Date: 20131028

Docket: IMM-10067-12

Citation: 2013 FC 1098

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 28, 2013

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

PIERRE-TASSY LOSTIN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

OVERVIEW

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Protection Act*, *SC 2001, c 27 (IRPA)*, of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board) dated August 31, 2012. Upon concluding that the applicant was not credible, the Board found Pierre-Tassy Lostin not to be a Convention refugee or a person in

need of protection within the meaning of sections 96 and 97 of the *IRPA*. For the reasons that follow, I find that this Court's intervention is not warranted.

FACTS

[2] The applicant is a citizen of Haiti and is now 47 years old.

[3] He alleges that he was the leader of the election campaign committee for a Senate candidate, Louis-Paul Raphaël, in the elections of November 28, 2010.

[4] During the night of December 7 to 8, 2010, following the declaration of the results putting presidential candidate Michel Martelly in third place (which excluded him from the second round of elections), his supporters allegedly came to applicant's house, armed and masked. The allegedly accused the applicant of supporting the candidacy of Jude Célestin, who came in second in the election. They allegedly tortured his wife and children, raped his daughter, set fire to his car and stole his motorcycle. At the time the events allegedly took place, the applicant claims that he was not home; he was allegedly on his way to the Dominican Republic to make purchases. The applicant says he lost contact with his family at that point and hid in Port-au-Prince until he left Haiti. At the hearing, the applicant stated that his brother reported the incident to the police on December 13, 2010.

[5] The applicant left Haiti for Canada on January 5, 2011, with the intention of remaining in the country for 28 days. On January 8, 2011, the applicant managed to get in contact with his wife. She allegedly told him that armed men came looking for him and accused him of supporting

presidential candidate Jude Célestin. She allegedly advised the applicant to remain in Canada for his safety. The applicant filed a refugee claim on January 10, 2011.

[6] On January 11, 2011, the applicant's wife passed away. The applicant wrote in his narrative that her death was attributed to the attack during the night of December 7 to 8. At the hearing, the applicant stated that high blood pressure caused her death.

IMPUGNED DECISION

[7] The Board rejected Mr. Lostin's refugee claim in its somewhat terse reasons, stating it was of the view that the applicant's credibility was tainted and undermined by several important omissions and contradictions.

[8] First, the applicant stated during his interview with the immigration officer on January 20, 2011, that the supporters of Michel Martelly who attacked his family accused him of having committed fraudulent acts during the elections to the benefit of candidate René Préval. However, in his written narrative, the applicant rather explains that the fact that he was on the campaign committee of candidate Louis-Paul Raphaël caused him problems.

[9] Second, the applicant did not mention in his written narrative that his brother had filed a complaint with the police, and he did not submit the police report to the Board until the last minute, that is at the hearing, when the document had been in his possession since December 2010. The Board deduced that the document was forged.

[10] Third, the applicant indicated in his written narrative that he was a member of Mr. Raphaël's election campaign committee. However, at the hearing, the applicant stated that he was the head of said committee. According to the Board, the applicant changed his testimony to fit a letter entered in evidence from Mr. Raphaël in which he attests that he chose the applicant as leader of the election campaign.

[11] Finally, the Board noted that the applicant's wife had not died as a result of the incident recounted, but rather because of high blood pressure, according to the applicant's own statements at the hearing.

ISSUES

[12] The applicant raised a number of arguments against the Board's decision. Some of those arguments are without merit and are not worthy of Court's attention. I therefore turn to consideration of the following paragraphs on issues that I find most significant and which can be articulated as follows:

(a) Did the Board commit a reviewable error in finding that the applicant is not credible?

(b) Did the Board commit a reviewable error in failing to conduct a separate analysis of section 97?

(c) Does the Board's decision violate the principles of procedural fairness in that it is not sufficiently reasoned and raises a reasonable apprehension of bias?

ANALYSIS

[13] It is well-established in the case law of this Court that the applicable standard of review regarding the Board's findings in relation to the credibility of a refugee claimant is reasonableness: see *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, at paragraph 4 (FCA). The same standard applies with respect to the second issue, insofar as the question has been characterized as one of mixed fact and law: *Velez v Canada (MCI)*, 2010 FC 923, at paragraphs 20-22. The issue of sufficiency of reasons itself should be part of the reasonableness inquiry: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at paragraph 21. Finally, issues of procedural fairness must be assessed on a standard of correctness, and therefore, receive no deference from this Court: *Sketchley v Canada (Attorney General)*, 2005 FCA 404, at paragraph 53.

[14] Before turning to the analysis of the issues identified earlier, a word should be said about the affidavit filed by the applicant in support of his application for judicial review. The affidavit is replete with opinions, arguments and conclusions of law. However, it is well-established that the purpose of an affidavit is to adduce facts relevant to the dispute without gloss or explanation: see, for example, *Canada (Attorney General) v Quadrini*, 2010 FCA 47, at paragraph 18; *Van Duyvenbode v Canada (Attorney General)*, 2009 FCA 120. Accordingly, I find that the substance of the applicant's affidavit should be stricken, and will not be considered by the Court when addressing the issues raised in this application for judicial review.

(a) *Did the Board commit a reviewable error in finding that the applicant is not credible?*

[15] The applicant criticizes the Board for failing to consider the evidence as a whole as well as the evidence on record and for having based its decision on speculation. The applicant also submits that the Board's reasons do not permit him to understand how it came to its decision.

[16] I cannot agree with these submissions. The Board based its finding on two contradictions and one omission in the applicant's account. It is trite law that contradictions between the answers given to an immigration officer and a contradictory narrative or evidence before the tribunal, on essential elements of the refugee claim, could allow a tribunal to find that the refugee claim is unfounded: *Cienfuegos v Canada (MCI)*, 2009 FC 1262, at paragraph 1.

[17] The Board made a negative finding with respect to the applicant's credibility by the fact that he stated in his written narrative that he was a member of Mr. Raphaël's election campaign committee, when he stated at the hearing that he was his campaign leader. The Board inferred from this that the applicant changed his testimony at the hearing to mirror the content of the letter from Mr. Raphaël, which indicated that he had chosen Mr. Lostin as his election campaign leader. The applicant submitted that the contradiction identified by Board lies is a mere [TRANSLATION] "slip". It is true that the applicant explained at the hearing that for him, a campaign leader is also a campaign member. The Board, however, considered that if the applicant had been the campaign leader, it would have stated that in his written narrative. That finding is not unreasonable to me.

[18] Moreover, I find that the Board could reasonably reject the letter from Mr. Raphaël on the ground that it was a document of convenience. The assessment of the applicant's evidence and

testimony is the responsibility of the decision-maker, who has the advantage of having seen and heard Mr. Lostin; the decision-maker is, therefore, is in a better position than this Court to assess the applicant's credibility. At the hearing, the Board questioned the applicant at length on the content and origin of said document, as well as on the letter of condolence that Mr. Raphaël allegedly sent to the applicant when his wife passed away. After assessing those documents and the answers provided by the applicant, and noting the discrepancy between the Mr. Raphaël's statement and the applicant's written narrative, the Board found that the applicant changed his testimony, and inferred from this that the letter from Mr. Raphaël recognizing him as the leader of his campaign was a document of convenience. Once again, this finding does not seem to me to be far-fetched or without merit.

[19] The Board also based its decision on the discrepancy between what the applicant stated during his interview with the immigration officer, indicating that the supporters of Mr. Martelly accused him of [TRANSLATION] "rigging the elections" for Jude Célestin, and what he wrote in his written narrative, namely, that he was accused of being a supporter of Mr. Raphaël. At the hearing, the applicant testified that the party of René Préval, whose favourite candidate was Mr. Célestin, and the party of Mr. Raphaël were informally related to each other. Nevertheless, the applicant stated in his written narrative that he was being sought out because of his support for Mr. Raphaël and not for having committed election fraud, which was central to his claim.

[20] It was also open to the Board to find that the applicant's failure to disclose in a timely manner that his brother had filed a complaint with the police undermined his credibility. The applicant said he knew about the complaint when he wrote his narrative and also stated that he

received the document at the same time as the other documents filed prior to the hearing. For a reason the applicant was unable to explain, the applicant nonetheless failed to include this document with the others, when it was a document material to his claim. In that context, and having regard to the fact that the document was a copy and not the original, it was reasonably open to the Board to consider it to be a false document and give no weight to it.

[21] Finally, the applicant's testimony was not entirely consistent with regard to the cause of his wife's death. He first testified that the supporters of Mr. Martelly had killed her. He then claimed that [TRANSLATION] "she suffered from high blood pressure and that is what brought her to her death". However, the applicant did not mention his wife's blood pressure problems in his written narrative. In the absence of any other evidence connecting his wife's death to the events that occurred during the night of December 7 to 8, 2010, and having regard to the Board's other findings on the applicant's credibility, it was reasonable for the Board to conclude that her death was not related to the alleged incidents.

[22] In short, the applicant has failed to convince me that the Board's finding does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts brought before it and the applicant's testimony. It is true that the Board's reasons are brief, but they are nonetheless intelligible, and they allow for understanding of its reasoning. The role of the Court is not to assess these grounds only in terms of what it would have liked to have found or what it could have considered, but rather to consider whether the decision is defensible based on the entire record. I find that is the case here.

(b) *Did the Board commit a reviewable error in failing to conduct a separate analysis of section 97?*

[23] The applicant alleges that the Act requires a panel hearing a claim for refugee protection to consider sections 96 and 97 separately. It is true that a lack of credibility finding is not necessarily fatal with respect to section 97. If there is evidence before the Board to support a section 97 analysis, the analysis must be conducted: *Brovina v Canada (MCI)*, 2004 FC 635, at paragraphs 12-18. Such is not the case, however, when the allegations made or the evidence produced do not warrant such an analysis. As Chief Justice Crampton recently noted in *Kaur v Canada (MCI)*, 2012 FC 1379, at paragraphs 50-51:

> The Board is not obliged to conduct a separate analysis under section 97 in each case. Whether it has an obligation to do so will depend on the particular circumstances of each case (*Kandiah v Canada (Minister of Citizenship and Immigration)*, 2005 FC 181 at para 16, 137 ACWS (3d) 604). Where no claims have been made or evidence adduced that would warrant such a separate analysis, one will not be required (*Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at paras 17-18, 254 FTR 244; *Velez*, above at paras 48-51).
>
> Given that the allegations made by Ms. Kaur in support of her claims under section 97 were the same as those that she advanced in support of her claims under section 96, the Board was under no obligation to undertake a second analysis of those claims under section 97, once it had found that her allegations were not credible.

[24] In this case, the Board found the applicant's story to be not credible owing to the contradictions and omissions. The Board did not believe that the applicant had been the leader or a member of Mr. Raphaël's election campaign, nor that his wife had died following the events that allegedly took place during the night of December 7 to 8, 2010. The applicant did not refer to any

information contained in the documentary evidence that could establish a personalized risk within the meaning of section 97. Indeed, the allegations made by Mr. Lostin in support of his refugee claim based on sections 96 and 97 were the same; having found the allegations to be non-credible, the Board was, therefore, not obliged to undertake a separate analysis from the perspective of section 97 after having rejected his claim under section 96.

(c) *Does the Board's decision violate the principles of procedural fairness in that it is not sufficiently reasoned and raises a reasonable apprehension of bias?*

[25] The applicant vaguely alleged an apprehension of bias, arguing that the Board had been guided by an [TRANSLATION] "unwarranted vague opinion" rather than by the relevant evidence and facts.

[26] That argument is, in my view, without merit. An allegation of bias is a serious allegation, the proof of which rests on the party making it, which should not be made lightly and must be supported by substantive and concrete evidence. It does not suffice to disagree with the decision rendered to raise an apprehension of bias. However, that is precisely what the applicant is attempting to do here. He submits that the Board could not ignore certain facts and fail to consider some of the evidence. That argument, which I have already rejected during my analysis of the reasonableness of the decision regarding the applicant's credibility, cannot be relied upon again in support of an apprehension of bias. There is no reason to believe, in the absence of any factual basis, that a reasonable and right-minded person, who is well acquainted with the case, could believe that the Board was biased and would not decide fairly, in the words of the Supreme Court in *Wewaykum Indian Band v Canada*, 2003 SCC 45, at paragraph 60. Accordingly, in my view, this argument cannot succeed.

CONCLUSION

[27] For all the above reasons, the application for judicial review must be dismissed. Neither party proposed a question for me to certify, and none will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

"Yves de Montigny"
Judge

Certified true translation
Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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