

Federal Court



Cour fédérale

**Date: 20180611**

**Docket: IMM-4902-17**

**Citation: 2018 FC 607**

**Ottawa, Ontario, June 11, 2018**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**JOEL OSU OSU TARIEL and  
DJANNY MAKOBO NSUKA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Tariel and his younger brother, Mr. Makobo, are citizens of the Democratic Republic of the Congo. They seek refugee status on the grounds that their father, a high ranking military official, exercised force in order to have them join the army. Indeed, Mr. Makobo was allegedly severely injured by military officers and hospitalized. As a result, he suffers mental issues. In a very detailed set of reasons, the panel of the Refugee Protection Division of the Immigration and

Refugee Board of Canada held that they were neither refugees within the meaning of the United Nations Convention nor otherwise in need of Canada's protection. This is the judicial review of that decision.

[2] The panel was of the view that the determinant issue was credibility. That determination is to be considered within the timeline of the events.

[3] Following Mr. Makobo's beating, their mother organized visas for the United States. They accompanied her and arrived there 24 August 2015. There were warrants issued in the Congo for their arrest.

[4] It is alleged that another brother, Pierro, died in the Congo 16 September 2015. The claimants allege that he was beaten to death by military forces. There is a death certificate which is silent as to the cause of death.

[5] The claimants' mother returned to the Congo a few days later. All three had been staying with a family friend. However, with the mother gone, the friend no longer wanted the brothers about.

[6] They came to Canada in December 2015 to lodge with an aunt and sought refugee status here. They did not seek refugee status while in the United States. The Port of Entry notes indicated that they said their father was also being persecuted. They claim they said that because

they considered the border officials here to be military officers who would not take kindly to aspersions made against another military official.

[7] Mr. Makobo has been seen in Canada by doctors. He apparently suffers from a post-traumatic stress disorder. There were communication problems with the doctors in Toronto in that his mother tongue is French, with very limited English, while the doctors were English speaking. Some of the events related by the doctors were patently wrong. There may have been two reasons for this, a failure to communicate linguistically and Mr. Makobo's memory problems.

[8] As noted by the panel, Mr. Tariel testified at the hearing that his brother "does not always remember what he says, he just talks to talk". The panel concluded that Mr. Makobo "is not a credible witness overall, as he cannot be relied upon to speak the truth or to even remember what he said and when he said it".

[9] The panel found that the warrants for the brothers' arrest were fake. That finding was not contested.

[10] The panel was unsure about the brother's death certificate and Mr. Makobo's report of hospitalization because they did not give details. However, they were forms which did not really allow space to elaborate.

[11] The panel also made a negative inference with respect to subjective fear because no claim had been made for asylum in the United States. However, it must be noted that the claimants were in status while in the United States.

[12] Thus there are clearly discrepancies upon which the panel seized upon. The warrants were used to bolster their claim: “to guild the lily” if you will. It does not necessarily follow that there is no claim.

[13] However, the panel ranked these various inconsistencies:

The most significant of these inconsistencies relates to the death of their brother, which in their BOC's, the claimants alleged happened after they were already in Canada, whereas in the medical report, the doctor indicates the associate claimant (ie Mr. Makobo) told him he witnessed the death prior to coming to Canada.

[14] However, the panel had discounted the hearsay in the medical report, quite rightly. The claimants in their basis of claim forms did not say that their brother died after they were already in Canada. They stated that they were in the United States, which coincides with the death certificate and their mother's return to the Congo.

[15] The only conclusion to draw is that Mr. Makobo was suffering from post-traumatic stress disorder, and could not be relied upon to tell the truth, not because he was necessarily lying. Suppose he had been so severely beaten he had suffered from amnesia and could recall nothing. Would that mean that his claim for refugee status would be hopeless?

[16] To my mind, the decision most directly on point is that of Mr. Justice Locke in *Joseph v The Minister of Citizenship and Immigration*, 2015 FC 393, together with the authorities cited therein. In that case, the panel had drawn key negative inferences as a result of the applicant's inconsistencies in testimony, her dissociation from the events and her inability to explain them in a chronological order.

[17] He said at para 36:

Moreover, in the case of a person suffering from PTSD, medical evidence is essential in analyzing the credibility of a refugee protection claimant, since it helps explain the claimant's memory problems; failure to consider such evidence may be fatal to the reasonableness of the decision.

[18] In my opinion, in this instance, that failure was fatal.

**JUDGMENT in IMM-4902-17**

For reasons given, the application for judicial review is allowed and the matter referred back to another panel for redetermination. There is no serious question of general importance to certify.

"Sean Harrington"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4902-17

**STYLE OF CAUSE:** JOEL OSU OSU TARIEL et al v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 4, 2018

**JUDGMENT AND REASONS:** HARRINGTON J.

**DATED:** JUNE 11, 2018

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