

Federal Court



Cour fédérale

Date: 20100921

Docket: IMM-5836-09

Citation: 2010 FC 940

Ottawa, Ontario, September 21, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

JEAN-PIERRE RUDAKUBANA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant served in the Rwandan Patriotic Army (RPA) and subsequently in the Rwandan Gendarmerie (Gendarmerie). By virtue of his membership in both organizations, his status therein and his knowledge of their persecuting activities, the Immigration and Refugee Board (Board) found him to be complicit in crimes against humanity committed by these organizations.

[2] The Board concluded that the Applicant was excluded from the definition of convention refugee under Article 1F(a) of the *Refugee Convention*. The Board also concluded that the Applicant's fears of persecution by the Rwandan government were not credible.

[3] The Applicant seeks judicial review of the Board's decision.

II. BACKGROUND

[4] The Applicant joined the youth wing (JPR) of the Rwandan Patriotic Front (RPF) in 1988 while in high school. In 1990 armed conflict broke out between the RPF and the Rwandan government. He joined the RPA and was sent to Uganda for training.

[5] In 1991 the Applicant was seriously wounded in conflict. After recovering he was posted at a border station on the Rwanda-Uganda border where he was responsible for 13-15 guards. He concluded his RPA career as a lieutenant.

[6] In 1993-94 the Applicant trained for and became a member of the Gendarmerie. He rose in rank to Inspector and was finally Chief Inspector when he left.

[7] The Applicant claimed that in 2001 he became a problem for his superiors when he refused to carry out orders to make political arrests. He also claimed that in 2002 he learned that he was to be killed while undergoing firearms training. As a result he fled Rwanda in 2003.

[8] The Applicant first went to Sweden where he claimed refugee status. His claim was that he was on a list of Rwandan officers living in Scandinavia who were suspected of having informed the French government that the Defence Minister was responsible for the shooting down of the President's plane which led to the genocide.

[9] The Swedish refugee process took 4½ years and the Applicant was unsuccessful at each stage. His claim in Sweden was basically the same as his claim made in Canada.

Having obtained a false Belgian passport, the Applicant claimed refugee protection in January 2008.

[10] The Board analyzed the activities of the RPA and Gendarmerie citing the evidence of human rights organizations as sources. While they may not have had a limited and brutal purpose, both the RPA and Gendarmerie were involved in killings, forced disappearances, arbitrary arrests, detention, torture and extra-judicial executions.

[11] The Board concluded that the Applicant was personally and knowingly involved in the persecutorial acts of the RPA and Gendarmerie, specifically because of the nature of the organizations, the fact that the Applicant had joined willingly, that he had achieved high rank, that he had served for 14 years without ever trying to leave and that he knew of the organizations' activities.

[12] The Board also found the Applicant not to be credible with respect to the claim for refugee protection. His evidence was inconsistent with that advanced in Sweden regarding his own detention in Rwanda, and his letter of support from a friend fails to mention his detention altogether. His POE notes also fail to mention his detention or that he was sought by the police.

Likewise, neither his original PIF nor his friend's letter made reference to the Applicant's name being on a list of potential informers.

[13] The Board, in addition to finding the Applicant to be excluded by virtue of his crimes against humanity, also found him not to be credible (and his story implausible) with respect to his own risk. The Board concluded that he would not face a serious possibility of persecution if he were returned to Rwanda.

III. ANALYSIS

[14] The standard of review in respect of the findings of complicity is reasonableness. With respect to credibility findings, the standard of review is also reasonableness with considerable deference owed to the Board in this regard (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[15] There is no basis for the Applicant's contention that the Board's complicity analysis was not sufficiently detailed or thorough. The evidence supports the Board's findings and they are reasonable in these circumstances (*Kasturiarachchi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 295).

[16] The Board accepted the Respondent's evidence of the activities of the RPA and Gendarmerie, as it was entitled to do. The Applicant's career, set out in the Tribunal Record at page 130, provides sufficient evidence of a nexus between the Applicant and the wrongful acts of both organizations.

[17] The Applicant's own claim was seriously flawed, a conclusion which the Board was entitled to make. The Board's reliance on the Swedish authorities' decision was reasonable particularly as to discrepancies in the Applicant's story.

[18] While the findings of foreign authorities are not, except in the most unusual circumstances, binding on the Board, it is appropriate to give recognition to decisions by these other authorities where there is a sufficient similarity in practices, policies and values to those in Canada. In this instance, the Swedish decision, along with the evidence before the Board, provided a reasonable basis for the Board's conclusions.

IV. CONCLUSION

[19] This judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5836-09

STYLE OF CAUSE: JEAN-PIERRE RUDAKUBANA

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 8, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: September 21, 2010

APPEARANCES:

Ms. Lina Anani FOR THE APPLICANT

Mr. Stephen H. Gold FOR THE RESPONDENT

SOLICITORS OF RECORD:

MS. LINA ANANI FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

MR. MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario