Federal Court  Cour fédérale

Date: 20101026

Docket: IMM-818-09

Citation: 2010 FC 1050

Ottawa, Ontario, October 26, 2010

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

LAURENT KAMEDA KADJO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Laurent Kameda Kadjo seeking to set aside an unfavourable Pre-Removal Risk Assessment (PRRA) decision made on December 23, 2008.

I. Background

[2] Mr. Kadjo arrived in Canada from Cote d'Ivoire in July 2004. He made a claim for refugee protection based on allegations of politically motivated persecution at the hands of both government and rebel forces.

[3] The Refugee Protection Division of the Immigration and Refugee Board (IRB) rejected Mr. Kadjo's refugee claim in a decision rendered on November 2, 2005. An application for leave for judicial review of that decision was denied by this Court on March 22, 2006.

[4] The IRB did not believe Mr. Kadjo and identified a number of problems with his evidence. Specifically, it noted the following:

- a major discrepancy between Mr. Kadjo's estimate of the numbers of persons killed during political protests in Cote d'Ivoire in 2004 and the estimates contained in documentary reports (Mr. Kadjo's estimate of 11,000 killed as compared to a few hundred hurt or killed according to the documentary evidence);
- the failure by Mr. Kadjo to adduce corroborative evidence of the alleged deaths of his father and brother;
- the failure by Mr. Kadjo to corroborate his alleged radio critique of the government or to make this allegation in his Personal Information Form (PIF) or during his immigration interview;
- the different versions provided by Mr. Kadjo about being attacked and tortured by rebel soldiers;

- the absence of any physical evidence of torture.

[5] The IRB concluded that Mr. Kadjo had invented his allegations of persecution and rejected his claim on that basis.

[6] In support of the PRRA application, Mr. Kadjo relied upon the same allegations of risk that had been rejected by the IRB. Much of what was submitted to the PRRA Officer (Officer) involved the recitation in affidavit form of evidence that was supposedly misinterpreted or "misremembered" by the IRB or which was, according Mr. Kadjo, open to a different and more favourable interpretation.

[7] The only entirely new evidence put to the Officer came in the form of letters from a friend and a niece in Cote d'Ivoire which stated that the authorities continued to seek out Mr. Kadjo because of his opposition activities in 2004. The Officer dealt with these submissions in the following way:

> It is important to remember that the PRRA process is not a level of review of RPD decisions. The applicant exercised his right of appeal before the Federal Court, and the RPD panel's decision was upheld.
>
> A letter allegedly written by his niece, dated July 12, 2006, indicated that the police were looking for him (Mr Kadjo) in order to arrest and torture him. It also describes the situation in Côte d'Ivoire. I lend little probative value to this document. The fact that she says, [TRANSLATION] "I want to warn you from a credible source that you are actively being sought here in the country [...] to be put in prison and tortured" (sic) is insufficient to restore the applicant's credibility. She says that this credible source is Damas Oponou from the economic police. The RPD did not believe that Mr Kadjo had testified on the radio because he did not mention it in his initial

> refugee claim. This self-serving evidence is insufficient to restore his credibility. Mr Kadjo said that he left Côte d'Ivoire in July 2004. This letter is dated September 12, 2006, over a year after the RPD's decision. The applicant did not explain why he was unable to obtain this type of information earlier. He claimed that he had trouble contacting his family members, but the writer of the letter does not mention how long ago the credible source mentioned a warrant or a reason for his arrest. Although this is new evidence within the meaning of paragraph 113(*a*), I am not satisfied that the information the letter contains is enough to overturn the RPD's conclusions.
>
> The same goes for a letter dated July 6, 2006. The writer, Kouadio Kouaho, also states that Mr Kadjo is wanted by the police for denouncing the government in 2004. My conclusion regarding the probative value of this letter is the same as for his niece's letter. This is self-serving evidence and is insufficient to overturn the RPD's judgment that his story was made up. I also note that the originals of these documents were not filed.
>
> Lastly, I considered the affidavits filed with the application. These documents repeat the substance of the account presented to the RPD, along with clarifications and criticisms of the panel. This is not new evidence.
>
> [footnotes removed]

II. Issues

[8] Did the Officer commit a reviewable error in assessing the "new evidence" tendered on behalf of Mr. Kadjo under ss. 113(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA)?

[9] Did the Officer breach the duty of fairness by not acceding to Mr. Kadjo's request for an oral hearing under s. 167 of *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations)?

III. Analysis

[10] It was argued on behalf of Mr. Kadjo that the Officer erred in law when she determined that two tendered affidavits did not constitute "new evidence" under ss. 113(a) of the IRPA. It was specifically contended that the Officer was obligated to consider this evidence insofar as it addressed the credibility findings and inconsistencies identified by the IRB or which otherwise clarified his evidence to the IRB.

[11] Mr. Kadjo's argument reflects a fundamental misunderstanding about the scope of ss. 113(a) of the IRPA. It is not correct that a PRRA officer is entitled to re-evaluate the evidence that was or could have been presented to the IRB.

[12] I accept Ms. Jones-Prus' point that Justice Karen Sharlow left the door open in *Raza v. Canada (MCI)*, 2007 FCA 385, [2007] F.C.A. No. 1632, for the consideration by a PRRA officer of new, credible and relevant evidence which contradicts a material finding of fact made by the IRB. I do not, however, read *Raza* as saying that this opens up the PRRA process to a re-examination of evidence that was already before the IRB or that could have been put to the IRB but was not. A PRRA is not an appeal from the IRB and it does not afford an opportunity to argue that the IRB misinterpreted the evidence before it. Justice Sharlow made it clear in *Raza* that the issue before her was whether a PRRA applicant "may present evidence to the Officer that was not before the Refugee Protection Division." She also held that a PRRA application is not a reconsideration of a negative refugee determination (see para. 12). After-the-fact rationalizations about the evidence

tendered to the IRB cannot be considered by a PRRA officer: see *Latifi v. Canada (MCI)*, 2006 FC 1388, [2006] F.C. No. 1738.

[13] Much of Mr. Kadjo's submissions to the Officer involved the re-argument of his refugee case. For instance, he argued that the IRB decision was patently unreasonable and that his explanations to the IRB should not have been rejected. He also told the Officer that the IRB had made a number of errors in the assessment of the evidence. One example of this complaint is found in the following passage from Mr. Kadjo's counsel's submission to the Officer:

> Similarly, as noted, the panel objected to the applicant's testimony that "11,000 people" had been killed in this massacre. The applicant's testimony was not consistent with the documentary evidence: the U.S. DOS Report notes that "over 100" people were killed; Amnesty International cites sources estimating "between 350 and 500." From this discrepancy, the panel concludes that the applicant's testimony is a "grotesque exaggeration which calls his credibility into question" ("une exaggeration grotesque mettant en doute la crédibilité du demandeur").
>
> The very fact that his numbers are so far off, it is submitted, suggests an error rather than an intention to mislead the Board. The panel might well have asked itself what the applicant could possibly have hoped to gain by a "grotesque exaggeration" so easily disproved. The only reasonable interpretation of his evidence, it is submitted, is that Mr Kadjo, a man of little formal education, was mistaken in his figures. It is submitted that this does not reasonably lead to a negative credibility inference, and that the Board's conclusion to the contrary is patently unreasonable.

[14] It will be a rare case when a PRRA officer can be expected to sit in review of factual findings made by the IRB, and it will be rarer still where the IRB's decision has been upheld on judicial review : see *Quiroga v. Canada (MCI)*, 2006 FC 1306, 153 A.C.W.S. (3d) 192 at paras. 12

and 13. There may be a few situations were a material factual finding made by the IRB can later be proven wrong with incontrovertible, new and previously unavailable evidence but that is not the situation here. I can identify no reviewable error in the Officer's treatment of this evidence and, indeed, the decision accurately recites her limited authority to look behind the factual and credibility findings made by the IRB.

Fairness

[15] Mr. Kadjo also complains that the Officer's failure to accede to his request for an oral hearing breached the duty of fairness. He contends that his credibility was squarely in issue on the PRRA application and therefore he ought to have been given the opportunity to redeem himself and to address the new evidence he had produced.

[16] I do not agree that an oral hearing is required in a situation like this one where a PRRA applicant's credibility has been found lacking by the IRB and where the PRRA officer is only recognizing that finding in the context of the same risk narrative. The PRRA officer is not making an independent assessment of credibility and, indeed, in the absence of new evidence, the PRRA officer is not entitled to do so.

[17] It was argued on behalf of Mr. Kadjo that because the letters from his friend and niece were accepted by the Officer as new evidence he was therefore entitled to a hearing to dispel the Officer's reservations about the reliability of this evidence. I do not agree.

[18] The Officer considered these letters and found them both to have little probative value. The Officer gave reasons for why she discounted this evidence. The affidavit from Ms. Shen which was submitted to the Officer as new evidence is nothing more than a hearsay recitation of Mr. Kadjo's supposed testimony to the IRB including one matter which the IRB had allegedly failed to ask him about. Mr. Kadjo's affidavit is a similar critique of the IRB's decision, different only to the extent that it exhibits a letter from his niece and a letter from a friend. His excuse for not obtaining these letters earlier is that "it was very difficult for me to contact anyone in the south".

[19] Apart from restating some of Mr. Kadjo's history in Cote d'Ivoire, the only new information contained in these letters indicated that since his departure from the country, the authorities continued to seek out Mr. Kadjo for the stated purpose of arrest and torture. . Mr. Kadjo was in no position to speak to the reliability of this evidence because he was not privy to the information it contained. In the context of a PRRA application, an oral hearing is only required where the conditions of s. 167 are met and only where "there is evidence that raises a serious issue of the applicant's credibility". This must be evidence that the applicant is in a meaningful position to address, which will rarely be the case where the new information comes from a third party and involves matters that cannot be directly attested to by the applicant. In this context, the failure to conduct an oral hearing did not breach a duty of fairness nor was the Officer required to explain why an oral hearing was not convened.

IV. Conclusion

[20] For the foregoing reasons, this application for judicial review is dismissed.

[21] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that application for judicial review is dismissed.

" R. L. Barnes "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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