

Federal Court



Cour fédérale

**Date: 20120203**

**Docket: IMM-4968-11**

**Citation: 2012 FC 135**

**Ottawa, Ontario, February 3, 2012**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**FRED ADU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant's refugee claim was denied on the basis that the applicant lacked credibility. It is that decision that is under review. There is only one issue: Whether the panel's finding that the applicant and his story were not credible was reasonable.

[2] Two findings on which the panel partly based its credibility findings were made in error and do not accord with the record. First, the panel drew a negative credibility inference on the basis that the applicant omitted the name of his tribe and the name of the village that appointed him as chief. However, the record discloses that the answer provided to question 1(g) of the PIF and the first paragraph of his narrative specifically name his tribe and village. The panel was in error.

[3] Second, the panel drew a negative credibility inference on the basis that the applicant, a Christian, believed in magic and voodoo. It found no documentary evidence which supported that those beliefs were associated with the applicant's claimed religion. Further, the panel made a negative credibility inference on the basis that there was no objective information to suggest that acting as a chief, rather than chief priest, would be against his religious beliefs. However, the record indicates that there are individuals in Ghana who have traditional beliefs mixed with religious ones and there is also documentary evidence that confirms that there are Christians who refuse chieftaincy due to their religious beliefs. The panel was in error.

[4] The respondent submits that the panel made a number of findings regarding the applicant's credibility and says that the above-mentioned minor errors do not detract from the overall credibility finding: *L.D. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 264 at para 21. The respondent submits that the remainder of the panel's credibility findings was reasonable and supported by the evidence. The respondent further submits that credibility findings are owed a great deal of deference as the panel is in the best position to determine

credibility: *Aguebor v (Canada) Minister of Employment and Immigration (FCA)*, [1993] FCJ No 732.

[5] The respondent provided a summary of all the facts that formed the panel's adverse credibility finding at paragraph 7 of its Further Memorandum of Argument, which I summarize as follows:

- The applicant omitted the name and location of his tribe. [This finding was made erroneously.]
- The applicant stated that the King of Ashanti was 'Kufi Adu', and then later admitted he did not know the King's name after it was pointed out to him that Kufi Adu was his father's name.
- In his Personal Information Form (PIF), the applicant stated that he was asked to be chief in the beginning of 2008 whereas in testimony, he stated it was June 15, 2008.
- Wealthy educated individuals are often appointed as chiefs; the applicant is neither and he could not explain why his brothers, who were more suitable for the role, were not selected.
- The applicant testified that he was a Seventh Day Adventist, and that he believed in magic. There is no objective documentary evidence supporting that claim. [This finding was made erroneously.]

- The applicant testified that his cousins came to his shop and attacked him with a knife. This material detail is omitted from his PIF.
- The applicant claims he is being forced to be chief, but the objective documentary evidence does not support that there is forced recruitment.
- The applicant waited over eight months after his arrival in Canada before he made a refugee claim and left Ghana six months after being told he was going to be the new chief.
- There is no evidence that anyone in Ghana was looking for him since January 2009, and no evidence of animosity between him and his family.
- The objective documentary evidence indicates that chief priests and not village chiefs partake in ceremonies involving blood or cutting off fingers. The applicant is claiming he is being asked to be chief, not chief priest.
- The objective evidence indicates that there is no punishment for refusing to become chief, and therefore no state protection required.

[6] There are several facts recited above, other than those that were wrongly found by the panel, that support an adverse credibility finding. The Federal Court of Appeal has held that even if there are errors in a tribunal's decision, the decision will not be quashed if there was

sufficient evidence upon which the decision-maker could conclude as he did: *Kathiripillai v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 889 (FCA) and *Luckner v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 363 (FCA). In my opinion, the decision under review is one where there was more than sufficient evidence upon which the panel could conclude as it did. The panel's conclusion was that the applicant is not a Convention refugee or a person in need of protection. Based upon my review of the record, that conclusion was not an unreasonable one to make, despite the errors made by the panel.

[7] In addition to the facts recited above, the panel found that the applicant's demeanour supported its finding that he lacked credibility. The panel at paragraph 7 of its decision writes:

The claimant's oral testimony was not forthcoming or spontaneous. Questions were repeated to him several times and answers had to be prompted for simple matters, such as his personal identity or his new passport. There were long pauses between answers and at times the claimant was simply silent and stared at the panel when he was asked questions. The claimant appeared to the panel to be nonchalant and to not care about what he was testifying to under oath. His answers were peppered with "yah, yah" and at one time the panel had to ask the claimant to sit up when answering questions. The claimant was calm and did not appear nervous to the panel. The claimant was not a credible witness.

[8] A panel has the benefit of viewing an applicant's demeanour; the Court does not.

However, having read the transcript of the hearing I am satisfied that the panel did not mischaracterize this applicant's behaviour and its finding that he lacked credibility as a witness shown by his responses and conduct at the hearing.

[9] The panel observed at paragraph 22 of its decision that the allegations of persecution are without foundation and suggested that “[i]t is more likely that the claimant fabricated his claim so that he would be able to stay in Canada while his family class sponsorship is processed by Immigration Canada.” The applicant was married in October 2009 to a woman he met at church in February of that year. They have a daughter born December 3, 2009. The panel’s speculation as to the motive of the applicant is irrelevant to the decision it reached; however, it cannot be said that it was baseless.

[10] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-4968-11

**STYLE OF CAUSE:** FRED ADU v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 1, 2012

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

**DATED:** February 3, 2012

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