Federal Court  Cour fédérale

Date: 20120319

Docket: IMM-5355-11

Citation: 2012 FC 313

Ottawa, Ontario, March 19, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

JOHNSON MOLI TSHIBOLA KABONGO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated July 21, 2011, finding that the applicant was neither a Convention (United Nations' *Convention Relating to the Status of Refugees*, [1969] Can TS No 6) refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow, the application is granted.

Facts

[2] The applicant is a citizen of the Democratic Republic of Congo (DRC). He alleges fear of persecution on the basis of political opinion. He states that his problems began when the Alliance of Democratic Forces for the Liberation of Congo (ADFLC) started recruiting youths to be part of the army. In 1997, the ADFLC tried to recruit the applicant's brother. He was killed after he refused to join them. This incident inspired the applicant to advocate against forced recruitment. He met with other youths from his church, speaking out against forced recruitment.

[3] On December 14, 2008, the applicant states that he arranged a meeting at a bistro with other youths. Soldiers arrived at the bistro and the applicant spoke out against forced recruitment. Eleven days later he was arrested and imprisoned. He was released on January 1, 2009 and he fled DRC that day (travelling to Rwanda, South Africa, Brazil, Argentina, and Mexico, before arriving in Canada). He arrived in Canada on April 26, 2009 and made a claim for refugee protection upon arrival.

[4] In the reasons for its decision dated July 15, 2011, the Board found the applicant not to be credible. The Board stated that it did not believe that the applicant would have placed himself and 15 other youths at risk by speaking out against forced recruitment in a public place, in the presence of soldiers. The Board noted the applicant's testimony that he had previously been afraid to speak out because he would be arrested or killed like his brother.

[5] The Board stated that because the applicant was found not to be credible it gave no weight to the documentary evidence; a letter from a priest stating the applicant was in danger and a warrant

for the applicant's arrest because he had insulted the government. The applicant's claim was therefore refused.

Standard of Review and Issue

[6] The issue raised by this application is whether the Board's decision is reasonable: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[7] Credibility findings attract considerable deference and the Board is entitled to make findings of implausibility based on rationality and common sense: *Shahamati v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 415 (CA). However, where an implausibility finding is based on inferences that could not reasonably be drawn from the evidence the Court must intervene. In this case, the Board's negative decision was based on a sole finding of implausibility. This finding was perverse and made without regard to the evidence, and therefore the decision must be set aside.

[8] The Board evidently found it implausible that the applicant, an intelligent, well-educated young man, aware of the risks of speaking out against forced recruitment, would choose to speak out publicly in the presence of soldiers, placing himself and his fellow youths in danger. This is not a valid foundation upon which to base a finding of implausibility. Most refugee claims based on political opinion involve speaking out against a persecutory regime, despite knowledge of the risks inherent in such activity. The genuineness of political conviction is not assessed by the degree of education or intelligence of the claimant; nor is it to be measured against some vague standard of

rationality. Indeed, history, including recent events, teaches us that the bravest acts of political dissent are, when rationally viewed, foolhardy. As Justice James Hugessen stated in *Samani v Canada (Minister of Citizenship and Immigration)*, August 18, 1998, IMM-4271-97, at para 4: "It is never particularly persuasive to say that an action is implausible simple [*sic*] because it may be dangerous for a politically committed person."

[9] The Board asked the applicant at the hearing to explain why he would speak out in this way despite knowing the danger. He gave the following response as recorded in the hearing transcripts (Certified Tribunal Record, at 125):

> Je suis arrivé à poser cet acte parce que, bon, j'étais déjà à bout ou bien les idées s'agitaient en foule en-dedans de moi. Alors je suis arrivé pour contrecarrer cette action pour que l'on ne puisse pas procéder au recrutement des jeunes. Parce que je n'avais pas accepté de voir mourir ces jeunes pendant que j'étais en vie et que je pouvais le voir, assister à la mort de ces jeunes.

[10] The Board did not consider the applicant's explanation. Instead, the Board simply stated that it is implausible that he would place himself and the other youths in danger. However, as the applicant explained, they were already in very real danger because of the prospect of forced recruitment, which drove him to speak out.

[11] The Board also failed to consider the fact that the applicant's testimony was corroborated by a warrant for his arrest for "insulting the government"; the Board instead stated that it gave no weight to this document because it had found the applicant not to be credible. The warrant was itself highly relevant to the credibility of his testimony. The Board cannot find the applicant's

testimony not credible without consideration of relevant corroborative evidence, and then subsequently reject the supporting evidence because of the credibility finding.

[12] The application for judicial review is granted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5355-11
STYLE OF CAUSE:	JOHNSON MOLI TSHIBOLA KABONGO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
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