

Federal Court



Cour fédérale

Date: 20110405

Docket: IMM-5002-10

Citation: 2011 FC 409

BETWEEN:

AWANKI FRANCIS EYAKWE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration Division of the Immigration and Refugee Board (the Board), dated August 9, 2010 wherein the Board determined that the applicant was inadmissible to Canada as a person described in paragraph 34(1)(f) by (b) of the Act.

[2] The applicant requests that the decision be set aside and the claim remitted for redetermination by a different member of the Board.

Background

[3] Awanki Francis Eyakwe (the applicant) is a citizen of Cameroon. He was a member of the South Cameroon Youth League (SCYL) since 1999. In 2001, he was elected to the executive branch and was the head of the Kumba branch of the SCYL for six years. As a member of the executive, he helped organize rallies and marches and gave speeches. He also produced and distributed pamphlets. The applicant was arrested several times and beaten for his participation in the SCYL.

[4] In 2007, the police issued an arrest warrant for the applicant. He fled Cameroon and travelled through Nigeria, Morocco, Spain and Sweden before reaching Canada. The applicant made a refugee claim in Canada in August 2008. This claim was suspended when the Minister of Public Safety and Emergency Preparedness issued a report under subsection 44(1) of the Act and referred the matter to the Board for an admissibility hearing.

Board's Decision

[5] The Board found that the applicant was a member of the SCYL which is an organization of which there are reasonable grounds to believe engages, has engaged or will engage in instigating subversion by force of the government of Cameroon.

[6] The Board found that the applicant had conceded his membership in the SCYL, but that he argued that the SCYL is factionalized into the overseas exiled leaders and the SCYL membership in Cameroon which remains loyal to a pacifist approach. The Board found that there was not sufficient evidence for the applicant's contention. The Board examined a letter from the Executive Secretary of the South Cameroon National Council (SCNC), the founding organization of the SCYL, which describes differences of opinions within the SCYL but refers to it as a single organization and the youth wing of the SCNC. The Board also considered a report from the Research Directorate of the Immigration and Refugee Board (IRB) and determined that the report does not show the SCYL as factionalized, but as a single organization with a single leadership hierarchy and offices in different countries. The Board rejected the applicant's argument that this information came from an unofficial website of SCYL individuals, as he did not provide corroborative evidence of this assertion.

[7] The Board then defined "subversion by force of any government" from paragraph 34(1)(b) of the Act. The Board reviewed several cases addressing subversion from the Federal Court and the Federal Court of Appeal. It determined that subversion is the use or encouragement of force, violence or criminal means with the goal of overthrowing any type of government, either in some part of its territory or in the entire country. The Board rejected that subversion requires the takeover of power from within, or that it requires deception or activity of a clandestine nature.

[8] The Board assessed the SCYL's activities against this definition of subversion. Concerning attacks on military and civil establishments in 1997, the Board concluded that there was insufficient

reputable corroborated evidence to find that these attacks were engaging in or instigating subversion of the government by the SCYL.

[9] However, the Board did find that the SCYL's involvement in the takeover of the Radio Buea in 1999 amounted to engaging in or instigating subversion. The SCYL claims its members participated in this takeover. During the event, armed activists disarmed the station's guards and forced the station to play a taped "Proclamation of the Restoration of Southern Cameroons Sovereignty and Independence". It also called for the "forces of occupation" to lay down their arms and for Southern Cameroons in the military, police, prison and customs departments to return to defend the country's sovereignty and to meet with greater force any forcible resistance. The Board noted that the Federal Court held in *Oremade v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077, that subversion by force includes "reasonably perceived potential for the use of coercion by violent means". The Board found that the station's takeover met this potential.

[10] The Board also found the rhetoric of the SCYL website called for the overthrow of the power of the Republic of Cameroon and the mission statement is to use all means including force to bring freedom to Southern Cameroon. The website also calls for the destruction of the president of Cameroon among other violence.

[11] The Board concluded that the activities of the SCYL fall within the bounds of engaging in or instigating the subversion by force of a government and this organization, therefore, falls under paragraph 34(1)(f) of the Act. As the applicant admitted to being a member of the organization, he was inadmissible pursuant to paragraph 34(1)(b) of the Act.

Issues

[12] The issues are as follows:

1. What is the appropriate standard of review?
2. Did the Board err in finding that the SYCL is a single organization to which the applicant belonged?
3. Did the Board err in finding that the SCYL had engaged in or instigated subversion by force of the government of Cameroon?

Applicant's Written Submissions

[13] The applicant submits that the Board ignored relevant evidence when determining that the SCYL was a single organization. For example, a Canadian Border Services Agency (CBSA) enforcement officer indicated in a declaration that there are several factions within the SCYL. A UNHCR and Danish Immigration Service Report also noted there were several factions in the SCNC.

[14] The applicant submits that the Board failed to accept Mr. Justice Frederick Gibson's holding in *Al Yamani v Canada (Minister of Citizenship and Immigration)* 2006 FC 1457 that subversion requires a clandestine or deceptive element. Further, the applicant submits that people who have no intention of committing the offending act must not be included in the definition of subversion. The Board failed to consider whether the applicant intended to overthrow the government.

[15] The applicant submits that the Board did not have sufficient credible evidence to find that the SCYL was responsible for the Radio Buea takeover which was the basis for the finding of subversion.

[16] Finally, the applicant submits that the Board erred in giving weight to the rhetoric on the SCYL website, because the site is created and maintained by Anglophone youths in the United States. The website states that the SCYL is not the youth wing of the SCNC.

Respondent's Written Submissions

[17] The respondent submits that the Board considered and weighed all of the evidence before it. The Board assessed the applicant's assertion that the SCYL is split into factions but found that there was not sufficient evidence of this. The respondent highlights that the Board is presumed to have taken all of the evidence and is not required to refer to every piece of evidence before it. Because the finding that the SCYL is not split into factions was reasonable and the applicant conceded his membership with a faction of the SCYL, the finding that the applicant was a member of the SCYL was also reasonable.

[18] The respondent submits that the Board's finding that the SCYL's activities amounted to subversion was reasonable. It provided a detailed qualitative analysis of the SCYL and its activities and supported its conclusion with evidence. The Board assessed the evidence before it and determined that there were reasonable grounds to believe that the SCYL had instigated violence and subversion of the government of Cameroon, both on its website and in the Radio Buea takeover.

Analysis and Decision

[19] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[20] It is well established that the standard of review for both the assessment of membership under paragraph 34(1)(f) and the determination of whether an organization is one described in paragraphs 34(1)(a), (b) or (c) is reasonableness (see *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paragraph 23; *Motehaver v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 141 at paragraph 11). This is due to the critical factual elements to be decided and the expertise of the officers in assessing applications of inadmissibility.

[21] Since a finding of exclusion is particularly significant to an applicant, “caution must be exercised to ensure such findings are properly made” (see *Alemu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 997 at paragraph 41). Where the analysis and decision are reasonable, the Court will not substitute its opinion; however, the finding of inadmissibility “should be carried out with prudence, and established with the utmost clarity” (see *Daud v Canada (Minister of Citizenship and Immigration)*, 2008 FC 701 at paragraph 8).

[22] **Issue 2**

Did the Board err in finding that the SYCL is a single organization to which the applicant belonged?

The applicant submits that the Board ignored evidence from CBSA that the SCYL and SCNC are factionalized. The applicant also noted that several articles discuss the SCYL leadership from abroad and the problem of disunity in the Anglophone organizations.

[23] I disagree with the applicant that the Board's finding that the SCYL is not split into factions was unreasonable. There is a presumption that Board members have considered all of the evidence before them (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425 (FCTD) (QL)). The Board need not summarize all of the evidence in its decision so long as it takes into account any evidence which may contradict its conclusion and its decision is within the range of reasonable outcomes (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL); *Idarraga Cardenas v Canada (Minister of Citizenship and Immigration)*, 2010 FC 537 at paragraph 22).

[24] The Board assessed a letter submitted by the applicant from the Executive Secretary General of the SCNC and found that the letter refers to the SCYL as a single organization. The letter does not indicate that more than one group are claiming to be the "real" SCYL. The Board also considered the IRB report which does not describe the SCYL as factionalized but as a single organization with one leadership. The Board directly referred to the applicant's interview with CBSA and acknowledged the applicant stated that there are many websites of the SCYL but reasonably found that the applicant had not provided evidence of this assertion.

[25] The applicant referenced a number of documents during the hearing. However, the information contained in these documents largely deals with factions of the SCNC. At issue, however, are the alleged factions of the SCYL and the applicant's membership in that organization. The Board was not obligated to refer to documents which did not address this issue.

[26] Worth mentioning, the applicant did not state in his Personal Information Form (PIF) or amended PIF that the SCYL is factionalized. In fact, he often referred to the SCYL as a single organization connected to the SCNC. For example, at page 43 of the applicant's record, he stated:

The SCYL is a part of the SCNC that is dedicated to bringing young Southern Cameroonians into the struggle for equality and independence.

[27] Further, the applicant readily admitted to being a leader of the SCYL in his interview with CBSA. At page 24 of the applicant's record:

Q: You are a leader of the SCYL?

A: Not a leader more head of a section.

Q: Which section?

A: I am head of a branch of a section.

Q: Which section?

A: Kumba.

[28] I cannot find that the Board's conclusion that SCYL is a single organization was unreasonable. Given that the applicant stated himself that he was a member of the SCYL, the finding that he was a member was also reasonable.

[29] **Issue 3**

Did the Board err in finding that the SCYL had engaged in or instigated subversion by force of the government of Cameroon?

Given that the applicant was found to be a member of the SCYL, the issue for the Board was not whether the applicant had engaged in or instigated subversion by force, but whether there were reasonable grounds to believe that the SCYL had done so.

[30] There is no single definition of subversion by force found in the jurisprudence or the Act. The Board reviewed the leading cases from this Court and the Court of Appeal on subversion. It concluded that the most common definition for subversion is the changing of a government or instigation thereof through the use of force, violence or criminal means.

[31] The applicant submits that the Board incorrectly interpreted subversion by finding that it does not require an element of deception. However, I agree with the analysis of the Board that this Court and the Court of Appeal did not include deception as part of instigating or engaging in subversion by force in *Qu v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 399; *Suleyman v Canada (Minister of Citizenship and Immigration)*, 2008 FC 780; and *Oremade* above.

[32] The Board provided a detailed analysis of the actions of the SCYL in determining whether it had engaged in or instigated subversion by force. The Board assessed the attacks on military and civil establishments which took place in 1997 but determined that there was not sufficient evidence to find that the purpose of the attacks was to overthrow the government.

[33] The Board then assessed the takeover of Radio Buea in 1999. The finding that this was subversion was reasonable. The Board found that:

1. members of the SCYL were armed in the takeover of Radio Buea;
2. there was no evidence that the guards of the radio station cooperated with the takeover;
3. the SCYL claimed its members participated in the takeover; and
4. the declaration played by the SCYL in the takeover called for Southern Cameroonians in the military, police and prisons to defend the country's sovereignty and threatened to meet forcible resistance with greater force.

[34] The Board also found that the SCYL website contains rhetoric encouraging Southern Cameroonians to overthrow the government by force.

[35] The Board specifically referred to and relied on the evidence above to find that there were reasonable grounds to believe that the SCYL had engaged in instigating subversion by force of the government of Cameroon. This conclusion was within the range of possible acceptable outcomes based on the facts and law as per the reasonableness standard in *Dunsmuir* above.

[36] The application for judicial review is therefore dismissed.

[37] The applicant shall have one week to submit any proposed question of general importance for my consideration for certification. The respondent shall have one week to make any submissions on the proposed question. The applicant shall have two days to file a reply if any is to be filed.

“John A. O’Keefe”

Judge

Ottawa, Ontario
April 5, 2011

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

...

(b) engaging in or instigating the subversion by force of any government;

...

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

...

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

...

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au depot d'une demande d'autorisation.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5002-10

STYLE OF CAUSE: AWANKI FRANCIS EYAKWE
- and -
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 29, 2011

REASONS FOR JUDGMENT: O'KEEFE J.

DATED: April 5, 2011

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