

Federal Court



Cour fédérale

**Date: 20151204**

**Docket: IMM-2819-15**

**Citation: 2015 FC 1347**

**Montréal, Quebec, December 4, 2015**

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

**BETWEEN:**

**GEORGES NYANDWI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Nyandwi was a television journalist in Burundi. The television network Héritage TV had him produce a series on good government. He produced a documentary on various assassinations. The heart of the program, which was broadcast on 8 October 2012, was an interview with Pierre Mbonimpa, a human rights advocate. Mr. Mbonimpa accused the government and certain high military and police officials of engaging in torture and carrying out various assassinations.

[2] Two days later, he received a call from a government information bureau requiring him to bring it a copy of the documentary. Two days after that he was attacked in the evening by three men. The implication is that they were in the government service.

[3] If Mr. Nyandwi had been believed, he certainly had an arguable basis to support his claim for refugee status in Canada. However, he was found not to be credible. This is the judicial review of that decision.

[4] I stated at the end of the hearing that I would grant judicial review and would issue a short set of reasons.

[5] The member of the Refugee Protection Division of the Immigration and Refugee Board of Canada made so many unjustified conclusions in her findings of fact that the decision is simply not reasonable.

[6] A CD of the interview was produced. She conceded that it showed Mr. Nyandwi interviewing Mr. Mbonimpa and was given the gist of the interview through an interpreter. Although she accepted it in evidence, she was not prepared to give it weight. She was not persuaded that it had actually been broadcast.

[7] Héritage TV had promptly written a letter to the police complaining about the attack on Mr. Nyandwi. A witness even gave the license plate number of the van which the three thugs

used. It seemed to be a government vehicle. These facts are consistent with Mr. Nyandwi's testimony that the documentary had been broadcast.

[8] It was simply too much to bring Mr. Nyandwi to task because he could not fully identify the three individuals who had attacked him from behind.

[9] It was also found that he did not even know the date of his recent marriage. Leaving aside the relevancy of this line of questioning, the record does not bear this out. The record simply does not evidence any confusion. He stated the exact date on which he was married. He had drawn a distinction between the date of his marriage and the date of the celebration thereof. The confusion was only in the member's mind.

[10] There are several other instances of conclusions not properly inferred from the facts, including the fact that he had recently applied for a Canadian visa, but was rejected. The implication is that he concocted this story in order to get to Canada. He speculated that perhaps his visa application was rejected because it was incomplete, although he thought that it was complete. We do not know what reason, if any, he was given for the rejection as the Canadian visa office in Nairobi had destroyed his application. In order to get to Canada from Burundi, he needed a visa. After he was rejected, he obtained an American visa, went to the United States and then crossed into Canada by land. He was then in position to claim refugee status. This episode is consistent with him having a subjective fear of persecution if he remained in Burundi.

[11] These are but a few of the troubling aspects of the decision.

**JUDGMENT**

**FOR REASONS GIVEN;**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The decision is quashed and the matter is referred back to another member of the Refugee Protection Division, of the Immigration and Refugee Board of Canada, for redetermination.
3. There is no serious question of general importance to certify.

“Sean Harrington”

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Judge

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

**DOCKET:** IMM-2819-15

**STYLE OF CAUSE:** NYANDWI v MCI

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** DECEMBER 1, 2015

**JUDGMENT AND REASONS:** HARRINGTON J.

**DATED:** DECEMBER 4, 2015

**APPEARANCES:**

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