection was refused by the Refugee Protection Division of the Immigration and Refugee Board. Mr. Okito alleges that the Board erred by failing to carry out a proper section 97 analysis. In addition, he says that the Board also erred by ignoring evidence that supported his claim, and in basing negative credibility and plausibility findings on a lack of corroborating documentation, without regard to cultural norms.

[2] For the reasons that follow, I am not persuaded that the Board erred as alleged.

Consequently, the application for judicial review will be dismissed.

### **The Section 97 Issue**

[3] Mr. Okito argues firstly that the Board erred by failing to carry out a proper section 97 analysis, and submits that such an analysis was required even though it had found his story of persecution at the hands of the government of the Democratic Republic of Congo not to be credible. Mr. Okito says that he was targeted for persecution because he had signed a press communiqué denouncing the government, which had subsequently been published in a newspaper.

[4] Mr. Okito relies on the decision of this Court in *Kilic v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 84, [2004] F.C.J. No. 84, in support of his contention that a full section 97 analysis was required in this case. It is clear, however, that Mr. Okito's situation is readily distinguishable from the circumstances confronting the Court in *Kilic*.

[5] *Kilic* involved an individual who claimed refugee protection based on his ethnicity, his religion, and his political opinion. He also relied upon his status as an evader of conscription in the Turkish military, for which he faced imprisonment.

[6] In that case, the Board found many of the applicant's claims lacked credibility. It was not, however, disputed that the applicant faced imprisonment in Turkey for having evaded his military obligations. In light of the significant evidence in the record documenting the deplorable prison conditions in Turkey, the Court held that "some sort of analysis by the Board setting out why the applicant was not a person in need of protection was required": at para. 23.

[7] In this case, once the Board rejected Mr. Okito's claim to have been a human rights activist in the DRC, his profile did not distinguish him from any other 40-year-old male Congolese citizen. Mr. Okito has not identified any evidence in the record that would suggest that the country conditions within the DRC are such that 40-year-old male citizens of the DRC are at any particular risk in that country. In the absence of such evidence the Board was not required to carry out a full section 97 analysis: see *Bouaouni v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211, [2003] F.C.J. No. 1540 at paras. 41-2, and *Sellan v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381, [2008] F.C.J. No. 1685.

#### **The Board's Consideration of Mr. Okito's Evidence**

[8] Mr. Okito submits that the Board erred by ignoring documentary evidence attesting to the expulsion of a French journalist from the DRC, which was the subject of the press release allegedly signed by Mr. Okito. He says that the Board also ignored documentary evidence regarding the arrest and detention of other journalists, and a "Reverend Kutino", with whom Mr. Okito allegedly worked.

[9] The difficulty with these submissions is that there is no link in any of this documentation between the individuals identified therein and Mr. Okito. The fact that other individuals may have been targeted by the Congolese government does not establish that Mr. Okito himself was at risk.

[10] There were serious problems with Mr. Okito's testimony regarding his activities in the DRC. Not the least of these was his inability to name a single individual, apart from Reverend

Kutino, who he visited in prison. This clearly cast serious doubt upon his claim to have been a human rights activist who spent years visiting detainees in prison and preparing reports on their behalf.

[11] Moreover, Mr. Okito acknowledged having been invited to participate in an agricultural conference in the United States dealing with the use of a particular plant in the treatment of malaria. The fact that Mr. Okito would be invited to participate in such a conference certainly cast further doubt on his claim to have been a legally-trained human rights activist.

[12] The Board was also understandably troubled by Mr. Okito's failure to produce relevant documentary evidence to support his claim. For example, he made no efforts to obtain a copy of the press release that he says is at the heart of his claim, even though the document was allegedly published in a newspaper and could thus potentially have been available.

[13] While the sworn evidence of a refugee claimant is presumed to be true, this presumption is rebutted if there is reason to doubt the truthfulness of an applicant's evidence: *Maldonado v. Canada (Minister of Employment & Immigration)*, [1979] F.C.J. No. 248 at para. 5. In such cases, it is not unreasonable for the Board to require supporting documentation to confirm the applicant's testimony: see, for example, *Ortiz Juarez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 288, [2005] F.C.J. No. 365 at para. 7 and *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 787, [2009] F.C.J. No. 911 at para. 6.

[14] Mr. Okito claimed he was able to escape from custody with the assistance of a school friend who worked in Presidential security. I am not persuaded that the Board erred in finding it implausible that someone that he had not seen in over 20 years would put his own safety on the line to help Mr. Okito escape from government forces. While Mr. Okito says that this finding was made “without regard to cultural norms”, he acknowledges that there is no evidence in the record as to any specific cultural norm that would detract from the Board’s finding in this regard.

### **Conclusion**

[15] For these reasons, the application for judicial review is dismissed.

### **Certification**

[16] Neither party has suggested a question for certification, and none arises here.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6305-09

**STYLE OF CAUSE:** GABRIEL ALONGE OKITO v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 24, 2010

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

**DATED:** August 25, 2010

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