Federal Court  Cour fédérale

Date: 20141205

Docket: IMM-963-14

Citation: 2014 FC 1172

Montréal, Quebec, December 5, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ANGE HABONIMANA
IONA MAIWENN KAMPEMANA
DIERK KAMPEMANA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Habonimana and her two minor children come to us from Burundi. They claim protection under both s. 96 and s. 97 of the *Immigration and Refugee Protection Act*. Their fear arises from a land dispute with ethnic overtones. An unidentified high-ranking official wants Ms. Habonimana's land. She is Tutsi, and there are ongoing tensions between Tutsis and Hutus.

[2] The Refugee Protection Division of the Immigration and Refugee Board of Canada dismissed her claim. The member was not satisfied that this was an ethnic dispute. Indeed, Ms. Habonimana could not say that her alleged persecutor was Hutu. There was considerable country documentation to the effect that resettlement disputes arising out of Burundians returning can pit Hutu against Hutu.

[3] Furthermore, Ms. Habonimana was found not to be credible. Her story was that she and her husband were beaten and that a guard that they had hired to protect the land in question had been murdered. However, the hospital records were suspect, and she and her husband continued to live where they had without adequate protection, given the perceived threat. Moreover, the long delays in finally leaving Burundi put her subjective fear in question.

[4] Nevertheless, the member went on to consider the internal flight alternative and identified two suitable places within Burundi itself.

[5] In this judicial review of that decision, it is common ground that it is to be assessed on its reasonableness.

[6] I find that the decision to be reasonable on all counts.

[7] Had this been an ethnic claim under the United Nations Convention Relating to the Status of Refugees and s. 96 of IRPA, the claimants would have been entitled to refugee status if there were a serious risk of persecution to them or to similarly placed individuals should they be

returned to Burundi (*B135 v Canada (Citizenship and Immigration)*, 2013 FC 871 at para 31). However, it was perfectly reasonable for the member to determine that this was not an ethnic issue. A property rights claim does not fall within s. 96 of the IRPA (*Ramirez v Canada (Solicitor General)*, 88 FTR 208 at paragraph 12, [1994] FCJ No 1888 (QL); and *Kenguruka v Canada (Citizenship and Immigration)*, 2014 FC 895).

[8] Consequently, the claimants can only succeed if they fall within s. 97 of the IRPA. They must be subject personally to a danger, believed on substantial grounds to exist, of torture, or to a risk to their lives or to a risk of cruel and unusual punishment or treatment. They must make out their case on the balance of probabilities (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1).

[9] The member's analysis as to credibility is reasonable. Either the events Ms. Habonimana recounted did not happen at all, or she was without subjective fear given the lengthy time she remained in her home. Although her husband, who did not accompany her and her children, has remained in Burundi and allegedly was attacked, there is nothing to indicate that that attack related to the land dispute. He is said to be in hiding.

[10] The focus on the internal flight alternative was that this military official could track them down. That may or may not be so, but it raises the question as to why he would want to track them down, as she has given up possession of the land in dispute.

I. Certified Question

[11] This case is both like and unlike *Kenguruka*, above. In that case, I certified a serious question of general importance arising from the land dispute as to whether a refugee claimant must first give up that right to avoid the risk of torture or death. Ms. Habonimana suggests that the same question be certified. The Minister points out that this case is somewhat different in that neither credibility nor the internal flight alternative was at issue in *Kenguruka*.

[12] As the decision of the member in this case also stands on credibility, there is no issue of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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