

Federal Court



Cour fédérale

Date: 20140204

Docket: IMM-1528-13

Citation: 2014 FC 122

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 4, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

JUVENAL NSENGIYUMVA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision by Immigration Officer J. Bonin (Mr. Bonin), of the pre-removal risk assessment unit (PRRA unit), of Citizenship and Immigration

Canada (CIC) dated January 31, 2013 (decision), to reject the applicant's PRRA application. The applicant is seeking to have the decision set aside and referred back to a differently constituted panel.

I. Background

[2] The applicant is a Catholic priest and a Rwandan citizen of Hutu origin. He was ordained in August 1992. In July 1994, he left Rwanda for the Democratic Republic of the Congo (DRC).

[3] On August 2, 1994, in Goma, DRC, he and 28 other Rwandan priests signed and sent a letter to Pope John Paul II. The letter accused the Rwandan Patriotic Front (RPF), the political party of Rwanda's current president, Paul Kagame, of being responsible for all of the killings in Rwanda; objected to the establishment of a tribunal to rule on acts of genocide; and denied that the Tutsi community had been targeted, indicating that that minority holds all rights and that only that ethnic group is listened to.

[4] In April 1997, he returned to Rwanda, where he continued to practise ministry in the Diocese of Ruhengeri.

[5] The applicant alleges that, on July 4, 1999, he was attacked when a lieutenant of the Rwandan army deliberately caused a car accident. The applicant therefore decided to leave Rwanda for Canada.

[6] He arrived in Canada on September 12, 1999, and claimed refugee protection here on November 5, 1999.

[7] On October 3, 2001, the Convention Refugee Determination Division (CRDD) of CIC rendered a negative decision with respect to his refugee claim, stating that the applicant had a negationist attitude towards the Rwandan genocide, and that the account given was not trustworthy, in particular regarding the car accident that provoked his departure from Rwanda.

[8] The applicant filed an application for judicial review of that decision; it was dismissed by Justice Pinard on February 19, 2002.

[9] On June 10, 2001, the applicant filed an application for permanent residence on humanitarian and compassionate grounds. On February 23, 2006, his application for permanent residence was allowed given the humanitarian and compassionate grounds; nevertheless, he still had to meet all of the other legislative requirements of the IRPA.

[10] On August 6, 2007, the applicant was found guilty of impaired driving after he drove his vehicle in an impaired state on two occasions in 2004 and 2005, an indictable offence liable to imprisonment for a term not exceeding five years under paragraph 253(1)(a) and subsection 255(1) of the *Criminal Code*, RSC (1985), c C-46, and failure or refusal to take a breath test under subsections 254(5) and 255(1) of the *Criminal Code*.

[11] On August 28, 2007, CIC issued a report pursuant to subsection 44(1) of the IRPA indicating that the applicant is inadmissible on grounds of criminality in accordance with paragraph 36(2)(b) of the IRPA.

[12] On October 2, 2007, the applicant was informed that his application for permanent residence was refused because he was inadmissible to Canada given his criminality.

[13] On February 2, 2011, the applicant filed an initial PRRA application, which was rejected by the PRRA unit on April 21, 2011.

[14] The applicant's removal was scheduled for May 13, 2011. On May 12, 2011, Justice de Montigny granted the applicant a stay of his removal order.

[15] On December 23, 2011, Justice Tremblay-Lamer dismissed the application for judicial review of the decision by the PRRA unit.

[16] In February 2012, the *National Post* newspaper published an article on the applicant in which he was identified as a negationist and an opponent of the Rwandan government, an article that was, over the following days, picked up by some Web sites, including sites in Rwanda.

[17] In March 2012, the applicant filed a second PRRA application, which was rejected by Mr. Bonin of the PRRA unit on January 31, 2013.

[18] On February 27, 2013, the applicant filed an application for judicial review of the negative PRRA decision.

[19] The applicant's removal was scheduled for March 30, 2012. On March 28, 2012, Justice Gagné allowed the applicant's motion to stay his removal.

II. Impugned decision

[20] In his decision, Mr. Bonin found that, in the applicant's second PRRA application, the applicant reiterated the risks raised in his initial PRRA application and before the CRDD; that the facts raised by the applicant had been considered before; and that the decision regarding the first PRRA decision was submitted to the Federal Court, which upheld the decision of that assessment and dismissed the judicial review.

[21] Mr. Bonin also found that the applicant's new allegations were that the Rwandan authorities would have been informed of his actions, the initial PRRA application and his litigation in the Federal Court, among other things, through the publication of the *National Post* article, which made it possible for many media outlets in Rwanda to disclose that information.

[22] In fact, the applicant alleged that information about his case is now in the public domain and known in Rwanda, and that that would mean that he would suffer persecution by the Rwandan authorities in connection with his statements and actions in Canada given his criticisms of the current Rwandan government.

[23] Mr. Bonin assessed the documents that constituted valid evidence, including the documents that contained new information and the documents concerning the general situation in Rwanda dated before the initial PRRA decision that could contain information on the current situation in Rwanda.

[24] First, Mr. Bonin assessed the *National Post* article. Some comments from readers of that article were joined to the application, but Mr. Bonin concluded that those pieces of evidence were from Web sites which were not established as independent sources and he therefore did not attach weight to those comments.

[25] Mr. Bonin then found that the applicant's activities since his arrival in Canada do not support the claim that he could be at risk if he were to return to Rwanda.

[26] Mr. Bonin noted that the fact that the Rwandan government became aware of articles that were published is not at issue. However, he found that, even though those articles may have been consulted by various people in Rwanda and that the applicant could be exposed to some publicity, the resulting information is not enough to establish a possibility of persecution or serious reasons to believe that he would be at risk if he were to return to Rwanda.

[27] The applicant's allegation that he must benefit from freedom of expression is not convincing because he did not demonstrate in a probative manner that he has criticized the Rwandan government since his arrival in Canada. Furthermore, the applicant did not show that he reportedly

made negationist remarks since his arrival in Canada which would mean that he would be subject to the negationism legislation in Rwanda.

[28] Mr. Bonin also assessed another document submitted by the applicant, a statement by the president of the *Congrès rwandais du Canada* (CRC) that the applicant's physical and psychological integrity could be compromised if he were deported to Rwanda, and that the applicant participated in conferences organized by the CRC, where he denounced the violation of human rights committed by the Rwandan government. Mr. Bonin notes that the author of the document does not provide details on the conferences or the applicant's remarks at the conferences, and that the evidence is therefore too vague. Furthermore, there is a lack of information available on the president of the CRC, which results in the fact that the document must be given very little weight.

[29] Mr. Bonin admits that the Rwandan government put in place legislation that was purposefully broad and imprecise to encourage national unity and restrict freedom of expression leading to hate speech, but risks violating human rights and serves to settle personal scores and muzzle the opposition. Mr. Bonin also admits that it is possible that the Rwandan government has been informed of the applicant's situation. Nevertheless, he found that the fact that Web sites report that the applicant gave sermons does not allow him to conclude that the applicant is seen as a negationist, and that the evidence is insufficient to establish that there is more than a mere possibility that the applicant would be persecuted based on a Convention ground.

[30] In looking at the general documentation on the conditions in Rwanda, Mr. Bonin found that, even though the situation there can be difficult in some respects (limited rights for Rwandans,

violence against genocide survivors, detentions and imprisonments, irregular elections, arbitrary arrests of members of the political opposition, limits on freedom of speech and association, etc.), the events recounted in the objective and independent documents on the situation in Rwanda are not connected to the applicant's personal situation, but rather to the general population.

[31] Ultimately, Mr. Bonin found that the applicant is not at risk of persecution under section 96 of the IRPA or subject to a danger of torture, a risk to his life or to a risk of cruel and unusual treatment or punishment within the meaning of section 97 of the IRPA.

III. Standard of review

[32] In *Rana v Canada (Minister of Citizenship and Immigration)*, 2010 FC 36 at paragraph 14, Justice Russell noted, in analyzing a second PRRA application from an applicant, that the standard of review for decisions by PRRA officers who have assessed evidence from an applicant is reasonableness:

Because questions of facts and discretion are to be reviewed on the standard of reasonableness (*Dunsmuir* at paragraphs 51 and 53), reasonableness is the appropriate standard of review for determining: a) whether the Officer erred by failing to consider all of the section 96 risk factors asserted by the claimant; and b) whether the Officer erred by not sufficiently considering and applying the Applicant's evidence.

[33] See also *Perez Arias v Canada (Minister of Citizenship and Immigration)*, 2011 FC 757 at paragraph 8.

[34] Therefore, I find that the applicable standard is reasonableness.

IV. Issue

1. Is the panel's decision reasonable?

V. Applicant's submissions

[35] The applicant submits that Mr. Bonin erred by departing from the document in evidence that includes a study by Evode Uwizeyimana, a Rwandan judge who worked as an expert on the Rwandan legal system for the BBC. The document includes the author's curriculum vitae and expert testimony, and discusses the legislation used in Rwanda to repress political opponents. The applicant maintains that Mr. Bonin should have included that document in his assessment because it is an objective document on the general situation in Rwanda regarding the legislation against negationism and sectarianism. That is supported by an excerpt from Justice de Montigny's order granting the stay motion, where the judge finds that Mr. Bonin should have given more weight to Mr. Uwizeyimana's expert report because it is an objective study of a specialist.

[36] The applicant also alleges that Mr. Bonin erred in his assessment of the personalized risk, especially by failing to determine that he was marked by the term negationist. The applicant quotes many Rwandan articles that cited the *National Post* article mentioning his negationist past with the comments made in Canada and the fact that he signed the letter to Pope John Paul II. He also refers to the decision by the CRDD, which states that the letter to the Pope clearly shows a negationist attitude towards the genocide.

[37] Furthermore, the applicant alleges that the evidence demonstrates that the Rwandan authorities are aware of all of the elements surrounding him and his negationist profile, and that the evidence shows that the authorities were unaware of his activities before the *National Post* article was published. That is supported by the grounds from the first PRRA decision and the decision by Justice Tremblay-Lamer, which states that no probative evidence was submitted to demonstrate that the applicant's profile was brought to the attention of the Rwandan authorities. According to the applicant, that has changed because of the *National Post* article, which was cited by the National Commission for the Fight Against Genocide, an organization whose president is the current president of Rwanda, Paul Kagame.

[38] According to the applicant, making the connection between the fact that he is perceived and described as a negationist and the fact that the Rwandan authorities are aware of this is enough to confirm that he risks persecution and torture if he were to return to Rwanda according to the documentary evidence to the effect that people perceived as negationists are the target of the legislation against negationism and sectarianism. That connection is established by the evidence.

[39] Furthermore, the applicant argues that the evidence shows that anti-genocide legislation is applied in a manner so as to commit serious human rights violations, and that that risk to the applicant is personalized. That is supported by Justice de Montigny's order.

[40] According to the applicant, the truthfulness and the details of his alleged remarks are not important; once he is perceived as a negationist by the Rwandan authorities, a personalized risk exists. Moreover, the applicant is a serious critic of the current government, and the Amnesty

International report notes that statements made abroad may be used by the Rwandan authorities to initiate legal proceedings under the legislation on genocide ideology. The evidence demonstrates that critics of the Kagame regime are likely to be victims of torture and persecution.

VI. Analysis

[41] It is important to start by noting the decision by Justice Tremblay-Lamer in which the application for judicial review of Officer Bonin's decision regarding the applicant's first PRRA application was dismissed. In that decision, Justice Tremblay-Lamer addressed the issues raised by the applicant in the context of the first application, which includes the signature of the letter addressed to Pope John Paul II in 1994; the applicant's activities since his arrival in Canada; and the report of Mr. Uwizeyimana.

[42] Justice Tremblay-Lamer found, at paragraph 24 of her decision, that the applicant submitted vague evidence with respect to his activities in Canada. In the context of his second PRRA application, the applicant made clarifications to his account with respect to his anti-government activities, but that does not allow me to revisit allegations that were already considered by another judge of this Court, which is the case here.

[43] Regarding the report of Mr. Uwizeyimana, Justice Tremblay-Lamer found that the content of the report was not related to the applicant's personal situation, and that the report was therefore irrelevant for the purpose of the PRRA application. That means that I also cannot revisit the report of Mr. Uwizeyimana.

[44] The only issue left is therefore whether the *National Post* article has changed the applicant's situation since Justice Tremblay-Lamer rendered her decision such that the applicant is at risk of persecution or a danger of torture or a risk to his life or to a risk of cruel and unusual treatment or punishment. Officer Bonin addressed the *National Post* article at page 12 of his decision and stated the following: [TRANSLATION] "it is possible that the Rwandan government has been informed of the applicant's situation . . . I consider that insufficient to establish that there is more than a mere possibility that the applicant would be persecuted based on a Convention ground, or that there are serious reasons to believe that he would be subject to a danger of torture or to a risk to his life or to a risk of cruel and unusual treatment or punishment if he were to return to Rwanda."

[45] In his decision, Officer Bonin acknowledged the possibility that the Rwandan government could be aware of the *National Post* article and carefully assessed the article's impact. It remains that the article's content is not very significant. The only significant statement in the article is that the applicant is accused of being a negationist. The article also mentions the letter to the Pope, but the Rwandan government has been aware of that letter for some time, and there is no evidence that it had negative consequences for the applicant.

[46] I find that Officer Bonin's assessment of the impact of the *National Post* article was reasonable. Regarding the general situation in Rwanda, Officer Bonin found that there was simply not enough evidence of a connection between the situation in the country and the personal situation of the applicant. That finding is reasonable.

[47] In addition, Officer Bonin even considered the “Country Report” by the US Department of State on human rights practices in Rwanda. The report states that there were fewer politically motivated killings or disappearances in the previous year. That further demonstrates the rigour and reasonableness of Officer Bonin’s assessment.

[48] The application for judicial review is therefore dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application is dismissed.

“Peter Annis”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1528-13

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DATED: February 4, 2014

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