Federal Court  Cour fédérale

Date: 20120111

Docket: IMM-9680-11

Citation: 2012 FC 32

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, January 11, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

LEON MUGESERA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] In Léon Mugesera's case, the voice of the Supreme Court of Canada was already heard in 2005 in a unanimous judgment. This judgment recognizes that hundreds of thousands of Rwandans were reduced to silence by a genocide incited against an identifiable group characterized by its ethnic origin, the Tutsi.

> 178 In the face of certain unspeakable tragedies, the community of nations must provide a unified response. Crimes against humanity fall within this category. The interpretation and application of Canadian provisions regarding crimes against humanity must therefore accord with international law. Our nation's deeply held commitment to individual human dignity, freedom and fundamental rights requires nothing less.
>
> 82 Genocide is a crime originating in international law. International law is thus called upon to play a crucial role as an aid in interpreting domestic law, particularly as regards the elements of the crime of incitement to genocide. Section 318(1)of the *Criminal Code* incorporates, almost word for word, the definition of genocide found in art. II of the *Genocide Convention*, and the Minister's allegation B makes specific reference to Rwanda's accession to the *Genocide Convention*. Canada is also bound by the *Genocide Convention*. In addition to treaty obligations, the legal principles underlying the *Genocide Convention* are recognized as part of customary international law: see International Court of Justice, Advisory Opinion of May 28, 1951, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, I.C.J. Reports 1951, at p. 15. The importance of interpreting domestic law in a manner that accords with the principles of customary international law and with Canada's treaty obligations was emphasized in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 69-71. In this context, international sources like the recent jurisprudence of international criminal courts are highly relevant to the analysis.

(*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100).

[2] The Court refers to paragraphs 88, 89, 105, 106, 114 and 115 of this Supreme Court of Canada judgment (*Mugesera*, above).

[3] In Léon Mugesera's case, the unanimous voice of the Supreme Court of Canada, in its 2005 decision, sounds a refrain that now reverberates through the recent decisions of the European Court of Human Rights and the Appeals Chamber of the International Criminal Tribunal for Rwanda.

II. Introduction

[4] Léon Mugesera has been living in Canada for almost 20 years. On December 6, 2011, he received an 80-page decision in which the federal government determined that Léon Mugesera will not face significant risks should he return to Rwanda.

[5] The applicant is requesting a stay of the removal order pending a review of his applications for leave and applications for judicial review of the decisions that are currently being challenged on judicial review.

[6] The applicant is challenging the decision by the Minister's delegate, under subsection 15(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and the decision to remove him on January 12, 2012.

III. Summary of the merits of the case

[7] On June 28, 2005, the Supreme Court of Canada affirmed the decision of the Immigration Appeal Division [IAD] determining that the Minister of Citizenship and Immigration Canada [CIC] had discharged his burden of proving that the applicant was inadmissible to Canada for inciting to murder, hatred and genocide and for committing a crime against humanity under paragraphs 27(1)(*a*.1)(ii) and 27(1)(*a*.3(ii)) of 27(1)(*g*), 19(1)(*j*) of the former *Immigration Act.*

[8] On December 19, 2005, the Canada Border Services Agency [CBSA] informed the applicant that it intended to seek the opinion of the Minister of CIC under paragraph 115(2)(*b*) of the IRPA as to whether Léon Mugesera should be allowed to remain in Canada on the basis of the

nature and severity of the acts he committed. The applicant provided submissions and additional documents regarding this notice during the years that followed. He also requested and obtained more time to make submissions. The applicant had ample opportunity to make his case.

[9] Subsection 48(2) of the IRPA provides that a removal order must be enforced as soon as is reasonably practicable. Those circumstances are currently in place and have been since November 24, 2011, the date on which the Minister's delegate decided, under paragraph 115(2)(*b*) of the IRPA, that the applicant should not be allowed to remain in Canada on the basis of the nature and severity of the acts he committed.

[10] This Court told both parties that their two respective positions were distinct and clearly very far removed from each other. By inherent logic, following its in-depth assessment, this Court has no choice but to agree with the respondent's position. Changing or mitigating the respondent's statements would go against the spirit of the Supreme Court of Canada judgment considering that the respondent always keeps in mind the Supreme Court of Canada judgment in *Mugesera*. In addition, the Court makes this finding based on its research and analyses of both parties' arguments. According to *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, an inherent logic flows from the reasonable decision of the Minister's delegate. To do otherwise than to accept the respondent's position on the decision by the Minister's delegate would be to remove words like adding words and would be illogical to a work that demonstrates validity with regard to the decision by the Minister's delegate, which has been worked on since the 2005 Supreme Court of Canada judgment. This is a result of the Supreme Court decision (in the case of the applicant)

pursuant to which the Canadian authorities worked to ensure that the Rwandan government's assurances with respect to the applicant's safety and well-being would be valid and also to ensure that he would receive a fair trial. The CBSA established that it waited until it received solid assurances from Rwanda before refouling the applicant. Every statement in the decision of the Minister's delegate demonstrates care derived from an analysis of Canadian immigration law and an understanding of the facts regarding the applicant. The decision of the Minister's delegate is well reasoned and reasonable. The applicant did not demonstrate that there is a serious issue. The applicant did not establish that he would suffer irreparable harm if he were removed before his applications for leave and judicial review were disposed of. Finally, the balance of convenience favours the Minister.

IV. Facts

Immigration file

[11] On November 22, 1992, while he was vice-president of the Mouvement républicain national pour le développement et la démocratie [MRND] in the prefecture of Gisenyi, the applicant gave a speech calling for the extermination, in particular, of members of the Tutsi ethnic group. A few months prior to the applicant's speech, Tutsi had been massacred in Gisenyi (Decision of the Minister's delegate at pages 3, 17 and 18).

[12] On August 12, 1993, the applicant arrived in Canada as a refugee after obtaining that status at the Canadian Embassy in Madrid. He obtained his permanent residence the same day (Decision of the Minister's delegate at page 3).

[13] On June 28, 2005, the Supreme Court of Canada in the *Mugesera* decision, above, found that the applicant was inadmissible under sections 19 and 27 of the former *Immigration Act* because by giving his speech on November 22, 1992, he had committed the following crimes:

- He incited to murder: the applicant "not only intentionally gave the speech, but also intended that it result in the commission of murders" (paragraphs 79 and 80 of the Supreme Court decision);
- He incited to genocide: although he was aware that Hutu had massacred Tutsi, he attempted to incite MRND supporters to attack opposition party members (paragraphs 97 and 98 of the Supreme Court decision);
- He incited to hatred: "Mr. Mugesera's speech targeted Tutsi and encouraged hatred of and violence against that group" (paragraphs 107, 110 and 111 of the Supreme Court decision);
- He committed a crime against humanity: although he was aware of the attacks against opposition members, specifically the Tutsi, he gave a speech inciting to their extermination, a speech that was "part of a systemic attack directed against a civilian population that was occurring in Rwanda" (paragraphs 169, 179 and 177 of the Supreme Court decision).

[14] On November 24, 2011, the Minister's delegate concluded:

> [TRANSLATION]
>
> After carefully reviewing all the facts of the case, including humanitarian and compassionate considerations, and assessing the potential risks that Mr. Mugesera could face should he be returned to Rwanda as well as the nature and severity of his acts, I find that Mr. Mugesera may be removed from Canada despite subsection 115(1) of the IRPA because his return to Rwanda would not violate his rights under section 7 of the *Canadian Charter of Rights and Freedoms.*

(Decision of the Minister's delegate at page 79).

[15] On December 7, 2011, two CBSA enforcement officers met with the applicant in the presence of his counsel, Guy Bertrand, gave him the decision of the Minister's delegate and told him that his removal would take place in early January 2012.

[16] On December 22, 2011, the applicant filed an application for leave against the decision made by the Minister's delegate.

[17] On December 29, 2011, the applicant was advised that his removal would take place on January 6, 2012. Following an application by the applicant's new counsel, the CBSA agreed to defer his removal until January 12, 2012 (Applicant's Record [AR] at pages A-81 to A-84).

[18] On December 30, 2011, counsel for the applicant asked the CBSA to defer his removal *sine die* (AR at page A-84).

[19] On January 4 , 2012, the applicant filed a motion with the Federal Court asking for a stay of his removal. He challenged the decision made by the Minister's delegate.

[20] On January 5, 2012, the CBSA refused to defer the applicant's removal. Accordingly, the removal was scheduled for January 12, 2012 (Exhibit B to the Affidavit of Pierre Alain Moreau).

V. Decision of Minister's delegate

[21] After a comprehensive and detailed analysis of the evidence in the record, the Minister's delegate determined first that the applicant's speech calling for murder and genocide constituted an unacceptable act for Canadian society justifying his removal from Canada (Decision of Minister's delegate at pages 38 and 39).

[22] The applicant did not demonstrate that he could not receive a full and fair trial should he return to Rwanda:

- Since the end of the 1994 genocide, and particularly in recent years, the Rwandan government has made significant progress in ensuring that people charged with participating in genocide are tried impartially and within a reasonable time (Decision of the Minister's delegate at pages 44, 45, 48, 56 and 57);
- The Rwandan government made a commitment to consider and treat the applicant as a person transferred from a country or a foreign court (Decision of the Minister's delegate and assurances from the Rwandan government at page 53, Exhibit A to the Affidavit of Aleksandra Wojciechowski). The applicant will stand trial in the High Court (Rwanda) not in the gacacas: since the crimes he is charged with involve persons suspected of planning, organizing, coaching and inciting to genocide are tried, according to Rwandan law, by this court. Furthermore, the Rwandan government made a commitment that the applicant would not be tried in a gacaca (Decision of the Minister's delegate at page 53);

- The judges who sit on the High Court (Rwanda) are experienced professionals who are bound by a code of ethics and who must issue written judgments with reasons (Decision of the Minister's Delegate at page 53);
- The applicant will have the opportunity to call witnesses: the Rwandan government has taken steps to ensure that witnesses are protected (Decision of the Minister's Delegate at pages 60 and 61);
- The applicant will be able to have an independent free lawyer (Decision of the Minister's delegate at pages 60 and 61).

[23] The applicant has also not demonstrated that, should he return to Rwanda, he would be tortured and/or mistreated while in detention:

- Rwandan authorities are concerned about and actively prosecute individuals who threaten people suspected of participating in genocide (Decision of the Minister's delegate at page 64);
- The applicant cannot be sentenced to a harsher sentence than life imprisonment: the death penalty was abolished in 2007, and the Rwandan government made a commitment to not sentence the applicant to life imprisonment (Decision of the Minister's delegate at pages 62 and 63);
- The Rwandan government has committed itself to detaining the applicant in a prison that complies with international standards. Moreover, recent documentation shows that the Red Cross is monitoring 74,000 detainees to ensure good detention conditions (Decision of the Minister's delegate at pages 66 to 70);

- The Rwandan government also made a commitment to the Canadian government to respect the applicant's rights and provided diplomatic assurances regarding the treatment he will receive. Good faith on the part of the Rwandan government must be presumed, and there is no evidence that it did not comply with its commitments in the past (Decision of the Minister's delegate at pages 71 to 73).

[24] Moreover, the applicant has a high profile and is the subject of intense media scrutiny. It is reasonable to find that the Rwandan authorities will pay particular attention to respecting his rights and will ensure that he receives a full and fair trial (Decision of the Minister's delegate at page 70).

[25] The applicant has not demonstrated that the Rwandan government will not comply with the assurances it has given to the Canadian government (Decision of the Minister's delegate at page 73).

[26] In conclusion, the Minister's delegate determined that there were no humanitarian or compassionate considerations that could lead him to find that the applicant's removal to Rwanda would cause unusual or undeserved hardship. He found notably that Léon Mugesera has never felt remorse about the speeches he gave and still continues to deny statements about genocide (Decision of the Minister's delegate at pages 77 and 78).

VI. Analysis

[27] To assess the merits of the stay motion, this Court must determine whether the applicant satisfies the jurisprudential criteria laid down by the Federal Court of Appeal in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA).

[28] In that case, the Federal Court of Appeal adopted three criteria that it imported from the case law on injunctions, specifically the Supreme Court of Canada decision in *Manitoba (Attorney General) v Metropolitan Stores Ltd.*, [1987] 1 SCR 110. These three criteria are:

(1) the existence of a serious issue;

(2) the existence of irreparable harm; and

(3) the assessment of the balance of convenience.

[29] The three criteria must be met for this Court to grant the requested stay. If one of them is not met, this Court cannot grant the stay.

[30] In this case, the applicant did not demonstrate the existence of a serious issue to be tried on his application for leave against the decision of the Minister's delegate or the existence of irreparable harm and, finally, the applicant's inconvenience does not outweigh the public interest in wanting the removal to be enforced as soon as is reasonably practicable under subsection 48(2) of the IRPA.

A. *Serious issue*

[31] The applicant has not demonstrated the existence of a serious issue to be tried by this Court for the following reasons:

(i) It is not necessary that the applicant be convicted to justify the exception to the principle of non-refoulement.

[32] The applicant argues that subsection 115(2) of the IRPA should be interpreted as requiring a conviction in accordance with paragraph 33(2) of the Convention (Applicant's memorandum at paragraphs 1 to 13). The applicant also contends that the fact that he has not been convicted by a final judgment and the fact that the Supreme Court did not find beyond a reasonable doubt that the crimes were committed cannot in law justify a decision to return the applicant under subsection 115(2) of the IRPA.

Standard of review

[33] It is important to keep in mind that inadmissibility proceedings fall within civil law, not criminal law, and to understand that Parliament's intent is not to lead the decision-maker to determine an individual's guilt but rather the individual's admissibility under the legal test that the decision-maker is required to apply.

[34] Requiring a conviction by a final judgment amounts to applying a higher standard of proof than necessary when the standard of proof in the case of subsection 115(2) of the IRPA is reasonable grounds to believe. The principle that reference to criminal law in immigration matters has to be made with circumspection:

> [67] Before concluding on that issue, I make two further comments. First, while it is understood that the provisions of the *Criminal Code* will play an important role in a determination of complicity in the context cited above, (especially when we consider subsection 34(2) of the *Interpretation Act*, RSC, 1985, c I-21), it is not excluded that other Acts of Parliament may apply to a particular situation on a finding of complicity (see subsection 4(4) of the Cr.C). Second, reference to criminal law in the context of immigration matters has to be made with circumspection and with the required adaptations, especially since the proper standard of proof applicable to subsection 115(2) of the Act is reasonable grounds and not beyond reasonable doubt. [Emphasis added].

(*Nagalingam v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 153, [2009] 2 FCR 52).

Statutory provision prevails over international rule

[35] In response to the applicant's arguments concerning paragraph 33(2) of the Convention, the Court agrees that the respondent's reminder in *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436, [2006] 3 FCR 655, the Federal Court of Appeal rejected the argument that international human rights instruments take priority over the provisions of the IRPA. The Court found that if there is a conflict between the two rules, the statutory provision must prevail over an international rule.

Statutory context

[36] Moreover, at paragraph 91 of *de Guzman*, above, the Federal Court of Appeal stated that whether a statutory provision complies with Canada's international obligations must be considered in the context of the entire legislative scheme.

[37] With respect to the statutory context, maintaining the security of Canadians and denying access to persons who are criminals or security risks are important objectives of the IRPA:

3. (2) The objectives of this Act with respect to refugees are	**3.** (2) S'agissant des réfugiés, la présente loi a pour objet:
…	[...]
(*g*) to protect the health and safety of Canadians and to maintain the security of Canadian society; and	*g*) de protéger la santé des Canadiens et de garantir leur sécurité;
(*h*) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals	*h*) de promouvoir, à l'échelle internationale, la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.

[38] The principle of non-refoulement in subsection 115(1) of the IRPA generally prohibits returning a person who has been granted refugee status.

[39] However, to ensure that the above-noted objectives are met, the IRPA provides an exception to the principle of non-refoulement in paragraph 115(2)(*b*) of the IRPA; it permits the Minister to disregard this restriction and to deport a person to a country where he or she risks persecution or torture if the person is inadmissible on grounds of security, violating human or international rights or organized criminality on the basis of the nature and severity of acts committed or of danger to the security of Canada.

[40] The applicant committed serious crimes and because of that is inadmissible under paragraphs 27(1)(*a*.1)(ii) and 27(1)(*a*.3(ii)) of 27(1)(*g*), 19(1)(*j*) of the former *Immigration Act*.

These paragraphs refer to the commission, outside Canada, of acts constituting certain crimes or offences. These provisions do not require that a person be convicted of a crime.

[41] Moreover, in this regard, the Minister's delegate stated as follows on pages 38 and 39 of his decision:

> [TRANSLATION]
>
> I find that Mr. Mugesera's act, a violent speech inciting to murder, in light of the circumstances surrounding his speech, i.e. the climate of ethnic tension that existed in Rwanda and his own knowledge of ethnic and political issues, is an unacceptable act for any society. The objectives stated in the IRPA and the objectives aimed at suppressing serious crimes that constitute human rights violations, reflected in international instruments and the decisions of international courts as well as in our own Canadian criminal law, condemn this behaviour. I am satisfied as to the extreme seriousness of this type of behaviour, which is a force whose devastating and destructive potential has been clearly demonstrated. I am satisfied that there are reasonable grounds to believe that the nature and severity of the acts committed justify that he not be allowed to remain in Canada. I am satisfied that Mr. Mugesera's very serious act is important and significant, in that it is associated with serious violence or harm to other persons. I am aware [that] the exception in paragraph [*sic*] 115(2)(6) regarding violations of human or international rights applies to Convention refugees or protected persons, and I am satisfied that Mr. Mugesera should not be allowed to remain in Canada because of the nature and severity of the acts he personally committed under our internal laws, applying the reasonable grounds standard.

[42] In addition, the Rwandan authorities issued an arrest warrant against the applicant. Although the applicant has not at this time been convicted by a final judgment and beyond a reasonable doubt, the fact that the Rwandan authorities issued an arrest warrant shows that the applicant must be the subject of an investigation and possibly will stand trial on the allegations against him. In his decision under subsection 115(2) of the IRPA, the delegate took into account the Rwandan legal system and the diplomatic assurances given to Canada and found that the applicant will have the

right to a full and fair trial. The purpose of the Convention is certainly not to permit an individual to evade the law.

[43] In light of the foregoing, the applicant's arguments do not raise a serious issue.

Section 7 of the Charter and Canada's international obligations

[44] The applicant contends that section 7 of the Charter will be breached if he is removed from Canada and that Canada would violate the "*Civil Covenant*" (*International Covenant on Civil and Political Rights)* and the *Canadian Bill of Rights*.

[45] In this case, it appears from the decision that the Minister's delegate considered all the circumstances of the case when he found that the applicant would not be at risk of persecution, torture or cruel and unusual treatment or punishment should he be returned to Rwanda and, consequently, that he could authorize his removal to the country in question (Decision of the Minister's delegate at pages 39 to 74 regarding the risk assessment).

[46] In this respect, the Supreme Court of Canada has maintained on a number of occasions that a Court must show deference when reviewing a minister's decision to enforce a removal order. In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3, the Court stated the following:

> . . . the Minister's decision on whether a refugee faces a substantial risk of torture upon deportation should be overturned only if it is not supported on the evidence or fails to consider the appropriate factors. <u>The court should not reweigh the factors or interfere merely because it would have come to a different conclusion</u>. [Emphasis added].

(Also, *Chieu v Canada (Minister of Citizenship and Immigration*), 2002 SCC 3, [2002] 1 SCR 84; *Al Sagban v Canada (Minister of Citizenship and Immigration*), 2002 SCC 4, [2002] 1 SCR 133).

[47] The applicant must demonstrate that he will be persecuted and/or subjected to torture and mistreatment if he is returned to his country, which he has not done.

[48] The applicant has been afforded all the procedural guarantees. The Minister's representative provided appropriate procedural guarantees in that the applicant was sufficiently informed of the proceeding against him, had a full and complete opportunity to respond to it and was given written reasons for the decision. Furthermore, it appears from the decision of the Minister's delegate that, since 2005, the applicant has benefited from a number of significant extensions of time to make his case (Decision of the Minister's delegate at pages 5 to 7).

Applicant's arguments do not raise a serious issue

[49] The applicant argues at paragraphs 31 and following of his submissions that the Minister's delegate relied on assurances given by Rwanda without considering the evidence filed by the applicant who showed, according to him, that these assurances are unreliable.

[50] First, it appears from the reasons of the Minister's delegate that his findings regarding the risks of return are not based solely on the diplomatic assurances given by the Rwandan government but on an assessment of all the evidence in the record on a number of risk factors, including all the representations submitted.

[51] Second, a review of the reasons for decision does not support the applicant's submissions that evidence was disregarded. After summarizing the assurances provided by the Rwandan government, the Minister's delegate, on the contrary, appropriately considered the evidence submitted to the effect that these assurances can be considered reliable given the human rights record in Rwanda since the genocide, the involvement of the Rwandan Patriotic Front [RPF] in human rights violations and, specifically, the responsibility of the RPF and Paul Kagamé in the genocide. The Minister's delegate also took into consideration the fact that Amnesty International, Human Rights Watch and other NGOs are firmly opposed to the use of diplomatic assurances.

[52] After considering all the evidence, the Minister's delegate determined the following, on page 70 of the decision, with respect to the diplomatic assurances provided:

> [TRANSLATION]
>
> They are not notes written in general terms but refer clearly, unequivocally, to specific rights, which adds to the value, in my opinion. I noted that the record of human rights since the genocide occurred is problematic, but I also recognize that, in many respects, the Rwandan government has made enormous efforts to surmount the chaos that prevailed after the tragedy it experienced. The reports identified these efforts not only in the ten years following the genocide but also in the more recent reports. Although human rights violations are still reported, I found that the probability that Mr. Mugesera would be subjected to torture and cruel and unusual treatment or punishment was not demonstrated.
>
> There is no evidence before me that assurances provided by the Rwandan government in the past were not adhered to. Although the past human rights record must be considered when the time comes to assess the weight to be given to assurances, the suggestion that it must be assumed that the government is acting in bad faith cannot be accepted in the absence of demonstrated breaches of past assurances. [Emphasis added]

[53] Last, still with respect to assessing the probative value of the assurances, the Minister's delegate considered the fact that the applicant has a high profile and has been the subject of intense

media scrutiny. Accordingly, the Minister's delegate found that the Rwandan authorities will pay particular attention to his rights and will ensure that he receives a full and fair trial:

> [TRANSLATION]
>
> One must also take into consideration the intense media scrutiny that Mr. Mugesera has been the subject of until now and the possible ramifications for a state like Rwanda of not complying with the assurances, given the fact that Rwanda and other jurisdictions have requested transfers from the ICTR under extradition applications. Although it cannot be determined in advance how much weight the Rwandan government would give to such ramifications, it is reasonable to conclude that the damage in terms of international credibility and diplomatic relations would be significant, in the context of the stated objective to prosecute persons suspected of genocide and the support that Rwanda has from the international community, including Canada, to rebuild a country devastated by genocide. [Emphasis added]

(Decision of the Minister's delegate at page 70).

[54] In a recent decision concerning an assessment by the Minister's delegate of assurances provided by the Chinese government, the Court declined to make its own assessment of the value of the assurances and found that the assessment did not raise a serious issue (*Lai Cheong Sing v Canada (Minister of Citizenship and Immigration)*, 2011 FC 915).

[55] The applicant did not demonstrate that the Minister's delegate disregarded evidence. Although the applicant does not agree with the assessment made by the Minister's delegate, it is for the Minister's delegate and not the applicant to assess the evidence, and the delegate's findings in this regard are reviewable on the reasonableness standard. In *Nagalingam*, above, at paragraphs 32-33, the Federal Court of Appeal found, in light of *Suresh*, above, and *Dunsmuir*, above, that a high degree of deference is to be afforded to the Minister's representatives such that the appropriate standard of review is reasonableness.

[56] Thus, the applicant's submissions have failed to establish that the decision of the Minister's delegate was unreasonable and there is, therefore, no serious issue to be tried with respect to the application for judicial review he filed against that decision.

[57] Accordingly, the stay motion could be dismissed on this ground alone.

B. *Irreparable harm*

[58] Recently in *Jeyamohan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1081, Justice Danièle Tremblay-Lamer stated:

> [37] In *Ragupathy v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151, at paragraph 18, the Federal Court of Appeal proposed a framework for the delegate to apply, once it has been established that a protected person is inadmissible on grounds of serious criminality and constitutes a danger to the public, in order for the delegate to formulate his or her opinion under paragraph 115(2)(*a*) of the IRPA:
>
> > . . If, on the other hand, the delegate is of the opinion that the person is a danger to the public, the delegate must then assess whether, and to what extent, the person would be at risk of persecution, torture or other inhuman punishment or treatment if he was removed. At this stage, the delegate must determine how much of a danger the person's continuing presence presents, in order to balance the risk and, apparently, other humanitarian and compassionate circumstances, against the magnitude of the danger to the public if he remains.
>
> [38] In *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 355, Justice Blanchard concluded that the threshold for determining whether *refoulement* is possible is to ask whether it will expose the applicant to a serious risk of torture. This risk must be personal and present and be assessed on the basis of criteria that go beyond "mere theory" or "suspicion":
>
> > If the risk is not established, there is no need to pursue the analysis since the applicant is not entitled to the protection afforded by subsection 115(1) of the IRPA.

[59] It is settled law that the fact that an applicant has been granted "Convention refugee" status in the past is not sufficient to establish a present risk under sections 96 and 97 of the IRPA (*Nagalingam,* above, at paragraph 25; *Camara v Canada (Minister of Citizenship and Immigration),* 2006 FC 168 at paragraph 58).

[60] Moreover, the assessment of the alleged risk must be personal or shared by others who are in a similar situation. This is apparent from sections 96 and 97 of the IRPA.

[61] In this case, the Minister's delegate thoroughly analyzed the risk that the applicant could face if he were removed.

[62] The Minister's delegate conducted a comprehensive and nuanced analysis of the documentary evidence concerning all the allegations of risk that were advanced. The Minister's delegate considered the applicant's specific allegations and assessed them on the basis of the documentary evidence in the record.

[63] With respect to section 97 of the IRPA, the Minister's delegate found as follows on page 74:

> [TRANSLATION]
>
> For the above-noted reasons, on the balance of probabilities, it is my opinion that Mr. Mugesera is not at risk of torture, considering the findings that I made on the recent human rights situation in Rwanda and the improvements made by the government over the years, and given the heavy media coverage and the surveillance that he will be subject to should he be returned to the Rwandan authorities. I am satisfied that the Rwandan government will comply with the assurances it has provided given the international pressure and the diplomatic repercussions that could follow. On the same basis, I am satisfied that he is not at risk of cruel and unusual treatment or punishment although it is clear that he is at risk of a long period of detention if he is convicted, in what will likely be difficult conditions.

[64] After a comprehensive review of the documents on country conditions as well as the evidence directly related to the applicant (written assurances given by the Government of Rwanda to the Government of Canada), the Minister's delegate reasonably determined that he will not be at risk of torture or cruel and unusual treatment or punishment in that country.

[65] The applicant has not established that the decision breached section 7 of the Charter. On the contrary, the Minister's delegate assessed the risks the applicant would face specifically to ensure that his refoulement would not contravene section 7 of the Charter.

[66] Moreover, in the last few months, the Appeals Chamber of the International Criminal Tribunal for Rwanda and the European Court of Human Rights agreed to transfer to the Rwandan authorities Rwandans charged, *inter alia*, with participating in genocide and found:

- They accepted commitments made the Rwandan government;
- The Rwandan judicial system cannot be considered as a system lacking in impartiality and independence. Hence, accused persons will receive a full and fair trial;
- Detention conditions for accused persons comply with international standards, and they will not face mistreatment.

[67] These judgments from two recognized international tribunals confirm the findings made by the Minister's delegate, namely, that it is reasonable to believe in the good faith of the Rwandan government and to conclude that the rights of individuals charged with participating in genocide will be respected and that they will not be persecuted.

[68] Recently, this Court stated that it must be assumed that a government will comply with assurances given to the Canadian government:

> [6] It is for these reasons that Canada requested strict, clear and unequivocal assurances from the Chinese Government in respect of the Applicant, Cheong Sing Lai, a fugitive from the Chinese justice system, who has been in Canada since 1999 and who is now under a deportation order. These assurances have now been received. It is assumed that the assurances of the Chinese Government, as per its written promises, will be kept, as the Chinese Government's honour and face is, and will be, bound and kept respectively, by the monitoring for the lifetime of the Applicant and, eventually, in time to come, in the reason for his eventual passing, as to whether it be natural or otherwise, recognizing fully well the age and current state of health of the Applicant (as per medical monitoring measures, also outlined in the assurances). [Emphasis added.]

(*Lai Cheong Sing*, above)

[69] In the circumstances, the applicant's allegations are clearly insufficient to establish that his return to Rwanda would cause him irreparable harm.

[70] As a result, and in the absence of a serious issue to be tried by this Court, the harm the applicant alleges has not been demonstrated.

C. *Balance of convenience*

[71] The balance of convenience favours the Minister. Subsection 48(2) of the IRPA provides that a removal order must be enforced as soon as is reasonably practicable. Since the time when the Minister's delegate issued his decision under subsection 115(2) of the IRPA, circumstances have been such that the removal order can be enforced. As the Federal Court of Appeal recognized, the removal of an applicant is not simply a question of administrative convenience. It implicates the

integrity and fairness of, and public confidence in, Canada's system of immigration control (*Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at paragraph 22).

[72] In the absence of serious issues and irreparable harm, the balance of convenience favours the Minister, who has an interest in having the removal order enforced on the scheduled date (*Mobley v MCI*, (January 18, 1995) IMM-106-95).

[73] One of the objectives of the IRPA is to promote international justice and security by fostering respect for human rights.

[74] As the Supreme Court of Canada recognized in *Mugesera*, above, shortly after the Tutsi were massacred in Gisenyi, the applicant, as vice-president of the MRND, asked the population at large, specifically the Hutu, to exterminate the Tutsi. Less than a year and a half after his speech, over a million Tutsi and moderate Hutu had been massacred notably through the MRND militia. The applicant incited to hatred, genocide and murder and committed a crime against humanity. These are serious crimes that run counter to Canadian values.

[75] The applicant never showed any [TRANSLATION] " remorse regarding his conduct in Rwanda." Furthermore, he never recognized the genocide of Tutsi and Hutu that was planned and organized by the Rwandan government (Decision of the Minister's delegate at page 77).

[76] The applicant has been living in Canada for almost 20 years and has taken advantage of every opportunity to be heard with respect to both his ineligibility and the Minister's opinion issued under paragraph 115(2)(b) of the IRPA.

[77] It is in Canada's interest to prevent individuals who, like the applicant, have committed serious crimes from remaining in the country. In this case, it is unquestionable that the public interest must prevail.

[78] Accordingly, the balance of convenience favours the Minister.

VII. Conclusion

[79] The factual basis cannot be reassessed. The judgment of the Supreme Court of Canada cannot be overturned directly or indirectly by reconsidering the validity of section 115 of the IRPA as the applicant would like. At this final stage, it is also important to note that the judicial review of the decision of the Minister's delegate sought by the applicant also cannot address the legitimacy of the removal order again without contradicting the disposition of the Supreme Court of Canada in *Mugesera*, which reads:

> 179 Based on Mr. Duquette's findings of fact, each element of the offence in s. 7(3.76) of the *Criminal Code* has been made out. We are therefore of the opinion that reasonable grounds exist to believe that Mr. Mugesera committed a crime against humanity and is therefore inadmissible to Canada by virtue of ss. 27(1)(*g*) and 19(1)(*j*) of the *Immigration Act*. [Emphasis added].

[80] According to this reasoning of the Supreme Court of Canada, if Léon Mugesera were to remain in Canada following the assurances received from Rwanda, this Court would be completely contradicting the decision of the Supreme Court.

[81] For all the foregoing reasons, the Court dismisses the applicant’s application for a stay.

JUDGMENT

THE COURT ORDERS that the applicant's application for a stay is dismissed. There is no question of general importance to certify.

"Michel M.J.Shore"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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