



[2022] 1 F.C.R. D-10

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Judicial review of Immigration and Refugee Board, Refugee Appeal Division (RAD) decision affirming decision of Refugee Protection Division (RPD) which found that applicant was excluded from refugee protection pursuant to *United Nations Convention Relating to the Status of Refugees*, Article 1(F)(a) — Applicant, citizen of Senegal, former member of separatist rebel group *Mouvement des forces démocratiques de la Casamance* (MFDC) — Alleging forced to join MFDC as teenager — Later agreeing to work as MFDC informant — Betrayed MFDC to Senegalese army — Applicant later beaten by MFDC agents — Claiming refugee protection in Canada — RPD not believing that applicant acted under duress in his continued membership with MFDC — RAD not accepting applicant's explanation that due to earlier threats against him, applicant decided to stay even though ceasefire was in effect — RAD also not accepting applicant's argument no safe avenue of escape during his time as informant — Found serious reasons for considering that applicant voluntarily made significant, knowing contributions to commission of crimes against humanity — Applicant relying on *R. v. Ruzic*, 2001 SCC 24, [2001] 1 S.C.R. 687 for proposition that courts must take into consideration the particular circumstances where accused found himself and his ability to perceive reasonable alternative to committing crime, with an awareness of his background, essential characteristics — Submitting RAD erred in failing to come to grips with and deciding this aspect of case, submitting this is a requirement established by Supreme Court — Whether RAD decision reasonable — *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 S.C.R. 678 setting out tests for determining complicity in criminal activities of a group — First part of test in *Ezokola* concerning voluntariness, duress — Requirement to consider, assess applicant's "ability to perceive a reasonable alternative to committing a crime, with an awareness of his background and essential characteristics" applying equally to criminal, immigration proceedings where voluntariness/duress in issue — Not logical to have differing tests on same issue — No principled basis on which to narrow RAD's scope of inquiry, ignore teachings of Supreme Court in this case — *Ezokola*, *Ruzic* having great focus on defence of duress — Duress key component of voluntariness in immigration context — *Ruzic* may be considered in refugee context as well as criminal law context where duress in issue — RAD should have come to grips with, assessed "the particular circumstances where the accused found himself and his ability to perceive a reasonable alternative to committing a crime, with an awareness of his background and essential characteristics" — Application allowed.

SEYDI V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-7671-21, 2022 FC 1336, Brown J., reasons for judgment dated September 26, 2022, 15 pp.)