Federal Court  Cour fédérale

Date: 20140410

Docket: IMM-4416-13

Citation: 2014 FC 349

Ottawa, Ontario, April 10, 2014

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

ROBERT IMANIRAGUHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[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 rendered on May 31, 2013 by Ms. Paule Robitaille of the Refugee Protection Division [the RPD, the Panel] finding that the

Applicant is neither a refugee within the meaning of section 96 of the IRPA nor a person in need of protection under subsection 97(1) of the IRPA.

II. Facts

[2] The Applicant is a Rwanda citizen, of Hutu origin, born on May 7, 1984.

[3] The Applicant left Rwanda on January 5, 2011 and arrived in Boston the next day. Approximately a month later, on February 5, 2011, he came to Canada through the American border.

[4] The hearing before the RPD occurred on May 21, 2013. At the hearing, the Applicant alleged that he was pursued by the government of Rwanda for being a member of the FDU-Inkingi Party, the opposition party lead by Ms. Victoire Ingabire [FDU Party]. He claimed to have taken part in a ceremony held on January 17, 2010 at the end of which Ms. Ingabire made a shocking declaration that lead to her conviction for revisionist and hate speech. The Applicant argued that he was arrested and interrogated by the police on two occasions, that he was tortured during his detention, that he lost his job as a result of his political opinions and that he would surely be persecuted again by the police should he be sent back to his home country.

III. Decision under review

[5] The RPD was satisfied as to the Applicant's identity but rejected his claim, finding that the main allegations therein were not credible, mostly for implausibility reasons.

[6] The RPD was not satisfied, on a balance of probabilities, that the Applicant, who is not an active member of the FDU Party but a mere sympathizer of the organization, was arrested on two occasions by the government. Even though the documentary evidence shows that the current government in place has a very low tolerance for opposition, the only events in which the Applicant took part (greeting Ms. Ingabire at the Kigali airport on January 10, 2010 and helping the FDU Party in providing help in hospitals and orphanages) are not sufficient to conclude that he would be an opponent likely to be targeted by the government, which generally goes after leaders and really active opposition members. Also, contrary to what the documentary evidence suggests, the Applicant claimed that there were no court document to evidence the charges, if any, he claimed were laid against him.

[7] The RPD also found that the Applicant could not have been the target of the Rwandan government; otherwise, he would not have been able to leave the country so easily with his own passport. Lastly, the RPD did not believe the Applicant's explanations as to why he suddenly became so interested in politics in 2010.

[8] For all these reasons, the Panel concluded that the Applicant failed to demonstrate that there was more than a mere possibility that, should he return to Rwanda, he would be persecuted within the meaning of section 96 of the Act, or that, on a balance of probabilities, he would be personally exposed to a risk pursuant to section 97 of the Act.

IV. Applicant's submissions

[9] The Applicant argues that the RPD's decision was not reasonable because it erred in finding that his allegations were not plausible and because it failed to consider contradictory evidence.

[10] First, the RPD's rejection of the Applicant's claim was based solely on findings of implausibility. According to case law and to the Immigration Refugee Board's guidelines, it is only open to the RPD to make such findings in the clearest of cases. Further, these findings must be based on reasonably drawn inferences and not speculation or conjecture, and they must be substantiated in the reasons by specific evidence. In the present matter, there was no evidence supporting the panel's implausibility findings.

[11] Second, the RPD ignored contradictory factual and documentary evidence. Regarding the facts, the Panel drew a conclusion from the Applicant's testimony without referring to all the relevant facts he had provided. The RPD never mentioned the difficulties the Applicant testified to have faced while fleeing his country. In fact, the panel even went so far as saying that it did not understand how he could have left Rwanda so easily. The RPD also misconstrued the facts

surrounding the Applicant's motivation to join the opposition party in 2010 which he clearly set out in his testimony despite being interrupted on numerous occasions. What is more, the Panel came to the conclusion that a member of the opposition had to be active in order to be targeted by the government without taking into account all the documentary evidence with which it had been presented: several documents before the RPD clearly stated that non-prominent members of the opposition, like the Applicant, are also targeted by the Rwandan authorities. The RPD failed to refer to this evidence.

V. Respondent's submissions

[12] For its part, the Respondent argues that the RPD's decision was reasonable.

[13] The Applicant has failed to demonstrate in what way the RPD ignored evidence with respect to his claim, and his arguments seem to disregard the important distinction between being a member of the FDU Party and a mere sympathizer of the opposition. That said, the Panel did acknowledge in its reasons that according to documentary evidence, certain opponents of the government, those that were very active, were arrested, beaten or even murdered. The Applicant refers in his submissions to national documentary package on Rwanda which speaks of "members" of the opposition parties being victims of oppression, but counsel for the Applicant conceded at the hearing that he was not a member of the FDU Party. None of the documentary evidence relied upon by the Applicant sets out that mere sympathizers of the opposition would be at risk in Rwanda. The RPD clearly identified all the facts on which it made its implausibility findings, and it was certainly open for it to come to this conclusion.

[14] Moreover, the Panel did not build its decision only on implausibility findings. The Applicant was vague in his answers on important issues of his claim, particularly as it concerns his sudden interest in politics, and the RPD reasonably drew a negative inference from this. Despite being questioned on the subject and provided ample opportunity to do so, the Applicant could not provide clear answers regarding his own and the FDU Party's political ideology. The Panel also drew a negative inference from the fact that the Applicant failed to provide evidence to corroborate his allegations that he was arrested by Rwandan police, and given that this is a central element of the Applicant's claim, it was reasonable for the RPD to come to this conclusion. Lastly, the Respondent adds that the RPD is presumed to have taken into consideration all the evidence with which it had been presented.

VI. Issues

[15] The present case relates to the legality of the RPD's credibility finding that lead the Panel to conclude that the Applicant is neither a refugee within the meaning of section 96 of the IRPA nor a person in need of protection under subsection 97(1) of the IRPA, and it raises the two following issues:

1. Did the RPD err in concluding that the Applicant's allegations were not plausible?

2. Did the RPD err in its assessment of the evidence?

VII. Standard of review

[16] Although they disagree on the wording of the issues to be addressed herein, the parties do agree, however, that the RPD's decision in the case at bar is to be reviewed under the standard of reasonableness (see *Saeedi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 146 at para 29, [2013] FCJ No 173 with respect to the implausibility findings; see *Flores v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1147 at para 25, [2010] FCJ No 1418 as it concerns the appreciation of evidence).

[17] As both issues are a matter of reasonableness, this Court shall only intervene if it concludes that the Panel's findings are unreasonable to the point that they fall outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] SCJ No 9).

VIII. Analysis

A. *Did the RPD err in concluding that the Applicant's allegations were not plausible?*

[18] This Court finds that the RPD did not commit an error when it concluded that certain of the Applicant's allegations were implausible.

[19] In his factum, the Applicant quotes this Court in *Saeedi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 146 at para 30, [2013] FCJ No 173, where it was held that the RPD should give clear explications for its implausibility findings, all of which should rest on the evidence with which it had been presented:

> [30] The RPD's conclusion that the Applicant's allegations lack plausibility is unreasonable for the following reasons. The duty to provide reasons for negative credibility findings becomes particularly important when non-credibility determinations are based on perceived implausibilities in the Applicant's story. As stated by this Court in *Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at para 15, 37 Imm LR (3d) 241, the RPD is required to clearly explain the rationales behind its implausibility findings and they should be based on the evidence before it:
>
> > [15] It is clear that plausibility findings are subject to the same deference as credibility findings, that being patent unreasonableness: see *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA). However, as stressed in *Valtchev*, supra, [2001] FCJ No 1131, plausibility findings involve a distinct reasoning process from findings of credibility and can be influenced by cultural assumptions or misunderstandings. Therefore, implausibility determinations must be based on clear evidence, as well as a clear rationalization process supporting the Board's inferences, and should refer to relevant evidence which could potentially refute such conclusions. The cautions set out in both *Valtchev*, supra, and *Leung v Canada (Minister of Employment and Immigration)*, (1994), 81 FTR 303 are worth keeping in mind in the Court's review of plausibility conclusions. [Emphasis added.]

It is also true that the IRB has adopted similar measures in this regard in its guidelines dealing with the assessment of the credibility of refugee claimants (see Assessment of Credibility in Claims for Refugee Protection, Legal Services, January 31, 2004, found at: http: //www.irb-cisr.gc.ca /Eng /BoaCom /references /LegJur /Pages /Credib.aspx).

[20] The Applicant's reasoning fails, however, when he claims that the Panel's implausibility findings are not supported by evidence.

[21] In its reasons, the RPD found it implausible, in its opinion, that the Applicant, who is merely a sympathizer of the FDU Party, would have been targeted by the Rwandan government. This implausibility finding is the most important one as it suffices to settle the entire claim. The RPD clearly established a distinction between sympathizers of the opposition party, who are not very active, like the Applicant, and the very active members of the opposition and their leaders. The panel indicated to have taken this distinction from documentary evidence, whereas the Applicant claims that this documentary evidence in fact supports the opposite findings.

[22] After having read the documentary evidence, this Court finds that none of the documents identified by the Applicant actually support its argument that sympathizers of the opposition could be the target of government authorities in Rwanda. In fact, the evidence vastly and expressly supports the RPD's finding to the opposite effect. All the evidence speaks of targeted people whose political status and/or implication level are substantially different from the Applicant's – very active political opponents who have made public declarations or participated in demonstrations against the government, journalists and other outspoken critics of the government, etc. In addition, the documentary evidence relied upon by the Applicant largely addresses the situation of "members of the opposition parties", and the Applicant conceded at hearing, through counsel, that he was not a member of the FDU Party but a "low-profile sympathizer" of the organization. The Applicant never publicly criticized the government and, to the extent of the Panel's knowledge, he took part in practically no public political events, except

greeting the leader of the FDU Party, Ms. Victoire Ingabire, at the Kigali airport on one occasion.

[23] And based on this, the RPD stated that it was not satisfied that there was more than a mere possibility that the Applicant, should he return to Rwanda, would be persecuted within the meaning of section 96 of the Act, or that, on a balance of probabilities, he would be personally exposed to a risk pursuant to section 97 of the Act. It is true that implausibility findings can only be made in the clearest of situations (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] FCJ No 1131 [*Valtchev*]), and I find that such is the case in the present matter as it concerns the implausibility of the Applicant being targeted by the government. The RPD clearly expressed the rationale behind its finding, laid out all the facts, and referred to relevant evidence as required by *Valtchev*, above. This inference was not drawn from speculations or conjecture.

[24] I find that this implausibility finding is strong enough in itself to render the RPD's decision reasonable. Indeed, if the Applicant is not a target, there is obviously no persecution and no risk to his life or a risk of cruel and unusual treatment or punishment to fear.

B. *Did the RPD err in its assessment of the evidence?*

[25] The second issue in this application relates to the review of the evidence – both testimonial and documentary – by the RPD. The Applicant claims that the RPD failed to consider and mention contradictory evidence. This Court finds that the RPD made only one error in its

overall appreciation of the evidence relating to the Applicant's difficulties in fleeing Rwanda but further concludes that returning the claim for re-determination would not result in a different outcome.

[26] As a general rule, the RPD is presumed to have given due consideration to all of the evidence before it and, as such, it does not have the obligation of commenting every piece of evidence submitted (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) [*Florea*]). This presumption is nonetheless subject to certain limits. If a decision-maker is silent on an important piece of evidence or if it ignores contradictory evidence, this Court could tend to infer that the decision was made without regard to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17):

> [17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v Canada (Minister of Employment and Immigration)* (1993), 63 FTR 312 (FCTD). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact. [Emphasis added.]

[27] First, this Court will examine the issue of testimonial evidence. In this regard, it is true that the Applicant testified to the effect that he had been helped by a friend (as confirmed by the Respondent's counsel's letter dated April 9, 2014) who worked at customs when leaving

Rwanda, in order to explain how the Applicant was able to leave his home country. And it is also true that the RPD made no mention of this explanation when stating that the Applicant would not have been able to leave the country so easily had he really been targeted by the government. However, while this explanation was important to consider and should have been mentioned by the RPD, the RPD had already come to the conclusion that it was not plausible that the Applicant was pursued by the Rwandan authorities because he is a simple sympathizer of the organization. Looking at the big picture of the case, the finding concerning the Applicant's difficulties in leaving Rwanda, which appears at the end of the decision, is of lesser importance as it was simply an additional finding that confirmed the RPD's opinion, but it was not central to the determination of the case by the Panel. What is more, considering that this Court has already upheld as reasonable this strong implausibility finding of the RPD relating to the implausibility of the Applicant being the target of the government, I have a hard time seeing how sending the matter back before another panel for re-determination could result in a different outcome (see for example *Kamanzi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1261 at para 20, [2013] FCJ No 1368).

[28] This Court further finds that the RPD properly assessed the rest of the testimonial evidence. After having read the evidence and the transcript of the hearing, I find that it was reasonable for the Panel to consider the Applicant provided a vague testimony when questioned about the basic principles of the FDU Party. The same goes for the answers he gave to questions related to his sudden political motivations.

[29] In any event, assessing the credibility of an applicant through his testimony, including its vagueness, is at the heart of the RPD's expertise, and reviewing courts must afford a great deal of deference in such findings (*Zheng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 673 at para 17, [2007] FCJ No 919).

[30] Second, as for the documentary evidence, the presumption in *Florea* stands. I have already found, in response to the first issue, above, that contrary to the Applicant's submissions, the RPD did not omit to consider contradictory documentary evidence in making its implausibility findings with respect to the Applicant. The same can be said here. In addition, the Panel exposes at para 9 of its reasons the harsh reality of certain really active members of the opposition in Rwanda. While recognizing the difficult situation of certain people, the RPD nonetheless reasonably concluded that this was not the situation of the Applicant. The Applicant has not satisfied this Court that the RPD has failed to consider or mention contradictory evidence in its decision.

[31] Finally, on the more general issue of credibility, it must be noted that the Applicant failed to provide corroborative evidence for his allegations that he was arrested and charged in Rwanda. This Court has previously found that it is reasonable for a tribunal to draw a negative inference from the failure to provide corroborative evidence when it relates to essential elements of an applicant's claims, as it is the case here (see *Sinnathamby v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473 at para 24, [2001] FCJ No 742; *Quichindo v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 350 at para 28, [2002] FCJ No 463). And as my colleague Justice de Montigny observed in *Jarada v Canada (Minister of*

Citizenship and Immigration), 2005 CF 409 at para 22, [2005] FCJ No 506, given that the RPD credibility finding with respect to the Applicant relied on a number of elements and implausibilities, "the reasons of an administrative tribunal must be taken as a whole in determining whether its decision was reasonable, and analysis does not involve determining whether each point in its reasoning meets the reasonableness test […]." This observation applies to the present matter.

[32] Consequently, having dismissed the Applicant's claims with respect to both issues, I find that the RPD's decision was reasonable and shall dismiss this application for judicial review as a whole.

[33] The parties were invited to submit questions for certification but none were proposed.

ORDER

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

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4416-13
STYLE OF CAUSE:	ROBERT IMANIRAGUHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	APRIL 2, 2014
REASONS FOR ORDER AND ORDER:	NOËL S J.
DATED:	APRIL 10, 2014

APPEARANCES:

Annick Legault	FOR THE APPLICANT
Gretchen Timmins	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Annick Legault Solicitor Montreal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT