Federal Court  Cour fédérale

Date: 20110826

Docket: IMM-6633-10

Citation: 2011 FC 1021

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, August 26, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

BOUBAKAR TRAORÉ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The decision at issue, rendered pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), is an exceptional and discretionary measure:

> [16] This exceptional measure is a part of a legislative framework where "[n]on-citizens do not have a right to enter or remain in Canada", where "[i]n general, immigration is a privilege not a right" (*Chieu*, para. 57) and where "the Act treats

> citizens differently from permanent residents, who in turn are treated differently from Convention refugees, who are treated differently from individuals holding visas and from illegal residents. It is an important aspect of the statutory scheme that these different categories of individuals are treated differently, with appropriate adjustments to the varying rights and contexts of individuals in these groups" (*Chieu*, para. 59).
>
> [17] Parliament chose, at subsection 114(2), to restrain the discretionary exercise to cases where there are compassionate and humanitarian considerations. Once these grounds are established, the Minister may allow the exception, but he may also choose not to allow it. That is the essence of the discretion, which must be exercised within the general context of Canadian laws and policies on immigration. The Minister can refuse to allow the exception when he is of the view that public interest reasons supercede humanitarian and compassionate ones. [Emphasis added.]

(*Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 F.C. 358; *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.)

II. Introduction

[2] This is an application for judicial review of a decision to refuse an application for permanent residence in Canada on humanitarian and compassionate (H&C) grounds dated June 25, 2010. This decision upheld the decision rendered August 3, 2010.

[3] In that decision, the Minister's delegate denied the application for an exemption sought in accordance with section 25 of the IRPA; consequently, the application for permanent residence was refused.

[4] The applicant argues that the decision is unreasonable because the Minister's delegate allegedly failed to consider all of the elements concerning the availability of treatments in Côte d'Ivoire and the applicant's characteristics, because the Minister's delegate failed to take the

applicant's stigmatization in Côte d'Ivoire into account and because the Minister's delegate improperly assessed the documents submitted by the applicant with respect to political risks.

[5] The Court agrees with the respondent's position as argued by Michèle Joubert. The decision by the Minister's delegate is well founded in fact and in law.

[6] The applicant also submitted an application for judicial review of the negative decision with respect to his pre-removal risk assessment (PRRA) application.

III. The facts (in summary—see Court decision, docket IMM-6635-10)

[7] On May 12, 2006, the Refugee Protection Division (RPD) of the Immigration and Refugee Board rejected the applicant's refugee claim, deeming his account to be entirely lacking in credibility.

[8] On January 29, 2007, Justice Danièle Tremblay-Lamer dismissed the application for judicial review submitted by the applicant in respect of the RPD's decision.

[9] In the context of his application for an exemption, the applicant presented, among other things, written submissions and an affidavit (both dated May 9, 2007), a copy of his PRRA file dated April 26, 2007, and numerous other documents. On September 16, 2007, the PRRA application was also denied.

IV. Decision under review

[10] After assessing the risks alleged by the applicant and the documents submitted in support of his allegations, the Minister's delegate found that the applicant would not be at risk if he were to return to his country.

[11] The Minister's delegate carefully analyzed the applicant's medical condition and the possibility of receiving care in Côte d'Ivoire in his case and also examined the submissions and documents presented by the applicant.

[12] On August 3, 2010, the Minister's delegate assessed the documents submitted to demonstrate the applicant's establishment and found the following:

> In his favour, I note that the documents submitted demonstrate that Mr. Traoré has entrepreneurial and networking skills. I note that Mr. Traoré has a track record as a business person prior to coming and that, given the type enterprise he has chosen to establish, he may even be able to continue working on this project from Côte d'Ivoire or establish something similar once he returns.

(Decision, Tribunal Record (TR) at page 4 and Applicant's Record (AR) at page 17.)

[13] After examining the documents, the Minister's delegate was not satisfied that the H&C application should be granted:

> Consequently, I am not satisfied that sufficient humanitarian and compassionate considerations exist to warrant an exemption to Mr. Traore's medical inadmissibility. I have also taken into consideration the issuance of a Temporary Resident Permit and similarly do not find sufficient humanitarian and compassionate considerations based on the same rationale.

(Decision, TR at page 70 and AR at page 15.)

> I am therefore satisfied that the March 24, 2010 package from Counsel does not alter my decison of June 25, 2010.

(Addendum dated August 3, 2010, TR at page 5 and AR at page 18.)

[14] The applicant is not challenging the merits of the findings on establishment or risks except concerning the finding that some of the new documents submitted by the applicant are purportedly fraudulent.

[15] The applicant argues that the decision is unreasonable because of the following:

a. the Minister's delegate made perverse or capricious findings with respect to the medical evidence;
b. the Minister's delegate improperly assessed the qualifications and expertise of Dr. Klein and Johanne Cyr;
c. the Minister's delegate did not consider the applicant's personal circumstances and stigmatization.

V. Relevant statutory provisions

[16] On June 16, 2010, section 25 of the IRPA read as follows:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national	**25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le

and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
…	[...]
Provincial criteria	**Critères provinciaux**
(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.	(2) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.
[Emphasis added.]	[La Cour souligne].

[17] On June 16, 2010, sections 66 to 68 of the *Immigration and Refugee Protection Regulations* SOR/2002-227 read as follows:

Humanitarian and Compassionate Considerations	**Circonstances d'ordre humanitaire**
Request	**Demande**
66. A request made by a foreign national under subsection 25(1) of the Act must be made as an application in writing accompanied by an application to remain in Canada as a	**66.** La demande faite par un étranger en vertu du paragraphe 25(1) de la Loi doit être faite par écrit et accompagnée d'une demande de séjour à titre de résident permanent ou, dans le

permanent resident or, in the case of a foreign national outside Canada, an application for a permanent resident visa.

cas de l’étranger qui se trouve hors du Canada, d’une demande de visa de résident permanent.

Applicant outside Canada

Demandeur se trouvant hors du Canada

67. If an exemption from paragraphs 70(1)(*a*), (*c*) and (*d*) is granted under subsection 25(1), 25.1(1) or 25.2(1) of the Act with respect to a foreign national outside Canada who has made the applications referred to in section 66, a permanent resident visa shall be issued to the foreign national if, following an examination, it is established that the foreign national meets the requirement set out in paragraph 70(1)(*b*) and

67. Dans le cas où l’application des alinéas 70(1)*a*), *c*) et *d*) est levée en vertu des paragraphes 25(1), 25.1(1) ou 25.2(1) de la Loi à l’égard de l’étranger qui se trouve hors du Canada et qui a fait les demandes visées à l’article 66, un visa de résident permanent lui est délivré si, à l’issue d’un contrôle, les éléments ci-après, ainsi que celui prévu à l’alinéa 70(1)*b*), sont établis :

(*a*) in the case of a foreign national who intends to reside in the Province of Quebec and is not a member of the family class, the competent authority of that Province is of the opinion that the foreign national meets the selection criteria of the Province;

a) dans le cas où il cherche à s’établir dans la province de Québec et n’appartient pas à la catégorie du regroupement familial, les autorités compétentes de la province sont d’avis qu’il répond aux critères de sélection de celle-ci;

(*b*) the foreign national is not otherwise inadmissible; and

b) il n’est pas par ailleurs interdit de territoire;

(*c*) the family members of the foreign national, whether accompanying or not, are not inadmissible.

c) les membres de sa famille, qu’ils l’accompagnent ou non, ne sont pas interdits de territoire.

Applicant in Canada

68. If an exemption from paragraphs 72(1)(*a*), (*c*) and (*d*) is granted under subsection 25(1), 25.1(1) or 25.2(1) of the Act with respect to a foreign national in Canada who has made the applications referred to in section 66, the foreign national becomes a permanent resident if, following an examination, it is established that the foreign national meets the requirements set out in paragraphs 72(1)(*b*) and (*e*) and

(*a*) in the case of a foreign national who intends to reside in the Province of Quebec and is not a member of the family class or a person whom the Board has determined to be a Convention refugee, the competent authority of that Province is of the opinion that the foreign national meets the selection criteria of the Province;

(*b*) the foreign national is not otherwise inadmissible; and

(c) the family members of the foreign national, whether accompanying or not, are not inadmissible.

Demandeur au Canada

68. Dans le cas où l'application des alinéas 72(1)*a*), *c*) et *d*) est levée en vertu des paragraphes 25(1), 25.1(1) ou 25.2(1) de la Loi à l'égard de l'étranger qui se trouve au Canada et qui a fait les demandes visées à l'article 66, celui-ci devient résident permanent si, à l'issue d'un contrôle, les éléments ci-après, ainsi que ceux prévus aux alinéas 72(1)*b*) et *e*), sont établis :

a) dans le cas où l'étranger cherche à s'établir dans la province de Québec, n'appartient pas à la catégorie du regroupement familial et ne s'est pas vu reconnaître, par la Commission, la qualité de réfugié, les autorités compétentes de la province sont d'avis qu'il répond aux critères de sélection de celle-ci;

b) il n'est pas par ailleurs interdit de territoire;

c) les membres de sa famille, qu'ils l'accompagnent ou non, ne sont pas interdits de territoire.

VI. Standard of review

[18] The standard of review applicable to H&C applications is reasonableness:

> [18] It is unnecessary to engage in a full standard of review analysis where the appropriate standard of review is already settled by previous jurisprudence (see: *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, at para. 62). The parties agree that the standard of review to be applied to an H&C decision is reasonableness. This standard is supported by both pre- and post-*Dunsmuir* cases . . . . [Emphasis added.]

(*Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 F.C.R. 360.)

VII. Analysis

Interpretation of subsection 25(1) of the IRPA

[19] The decision at issue, rendered pursuant to subsection 25(1) of the IRPA, is an exceptional and discretionary measure:

> [16] This exceptional measure is a part of a legislative framework where "[n]on-citizens do not have a right to enter or remain in Canada", where "[i]n general, immigration is a privilege not a right" (*Chieu*, para. 57) and where "the Act treats citizens differently from permanent residents, who in turn are treated differently from Convention refugees, who are treated differently from individuals holding visas and from illegal residents. It is an important aspect of the statutory scheme that these different categories of individuals are treated differently, with appropriate adjustments to the varying rights and contexts of individuals in these groups" (*Chieu*, para. 59).
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> [17] Parliament chose, at subsection 114(2), to restrain the discretionary exercise to cases where there are compassionate and humanitarian considerations. Once these grounds are established, the Minister may allow the exception, but he may also choose not to allow it. That is the essence of the discretion, which must be exercised within the general context of Canadian laws and policies on immigration. The Minister can refuse to allow the exception when he is of the view that public interest reasons supercede humanitarian and compassionate ones. [Emphasis added.]

(*Legault*, above; *Chieu*, above; *Baker*, above.)

[20] The onus of proof is on the person presenting an H&C application (*Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 F.C.R. 635).

Assessment of the evidence

[21] The applicant alleges that the part of the decision on the applicant's medical condition is unreasonable because the Minister's delegate improperly assessed the evidence without considering the documentary evidence he sent regarding treatments in Côte d'Ivoire, because the Minister's delegate erred by assessing the testimony of the experts in a cursory manner and because the Minister's delegate failed to consider the applicant's personal characteristics and stigmatization.

(i) The Minister's delegate did not disregard the medical evidence on the availability of retroviral treatments and the alleged lack of continuity

[22] The applicant alleges that the part of the decision on the applicant's medical condition is unreasonable because the Minister's delegate improperly assessed the evidence without considering the documentary evidence he sent regarding treatments in Côte d'Ivoire.

[23] The Minister's delegate took all of the documents submitted by the applicant into account.

[24] Given the nature of the decision at issue and the standard of review applicable to this type of decision, it has been well established that it is not up to this Court to reassess the evidence assessed by the Minister's delegate:

> [99] First, the applicant is criticizing the Minister's Delegate for not analyzing his personalized risk with respect to his particular medical condition. [Emphasis added.]

(*Lupsa v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1054.)

[25] It has not been demonstrated that the decision at issue is unreasonable given the following factors, most of which were mentioned by the Minister's delegate:

a. The applicant lived in Côte d'Ivoire for forty-four years, including ten years in Abidjan, before coming to Canada;
b. The applicant could therefore settle in Abidjan, where medications are more widely available than in the rest of the country;
c. There is no evidence in the record that a change in therapy could negatively affect the applicant's medical condition;
d. The applicant's children (except one, who resides in the United States) and extended family are in Côte d'Ivoire;
e. The applicant is a businessman who is used to being resourceful;
f. The applicant could prepare his return home with his attending physician in Canada and his family in Côte d'Ivoire in order to find a doctor there and be prescribed a therapy that is available in Abidjan and is the most compatible with the one he has here;
g. The costs associated with the therapy in Côte d'Ivoire are not prohibitive, between US $22 and US $35 in 2005, and the applicant could seek financial assistance from his family.

(Decision, TR at pages 66 to 70 and AR at pages 11 to 15.)

[26] Moreover, the recent elections have led to a change of government in Côte d'Ivoire.

[27] According to the assessment, the Minister's delegate considered all of the evidence and arguments submitted by the applicant.

(ii) The Minister's delegate did not err in assessing the evidence by the experts

[28] The applicant alleges that the part of the decision on the applicant's medical condition is unreasonable because the Minster's delegate erred by assessing the testimony by the experts in a cursory manner.

[29] However, it appears from footnotes 11 and 12 and in the reasons for decision to which these footnotes refer, the Minister's delegate properly understood the qualifications and area of expertise of the persons concerned.

(iii) The Minister's delegate did not err in assessing the personal characteristics and the stigmatization of the applicant

[30] The applicant's argument that the delegate disregarded his personal characteristics and stigmatization does not stand up to a reading of the reasons for decision. The reading demonstrates that the Minister's delegate understood the applicant's allegations (Decision, TR at pages 62, 63, 65, 66, 69 and 70 and AR at pages 7, 8, 10, 11, 14 and 15).

[31] As it appears in the reasons for decision, including the excerpts above, the Minister's delegate took the arguments submitted by the applicant into account.

Fraudulent nature of documents

[32] The applicant alleges that the delegate made an unreasonable and erroneous finding by indicating that the applicant had submitted fraudulent evidence and breached the principles of natural justice by not conducting an interview.

[33] Given the evidence in the record, the applicant, who was found not credible by the RPD, did not demonstrate that this finding is unreasonable and warrants the intervention of this Court.

[34] As it appears in the letter dated December 4, 2007, regarding the results of verifications by the authorities in Côte d'Ivoire, the unit head stated that the documents that were submitted are fraudulent, which confirms the opinion given by an embassy official dated November 8, 2007, in an e-mail to Anne-Marie Loungnarath (Verification results, TR at page 132; E-mail dated November 8, 2007, TR at page 336).

[35] Furthermore, as it appears in Ms. Loungnarath's letter dated January 30, 2008, in reply to that of counsel for the applicant dated December 28, 2007, not only is the applicant's name extremely common in Côte d'Ivoire, but also no other information making it possible to identify him, or the names of the other people involved, was provided.

[36] The applicant availed himself, on four occasions, of the opportunities provided to respond to the decision-maker's concerns with respect to the genuineness of the documents he submitted in connection with his PRRA application dated April 26, 2007. Thus, the applicant was able to respond

in December 2007, in February 2008, in March 2008 and in April 2008 and was able to send other documents.

[37] The filing of these documents confirms the applicant's lack of credibility as noted by the RPD and the Federal Court.

[38] Further to the Court's analysis, the finding by the Minister's delegate regarding these documents is reasonable.

VIII. Conclusion

[39] For all of the above-mentioned reasons, the applicant's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the applicant's application for judicial review be dismissed. No question for certification arises.

"Michel M.J. Shore"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6633-10
STYLE OF CAUSE:	BOUBAKAR TRAORÉ v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	August 10, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	August 26, 2011

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