

Federal Court



Cour fédérale

Date: 20140819

Docket: IMM-6656-13

Citation: 2014 FC 805

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 19, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**PIERRE ARNAUD NDABEREYE
SAMIRA RUKARA
RITA MICHELLE NDABEREYE INEMA
SAMUEL HALLEY NDABEREYE MUGISHA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Preliminary remarks

[1] Accepting a series of assumptions which, taken together, make a narrative implausible, contradictory and full of holes, in both time and space, would lead to an unreasonable conclusion, having regard to the entire record, including a hearing transcript.

II. Introduction

[2] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of decision dated September 23, 2013, of the Refugee Protection Division of the Immigration and Refugee Board [RPD] rejecting the applicants' claim for protection as refugees or persons in need of protection within the meaning of sections 96 and 97 of the IRPA.

III. Facts

[3] The principal applicant, Pierre Arnaud Ndabereye (the applicant), is a citizen of Burundi, as are his spouse, Samira Rukara, and their two children, Rita and Samuel.

[4] The applicant states that before coming to Canada, he worked in Burundi for a company named Bujumbura Garbage Collection [BGC] and performed audits and provided accounting services as a self-employed worker under a part-time contract with a company called Bureau d'ingénierie et de faisabilité économique [BIFE]. He states that as such, he was a member of the Observatoire de la lutte contre la corruption et les malversations économiques, the anti-corruption and economic malpractice observatory [OLUCOME].

[5] It is alleged that, starting in 2008, BIFE was tasked with preparing the payrolls for non-commissioned officers and enlisted men in the army and making sure they were paid. BIFE allegedly came across clues that funds were possibly being diverted to fictitious police officers, but their contract was terminated in February 2009 amid suspicions of financial impropriety.

[6] BIFE was allegedly contacted in mid-February by the state's inspector general in connection with their investigation into the Police Nationale du Burundi, Burundi's national police force [PNB]. BIFE was supposedly instructed to document and calculate the amounts and value of diverted equipment orders.

[7] It is alleged that OLUCOME asked the applicant to provide information regarding the fictitious police officers. The applicant states that he told OLUCOME verbally where it could look to find the desired information.

[8] On April 9, 2009, OLUCOME's vice-president, Ernest Manirumya, was murdered at his home, and some of his files allegedly disappeared.

[9] The applicant explains that on May 10, 2009, some individuals in police uniforms broke into his home. He alleges that they ransacked his house, assaulted him and threatened his spouse and his children. When they found nothing in his house concerning the information that OLUCOME was looking for, they supposedly fled.

[10] The applicant says that he reported the assault to the police the next day, but the police did not give him the protection he asked for. The applicant explains that after this, people kept calling him and asking about him at his place of work.

[11] On May 16, 2009, three men allegedly grabbed him while he was getting off a bus on his way home. They allegedly tried to force him to get into a car, but he was able to escape. The same night, the applicant and his family fled to the home of his uncle.

[12] On May 22, 2009, the applicant left Burundi for the United States to take part in a Business Initiative Direction [BID] summit. He arrived in Canada on May 24, 2009, and claimed refugee protection that same day.

[13] The female applicant obtained a United States visa for her children and herself on December 9, 2009. She arrived in Canada on January 18, 2010, and claimed refugee protection that same day.

IV. Decision under review

[14] In its decision, the RPD found that the applicants gave testimony that was not credible; their testimony contained multiple inconsistencies, contradictions and omissions. In particular, the RPD noted the following problems regarding the applicants' allegations:

- (a) the applicant's main allegation that the PNB tracked him down using information in a file kept in the house of OLUCOME's murdered vice-president is purely speculative;

(b) the applicant's level in the organization's hierarchy did not warrant the assaults he claims to have suffered, since he was providing information that in no way incriminated the PNB.

[15] To sum up, the RPD thought that it was unlikely that the PNB would have found the applicant and assaulted him for information of such little value. The RPD noted that if the applicants' allegations were to be believed, it would have to accept a series of assumptions that, taken together, made the story implausible.

[16] The RPD also noted that the applicant contradicted himself regarding the period during which he worked for BIFE, thereby undermining his credibility with regard to his assignment to BIFE. Moreover, despite having been specifically asked by an immigration officer for his employment contract with BIFE and having been given four years to submit it, the applicant never submitted his contract, despite the fact that he remained in contact with his employer.

[17] The RPD went on to remark that the applicant contradicted himself regarding the date he became a member of OLUCOME. He also contradicted himself on whether he had proof of his membership in the organization. Initially, he declared to an immigration officer that he had proof of his membership back in Burundi and could provide it; later, he testified before the RPD that he could not retrieve it because there was no one to help him. This further undermined the applicant's credibility.

[18] Considering that the grounds alleged by the female applicant and her children were based on the allegations of the applicant, which the RPD found not to be credible, the RPD found those grounds, too, not to be credible.

V. Issue

[19] Did the RPD err in finding that the applicants were not credible?

VI. Relevant legislative provisions

[20] Sections 96 and 97 of the IRPA apply in this case:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;

or
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de

adequate health or
medical care.

fournir des soins
médicaux ou de santé
adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Standard of review

[21] The case law of this Court establishes that the RPD's findings regarding credibility are questions of fact and thus reviewable on a standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)).

VIII. Analysis

[22] The applicants argue that the RPD made two main errors in this case: (1) the RPD breached the rules of natural justice in adjourning the hearing several times; and (2) the RPD misinterpreted the evidence.

[23] Having reviewed the record, the Court finds that there was no breach of natural justice or procedural fairness owing to the adjournment of the hearing. Although the evidence shows that the RPD had to adjourn the hearing several times in the last few years, the applicants have not established how this breached the rules of natural justice. They explain that some hearings were adjourned because there was no member available or the member could not finish the hearing

(due to illness), while other hearings were adjourned because the RPD required more information regarding the children's identities and the genuineness of the marriage of the majority-age applicants. The Court does not find that these are unjust or arbitrary reasons for adjourning a hearing. They are entirely reasonable. Moreover, the applicants do not seem to have been adversely affected by these adjournments; on the contrary, they remained in safety in Canada for nearly four years. The fact that these adjournments frustrated the applicant does not warrant this Court's intervention.

[24] Regarding the second issue raised in this case, the applicants clearly disagree with most of the RPD's findings. However, instead of establishing errors in the RPD's decision, the applicants tried to reargue their case, asking the Court to reassess the evidence so as to arrive at a conclusion different from that of the RPD. They have not shown that these conclusions, having regard to the evidence in the record, are unreasonable, arbitrary or absurd.

[25] This Court recently noted the following in *Ayala Sosa v Canada (Minister of Citizenship and Immigration)*, 2014 FC 428:

[25] Credibility findings are factual and case specific and rely on the assessment by the decision-maker of several factors including the observation of the witnesses and their responses to questions posed. The Board is entitled to draw inferences based on implausibility, common sense and rationality (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 at para 4 (FCA)). Given its role as trier of fact, the Board's credibility findings should be given significant deference (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329; *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82).

[Emphasis added.]

[26] Credibility findings should therefore be given significant deference (*Sosa*, above).

[27] The Court finds that the RPD did indeed assess the evidence before it and reasonably concluded that the applicants were not credible because of numerous inconsistencies, contradictions and omissions in their story that remained largely unexplained. In the Court's opinion, the RPD's doubts concerning the applicants' credibility led to a conclusion that was within a range of possible, acceptable outcomes.

[28] For all the above reasons, the applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the applicants' application for judicial review be dismissed, with no question of general importance to be certified.

"Michel M.J. Shore"

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6656-13

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MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 18, 2014

JUDGMENT AND REASONS: SHORE J.

DATED: AUGUST 19, 2014

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