

Federal Court



Cour fédérale

Date: 20111223

Docket: IMM-3007-11

Citation: 2011 FC 1518

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, December 23, 2011

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

JUVÉNAL NSENGIYUMVA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision of a pre-removal risk assessment (PRRA) officer refusing the applicant's pre-removal risk assessment application.

[2] The applicant, a citizen of Rwanda of Hutu origin, is a Catholic priest, ordained in August 1992 in the Diocese of Ruhengeri, where he worked as an educator and a disciplinary prefect from September 1993 to July 1994. He alleges the following facts in support of his application.

[3] In July 1994, he fled to Goma in the Democratic Republic of the Congo (DRC) following the massacres of Hutu priests and bishops by the forces of the Rwandan Patriotic Front (RPF) in his country. Even in the DRC, the applicant was not beyond the reach of RPF militants. According to him, he was put on a hit list.

[4] On August 2, 1994, he and 28 other Rwandan diocese priests who had sought refuge in Goma sent a letter to Pope John Paul II in order to inform him of the situation in Rwanda. According to that letter, the RPF was guilty of massacres during the genocide, the International Criminal Tribunal for Rwanda (ICTR) was headed by war criminals and the Tutsis held all the rights in Rwanda.

[5] Not finding anywhere else to seek refuge, the applicant returned to the Archdiocese of Rwanda in April 1997, and remained there until his departure for Canada. During 1998 and 1999, several of his colleagues were killed by RPF forces. His father, his two brothers and his uncle suffered the same fate.

[6] When he was coming back to his place of residence in the bishopric in July 1999, he was attacked by a lieutenant of the Rwandan army and received death threats. After that, he decided to leave for Canada.

[7] The applicant arrived in Canada in September 1999, and filed a refugee protection claim in November 1999, which was rejected by the Convention Refugee Determination Division (CRDD). The application for leave filed with respect to that decision was dismissed in February 2002.

[8] In August 2007, Citizenship and Immigration Canada issued a report under subsection 44(1) of the IRPA stating that the applicant was inadmissible because he had been found guilty of impaired driving.

[9] Two months later, his application for permanent residence on humanitarian and compassionate grounds was also refused.

[10] On January 31, 2011, he filed a PRRA application, indicating that he feared for his life, safety and physical security if he were to return to Rwanda for the following reasons:

- a. Rwanda's recently enacted legislation on genocide ideology and sectarianism is broad and unclear so as to help the government to suppress all opposition to the RPF. Since he is one of the co-authors of a letter to the Pope expressing his opposition to the RPF, he could be imprisoned or assassinated.
- b. The Kagame regime tries to take revenge on the Catholic Church and attacks certain elements that could interfere. He could be one of these "elements".
- c. Since he is of Hutu origin, he could be persecuted if he were to return to Rwanda.
- d. The fact that his refugee protection claim was rejected, that his narrative mentioned an attempt on his life and that the CRDD attributed to him a negationist attitude

towards the genocide could expose him to a risk of imprisonment if he were to return to Rwanda.

- e. His statements against the Rwandan authorities during masses and conferences for the Rwandan community in Montréal could put him at risk on his arrival in Rwanda.

[11] His PRRA application was refused on April 21, 2011.

[12] In his decision, the officer examined a long list of documents submitted by the applicant in support of his application, rejecting several because of their bias, because of the difficulty of identifying the sources of information or because they were not useful in establishing a link with the applicant's personal situation.

[13] These documents included an expert report on Rwandan legislation against genocide ideology, prepared by Evode Uwizeyimana following an order received by the applicant, which was given little weight. According to the officer, Mr. Uwizeyimana's conclusions show only his personal interpretation of the legislation in question and provide no information on the applicant's personal situation.

[14] With respect to the risk related to the letter sent to the Pope in 1994, the officer noted that the letter was written a few weeks after the end of the genocide. Nothing shows that the Rwandan government is aware of its existence or that the other co-writers of the letter had been imprisoned or mistreated simply because they had signed it. The officer noted that the applicant returned to live in Rwanda between 1997 and 1999 without having any problems.

[15] The officer acknowledged that the Rwandan legislation on the ideology of genocide and sectarianism is deliberately broad and imprecise and that it could be used to settle scores unrelated to the Rwandan genocide. The evidence shows that journalists and political leaders have been targeted for “negationism” by the current authorities. However, the wording of these acts and their application do not lead to the conclusion that the applicant would personally be targeted by the authorities.

[16] The officer based himself on the 2010 *US Country Report* in rejecting the applicant’s allegations that his Hutu ethnicity would put him at risk if he were removed to Rwanda. Even though the Rwandan government is still launching offensives against Hutu rebels and that several people are dead, the applicant has not shown that he may be considered an opponent, rebel or dissenter.

[17] The officer also concluded that the applicant did not show that his refugee claim was brought to the attention of the Rwandan government or that he had made statements against the government during masses and conferences. Although the applicant submitted documents in which it was stated [TRANSLATION] “that a refugee claimant removed to Rwanda was apparently found guilty of defamation since he apparently made misrepresentations and used falsified documents” and that there had been [TRANSLATION] “arrests and convictions of certain persons belonging to the clergy”, he did not show that may he be considered as an opponent, rebel or dissenter and thus be at risk if he returned to Rwanda.

[18] Is the PRRA officer’s decision reasonable?

[19] In this case, it is essentially a matter of weighing the evidence, which requires greater deference from the Court.

[20] In his decision, which is very detailed and well reasoned, the officer mentioned documents filed by the applicant as well the reasons why he rejected some of them or attributed little weight to them. The officer raised doubts with regard to the objectivity of the authors and the independence of the sources, which he was entitled to do, especially since the information is related to events closely linked to a political context.

[21] As for the report of Evode Uwizeyimana, first, it seems to be supporting, with good reason, the statement that some Rwandan laws are used to [TRANSLATION] “muzzle the opposition and critics”. The author specified that removing the applicant to Rwanda would be a highly risky decision. However, the officer attributed little weight to it because of the absence of any nexus between the information described in the report and the applicant’s personal situation. In fact, Mr. Uwizeyimana cannot testify about the applicant’s activities, about his being known to the Rwandan authorities or about their interest in him. The weight to be attributed to this piece of evidence was entirely up to the officer’s discretion and cannot in itself warrant the Court’s intervention.

[22] As for the letter addressed to Pope John Paul II, which denies the existence of a genocide of Tutsis in Rwanda, nothing indicates that people could be prosecuted for merely signing a letter.

[23] In sum, it is apparent from reading the officer's decision that he carefully considered the evidence submitted by the applicant. He truly took into account the fact that the applicant had been identified by the CRDD as having a negationist attitude towards the genocide, but nevertheless concluded that he had not demonstrated that the CRDD decision had been brought to the attention of the Rwandan government. The mere fact that the Court files are open to the public does not make it possible to conclude that Rwandan authorities have been informed of the decision – even less so of a decision rendered 10 years ago – and that they are interested in the applicant.

[24] As to his actions in Canada, the applicant did not submit any probative evidence that participating in a demonstration five years ago and some imprecise statements or declarations he has allegedly made could establish a personalized risk if he were to return to Rwanda.

[25] The officer concluded that the applicant had simply not submitted any probative evidence in support of the allegations in his narrative. That decision is reasonable because it falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 CSC 9, (2008) 1 SCR 190).

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

JUDGMENT

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

“Danièle Tremblay-Lamer”

Judge

Certified true translation
Margarita Gorbounova, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3007-11

STYLE OF CAUSE: JUVÉNAL NSENGIYUMVA and MCI ET AL.

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**REASONS FOR JUDGMENT
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