Federal Court

Cour fédérale

Date: 20121022

Docket: IMM-9799-12

Citation: 2012 FC 1230

Ottawa, Ontario, October 22, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JEAN LEONARD TEGANYA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This decision is in response to an application, heard today, Monday morning, October 22, 2012, to stay the Applicant's removal to Rwanda in less than eighteen hours, at 3:30 a.m., Tuesday, October 23, 2012.

[2] The Applicant came to Canada in 1999; he was excluded from refugee protection under Articles 1(F)(a) and 1(F)(c) of the Convention relating to the Status of Refugees, not once, but twice

(twice, due to a procedural fairness argument in respect of the first hearing he had had before the Refugee Protection Division [RPD] of the Immigration and Refugee Board).

[3] The first RPD decision was set aside by this Court due to an accepted challenge to procedural fairness.

[4] The second decision, as did the first RPD decision, nevertheless, still determined that the Applicant, as a medical intern in a Rwandan hospital where atrocities had taken place, had lived in a context of direct knowledge of atrocities committed; and, as a result, he was determined to have been complicit.

[5] Upon considering the Applicant’s case anew, the RPD decided that the Applicant is to be excluded under the very same articles of the Convention relating to the Status of Refugees as had been determined in the first decision of the RPD:

> Article 1
>
> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> …
>
> (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

[6] The second decision of the RPD specified that moderate Hutus and Tutsis had been killed at the same hospital where the Applicant was present during a massacre. The fact that the Applicant

was left unscathed was conceived by the RPD to have demonstrated that the Applicant had been considered to be an extremist.

[7] Although the information on file specifies that the Applicant's father belonged to the ruling party during the genocide, and, that the father of the Applicant had been arrested, detained and sentenced to twenty two years imprisonment, does not implicate the Applicant as having been associated with crimes his father may have committed. To date, the Applicant was never, knowingly, charged, neither was he accused of anything, nor was there any investigation in his regard by the Rwandan government.

[8] Although pre-trial detention does exist in Rwanda for those who stand trial, the Applicant's evidence in that regard and country conditions, considered in a second Pre-Removal Risk Assessment [PRRA], determined no clear and convincing evidence of a risk to the Applicant.

[9] Country conditions do not support a determination of a speculative nature of "irreparable harm" to the Applicant, even if he is, or would be, wanted for genocide atrocities. Under the country conditions before the second PRRA decision-maker, the second decision, itself, in that regard, clearly stated (in view of no new evidence of significance having been provided since the first PRRA decision), that fears of criminal prosecution in Rwanda, do not support an argument for a finding of "irreparable harm" (second PRRA decision of March 7, 2012 at p 7 of the Motion Record).

[10] It is important to note that this Court has clearly stated in a June 2011 decision, in respect of the second PRRA determination, that the determination of that PRRA is not unreasonable even with the possibility of a prolonged detention or of prison conditions as they were specified in the evidence before the PRRA decision-maker.

[11] This Court, in regard to this application, has been made fully cognizant, through written and oral arguments by counsel on both sides, of the decisions of the Refugee Protection Division, two Pre-Removal Risk Assessments and one decision in regard to humanitarian and compassionate [H&C] grounds, all of which have been dismissed by decision-makers in the past in respect of the Applicant.

[12] For all of the above reasons, the tri-partite *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) decision test is not met in any of the three conjunctive, thus, essential, criteria of that test; therefore, the stay of removal is denied.

ORDER

THIS COURT ORDERS that the Applicant's application for a stay of removal be dismissed.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9799-12
STYLE OF CAUSE:	JEAN LEONARD TEGANYA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION HELD VIA TELECONFERENCE ON OCTOBER 22, 2012 FROM OTTAWA, ONTARIO AND TORONTO, ONTARIO

REASONS FOR ORDER AND ORDER:	SHORE J.
DATED:	October 22, 2012

ORAL AND WRITTEN REPRESENTATIONS BY:

Clare Crummey	FOR THE APPLICANT
Leila Jawando	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT