

Federal Court



Cour fédérale

**Date: 20150709**

**Docket: IMM-8130-14**

**Citation: 2015 FC 847**

**Ottawa, Ontario, July 9, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**CHELSEA IRANKUNDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Chelsea Irankunda is the daughter of a member of an opposition party in Burundi who claims to fear persecution at the hands of a senior government member who had sexually assaulted her. The Refugee Protection Division found Ms. Irankunda's claim not to be credible and dismissed her application for refugee protection. For the reasons that follow, I have concluded that the Board's decision was reasonable, and that Ms. Irankunda was not treated unfairly in the refugee process.

**I. Background**

[2] Ms. Irankunda says that in April of 2013, when she was 14 years old, she went to a party with a girlfriend at which a number of older men were present. The men were mingling with young girls and were touching them inappropriately. Ms. Irankunda claims that she was given a Coke by one of the men, and that after she drank it she began to have stomach pains and feel dizzy. When her girlfriend did not want to leave the party and her stomach pains got worse, Ms. Irankunda went to the bathroom to vomit. While she was in the bathroom, Ms. Irankunda says that she was molested by an older man.

[3] After the assault, Ms. Irankunda went looking for her friend at the party, but was unable to find her. The man who had touched her in the bathroom then approached Ms. Irankunda and offered to drive her home. Ms. Irankunda accepted his offer, and the man allegedly continued to touch her during the car ride.

[4] When they pulled up in front of Ms. Irankunda's house, the man asked her who her father was. When she told him her father's name, the man told her not to reveal anything that had happened that night or he would harm her father. When Ms. Irankunda got out of the car, she noticed that it bore a government license plate. It was then that Ms. Irankunda realized that she had seen the man on television, and that he was a member of the governing party.

[5] Ms. Irankunda says that she did not tell anyone about what had happened to her for over a year because she feared her father would be harmed by her assailant. However, when her father failed to return home one night in July of 2014, Ms. Irankunda became very upset, fearing that her assailant may have harmed her father. When her father finally did come home, Ms.

Irakunda told him about the assault and the threats that had been leveled against her father the year before.

[6] Ms. Irakunda's father feared for his daughter's safety and wanted to get her out of Burundi. On August 5, 2014, the pair left Burundi for New York City, where Ms. Irakunda's father had friends. A few days later, Ms. Irakunda took a bus from New York City to Buffalo where she stayed for a few days at Viva La Casa, a refugee shelter that provides assistance to refugees wishing to cross over into Canada. Ms. Irakunda entered Canada on August 19, 2014 and claimed refugee protection at the port of entry that same day.

[7] After her arrival, Ms. Irakunda went to live with her aunt, Germaine Basita, who resides in Canada and who acted as Ms. Irakunda's Designated Representative at her refugee hearing. The Applicant also has a brother living in Canada.

## **II. The Board's Decision**

[8] The Board rejected Ms. Irakunda's refugee claim on credibility grounds.

[9] The Minister had intervened in this matter, and provided evidence that Ms. Irakunda had applied for a study visa in mid-2012, and that an application for permanent residence had been filed on her behalf at the end of 2012. Only one of these prior applications had been disclosed in Ms. Irakunda's Basis of Claim form.

[10] The Board noted that Ms. Irakunda could not establish the identity or existence of the man who had allegedly molested her and that she had not made any effort to find out who he was, even though it would have been relatively easy to do so given that he was on television. Ms.

Irakunda's vague and incomplete testimony led the Board to conclude that the man did not exist.

[11] The Board found it understandable that Ms. Irakunda might not have told her father about what had happened to her for over a year. However, it found that Ms. Irakunda's explanation of what happened after she told her father about the assault not to be credible.

[12] The Board noted that according to Ms. Irakunda, her father was sufficiently concerned about her safety after learning of the assault that he immediately took her to the United States so that she could get to Canada. However, the Board found it incredible that the father did not contact his sister and son in Canada to alert them that Ms. Irakunda was coming, nor did he accompany her to Canada. Instead he put his fifteen-year-old daughter on a bus destined for Buffalo all by herself.

[13] The Board stated that Ms. Irakunda had claimed that it was only when she talked to other Burundians on the bus that she learned about the Viva La Casa shelter in Buffalo, and that it was when she got to the shelter that Ms. Irakunda contacted Ms. Basita and her brother to tell them that she was coming to Canada.

[14] The Board was also not persuaded that Ms. Irakunda's father was in any danger in Burundi, given that he returned home after putting his daughter on the bus to Buffalo. This led to an adverse inference being drawn as to Ms. Irakunda's credibility.

[15] Finally, the Board also found that even if it had believed Ms. Irakunda's story, it still would not have found that she had a well-founded fear of persecution in Burundi. Although the events of April 2013 were "malheureux", the Board noted that on Ms. Irakunda's own

evidence, more than fourteen months had passed since the assault without Ms. Irankunda encountering any problems in Burundi. Although Ms. Irankunda stated that she was afraid that her father would seek to avenge her should he learn the identity of the man who assaulted her, the Board noted that this was unlikely, given that Ms. Irankunda did not herself know the man's identity.

### **III. Adjournment**

[16] Ms. Irankunda asserts that she was denied procedural fairness by the Board, which refused her request to adjourn her refugee hearing in order to permit her to obtain a psychological report.

[17] The denial of an adjournment raises a question of procedural fairness. I must, therefore, determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.

[18] The hearing was set for October 20, 2014. On October 3, 2014, Ms. Irankunda's counsel submitted a three-line request for an adjournment. The primary reason cited for the request was counsel's scheduling conflict. The letter went on to state that Ms. Irankunda's psychologist would not be able to prepare a report by October 20. There was no indication in the adjournment request why a psychological report was required, nor was there any suggestion that Ms. Irankunda suffered from a psychological condition that would have impaired her ability to testify on her own behalf. The request for an adjournment was denied by the Board on October 17, 2014.

[19] The issue of the psychological report was addressed briefly at the commencement of the hearing. Counsel did not renew her request for an adjournment, nor was there any suggestion that Ms. Irankunda would be prejudiced in any way by proceeding with her refugee hearing without a psychological report.

[20] At the end of the hearing, the Board gave Ms. Irankunda a further week to file a report from her psychologist. No such report was ever filed, and the affidavit of Ms. Irankunda's aunt, which was filed in support of the application for judicial review, does not provide any explanation for the failure to file the report. Nor does the affidavit indicate what the report would have said or explain how Ms. Irankunda was prejudiced as a result of the denial of the adjournment. In the circumstances, Ms. Irankunda has not demonstrated that the Board treated her unfairly in denying her adjournment request.

#### **IV. Credibility**

[21] Ms. Irankunda submits that it was unreasonable for the Board to have found her story not to be credible based upon her father's actions, given that he was not present at the hearing and could thus not address the Board's concerns. Ms. Irankunda further submits that she is not accountable for her father's actions, and that the Board speculated about why her father acted a certain way. Finally, Ms. Irankunda submits that, in any event, the Board's findings regarding her father's actions were peripheral to her own fear of persecution.

[22] I do not accept this argument. The role of the Board is to consider the evidence before it, and to determine whether the story told by an applicant for refugee protection is credible. In doing so, the Board is entitled to use common sense.

[23] In this case, Ms. Irankunda provided a detailed account of the events leading up to her flight from Burundi, her transit through the United States and her arrival in Canada. These events were central to her claim.

[24] The actions that Ms. Irankunda attributed to her father were largely those of “un bon père”, that is, a loving parent who would do what was required to protect his daughter. At the same time, Ms. Irankunda stated that her father took her to the Greyhound bus station in New York City where he put her on a bus destined for Buffalo, simply telling her to go to the Viva la Casa shelter and seek assistance there. These actions appear, on their face, to be inconsistent with the actions of a loving father seeking to protect his vulnerable 15-year-old French-speaking daughter.

[25] A review of the transcript reveals that the Board repeatedly questioned this aspect of Ms. Irankunda’s story, giving her ample opportunity to address its concerns. Various responses were provided by Ms. Irankunda and Ms. Batista in an attempt to address the Board’s concerns. However, their responses only added to the confusion.

[26] At one point, Ms. Irankunda seemed to indicate that she had travelled to Buffalo by herself, whereas elsewhere in her testimony, she stated that she had been accompanied by friends of her father who the pair had met at the bus station. In contrast, Ms. Batista suggested that there were other Burundians on the bus who were travelling to Montreal to visit family, a suggestion that raises the obvious question of why someone travelling from New York City to Montreal would be on a bus to Buffalo in the first place.

[27] Ms. Irankunda testified that the only instructions that her father gave her were to go to the refugee shelter in Buffalo and seek assistance there. There is no suggestion that her father told her what she should do or who she should call if she ran in to difficulties once she got to the shelter, and it is not at all clear from the transcript when or if Ms. Irankunda's aunt was notified that Ms. Irankunda was on her way to Buffalo. In the circumstances it was entirely reasonable for the Board to have concerns with respect to the veracity of Ms. Irankunda's testimony.

[28] Ms. Irankunda also argues that the Board erred by drawing a negative inference from the fact that prior attempts had been made to have her come to Canada, either via a study permit or an application for permanent residence. According to Ms. Irankunda, these prior applications were irrelevant to the question of whether she had a well-founded fear of persecution in Burundi as a result of the events of April 2013. However, a review of the Board's decision does not demonstrate that any negative inference was drawn by the Board in this regard.

[29] As was noted earlier, the Minister intervened in Ms. Irankunda's refugee claim in order to adduce evidence regarding her prior attempts to enter Canada. In its reasons, the Board recites the fact that two visa applications had been made in 2012. These events were, however, simply noted as part of its narrative history, and no inferences, negative or otherwise, were drawn by the Board in relation to this evidence.

## **V. Gender Guidelines**

[30] Ms. Irankunda argues that although the Board paid lip-service to Chairperson's Guidelines regarding gender-related persecution and child refugee claimants, it was not sufficiently attentive to her situation as a young female victim of a sexual assault in Burundi.



[31] By way of example, Ms. Irankunda submits that the Board faulted her for not immediately reporting the assault, noting that there are many reasons why a victim may not disclose a sexual assault for some time. The Board was, however, clear in its reasons that it did *not* fault Ms. Irankunda for failing to report the assault at the time that it happened. The Board noted at the hearing that a sexual assault was something that would be difficult for a daughter to discuss with her father. Indeed, in observing that Ms. Irankunda had waited more than a year to report the assault, the Board noted at paragraph 14 of its reasons, “[c]eci en soi peut se comprendre”. What the Board took issue with was not the delay in reporting the assault, but rather Ms. Irankunda’s story as to what came next.

[32] Ms. Irankunda also suggests that the Board trivialized the assault by describing it as “une mauvaise soirée” or “des événements malheureux”. I cannot accept that the Board’s use of these terms demonstrates a lack of sensitivity to the situation in which Ms. Irankunda allegedly found herself in April of 2013. This is especially so when regard is had to the transcript of the hearing, where it appears that the Board went out of its way to put Ms. Irankunda at ease and to empathize with her.

## **VI. Section 97**

[33] Finally, Ms. Irankunda argues that the Board erred by failing to have due regard to her claim under section 97 of the *Immigration and Refugee Protection Act*. While it is true that the country condition information indicates that sexual violence and forced prostitution involving young girls is a significant problem in Burundi, Ms. Irankunda’s allegations of risk were entirely based upon Convention grounds and involved a story that was found not to be credible. In the

circumstances of this case, I am not persuaded that the Board was required to go further than it did in its section 97 analysis.

**VII. Conclusion**

[34] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case is fact-specific and does not raise a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Anne L. Mactavish"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8130-14

**STYLE OF CAUSE:** CHELSEA IRANKUNDA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 25, 2015

**JUDGMENT AND REASONS:** MACTAVISH J.

**DATED:** JULY 9, 2015

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