

Federal Court



Cour Fédérale

**Date: 20120106**

**Docket: IMM-3000-11**

**Citation: 2012 FC 7**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, January 6, 2012**

**PRESENT: The Honourable Justice Pinard**

**BETWEEN:**

**Thierno Oumar SOW**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision by Louis Cousineau from the Refugee Protection Division of the Immigration and Refugee Board (the panel) filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC (2001), c 27 (the Act). The panel rejected Thierno Oumar Sow (the applicant)'s refugee protection claim , finding he was not a

refugee nor a person in need of protection within the meaning of the Act, because there had been a change of conditions since he submitted his claim.

[2] The applicant is a citizen of Sierra Leone. His father is also from that country, whereas his mother was born in Guinea. At the time of the armed conflict in Sierra Leone, his aunt was married to the country's former president, Momoh.

[3] The applicant bases his claim on sections 96 and 97 of the Act, fearing he will be persecuted, killed or tortured if he returns to Sierra Leone or Guinea because of his family ties with former president Momoh and because he no longer has family in Sierra Leone.

[4] First, the panel found the applicant did not have an objective fear because of changes in Sierra Leone since his refugee protection claim was filed. Second, the panel found that, regardless there were not any compelling reasons to justify accepting the applicant's refugee protection claim.

[5] The applicant claims that the panel erred in its interpretation of the facts by finding there was no evidence of recent persecution of individuals with ties to former president Momoh in Sierra Leone.

[6] The applicant then claims that the panel erred by finding that his particular circumstances do not constitute compelling reasons.

[7] A panel's finding on a change of conditions in a country is a question of fact (*Rahman v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 562 (F.C.A.) at para 1; *Yusuf v. Canada (Minister of Employment and Immigration)*, [1995] FCJ No 35 (F.C.A.) at para 2). A finding on whether there are compelling reasons must be considered a question of mixed fact and law (*Suleiman v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 FCR 26 at para 11 [*Suleiman*]).

[8] The standard of review that applies to these questions of fact and mixed fact and law is reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

[9] After reviewing the relevant evidence and hearing counsel for the parties, the panel's finding that the applicant did not have an objective fear of persecution in Sierra Leone seems reasonable to me, and is supported by evidence in the record.

[10] On this subject, the following two paragraphs from the decision in question are of critical importance:

[21] The panel also considered the letter dated November 22, 2010, as well as the claimant's testimony, particularly with respect to the threats made against the claimant's family. The claimant testified that he did not know when these threats were made. He also testified that he did not know what might have happened to his family's property in Kono. In addition, the claimant testified that he would not lay claim to his family's property. He added that the information was obtained by his uncle's friend, who allegedly travels between the United States and Sierra Leone.

[22] First, the panel notes that, with the exception of the letter from the claimant's uncle dated November 22, 2010, none of the documentary evidence describing the situation in Sierra Leone, especially since the war ended, discusses difficulties for people with

alleged ties to former president Momoh's family. The panel finds it reasonable to believe that, given that General Momoh was a former president and that, according to the claimant's testimony, the family of the former president was well known, if the family had had problems since the end of the war in Sierra Leone, from people from Kono or from other sources, the documentary evidence would have information about this. Consequently, in light of this lack of documentary evidence, the panel is of the opinion that the claimant did not establish that he, as a member of former president Momoh's family, would face a "serious possibility" of persecution or that, on a balance of probabilities, he would be personally subjected to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment, for that reason.

[11] The panel's reasoning is supported by the case law. As I did in *Sandhu v. Minister of Citizenship and Immigration*, 2005 FC 370, at paragraph 4, it is sufficient to refer to *Adu v. Minister of Citizenship and Immigration* (January 24, 1995), A-194-92:

... The Federal Court of Appeal in *Adu v. Minister of Employment and Immigration* (January 24, 1995), A-194-92, stated that "the presumption that a claimant's sworn testimony is true is always rebuttable, and, in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention.

[12] As for the applicant's second argument, I feel that the panel correctly summarized the concept of "compelling reasons", relying on the relevant case law. Such special and exceptional circumstances are only recognized for a very small minority of people whose prior persecution is so extreme that their experience alone is sufficient to not remove them, although they may no longer have reason to fear new persecution (*J.N.J. v. Minister of Public Safety and Emergency Preparedness*, 2010 FC 1088 at para. 39 citing *Suleiman*; *Suleiman* at paragraphs 14 and 15).

[13] As in *Noori v. Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 938 (T.D.) although the applicant may have our sympathy, this does not justify the Court's intervention. The

panel considered the evidence on the record and noted the applicant's specific circumstances, including his young age at the relevant period. Its finding that there were no compelling reasons was therefore reasonable, being transparent and intelligible and "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir* at para. 47).

[14] For all these reasons the application for judicial review is dismissed.

[15] I agree with counsel for the parties that no question for certification arises.

**JUDGMENT**

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board rendered April 11, 2011, is dismissed.

"Yvon Pinard"

---

Judge

Certified true translation  
Elizabeth Tan

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

**DOCKET:** IMM-3000-11

**STYLE OF CAUSE:** Thierno Oumar SOW v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** December 8, 2011

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

**DATED:** January 6, 2012

**APPEARANCES:**

Claudette Menghile FOR THE APPLICANT

Suzon Létourneau FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Claudette Menghile FOR THE APPLICANT  
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada