

Federal Court



Cour fédérale

**Date: 20150827**

**Docket: IMM-690-15**

**Citation: 2015 FC 1018**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 27, 2015

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**OSCAR IYAMUREMYE  
JEANNINE UMUHIRE  
KARABO GRETA INEZA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Preliminary

[10] After reviewing the evidence and hearing counsel for the parties, I am of the opinion that the decision is reasonable with respect to the assessment of the applicant's contradictions and omissions, which are clearly apparent from reading the applicant's Personal Information Form, the transcripts of his interviews with the immigration officers and the hearing transcript. I agree with the panel that these bear on facts that are central to the account

provided by the applicant, who was not even able to provide a coherent order of events just days after the alleged incidents. I also agree with the respondent that *Moscol et al. v. The Minister of Citizenship and Immigration*, 2008 FC 657, is relevant. In his decision, Justice Luc Martineau wrote the following:

[21] The case law states that differences between the claimant's statement at the port of entry and the claimant's testimony are enough to justify a negative credibility finding when these contradictions bear on elements that are central to the claim: *Chen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 767, [2005] F.C.J. No. 959 (QL), at paragraph 23 and *Neame v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 378 (QL). Further, the RPD is entitled to assess a claimant's credibility based on a single inconsistency where the impugned evidence is a significant aspect of the claim: see *Nsombo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 505, [2004] F.C.J. No. 648 (QL).

(As expressed by Justice Yvon Pinard in *Gomez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 578)

## II. Introduction

[1] This is an application for judicial review under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Refugee Protection Division [RPD] dated April 11, 2013, denying the applicants' refugee protection claim.

## III. Facts

[2] The applicants are citizens of Rwanda. The principal applicant is of mixed Hutu and Tutsi origin, and his wife is Tutsi.

[3] The principal applicant alleges that his family was persecuted during the 1994 genocide, during which several members of his family were killed. After the genocide, the principal applicant's father was brought before a Gacaca court, but he continued to be persecuted despite being acquitted.

[4] The principal applicant was allegedly asked to swear allegiance to the Rwandan Patriotic Front [RPF], which he refused to do.

[5] The principal applicant alleges that he was discriminated against by his employers because of his apparent political beliefs and his ethnic origin.

[6] Among other things, the principal applicant alleges that, on September 25, 2012, he was summoned for an interview by the Rwandan military police, the Directorate of Military Intelligence [DMI], during which he was accused of supporting the Rwandan National Congress and promoting genocide. The interrogation lasted all night. Afterwards, the applicant's home was illegally searched on September 27, 2012.

[7] Later, in November 2012, the authorities prevented him from building on a plot of land.

[8] On November 11, 2012, the applicant was the victim of an attempted kidnapping by the DMI, as a result of which he dislocated his shoulder, as corroborated by a medical document adduced into evidence by the applicant.

[9] It is this event that prompted the principal applicant to leave Rwanda on December 15, 2012; he arrived in Canada on December 21, 2012.

[10] The principal applicant's wife and daughter base their refugee protection claim on the same allegations as the principal applicant.

#### IV. RPD decision

[11] In its reasons, the RPD found that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the IRPA.

[12] The RPD found that the principal applicant lacked credibility. Specifically, it determined the following:

[15] [The principal applicant's] was often confused and riddled with contradictions. The explanations he gave in response to questions posed by the panel were often implausible. At the hearing, he revealed important new facts that were surprisingly left out of the allegations he made in his Personal Information Form (PIF) and other documents. This led the panel to conclude that he was attempting to embellish his testimony. In short, this manner of testifying led the panel to question the overall credibility of his claim, as well as the claim of his brother, as that claim is linked to his own.

[16] The most glaring omission is certainly the following. At the hearing, Mr. Iyamuremye [the principal applicant] testified without hesitation that what prompted him to decidedly leave his country was being targeted by the dreadful DMI (military police known for their harsh repression of opponents of the government of Paul Kagamé). He recounted an attempted kidnapping in September 2012 and aggressive interrogations during which he was even tortured in the summer of 2012. All of this, he stated, because he had been accused of having awarded an important contract to a company linked to Alphonse Rutagarama, an opponent of Kagamé. This is also mentioned in the Basis of Claim Form (BOC Form)

that he signed on January 31, 2013, one month after he arrived in Canada.

[17] However, when he arrived in Canada and claimed refugee protection in December 2012, Mr. Iyamuremye told an entirely different story. At that time he stated that he was being persecuted in Rwanda because the government had humiliated his family. He mentioned the government's refusal to issue him a permit to build on land that was rightfully his, he claimed, because of his imputed political opinion. He further added that his employer, the ministry of health, allegedly transferred him to a new position after falsely accusing him of incompetence. Despite numerous questions asked by the immigration officer about the nature of his fear, the claimant did not say one word about the DMI, the attempted kidnapping alleged in the BOC Form or the accusations of being in cahoots with opponents of Kagamé.

(RPD's decision, applicant's record, at pp 16 and 17)

[13] The RPD continued by identifying other major contradictions in the evidence adduced by the applicants and found the explanations provided to be implausible, unreasonable and inadequate.

[14] Finally, following an examination of the documentary evidence, the RPD found that, contrary to the applicants' submissions, in Rwanda today people are no longer persecuted because of their ethnicity; rather, it is the opponents of the Paul Kagamé regime who are the targets of repression, regardless of their ethnic origin.

## V. Legislation

### **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,

### **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,

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.

#### **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

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.

#### **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

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 adequate health or medical care.

(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.

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 fournir des soins médicaux ou de santé adéquats.

(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.

## VI. Issue

[15] The Court finds that this application raises the following issue:

Is the RPD's decision unreasonable?

## VII. Analysis

[16] The RPD's decision is entirely reasonable. It focuses on the principal applicant's lack of credibility. Relying on the objective and subjective evidence, it does so in clear, straightforward,

precise terms. The applicant contradicted himself and relied on two different accounts, as the RPD clearly notes in its decision.

[17] The principal applicant's failure to mention his fear of the Rwandan military police, in and of itself, justifies a rejection of the refugee protection claim. It was reasonable for the RPD not to accept the applicant's explanations for this omission.

[18] Moreover, the respondent notes that the applicants do not challenge the RPD's findings based on the documentary evidence, specifically with respect to their alleged fear based on their Hutu and mixed ethnic origin, respectively.

[19] What is also important to note is that the evidence establishes that the targets of repression are the opponents of the Paul Kagamé regime, regardless of their ethnic origins, no one else.

#### VIII. Conclusion

[20] For all these reasons, the application for judicial review is dismissed.



**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. There is no question of importance to be certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
Johanna Kratz, Translator

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

**DOCKET:** IMM-690-15

**STYLE OF CAUSE:** OSCAR IYAMUREMYE, JEANNINE UMUHIRE,  
KARABO GRETA INEZA v THE MINISTER OF  
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