

Federal Court



Cour fédérale

Date: 20160520

Docket: IMM-5288-15

Citation: 2016 FC 564

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 20, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**JEANNE MARIE NTIRANDEKURA
LUCE QUEENTHIA ISHATSE**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] Having considered the reasons for the negative decision of the Immigration and Refugee Board of Canada (IRB) Refugee Protection Division (RPD) on the entire docket and the applicable legal principles, I am satisfied in this case that the RPD committed a reviewable error by failing to clearly rule on the reasonable chance of persecution and the existence of a personalized risk involved in the applicants' return to Burundi, because of both their Tutsi

background and their family ties with Tutsi General Philibert Habarugira, one of the main instigators of the failed coup d'état against the President of Burundi, Pierre Nkurunziza, on May 13, 2015.

[2] In direct response to the RPD's question suggesting that [TRANSLATION] "currently, [the applicants are afraid] of returning to Burundi for reasons related to [their] ethnic background," the primary applicant said at the hearing that [TRANSLATION] "[she is] not only afraid of returning to Burundi because [she is] Tutsi, [but is also] afraid of returning to Burundi because [she is] sought by the authorities for participating in demonstrations [on May 10 and 13, 2015 against President Nkurunziza]." The applicant also testified that her husband [TRANSLATION] "is a judge, a magistrate," and that he [TRANSLATION] "is also seeking refuge and hiding," first, [TRANSLATION] "because [she] went to the demonstration," and second, because [TRANSLATION] "[his] brother is a general who was involved in the coup." At the beginning of the hearing, the RPD accepted the submission of photos showing the primary applicant's husband with his brother, General Philibert Habarugira, and an article published online on June 26, 2015, indicating the existence of [TRANSLATION] "an international arrest warrant for the coup-plotting General Philibert Habarugira," as well as a public service mutual corporation card with photos of the applicant and her husband, showing that her husband belongs to the judiciary. In the documentary evidence produced by the applicants at the hearing, there is another article published online on June 29, 2015, that addresses the issue of [TRANSLATION] "[the] ethnic dimension, with another conflict looming between the Hutu and Tutsi peoples."

[3] The RPD ruled that the primary applicant's testimony with respect to her own participation in the May 2015 demonstrations was not credible, and the applicants are not calling the reasonableness of that conclusion into question today. Be that as it may, without an independent analysis of the evidence, the RPD could not conclude that the primary applicant [TRANSLATION] "did not establish a well-founded fear of persecution for any of the grounds indicated (her own political involvement or assumed involvement, or her involvement in the family's social group), or for any of the reasons in the Convention."

[4] This is not a situation in which the RPD failed to rule on a ground of persecution "that had not been argued and that did not emerge perceptibly from the evidence presented as a whole" (*Guajardo-Espinoza v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 797 (FCA) at paragraph 5; *Pierre-Louis v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. No. 420 (FCA); *Singh v. Canada (Citizenship and Immigration)*, 2008 FC 453 at paragraph 22; *Singh v. Canada (Citizenship and Immigration)*, 2009 FC 1070 at paragraphs 23 and 24; *Ramirez v. Canada (Citizenship and Immigration)*, 2008 FC 466 at paragraph 17). Rather, it is a case in which the Court must intervene because "the crux of the claim may not have been adequately identified" (*Niyonkuru v. Canada (Citizenship and Immigration)*, 2012 FC 732 at paragraph 2) and in which the RPD's failure to address a potentially determining ground of persecution based on all of the evidence constitutes a reviewable error that justifies setting aside the decision and referring the claim for refugee protection for redetermination (*Canada (Attorney General) v. Ward*, [1993] 2 SCR 689 at pages 745 and 746; *Viafara v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526

at paragraphs 5 to 8; *Emmanuel v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 865 at paragraphs 5 *et seq.*).

[5] On the other hand, I do not consider the RPD's statement that the primary applicant [TRANSLATION] "specified that she was afraid to return because . . . her husband's brother was a general involved in the coup d'état, which is new information that was not included in the Basis of Claim (BOC) Form" as a clear indication that the RPD rejected that part of the claim because the primary applicant's allegations about her brother-in-law and her husband are not credible, particularly given that they are corroborated by photos and an article that she submitted into evidence.

[6] As indicated above, the RPD is mistaken when it states in paragraph 7 of the decision that the applicant [TRANSLATION] "testified that she was not afraid of returning because of her ethnic background (Tutsi)." Furthermore, beyond the applicants' subjective fear, and even beyond the conclusion of non-credibility with respect to the primary applicant's participation in the May 2015 demonstrations, the RPD was obligated to examine the existence of a reasonable chance of persecution and of a personalized risk involved in returning based on the most recent objective information from Burundi regarding the feared resurgence of tensions between the Hutu and Tutsi peoples, given the volatile environment and political instability caused by President Nkurunziza's decision to remain in power and seek out a third term, despite strong opposition in the country (*Attakora v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 444 (FCA)).

[7] For these reasons, the application for judicial review is allowed. The decision of November 3, 2015 is set aside and the case is referred back to the IRB for redetermination by another RPD panel. Counsel for the parties agree that there are no questions of general importance in this case.

JUDGMENT

THIS COURT ADJUDGES AND ORDERS that the application for judicial review be allowed. The decision of November 3, 2015 is set aside and the case is referred back to the Immigration and Refugee Board of Canada for redetermination by another Refugee Protection Division panel. There is no question to be certified.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5288-15

STYLE OF CAUSE: JEANNE MARIE NTIRANDEKURA
LUCE QUEENTHIA ISHATSE v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 18, 2016

JUDGMENT AND REASONS: MARTINEAU J.

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