Between
Joseph Kaku Armson. Applicant, and The Minister of Employment and Immigration, Respondent

Indexed as: Armson v. Canada (Minister of Employment and Immigration) (F.C.A.)
Federal Court Judgments: (1989) F. C. J. No. 800
Action No. A-313-88
Federal Court of Appeal
Toronto, Ontario
Heald, Mahoney and Desjardins JJ.
Heard: August 21, 1989
Judgment: September 5, 1989
Judicial review—Immigration—Refugee Status Redetermination.

C.Anthony Keith, Q. C., for the Applicant.

April Burey, for the Respondent.

The judgment of the Court was delivered by
HEALD J.:-This section 28 application asks the Court to review and set aside the unanimous decision of the Immigration Appeal Board in which the Board determined that the applicant was not a Convention Refugee.

Before the Board, the applicant asserted a fear of persecution because of his political opinion and, additionally, because of his membership in a particular social group, i. e., the Nzima tribe. Before us, counsel for the applicant made no argument relative to the applicant's fear of persecution based on his membership in the Nzima tribe. He restricted his submissions to the applicant's fear of persecution because of his political opinion.

The only witness who gave viva voce evidence before the Board was the applicant himself. His evidence may be summarized as follows. He is a 38 year old Ghanaian, married, with two children. Following the Rawlings coup in 1981, a brother of the applicant who was an organizing secretary of the P. N. P. (an opposition party) was detained and beaten because of his political association. The applicant is not a member of any Ghanaian political party. He was a teacher of English and History in a Junior Secondary School there. Although he was not a member of any political party, he spoke out against the government to his students from time to time between 1982 and 1986. He was arrested at home in May of 1986, taken to an army barracks at Takurade where he was detained for approximately ten days. While under detention he was beaten by his jailors. He was moved to barracks in Accra. In August of 1986, with the help of the prison warder, he was able to escape from the barracks in Accra. Outside the barracks, he was met by a man named Alhaji (a friend of a deceased brother). Alhaji and the applicant drove across the Ghana-Togo border to Lomé. On the following day they drove to Lagos. They flew to Paris from Lagos. There, Alhaji arranged for the applicant to fly to Canada. The costs of the air fare, of the passport and other necessary papers were paid for by Alhaji. Alhaji had also paid the cost of the air fare from Lagos to Paris.

The applicant's testimony at the hearing before the Board was lengthy. The transcript of that evidence contains some 174 pages (Case, Vol. 1, p. 117 to Case, Vol. 2, p. 291). The Board dismissed his evidence on the basis of lack of credibility. At page 340 (Case, Vol. 2), it stated:

Looking at the evidence as a whole, the Board had serious doubts about the veracity of Mr. Armson's testimony.

The reasons given by the Board for not believing the applicant's evidence were regrettably sparse. The Board merely said (Case, Vol. 2, p. 340):

"the applicant was not a member of a political party in Ghana; he allegedly spoke for four years to his students against the government while he was at the same time representing a government organization, in his capacity as a teacher, without interference by the authorities; he left prison without difficulty, met a friend of his late brother, travelled with him many thousands

of miles to Paris without cost and then had his night, with papers, arranged to continue on to Canada. In our opinion, this testimony does not enhance the credibility of the applicant.

From these short reasons, it is reasonable to infer four possible grounds for the Board's disbelief of the applicant's evidence:

(a)he was not a member of a political party in Ghana;

(b)he spoke against the government for a period of 4 years to his students and during that entire period, he represented the government as a teacher, and, notwithstanding this circumstance, he was not interfered with by the authorities;

(c)he left prison without difficulty; and

(d)he was taken by Alhaji (his late brother's friend) to Paris without cost to him and sent to Canada by Alhaji, again without cost to him.

The principal attack made by counsel for the applicant on the Board's decision was that it erred in law because it based its negative findings of credibility on irrelevant considerations, and failed to consider the totality of the evidence before it. Accordingly, I think it necessary to closely examine the four grounds relied upon.

(a)The applicant was not a member of a political party in Ghana

In this connection, counsel for the applicant makes the point that, following the Rawlings coup in December of 1981, all political parties were proscribed but that several opposition groups operated outside Ghana including the G. D. M. (Ghana Democratic Movement) led by Joseph Mensah. The G. D. M. was based in London and advocated the restoration of a liberal democratic system (Footnote: See Case, Vol. 1, p. 72.) Thus, in counsel's view, in the circumstances of this case, the fact that the applicant was not a member of a political party was an irrelevant consideration. I think there is merit in this submission. The applicant's uncontradicted evidence was to the effect that he had, over the years, spoken out on the shortake of textbooks for schools, corruption in the government, Marxism, and oppression under the Rawlings regime (Footnote: See Case, Vol. 2, p. 254.). Since the definition of "Convention Refugee" in the Immigration Act refers to political opinion, I agree with counsel that the fact of non-membership in a political party when considered in isolation and without reference to the surrounding circumstances is irrelevant.

(b)The applicant spoke out against the Government even though he was employed as a teacher by the Government he was criticizing and even in these circumstances he was not interfered with by the Government authorities.

Board Member Vidal raised this seeming inconsistency in his evidence at the hearing. The applicant responded as follows (Footnote: See Case, Vol. 2, p. 257.):

We have an association that we call the Ghana National Association of Teachers, which is a separate body, in spite of the fact that teachers are under the Ministry of Education. GNAT is just separate, and is autonomous.

And so nobody can fire a teacher. The government can't fire a teacher unless, of course, the teacher is found with some immoral acts or other things. And even that will be taken over by the GNAT itself.

MS VIDAL: Kind of like our civil service here. Okay. So you sort of had you had the protection of this Ghana Association of Teachers?

THE WITNESS: Yes.

In my view, this uncontradicted testimony is a complete answer to this possible ground for disbelieving the applicant's evidence.

(c)He left prison without difficulty

the applicant's evidence concerning his escape from prison was to the effect that on approximately August 13, 1986, the warder (prison guard) who was watching over him, told him that he would be able to escape that night because the prison gates would be left open. He testified that he escaped along with four or five other prisoners by simply walking out through the prison gates. When cross-examined strenuously on this evidence, the applicant differentiated between the "military People" who had beaten him and the prison guards or "warders". He said that the warder advised him that someone was coming to take him away in a car in the middle of the night. He said that this was not an uncommon occurrence in Ghana since "there are people who organize it to help some people, political detainees, to escape." (Case, Vol. 2, p. 248). He also gave his opinion that "These warders were bribed," (Case, Vol. 1, p. 148).

A perusal of the transcript reveals that Board member Vidal's perception of the applicant's evidence was mistaken. At Case, Vol. 2, pp. 224 and 225, Board member Vidal said to the applicant:

This is the man who is holding you in detention. This is the man who you are in fear of.

THE WITNESS: Yes.

MS. VIDAL: This is the man you are claiming who will kill you at any minute. He walks in and says, "Your escape has been arranged, be ready." And you run out towards a strange car, to a person you do not even know. Did it not even enter your head that you might be walking into a trap?

The applicant's reply to this question was consistent with his earlier testimony. He answered (Case, Vol. 2, p. 225):

"It is only the military people who are dressed in military attires." The soldiers, if they come into our place, those are the people who can beat us, and slap us, and so on. But with those dressed in their dress like the warders, they don't mistreat us. So even though we don't talk so much with them don't talk much with them we don't communicate with them we feel they are good or better people than the soldiers.

Subsequently, the applicant's counsel, Mr. Gauthier, had an exchange with Board member Vidal. That portion of the evidence reads (Case, Vol 2, pp. 226-227):

MR. GAUTHIER: Can I make a comment now, please? I believe that this morning the appellant made it clear that those that came into the barracks were military people. At no time did he make any statement to the effect that the warders or wardens had touched him or hurt him. If you check the record, I think you will see that that was the case. So if you are under the impression that he was actually abused or beaten by the warders, that is not what he said this morning.

MS VIDAL: I do not believe I said that.

MR. GAUTHIER: That is what you just said.

MS VIDAL: I said the warders were keeping him in jail.

MR. GAUTHIER: Well, you were asking him why he would trust a warder.

MS VIDAL: Right.

MR. GAUTHIER: That would threaten his life, or beat him up, and all those things. I was just correcting this misapprehension. He was not beaten by them. He has not stated today that he was beaten by them. And I think it is very important for the record to show this.

Based on the applicant's explanation as to how he left the prison, and considering that his evidence was not contradicted, was consistent and is not, inherently suspect or improbable, the Board erred, in my view, in inferring a lack of credibility from the applicant's evidence that he left

the prison without difficulty (Footnote: This view is supported by the relevant jurisprudence see, for example, R. vs. Covert (1917) 34 D. L. R. 662 (Alta. C. A,); Clark v. McRohan (1948) 2 D. L. R. 283 (Ont. C. A.).).

(d)The applicant was taken by his late brother's friend Alhaji, to Paris and was went to Canada by this, friend, all without cost to the applicant.

The transcript reveals that this segment of the applicant's evidence was the subject of considerable scrutiny by Board member Suppa (Footnote: see Case, Vol. 2, pp. 258 to 262 inclusive.)

It seems evident from the question asked that Mr. Suppa was skeptical as to the truth of this part of the applicant's evidence. The applicant's explanation was that Alhaji had been a close friend of his brother and that was his motivation fur aiding the applicant. Both Mr. Suppa and Ms. Vidal seemed to doubt his explanation as to where Alhaji obtained the applicant's birth certificate and why the applicant did not inquire further of Alhaji concerning this matter. The applicant said that he was very confused, after he had been beaten and mistreated and, therefore, did not pursue this matter with Alhaji. He was also cross-examined extensively about events which occurred at Charles De Gaulle Airport in Paris. The applicant's answers were confused. He was not accustomed to travelling by air. Apparently the potion of the boarding pass which is normally torn off was not removed when he boarded the aircraft for Canada. The applicant's counsel dealt with this matter as follows (Case, Vol. 2, pp. 305 and 306):

The applicant remains confused, as I said, about exactly what happened at the airport before boarding the plane. But it is my submission that considering the significance of that particular night, which was taking him to a safe place, considering his lack of familiarity with France, the French environment, and what he was in the middle of, that we should not construe his confusion then or today as a lack of willingness on his part to be totally truthful with this Board.

I believe the only proper conclusion from all of the questions that have been raised today in that regard is that it was a very confusing event for the applicant, and as confused as he was then, he continues to be confused today.

It is not without significance that the evidence concerning the problem with the boarding pass was not mentioned by counsel for the respondent in his submissions to the Board (see Case, Vol. 2, p. 305).

After carefully reading the applicant's evidence in its entirety, I agree with the explanation offered by counsel for the applicant. This is a small matter when considered in the context of the totality of the applicant's evidence and, in my view is, inconsequential.

In summary, while this portion of the applicant's evidence may raise questions, it has not been contradicted in any way by other evidence. Actually, counsel for the respondent, in his submissions to the Board agreed that" the story related today viva voce has been fairly consistent with that related in '86 at the examination under oath" (Footnote: See Case, Vol. 2, p. 323.)

Accordingly, I conclude, as I did in subparagraph (c) supra, that since this portion of the applicant's evidence is not contradicted, is consistent, and is not inherently suspect or improbable, the Board erred in making adverse findings of credibility in respect thereof.

In my view, the decision a quo is defective for another reason. In the circumstances of this case, the Board owed a duty to this applicant to give its reasons for rejecting the applicant's Refugee claim on the ground of credibility in clear and unmistakeable terms (Footnote: See Re Pitts and Director of Family Benefit Branch of the Ministry of Community and Social Service, 51 O. R. (2d) p. 302, Ontario Divisional Court.). At page 301 of the Pitts case, Mr. Justice Reid said:

The task of determining credibility may be a difficult one but it must be faced. If the board sees fit to reject a claim on the ground of credibility, it owes a duty to the claimant to state clearly its grounds for disbelief. The board cannot simply say, as the member did here, "I feel that I have

not received credible evidence to rescind the decision of the Respondent." Some reason for thinking the evidence not credible must be given if an appearance of arbitrariness is to be avoided.

In a now famous address, Sir Robert McGarry, Vice-Chancellor of England, has reminded judges that the most important person in a lawsuit is not the judge, sitting in elevated dignity on the dais, nor the lawyers, however eminent they might be; it is the losing party: see "Temptations of the Bench" (1978) XVI Alta. L. Rev., p. 406. In order that faith may be maintained in the legal system, it is necessary that losing parties be satisfied that they have been fairly dealt with, that their position has been understood by the judge, and that it has been properly weighed and considered. It is, therefore, important that the reasons for a decision be stated, and stated in language that the party who has been dealt the blow can comprehend. I think that this applies with equal weight to the decisions of tribunals. Thus, in my opinion, members of the Social Assistance Review Board owe to claimants, in simple justice, a reasonable statement of why their claim failed, particularly when it failed because the claimant or witnesses were not believed. Mr. Manuele's rejection of Ms. Pitts' and her witnesses' evidence as not entitled to credence was neither preceded nor followed by one single word indicating why he did not find it credible.

The situation at bar is not unlike that in Pitts. The Board's reasons do not contain a singly words as to why it considered the applicant's evidence not credible. In my view this circumstance forms and additional basis for vitiating the Board's decision herein.

The circumstances here are also similar to those in the case of Talinz v. Minister of Employment and Immigration, 7 Immigration Law Reporter, (2d) p. 163 at 164. In that case as well, the attack on the Board's decision was that it was based solely on a finding of lack of credibility of the applicant's evidence. In allowing the section 28 application, Marceau J.A., speaking for the Court, Stated:

Now, this opinion of the Board was not based, at least if we rely on the reasons given for decision, on discrepancies or contradictions in the applicant's testimony but merely on the feeling that there were obvious exaggerations in what he was recounting. While we agree that it is within the province of the Board to assess credibility we are of the view that the Board's apparently complete rejection of the applicant's statements was not justified. It seems to us that the Board should have asked itself, whether even assuring some exaggerations, the applicant had not shown that he had been undoubtedly the victim of harassment of a variety or forms amounting to persecution, making thereby his fear to go back not only genuine but objectively founded.

Similarly, the comments of Hugessen J.A. speaking for the Court in the case of Benjamin Attakora v. M. E. I. (File A-1091-87, May 19, 1989) are also opposite. At page 4, Hugessen J. A. stated:

I have mentioned the Board's zeal to find instances of contradiction in the applicant's testimony. While the Board's task is a difficult one, it should not be over-vigilant in its microscopic examination or the evidence of persons who, like the present applicant, testify through an interpreter and tell tales of horror in whose objective reality there is reason to believe.

As in Attakora, the applicant here also testified before the Board through an interpreter. His evidence that a brother was detained and because he was an organizing secretary secretary of an opposition party is not challenged. His evidence that he spoke out against the government to his students is not contradicted. His evidence that he was arrested, detained and beaten is likewise uncontradicted. There is no doubt that he escaped from jail and fled to Canada. Details of how he escaped from jail, who assisted him and how he came to Canada, while not irrelevant do not, nevertheless, alter or detract in any way from the clear reality that there is strong evidence here to support a finding that both the subjective and objective components of the Rajudeen test are present in the circumstances of this case, Rajudeen v. M. E. I. (1984) 55 N. R. 129.

As a consequence, and for all of the foregoing reasons, I would allow the section 28 application, set aside the decision of the Immigration Appeal Board dated February 11th, 1988 and signed February 17th, 1988 and remit the matter for a full rehearing by a differently constituted panel of the Board.

HEALD J.

MAHONEY J.:--I agree.

DESJARDINS J.:-- I agree.