

Osman v. Canada (Minister of Citizenship and Immigration)

Between
Abdalla Abdelkarim Osman, applicant, and
The Minister of Citizenship and Immigration, respondent

[2001] F.C.J. No. 408
2001 FCT 229
Docket IMM-527-00

Federal Court of Canada - Trial Division
Toronto, Ontario
Blanchard J.

Heard: February 13, 2001.
Judgment: March 22, 2001.
(33 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Credible basis for claim — Refugee status or permanent residence in another country — Appeals or judicial review, scope of review.

Application by Osman for judicial review of a decision that he was not a Convention refugee. Osman was a citizen of Sudan. He moved to the Philippines where he got married and fathered two children. He returned to Sudan and left his wife and children in the Philippines. He claimed that because of his political views and activities in Sudan, he was arrested and tortured. The Convention Refugee Determination Division concluded that Osman was not a Convention refugee because he did not make genuine efforts to obtain status for himself in the Philippines, he was found to be an unreliable witness, and he failed to establish both an objective and subjective fear of persecution. Osman argued that the panel erred by emphasizing his failure to return to the Philippines, by failing to assess the totality of the evidence, and by not properly assessing a letter regarding his political activities.

HELD: Application dismissed. It was reasonable for the panel to enquire about the steps taken by Osman to reunite himself with his family in the Philippines, and the panel's findings were not patently unreasonable. Osman failed to show that the panel did not assess the totality of the evidence. The panel gave the letter no weight, which was a decision open to it. The panel did not make its decision in a perverse or capricious manner, and did not base its decision on irrelevant considerations.

Statutes, Regulations and Rules Cited:

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

Counsel:

Vania Campana, for the applicant.
Marianne Zoric, for the respondent.

1 **BLANCHARD J.** (Reasons for Order and Order):— This is an application by Abdalla Abdelkarim Osman, hereinafter the applicant, for an order setting aside the decision of the Convention Refugee Determination Division of the Immigration and Refugee Board, hereinafter CRDD, dated January 14, 2000, which held that the applicant is not a Convention refugee pursuant to subsection 2(1) of the Immigration Act¹.

FACTS

1

Immigration Act, R.S.C. 1985, c. I-2

2. (1) In this Act, "Convention refugee" means any person who
 - (a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
 - (i) is outside the country of the person's nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, (...).

* * *

Loi sur l'immigration, L.R.C. 1985, c. I-2.

2. (1) Les définitions qui suivent s'appliquent à la présente loi. "réfugié au sens de la Convention" Toute personne :
 - a) 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 :
 - (i) soit se trouve hors du pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays, [...].

2 The applicant bases his claim on a well founded fear of persecution in Sudan, by reason of his political opinion (real and perceived), expressed largely in his opposition to serving in the Popular Defence Force (PDF) in Sudan. The applicant alleges that he was forcibly conscripted in this militia, the said PDF, from which he claims to have escaped. The applicant claims he now faces persecution in Sudan as a result of these events.

3 In 1989, the applicant, a 33-year old citizen of Sudan, left his country to study in the Philippines. He spent the next six years until June 1995 as a student or visitor in the Philippines.

4 In 1992, he married a Filipino woman with whom he had two children, one born in 1993 and the other born shortly before he left the Philippines in 1995.

5 In 1995, the applicant returned to Sudan where, he believes, due to his political views and activities, he was unable to find work in the government sector. He therefore joined his family business and at the same time resumed his political activities with the UMMA Party attending secret meetings and distributing pamphlets.

6 On June 30, 1989, a coup brought General el Bashir to power in Sudan.

7 At the start of 1997, the leader of the UMMA Party, Sadiq el Mahdi fled Sudan.

8 On February, 5, 1997, the applicant submits that he was seized, detained and mistreated in a ghost house for some three weeks.

9 At the end of 1998, the applicant submits that he was involved in a demonstration protesting the war in the south and the recruitment of students and young people sent to the front.

10 The applicant submits that he was arrested, tortured for 13 days and transferred on January 12, 1999, to a PDF Training Camp some 25-30 kilometres south of Khartoum.

11 In March 1999, after being detained for approximately 47 days, the applicant claims he escaped the PDF camp. He hid with a friend for approximately two months and then left Sudan on May 7, 1999, arriving in Canada on May 8, 1999.

12 As a result of these alleged facts, the applicant fears persecution in Sudan.

DECISION OF THE CRDD

13 The CRDD came to the conclusion that the applicant was not a Convention refugee and essentially based its decision on the following:

- (1) The applicant did not make genuine efforts to obtain status for himself in the Philippines.

- (2) The applicant was found to be an unreliable witness in that he exaggerated, equivocated and contradicted himself.
- (3) The application failed to discharge his burden of establishing both an objective and subjective fear of persecution as required by the Convention.

Simply put, the CRDD did not believe that the claim was well founded.

STANDARD OF REVIEW

14 The standard of review is distinct for questions of law and factual findings. The Supreme Court of Canada confirmed in the Pushpanathan decision² that all questions of law determined by the CRDD are governed by the standard of correctness. Secondly, that all factual findings are regulated by the patently unreasonable standard as stated by Decary J.A. in Aguebor:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review³.

15 Having established the standards of review, I will now address issues raised by counsel for the applicant, namely:

- (1) whether the CRDD erred in its emphasis on the applicant's failure to return to the Philippines?
- (2) whether the CRDD erred in failing to assess the totality of the evidence?
- (3) whether the CRDD erred in its assessment of the UMMA Party letter?

ANALYSIS

16 On the first issue, counsel for the applicant asks this Court to consider "...whether the Board erred in its emphasis on the applicant's lack of return to the Philippines?" The facts of the case demonstrate that the applicant resided in the Philippines from 1989 to 1995, that he married there and is the father of two children. It is certainly reasonable for

² Pushpanathan v. Canada (Minister of Citizenship and Immigration) [1998] 1 S.C.R. 982, at paragraph 50

³ Aguebor v. Canada (Minister of Employment and Immigration), [1993] F.C.J. No. 732

the CRDD to enquire about the steps the applicant took to be reunited with his family in the Philippines.

17 A reading of the reasons of the CRDD on this issue clearly shows that the panel was evaluating the claimant's behaviour vis-à-vis his options in the Philippines in the context of his subjective fear and his credibility.

18 At page 3 of the Reasons, the panel stated:

This did not, however, prevent the panel from evaluating the claimant's behaviour vis-à-vis his options in the Philippines (i.e. his ability/efforts to have his application for nationality approved in order to acquire the rights of a Filipino national) in the context of his subjective fear and his credibility⁴.

19 The panel was not convinced that the applicant explored all avenues to stay reunited with his family in the Philippines. The panel reasonably concluded that if the applicant indeed feared for his life in Sudan, he would have made efforts to regularize his status in the Philippines where he resided with his wife and children. Even though this is not the determining factor, it did affect the panel's finding of non credibility. Indeed, the CRDD found the applicant to be lacking in trustworthiness and credibility.

20 The Board also noted:

- (i) When the claimant was being questioned as to why, if he had to leave Sudan, he would not have tried to go to the Philippines to be with his family, the claimant testified that his fate, if he returned to the Philippines, would be worse than it would be in Sudan. The panel found this statement to be extreme and totally incredible. He was asked why. He replied that this was the case because if he entered the Philippines without a legal visa, he would be taken from the airport and imprisoned for having a fraudulent passport.

... It finds it highly improbable, however, that a man who had lived in the Philippines for six years, who is a graduate of a Filipino university, who is legally married to a Filipino and has two children, would be treated even remotely like someone who was known to oppose the regime in Sudan⁵.

- (ii) The claimant testified at one point to a note being sent with him to the PDF camp from the detention center saying that he, the claimant "should be disappeared". When asked how he knew about this note

⁴ CRDD decision at page 3.

⁵ CRDD's decision, at pages 4-5.

(there is no reference to this at all in his PIF) he said that he felt he was treated differently than the others in the camp which made him feel there was an order from the detention center to the camp⁶.

- (iii) The claimant testified orally to having been arrested and tortured for 13 days following a protest at the end of 1998. This information was not in the Personal Information Form⁷.
- (iv) If the authorities wanted the claimant to "disappear", it is not very likely that they could not, and would not, have seen this was done such that the replacement of one officer by another changed the whole picture for the claimant. Having weighed this evidence, the panel does not believe the claimant was ever in the PDF camp⁸.
- (v) When he entered Canada he indicated that his passport had expired in May 1991. Orally however, it transpired that he had renewed it twice through his brother and a third time in Sudan so that the actual date of expiry was May 15, 1999. ... The panel finds this to be a weak, unbelievable explanation and that the claimant was trying to cover the fact that he had been able to renew his passport and perhaps even to travel on it to Canada⁹.

21 Ultimately the panel found that the claimant was not a credible witness and that his alleged fear of persecution in Sudan is not well founded.

22 In *Sheikh*, Mr. Justice MacGuigan dealt with how a general finding of lack of credibility may extend to all other pertinent evidence of the application:

[E]ven without disbelieving every word an applicant has uttered, a [panel] may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim (...). In other words, a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony¹⁰.

23 I find that the Board did not err in assessing this first issue, namely the "... emphasis on the applicant's lack of return to the Philippines?" In my view the findings of the Board as they relate to the credibility of the applicant are not patently unreasonable.

24 This brings us to the second issue where the applicant argues that the Board erred in failing to assess the totality of the evidence.

⁶ CRDD's decision, at page 5.

⁷ CRDD's decision, at page 5.

⁸ CRDD's decision, at pages 5-6.

⁹ CRDD's decision, at page 6.

¹⁰ *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.) at p. 244.

25 Upon making a finding of lack of credibility, the Board could extend such a finding to all relevant evidence emanating from the applicant's testimony. Indeed, the Board was not convinced the applicant was even in Sudan in the last four years as he alleged. The Board could not conclude that on a balance of probabilities the applicant arrived and came from Sudan.

26 Upon reviewing all of the evidence and upon reviewing the reasons of the Board, I therefore conclude that the applicant has not convinced me that the Board failed to assess the totality of the evidence.

27 The third issue raised by the applicant is whether the CRDD erred in its assessment of the UMMA Party letter?

28 The fact that the CRDD did not explicitly mention all of the evidence brought forward by the applicant is not, in and of itself a reviewable error of law. As Richard A.C.J. (As he then was) stated in *Singarayer*:

In my view, the conclusions of the Refugee Division were reasonably open to it based on the totality of the evidence adduced. The fact that some of the documentary evidence was not mentioned in its reasons is not fatal to its decision. It did consider and weigh the total evidence. Where the tribunal has evidence before it which support its conclusion, this Court will not readily interfere with the weight assigned to that evidence¹¹.

29 *Simpson J. in Gourenko* sets out the criterion that is generally followed by this Court to determine if a document need be mentioned in reasons of the CRDD:

In my view, a document need only be mentioned in a decision if, first of all, the document is timely, in the sense that it bears on the relevant time period. Secondly, it must be prepared by a reputable, independent author who is in a position to be the most reliable source of information. Thirdly, it seems to me that the topic addressed in the document must be directly relevant of the applicant's claim. (...) In addition, if a document is directly relevant to the applicant, one would expect to see that document addressed in the Refugee Division's reasons¹².

In applying this criterion in *Gourenko*, I am satisfied that the pertinent documents were properly considered in the within case.

30 The letter in question was considered by the Board in its reasons and no weight was given to the said letter by it. It is my view the conclusion reached by the board was

¹¹ *Singarayer v. Minister of Citizenship and Immigration* [1998] F.C.J. No. 870 at para. 5 (Fed. T.D.).

¹² *Gourenko v. Solicitor General of Canada* (1995), 93 F.T.R. 264, at p. 264.

open to it on the evidence and that the applicant has not demonstrated to me any basis for intervention.

31 I cannot find that the Board based its decision on erroneous findings of facts or that it made its decision in a perverse or capricious manner or without regard for the material before it. The applicant has failed to satisfy me that the Board based its decision on irrelevant considerations or that it ignored evidence. Therefore this Court will not intervene.

32 For these reasons the application for judicial review is dismissed.

33 There is no question of general importance which would require certification.

ORDER

THIS COURT ORDERS that:

1. The application for an order setting aside the decision of the Convention Refugee Determination Division of the Immigration and Refugee Board, dated January 14, 2000, which held that the applicant is not a Convention refugee pursuant to subsection 2(1) of the Immigration Act, is dismissed.

BLANCHARD J.