

Imama v. Canada (Minister of Citizenship and Immigration)

Between
Lofulo Bofaya Imama, applicant, and
Minister of Citizenship and Immigration, respondent

[2001] F.C.J. No. 1663
2001 FCt 1207
Court File No. IMM-118-01

Federal Court of Canada - Trial Division
Montréal, Quebec
Tremblay-Lamer J.

Heard: November 1, 2001.
Judgment: November 6, 2001.
(15 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Grounds, political activity — Disqualifications, crimes against humanity — Disqualifications, acts contrary to the purposes and principles of the United Nations — Appeals or judicial review, whether claim reasonable.

Application by Imama for judicial review of a decision of the Convention Refugee Determination Division that he was not a convention refugee. He was a citizen of the Democratic Republic of Congo and claimed to have a well-founded fear of persecution by reason of his political opinions. He had worked for the Zairian Ministry of State from 1963 to 1998 under the Mobutu regime and held several high positions in foreign affairs. He admitted at the hearing that he was aware of the human rights abuses of the Mobutu regime while holding those positions. The board found that he was excluded from the definition of refugee because he was guilty of complicity in crimes against humanity.

HELD: Application dismissed. Imama did nothing to disassociate himself from the government during the lengthy period that he was aware of the human rights abuses. The board was correct in concluding he was complicit by association in crimes against humanity.

Statutes, Regulations and Rules Cited:

Immigration Act, R.S.C. 1985, c. I-2, s. 2(1).

United Nations Convention Relating to the Status of Refugees, Articles 1E, 1F, 1F(a), 1F(c).

Counsel:

Marie-Claude Paquette, for the applicant.
Michel Pépin, for the respondent.

REASONS FOR ORDER AND ORDER

1 **TREMBLAY-LAMER J.**— This is an application for judicial review of a decision by the Convention Refugee Determination Division of the Immigration and Refugee Board ("Refugee Division"), determining that the applicant is excluded from the definition of Convention refugee under articles 1F(a) and 1F(c) of the Convention.

2 The applicant is a citizen of the Democratic Republic of Congo (DRC). He claims to have a well-founded fear of persecution by reason of his political opinion.

3 The applicant worked for the Zairian Ministry of State from 1963 to 1998. He held the following positions:

From 1963 to 1965, the applicant was in Zaire and was responsible for privileges and immunity;

In 1965, he held the position of second secretary at the Embassy in Washington;

From December 1965 to August 1966, he held the position of second secretary at the Embassy of Congo in Ottawa;

From August 1966 to 1968, he held the position of second secretary at the Embassy in the Ivory Coast;

From 1968 to 1972, he was in Zaire and worked in the regional international organizations directorate in Zaire;

From 1972 to 1974, he held the position of second secretary at the Embassy in Rwanda;

From 1974 to 1976, he held the position of first secretary in Gabon. He was in charge of the Embassy's economic affairs;

From 1976 to 1978, he was chief of the Privileges and Immunity Division in Zaire;

From 1978 to 1980, he was Director of Protocol in Zaire;

From 1980 to 1986, he was head of Protocol and Public Relations in the Prime Minister's office;

From 1986 to 1989, he was Director of Protocol in the Department of Foreign Affairs;

From 1989 to 1998, he was Ambassador to Chad.

4 Subsection 2(1) of the Immigration Act, R.S.C. 1985, c. I-2, defines the expression "Convention refugee" and provides that persons to whom the Convention does not apply pursuant to sections E or F of article 1 are not included. Sections E and F of the Convention are incorporated into the Act. In this case, Section F of article 1 of the Convention is relevant. It reads as follows:

- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
 - (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

* * *

- F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
- a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
 - b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
 - c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

5 Section 1F of the Convention states that the panel must have "serious reasons for considering." That expression was construed in *Ramirez v. Canada*, [1992] 2 F.C. 306 (Ramirez), as establishing a standard of proof lower than the balance of probabilities. However, given the gravity of the consequences for the claimants, the exclusion clauses must be narrowly construed (*Moreno v. Canada (M.E.I.)*, [1994] 1 F.C. 298 (C.A.)).

6 The onus is on the Minister to prove that the applicant falls within the class of excluded persons.

7 The Refugee Division found that the applicant was a member of the class of persons excluded under sections 1F(a) and 1F(c) of the Convention because he was guilty of complicity in crimes against humanity.

8 First, having regard to the evidence that was before the panel, there is no doubt that the numerous abuses committed by the Mobutu regime fall within the definition of crimes against humanity as defined by the Court of Appeal in *Sivakumar v. Canada*, [1994] 1 F.C. 433 (C.A.) at page 442 and *Gonzalez v. M.E.I.*, [1994] 3 F.C. 646 at pp. 653-654, and more recently in *Sumaida v. Canada*, [2000] 3 F.C. 66 at page 73 in which Létourneau J. gave the following summary:

Basically, the definitions of crimes against humanity refer to serious crimes or other inhumane acts committed against "any civilian population".

9 The evidence that was before the panel exposed the numerous crimes committed by the Mobutu regime:

In March 1993, the United Nations Commission for Human Rights condemned Zaire's violations of human rights and basic freedoms. The commission's report cited in particular the widespread use of torture, inhuman conditions of detention, "disappearances", summary executions, and failure to ensure fair trials. It also deplored the regime's systematic and forceful repression of peaceful demonstrations and accused the regime of deliberately inciting ethnic violence in Shaba.

In September 1993, Amnesty International rated the human rights situation in Zaire as worse than it has been since the chaos following independence in 1960. In support of this assessment, it cited widespread deliberate violations of human rights by regional authorities loyal to Mobutu, ethnic murders in Nord-Kivu and Shaba instigated by government security personnel, the arrest and detention of the editor of an opposition newspaper, and the obstruction of transitional government meetings. Given the extent of random banditry throughout the country, Zaire in the early 1990s was a country in which lawlessness prevailed and human rights were systematically trampled.

(Exhibit M-1).

10 Was the applicant guilty by association of a crime against humanity?

11 In *Sivakumar v. Canada (M.E.I.)*, [1994] 1 F.C. 433 (C.A.), Mr. Justice Linden summarized the concept of complicity by association. He stated at page 442:

To sum up, association with a person or organization responsible for international crimes may constitute complicity if there is personal and knowing participation or toleration of the crimes. Mere membership in a group responsible for international crimes, unless it is an organization that has a "limited, brutal purpose", is not enough (Ramirez, *supra*, at page 317). Moreover, the closer one is to a position of leadership or command within an organization, the easier it will be to draw an inference of awareness of the crimes and participation in the plan to commit the crimes.

12 More recently, in *Mohammad v. Canada (Minister of Citizenship and Immigration)* (1995), 115 F.T.R. 161, at page 178, Mr. Justice Nadon produced this concise list from what had been said by Linden J.A.:

1. A person who commits a crime must be held responsible therefor.
2. A person may be responsible for a crime he or she did not personally commit, that is, as an accomplice.
3. The starting point for the existence of complicity is "personal and knowing participation" by the person in question.
4. Mere bystanders are not accomplices.
5. A person who aids in or encourages the commission of a crime may be responsible therefor.
6. A superior may be responsible for crimes committed by those under his or her command if the superior knew about them.
7. A person may be held responsible for crimes committed by others because of his or her close association with those who committed them.
8. The more important the position held by a person in an organization that has committed one or more crimes, the more likely his or her complicity.
9. A person who continues to hold a leadership position in such an organization with full knowledge that the organization is responsible for crimes may be considered an accomplice.
10. Evidence that the individual protested against the crime, tried to stop its commission or attempted to withdraw from the organization must

be taken into consideration in determining whether he or she is responsible. (Emphasis added)

13 The Refugee Division determined that the applicant had knowledge of the abuses committed by the Mobutu regime. When questioned at the hearing, he in fact acknowledged that when he was a senior officer in the Department of Foreign Affairs, he knew what was going on in Congo from the newspapers. He admitted that he had known since 1959 about the human rights abuses committed by the regime.

14 Furthermore, in his position as Ambassador, he represented the State abroad and was accountable for its actions. Although he was aware of the acts committed by his government, the applicant did nothing to disassociate himself from them. On the contrary, as the panel pointed out, he continued to work for the Mobutu government for several years and was head of the MPR while he was Ambassador. The Refugee Division was right in concluding that he was complicit by association in crimes against humanity committed by the Mobutu government.

15 The application for judicial review is accordingly dismissed.

Certified true translation : Sophie Debbané, LL.B.