

Date: 20060321

Docket: IMM-5448-05

Citation: 2006 FC 363

Ottawa, Ontario, March 21, 2006

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

CELESTIN NIYONGABO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) rendered on August 11, 2005 by Lamine Diallo, finding that the applicant was not a Convention refugee nor a person in need of protection.

ISSUES

[2] The applicant raises the following issues:

1. Did the Board commit a reviewable error in assessing the applicant's establishment of his identity?
2. Did the Board commit a reviewable error in disregarding or failing to consider the evidence before it?

[3] For the following reasons, the answers to these issues are negative and the application shall be dismissed.

BACKGROUND

[4] The applicant is a citizen of Burundi, of mixed Tutsi-Hutu ethnicity. He was born on December 25, 1980 in Bujumbura.

[5] In the context of the extreme tension between Burundi's Hutu and Tutsi ethnic groups, the applicant found himself rejected by both groups because of his mixed ethnicity.

[6] A Hutu criminal group told the applicant that he could prove his loyalty by killing his maternal uncle, a Tutsi. The applicant instead warned his uncle that the Hutu group wanted him dead. The Hutu group learned about this, and he and his uncle ended up fleeing together to neighbouring Rwanda, with the intention of seeking asylum in Canada.

[7] The applicant's uncle got him a passport, a plane ticket and a visa to the United States. The applicant does not know how his uncle obtained these documents.

[8] The applicant and his uncle flew from Kigali to Newark.

[9] Three weeks later, on March 24, 2004, the applicant came to Canada, where he immediately filed an asylum claim. He was detained upon his arrival because he had no documents to establish his identity.

[10] On June 23, 2004, the applicant was released from detention following a detention review decision where the member found that he had successfully established his identity by submitting the death certificates of both his parents.

[11] The applicant's asylum claim was heard on May 31, 2005.

DECISION UNDER REVIEW

[12] The Board's reasons reveal that the applicant's claim was dismissed because he was not found to be credible and the documents filed when he came to Canada were unacceptable ones.

[13] Regarding the applicant's identity, the Board noted that he had submitted a birth certificate and an ID card from Burundi. However, it also noted that expert analysis of the ID card revealed that it was apocryphal, and that the picture showed signs of having been removed and then stapled on the document.

[14] The Board also mentioned that in his United States visa applications from Rwanda, the applicant had claimed to be a Rwandan citizen and that he was wanted in Kigali in relation to a fraudulent U.S. visa ring along with eighteen other people.

[15] The Board was therefore unable to determine whether the applicant was really a citizen of Burundi or Rwanda.

[16] Citing section 106 of the Act and section 7 of the *Refugee Protection Division Rules*, SOR 2002-228 (the Regulations), the Board stated that the applicant had failed to provide reasons for his inability to submit acceptable documents establishing his identity.

[17] The Board also found that the applicant's testimony was not credible, and stated that the applicant's demeanour and answers throughout the hearing indicated that he was fabricating his allegations to obtain asylum in Canada.

[18] The Board concluded its reasons by stating that after considering the evidence before it, the applicant's lack of credibility led it to find that he had not established that he was a "Convention refugee" pursuant to section 96 of the Act.

ANALYSIS

1. Did the Board commit a reviewable error in assessing the applicant's establishment of his identity?

[19] The applicant submits that the Board committed a reviewable error in determining that the applicant had failed to establish his identity or to give a reasonable explanation for his lack of documentation. He argues that this determination contradicts the finding of the Immigration Division, which released him from detention on June 23, 2004.

[20] The applicant submits that the Board never dealt with the fact that the Immigration Division had accepted his identity.

[21] The jurisprudence of this Court is not unanimous on the issue of the applicable standard of review to the Board's findings regarding a claimant's identity.

[22] In *Mayuma v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1509, [2004] F.C.J. No. 1805 (T.D.) (QL), I applied the standard of patent unreasonableness. In *Rasheed v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 587, [2004] F.C.J. No. 715 (T.D.) (QL), my colleague Justice Martineau applied the standard of reasonableness.

[23] However, regardless of which standard is applied, I am not of the opinion that the Board committed a reviewable error in this case.

[24] Within the Board, the Refugee Protection Division is an independent tribunal, and it would be fettering its own discretion by finding itself bound by the findings of the Immigration Division regarding a claimant's identity.

[25] The applicant had the onus of establishing his identity on a balance of probabilities (*Yip v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1285 (T.D.) (QL)). Considering the expert analysis of his ID card that revealed that the picture had been tampered with, and the fact that he had applied for a U.S. visa in Rwanda using a Rwandan passport, it was not unreasonable for the Board to conclude that he had failed to establish his identity (*Mukharji v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 721, [2004] F.C.J. No. 911 (T.D.) (QL)).

2. Did the Board commit a reviewable error in disregarding or failing to consider the evidence before it?

[26] The applicant urges that the Board failed to give detailed examples explaining why it could not accept the applicant's testimony as truthful, and that it committed a reviewable error in not addressing documentary evidence relating to conditions in Rwanda and Burundi in its reasons.

[27] The Board's determinations regarding a claimant's credibility are findings of fact, and in the context of a judicial review application this Court should not intervene in the absence of a patently unreasonable error (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (QL)).

[28] I do not think the Board's adverse credibility finding was patently unreasonable in this case. The issue of the applicant's identity cannot be hermetically separated from that of the overall credibility of his allegations. His failure to establish his identity on the balance of probabilities was fatal to the outcome of his claim.

[29] As the Board noted in its reasons, it was unclear whether the applicant was a citizen of Burundi or Rwanda. The applicant's suggestion that the Board should then have addressed conditions in both of these countries in its reasons is inadmissible. He had the onus of establishing his identity and the existence of a well-founded fear of persecution, and the Board cannot be blamed in these circumstances for finding that he had failed to meet this onus.

[30] On the issue of credibility, the tribunal record shows that the applicant changed his story when confronted with the information obtained from the United States regarding his presence at the U.S. Embassy in Kigali to obtain a U.S. visa. The intervention of the Court is not warranted here.

[31] Neither party proposed questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5448-05

STYLE OF CAUSE: **CELESTIN NIYONGABO and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: March 16, 2006

**REASONS FOR JUDGMENT
AND JUDGMENT:** BEAUDRY J.

DATED: March 21, 2006

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