

Federal Court



Cour fédérale

Date: 20120201

Docket: IMM-4390-11

Citation: 2012 FC 127

Ottawa, Ontario, February 1, 2012

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

NAFIU ABDUL RAHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Nafiu Abdul Rahman applies for judicial review of the June 3, 2011 decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) refusing his claim for refugee protection pursuant to section 96 and subsection 97(1) of the *IRPA*.

[2] Mr. Rahman, a member of the Mamprusi tribe, claimed refugee protection because of two attacks by members of the Kussasi tribe: he had been attacked at a roadblock in Ghana and very

shortly afterward his family home had been attacked and his father killed in Bawku in north eastern Ghana.

[3] The RPD found the conflict between the Kussasi and Mamprusi was mainly confined to north eastern Ghana, the attack on the Applicant was an isolated incident and the Applicant had an Internal Flight Alternative (IFA) in Accra, the capital city in southern Ghana.

[4] I conclude that this application for judicial review should be dismissed for reasons that follow.

Facts

[5] The Applicant, Nafiu Abdul Rahman, is a citizen of Ghana. He is a member of the Mamprusi tribe of Bawku in the north eastern region of Ghana. There is a long-standing violent conflict between the Kussasi and the Mamprusi tribes over ownership of land in Bawku.

[6] In August 2009, the Applicant was working as a mechanic at a roadside workshop in Ghana. The place of employment was located away from Bawku. He took a car for a test drive and was stopped at a roadblock where he suffered a beating at the hands of Kussasis. The Applicant fled to the neighbouring country, Togo, and stayed with his brother's business partner. The next day the Applicant's brother also arrived in Togo. The brother was injured and he told the Applicant that their family home back in Bawku had been attacked by Kussasis and that their father had been shot and killed.

[7] In September 2009, the Applicant left for Canada. That November, he made his refugee claim, alleging fear of members of the Kussasi tribe, government security forces who he said favoured the Kussasis, and members of his own Mamprusi tribe who he said regarded him as a traitor for fleeing the conflict.

Decision Under Review

[8] The RPD found that the Applicant's fear was not objectively well-founded and that the Applicant had an Internal Flight Alternative (IFA).

[9] The RPD accepted the Applicant's identity and the Applicant's claim of long-term conflict between the Mamprusi and Kussasi tribes in Bawku. The RPD also accepted that the Applicant was assaulted at the roadblock but found that this was a single isolated incident as it happened away from Bawku and the neighbouring northern regions of tribal conflict.

[10] The RPD determined this attack did not constitute persecution given the Applicant did not experience any problems related to the conflict between the Kussasi and Mamprusi tribes when he lived and studied in Ghana outside of northern regions from 1998 to 2000 and from 2006 to 2007.

[11] The RPD rejected the Applicant's submission that the northern tribal conflict had spread south into the capital city of Accra and the city of Kumasi because of two incidents, one where

some Mamprusis were killed in Accra and one where Kussasi and Mamprusi clashed in a Kumasi market.

[12] The RPD also did not accept the Applicant's claim that the government was complicit with the violence against the Mamprusi because a Kussasi held a prominent role in the Ghanaian government. The RPD noted the current President has pleaded with the Mamprusis and Kussasis for peace. The RPD also noted that since 2002 the government has spent significant amounts to maintain law and order in the three northern regions where the conflict was greatest. The RPD found that the Ghanaian Government was making attempts to improve the situation in northern Ghana by trying to work with both tribal groups.

[13] While accepting the Applicant had a subjective fear of persecution, the RPD found that objective documentary evidence did not support the Applicant's fear of persecution.

[14] The RPD also found that the Applicant had an IFA in the capital city of Accra in southern Ghana. The RPD noted Accra is located in the far south on the Gulf of Guinea which was well removed from Bawku where the tribal conflict occurred.

[15] The RPD noted Accra had a population of approximately four million people and since the Applicant was not a prominent person in the Mamprusi tribe or involved in politics at any level, he would not be targeted.

[16] The RPD found the Applicant could relocate to Accra. The Applicant now had overseas educational and work experience. The RPD found that the Applicant could finish his studies for auto mechanics in Accra educational institutions and find employment opportunities in Accra. Finally, the RPD noted that Ghana's constitution provides for freedom of movement and that the Ghanaian government generally respected these rights.

[17] The RPD concluded that the Applicant was not a Convention refugee as he did not have a well-founded fear of persecution in Ghana. The RPD also determined that the Applicant was not a person in need of protection in that his removal to Ghana would not subject him to risk to his life or cruel and unusual treatment or punishment.

Relevant Legislation

[18] The *Immigration and Refugee Protection Act*, SC 2001, c 27 provides:

<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces</p>
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<p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>pays; b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
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<p>97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them Personally</p>	<p>97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p>
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<p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p>	<p>a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;</p>
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<p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p>	<p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p>
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<p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p>	<p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p>
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<p>(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p>	<p>(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,</p>
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<p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p>	<p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents</p>
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(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Issues

[19] The Applicant raises several issues in this application, three of which are most relevant to this application:

1. Was the RPD's determination that the Applicant did not face persecution reasonable?
2. Was the RPD's determination of the availability of an IFA option for the Applicant reasonable?
3. Was the RPD required to consider compelling reasons pursuant to section 108(4) of *IRPA*?

Standard of Review

[20] The Supreme Court of Canada has held in *Dunsmuir v New Brunswick*, 2008 SCC 9, [*Dunsmuir*] that there are only two standards of review: correctness for questions of law and

reasonableness involving questions of mixed fact and law and fact. The Supreme Court has also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated.

[21] The RPD's determination regarding the viability of an IFA is a question of mixed law and fact to be assessed on a standard of reasonableness: *Melvin Alonso Cruz Pineda v Canada (Minister of Citizenship & Immigration)*, 2011 FC 81 at para 29.

Analysis

Was the RPD's determination that the Applicant did not face persecution reasonable?

[22] The Applicant claims the RPD failed to consider his claim of persecution as a well-founded fear. The Applicant submits his fear arises as a result of the undoubted conflict between the Kussasi tribe and the Mamprusi tribe and because he feared the government security forces. The Applicant submits that the RPD's failure to provide reasons for preferring the documentary evidence over his sworn testimony constitutes a reviewable error.

[23] The Applicant also takes issue with the RPD's finding that the Applicant did not face persecution. The Applicant submits that persecutory acts directed against a person's close family should be considered persecutory acts directed against a claimant. The Applicant also submits that the cumulative effect of a series of incidents constitutes persecution.

[24] In my view the RPD is entitled to consider documentary evidence in determining the extent of the violent conflict between the Kussasi and the Mamprusi tribes. The RPD did not ignore the Applicant's documentary evidence about tribal conflict. It was entitled to consider documentary evidence about the limited regional nature of the conflict, being confined to the Bawku and the two neighbouring regions, against the Applicant's testimony and his documentary evidence about the spreading violence. The attack on the Applicant and the attack on his family in Bawku, although very close in time, were separated in location and the Applicant did not provide any evidence of a nexus beyond tribal conflict between these two attacks.

[25] I have some concern about the RPD's failure to address the important fact that the Applicant was attacked at a roadblock which suggests a more widespread tribal conflict instead of a random opportunistic attack. However, I find the issue of an IFA determinative.

Was the RPD's determination of the availability of an IFA for the Applicant reasonable?

[26] The Respondent emphasises that the RPD found the Applicant had an IFA in Accra.

[27] The Applicant submits that the RPD's finding of the existence of an IFA in Accra is wrong. The Applicant submits the RPD failed to properly consider the test set out in *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680, (FCA). The RPD was required to inquire whether the Applicant, on a balance of probabilities, would face a serious possibility that he would suffer persecution in Accra. Given the evidence put before the RPD

concerning the violence in Accra, the RPD should have answered this question in the affirmative and stopped the inquiry there. The Applicant contends that the RPD's finding of an IFA was not reasonable because the Applicant had shown that his life and safety would be jeopardised in Accra as a result of the attacks on the Mamprusi there. This risk was compounded due to the government's bias against the Mamprusi.

[28] In *Butt v Canada (Minister of Citizenship & Immigration)*, 2010 FC 28, Justice Pinard stated the test for a finding of an IFA at paragraph 13:

The test for a finding of an IFA is that the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the applicant being persecuted in the proposed IFA and that in the circumstances particular to the claimant it is not unreasonable for the claimant to seek refuge there.

Justice Pinard also stated that the onus of proof is on an applicant to demonstrate that he will be persecuted anywhere in his country of origin or that it is unreasonable to expect him to move if an IFA is found.

[29] The RPD found that Accra, the capital city of Ghana, was a valid IFA available to the Applicant. The RPD noted that Accra is well removed from the northern area where Bawku is located since Accra is located in the south on the Gulf of Guinea.

[30] The Applicant referred to but two incidents in the very large metropolitan area around Accra. The RPD considered both. His allegation of government bias against Mamprusi was considered and weighed by the RPD against the President's statements and government measures

demonstrating the contrary. The RPD considered the Applicant's examples to be isolated incidents. There was little documentary evidence that the conflict in Bawku had spread beyond Bawku, and, in particular, to Accra. In my view it was reasonable for the RPD to conclude as it did that the Applicant did not face a serious possibility of persecution in Accra. This satisfies the first part of the IFA test.

[31] As to the second part of the *Adjei* IFA test, the RPD did consider the personal circumstances of the Applicant. The RPD noted that the Applicant would not be targeted because he was not a person of power in the Mamprusi tribe nor was he involved in politics. The RPD also noted that the Applicant was studying to be a mechanic and that the Applicant would be able to finish his studies towards being an auto mechanic as there are many institutions of higher education in Accra. The RPD observed the Applicant now had overseas experience and that there would be plenty of work opportunities in the capital city. Finally, the RPD noted that the Ghana constitution provides for freedom of movement and that the government generally respected these rights in practice.

[32] I am of the view the RPD's conclusion that the Applicant could avail himself of the IFA in Accra was reasonable. It considered general circumstances as well as multiple factors relating to the Applicant, such as profile, opportunity and freedom of movement, all of which supported the RPD's conclusion that Accra was an available IFA for the Applicant.

Was the RPD required to consider compelling reasons pursuant to section 108(4) of IRPA?

[33] The Applicant submits the RPD also erred in failing to consider whether compelling reasons under section 108(4) of *IRPA* applied to the Applicant. The Applicant submits there was persecution which the RPD failed to acknowledge. The Applicant argues that had the RPD found the Applicant faced persecution, then the RPD would have had to consider whether the Applicant had ceased to be a Convention refugee due to the availability of an IFA in Accra. The Applicant submits the RPD would then have had to determine, pursuant to section 108(4), whether there were compelling reasons arising out of past persecution for the Applicant to refuse to avail himself of the protection of Ghana.

[34] The jurisprudence on section 108(4) is clear in that the RPD must first find a refugee claimant to be a Convention refugee or person in need of protection: *Salazar v Canada (Minister of Citizenship & Immigration)*, 2011 FC 777 at para 31.

[35] The Respondent submits that a determination of a valid IFA precludes the necessity to consider whether compelling reasons exist pursuant to section 108(4) since a person cannot be a refugee or a person in need of protection if there is an IFA. I agree.

[36] The RPD's finding of a valid IFA is determinative and there is no basis for any requirement to conduct a section 108(4) analysis as argued by the Applicant.

Conclusion

[37] The RPD's finding of an IFA is reasonable and is determinative of this case. The application for judicial review must be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4390-11

STYLE OF CAUSE: NAFIU ABDUL RAHMAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: JANUARY 18, 2012

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

DATED: FEBRUARY 1, 2012

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