

Date: 20090107

Docket: IMM-2668-08

Citation: 2009 FC 19

Ottawa, Ontario, January 7, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MUTUMBA, Fahad Huthy

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In a situation of choice wherein one could remove oneself or extricate oneself, yet, nevertheless, to continue one's work in an organization that is personally known to commit torture and, thereby, recognized for its "limited and brutal purpose", is to subject oneself to exclusion from convention refugee protection.

[2] When examining the record before the Immigration and Refugee Board (Tribunal), the following appears: Exhibit M-2 describes a rising level of torture in Uganda (p. 9). The Internal Security Organization (ISO) is described as a government intelligence group which uses torture to

achieve its objectives (p. 14). Exhibit M-4, Uganda Country Report, April 2005, Country Information and Policy Unit Immigration and Nationality Directorate, Home Office, United Kingdom at page 1094: at 2.9 “Among the agencies accused of torture are ... the Internal Security Organization (ISO)”.

[3] Exhibit M-3 refers to complaints of alleged human rights violations perpetrated by a number of Ugandan agencies, including the ISO (Exhibit M-3, p. 21) on page 1347 of the Tribunal Record, the Applicant, himself, when asked whether he had been aware “about the practice of torture”, answered, “absolutely, yes”.

II. Judicial Procedure

[4] The Applicant, a citizen of Uganda, filed an application with the Federal Court for judicial review challenging a decision rendered by the Tribunal, on May 26, 2008, which denied the Applicant’s asylum claim. The Tribunal found that the Applicant was excluded from Convention refugee and protected person status pursuant to Article 1F(a) of the United Nations Convention Relating to the Status of Refugees (Refugee Convention) which serves, de jure, as a bar to such status.

III. Background

[5] The Applicant, Mr. Fahad Huthy Mutumba, lived in Kampala, Uganda. He worked as a teacher from 2002 to 2004.

[6] Mr. Mutumba was fired in May 2004 due to his sexual orientation. He was also excluded from his church in July 2004 for the same reason.

[7] In August 2004, Mr. Mutumba was hired by the ISO. He remained with this organization for fifteen months, i.e. until November 24, 2005.

[8] Mr. Mutumba was arrested by his superiors at the ISO, on November 24, 2005. He was allegedly suspected of having leaked information to the press concerning the death of a rebel who had died while in custody of the ISO. Mr. Mutumba was allegedly detained, beaten and tortured for seven days and accused of being a traitor. Mr. Mutumba was released from custody on December 1, 2005.

[9] Mr. Mutumba arrived in Canada on December 10, 2005 and claimed refugee status on December 15, 2005.

IV. Decision under review

[10] The Tribunal found that Mr. Mutumba was excluded from refugee protection under Article 1F(a) of the Refugee Convention.

V. Analysis

Legislation

[11] Article 1F(a) of the Refugee Convention 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;

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;

Internal Security Organization (ISO)

[12] The Tribunal found that the ISO is a secret force in Uganda which committed, on a regular and consistent basis, serious violations of human rights characterized as crimes against humanity or war crimes under Article 1F(a) of the Refugee Convention.

[13] The Tribunal concluded that the Ugandan ISO is a secret police force and an organization directed to a limited brutal purpose.

[14] No doubt exists as to Mr. Mutumba's employment by the ISO for a period of fifteen months between August 2004 and November 2005.

[15] In *Ramirez v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 306, [2002] F.C.J. No. 109 (QL) (C.A.), the Federal Court of Appeal noted that mere membership in an organization principally directed to a limited brutal purpose, may be sufficient to trigger the exclusion clause:

[16] What degree of complicity, then, is required to be an accomplice or abettor? A first conclusion I come to is that mere membership in an organization which from time to time commits international offences is not normally sufficient for exclusion from refugee status. Indeed, this is in accord with the intention of the signatory states, as is apparent from the post-war International Military Tribunal ...:

It is important to note that the International Military Tribunal excluded from the collective responsibility 'persons who had no knowledge of the criminal purposes or acts of the organization and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the organization. Membership alone is not enough to come within the scope of these declarations' [International Military Tribunal, i. 256].

It seems apparent, however, that where an organization is principally directed to a limited, brutal purpose, such as a secret police activity, mere membership may by necessity involve personal and knowing participation in persecutorial acts. (Emphasis added).

[16] *Ramirez* has become a seminal case and its principles have been frequently reiterated by this Court and the Federal Court of Appeal (*Penate v. Canada (Minister of Employment and Immigration)*, [1994] 2 F.C. 79, [1993] F.C.J. No. 1292 (QL) (T.D.); *Moreno v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 298, [1993] F.C.J. No. 912 (QL) (C.A.); *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433, [1993] F.C.J. No. 1145 (QL) (C.A.); *Ruiz v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1177, [2003]

F.C.J. No. 1507 (QL); *Thomas v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 838, 160 A.C.W.S. (3d) 148).

[17] The Tribunal found the ISO to be a secret police force in Uganda, based on Mr. Mutumba's own written statements and documentary evidence. Mr. Mutumba subsequently denied his own earlier characterization of the ISO.

[18] Mr. Mutumba claimed refugee status in Canada on December 15, 2005. The following day, Mr. Mutumba was interviewed by Examination Officer, Mr. Graham Rowe (Exhibit "A" of Ketsia Dorceus' affidavit).

[19] Mr. Mutumba's written statement at point of entry clearly indicates that the ISO is a secret security agency of the Ugandan government:

My name is Fahad Huthy Mutumba, aged 35, a Ugandan citizen, born in Mulago Hospital in Mengo, Kampala District, on the 9th October 1973.

I had to flee my country in fear of being persecuted by the government security machinery, for refusing to join the Secret agents organization called the Internal Security Organisation (ISO). I had worked for them, in a civilian capacity as an office administrator for over a year, having been introduced there by Major Haruna Nukorgo, on the 7th August 2004. My main duties were to record handwritten statements from suspects and type them in word processing Microsoft programme on the computers.

This at first didn't sound a good job for me, working within the army, but having lost my previous job for being open about my sexuality, made it hard, as I had a family of six (6) to look after!

The second reason is because I came out in the open that I was gay.

(signature) 16-12-2005

(Emphasis added).

[20] In his question and answer session with Officer Rowe, Mr. Mutumba indicated that the ISO was a security agency. Due to his own situation, he admitted acceptance of his position and awareness that the ISO tortured citizens.

Who is seeking to harm you?

The security agency called Internal Security Organization.

Why are you specifically being targeted?

I refused to join them because of their practice of torturing citizens and branding them as traitors.

Why did they want you to join them?

I was working for them taking notes during their interrogations but they wanted me to become more involved with them.

Did you ever take part in the torny(sic) torture operations?

No, I took statements from people that were being interrogated by security personnel.

(Emphasis added).

[21] Mr. Mutumba's description of the ISO as a "secret agent" or "security agency" and the torture acts linked with this organization were sufficient to conclude that it was principally directed to a limited, brutal purpose in the manner described in *Ramirez*, above, and subsequent case law.

[22] Accordingly, Mr. Mutumba's membership in the organization for a fifteen month period was sufficient to trigger the exclusion clause set forth at Article 1F(a) of the Refugee Convention.

[23] In support of its finding that the ISO was a secret police force that carried out violations of human rights and crimes against humanity, the Tribunal cites two documents at footnote 2 of its reasons, i.e. Exhibit M-2 Commonwealth Human Rights Initiative: The police, the people, the

politics: Police Accountability in Uganda, 2006 and Exhibit M-3 *Uganda Human Rights Commission Annual Report, chapter 02: investigations and resolution of complaints, 2004* (Exhibits “B” and “C” of Ketsia Dorceus’ affidavit).

[24] When examining the record before the Tribunal, the following appears: Exhibit M-2 describes a rising level of torture in Uganda (p. 9). The ISO is described as a government intelligence group which uses torture to achieve its objectives (p. 14). Exhibit M-4, Uganda Country Report, April 2005, Country Information and Policy Unit Immigration and Nationality Directorate, Home Office, United Kingdom at page 1094: at 2.9 “Among the agencies accused of torture are ... the Internal Security Organization (ISO)”.

[25] Exhibit M-3 refers to complaints of alleged human rights violations perpetrated by a number of Ugandan agencies, including the ISO (Exhibit M-3, p. 21) on page 1347 of the Tribunal Record, Mr. Mutumba, himself, when asked whether he had been aware “about the practice of torture”, answered, “absolutely, yes”.

[26] Taken as a whole, these documents and Mr. Mutumba’s statements confirm that he was a member of the ISO. He was aware of the torture perpetrated by this organization and that it was administered in secret as is evidenced by Mr. Mutumba’s personal experience of being detained for allegedly leaking information to the public. Accordingly, the Tribunal had all the required elements to apply the IF(a) exclusion clause in this case.

[27] The first instance tribunal did consider the written submissions of Mr. Mutumba and the Minister's representative in its consideration of the issue of exclusion. No requirement exists that the reasons reflect the totality of the arguments set out by the parties or that its findings are limited to that suggested by the litigants.

[28] Justice James Russell reiterated the principle set forth by the Federal Court of Appeal on this issue in *Mehterian v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 545 (QL) (F.C.A.):

[53] ... As held in *Mehterian* ..., written reasons of the Board must be sufficiently clear, precise and intelligible so that a claimant can understand why the claim has failed ...

[29] In the present case, the *ratio decidendi* of the Tribunal is clear, Mr. Mutumba is excluded under Article 1F(a) as a member of the ISO, an organization with a limited, brutal purpose, that of torture of Ugandan citizens. The reasons are clear and give Mr. Mutumba full knowledge of the reasons in support of the negative decision of the Tribunal.

Evidence provided by the Applicant on the ISO

[30] During the course of the hearing, the Tribunal noted that Mr. Mutumba provided the Tribunal with very different evidence as to his role in the ISO as compared to his earlier statements at the point of entry.

[31] Mr. Mutumba, at the Tribunal hearing, generally denied statements which he made at the point of entry interview. He became vague and evasive as to his duties in the ISO as opposed to earlier statements he had made.

[32] Mr. Mutumba claimed, at the hearing, to have had no knowledge of the ISO's practice of torture and killing of Ugandan citizens, also qualifying them as "rumours". This testimony was in complete contradiction to his testimony at point of entry where he, himself, spoke of torture perpetrated by this organization.

[33] In addition to all else Mr. Mutumba had presented, he referred to his current medical and psychological condition. This, nevertheless, does not change the sequence of events which had occurred in Uganda and which led to the finding of exclusion as rendered by the Tribunal.

[34] Subsequent to the evidence, Mr. Mutumba could not invoke a defence of duress as to his decision to remain with the ISO. In February 2005, seven months after joining the ISO, Mr. Mutumba specified that he gave thought to leaving the organization but remained since he did not have any other employment opportunity at the time. Mr. Mutumba was under no threat of imminent danger had he left his position at that time.

[35] The question of complicity was also considered by Justice Edmond Blanchard in *El Kachi v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 403, [2002] F.C.J. No. 554 (QL).

VI. Conclusion

[36] The Board's decision is upheld and Mr. Mutumba's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2668-08

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v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

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