Federal Court  Cour fédérale

Date: 20130115

Docket: IMM-3575-12

Citation: 2013 FC 33

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, January 15, 2013

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

MARIE NIKUZE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [panel], dated March 20, 2012, rejecting the applicant's claim for refugee protection on the ground that she was excluded from refugee protection by the combined effect of section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], and paragraph 1F(*a*) of the *United Nations Convention Relating to the Status of Refugees*, [1969] Can TS No 6 [Refugee Convention]. For the reasons that follow, this application for judicial review must be allowed.

Facts

[2] The applicant is a citizen of Rwanda. She was born on December 30, 1970, to a Tutsi mother from Gitarama and a Hutu father from Ruhengeri. The applicant's father was a well-known lawyer and politician in Rwanda, and her parents' marriage was always disapproved of by both ethnic groups. She alleges that, after her father's death, her family was threatened and harassed by Hutu extremists from the North, who wanted to make them leave the region.

[3] The situation deteriorated in 1990, when a conflict erupted between the predominantly Tutsi Rwandan Patriotic Front [RPF] and the predominantly Hutu government of the time. The applicant alleges that, in the course of the conflict, her mother was arrested and imprisoned and that, in her absence, government soldiers and Hutu extremists came to her house to torture, rape and rob the members of her family. A second attack took place when the applicant's aunt came to live with them while their mother was in prison. On that day, soldiers forcibly entered the house, breaking windows and doors with the barrels of their guns, and raped the applicant, her sister and her aunt. Following this incident, the family sought shelter at the hospital in Ruhengeri before fleeing to Gitarama. In 1993, when the RPF infiltrated the northern province and opened the prison of Ruhengeri, the applicant's mother escaped and came to join them in Gitarama.

[4] The Tutsi genocide in Rwanda mainly took place between April 6 and July 4, 1994. The applicant alleges that, when the RPF soldiers arrived in Gitarama in June 1994, she and her siblings were under the protection of the Red Cross, but were still targets.

[5] On or around July 29, 1994, the RPF soldiers came to the Red Cross site and arrested about 30 people whom they believed to be of Hutu origin, including the applicant and her sister, to take them into custody. Even though the applicant did not mention this fact in her Personal Information Form [PIF], the evidence shows that, at the time, she was accused of genocide and murder and was the subject of an investigation (release order dated December 14, 1998).

[6] Another fact that was not specifically mentioned in the applicant's PIF, but which the Minister pointed to before the Court, is that the applicant was a student in the Faculty of Law at the National University of Rwanda [NUR], Kigali campus, from 1992 to April 1994. When examined by the panel in this regard, she explained that, as soon as the hostilities that led to the Rwandan genocide started, university classes were suspended and all Faculty of Law students were evacuated and moved, by minibus, to the Butare campus, where they were housed until the end of May 1994. This move allegedly took place on or around April 11, 1994. She alleges that she managed to survive her stay on the Butare campus thanks to her Burundi identity card stating that she is of Hutu origin (according to tradition, children belong to the father's ethnic group) and the fact that no one in the area knew her.

[7] By order of the Public Prosecutor of Gitarama, dated December 14, 1998, the applicant was released conditionally after spending four and a half years in preventive detention without being tried or sentenced. This order compelled the applicant to remain in the town of Nyamabuye, to report to the examining magistrate from time to time and to appear before the examining magistrate or the judge when summoned to do so.

[8] The applicant alleges that, after the genocide, all those who were arrested and taken into custody were done so on the strength of the same accusation. She alleges that one of her sisters, who had been in prison with her, was released on the same day. She also alleges that, following her release, they were mistreated by the Tutsis, who called them *ibipinga* (Hutu) and accused them of being close to the Interahamwe of the National Revolutionary Movement for Development [NRMD], who were responsible for most of the massacres committed as part of the 1994 genocide. The applicant alleges that she was attacked by the Tutsi militia and was pressured within her community and that she had a hard time finding a job following her release. In 1999, she was finally hired by the General Bursar of the Diocese of Kabgayi in Gitarama, where she worked until 2007.

[9] On May 11, 2006, eight years after her release, the application received a summons to appear before the Gacaca Court. Even though the summons was addressed to her sister (who is now a refugee in France), the applicant appeared before the court on May 18, 2006, and was examined about where she lived during the war. For over three years, the Rwandan authorities did not follow up on this meeting.

[10] On June 1, 2009, the applicant received a second summons, still in the name of her sister and without any mention of the names of her parents. The applicant's brother went to the court to inform the authorities that a mistake had been made but was told that the applicant would receive another summons in her name.

[11] The applicant alleges that she was afraid of reporting to the Rwandan authorities since one of her brothers and her cousin had been arrested arbitrarily and imprisoned by Tutsi extremists in April 2002 and April 2009. In fear of what was in store for her, the applicant left Gitarama on June 14, 2009, and went to Kigali. On June 16, 2009, her husband received a summons in her name, under which she was accused of participating in the [TRANSLATION] "killings in Kabgayi" and was summoned to appear before the Court on June 23, 2009.

[12] On June 15, 2009, the applicant left Rwanda for Uganda and later joined her sister in Canada, where she immediately claimed refugee protection.

Impugned decision

[13] In support of her fear of persecution by the Tutsi extremists of the Rwandan government, the applicant provided evidence of her detention and her conditional release and of the summons she received from the Gacaca Court. However, this documentary evidence backfired on her as the Minister attempted to establish that the applicant was excluded from refugee protection under paragraphs 1F(*a*) and (*c*) of the Refugee Convention, on the ground that she had committed crimes against humanity by participating in the 1994 genocide in Rwanda or that she had been an accomplice to such crimes.

[14] Section 98 of the Act stipulates that a person referred to in section 1F of the Refugee Convention cannot be considered to be a Convention refugee or a person in need of protection and, consequently, is not entitled to the protections afforded by the Act and the Refugee Convention.

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[15] Section 1F of the Refugee Convention, appended in the Schedule to the Act, reads as follows:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	1 F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
(*a*) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;	*a*) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
(*b*) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	*b*) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
(*c*) He has been guilty of acts contrary to the purposes and principles of the United Nations.	*c*) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

[16] The panel concluded that the applicant was a person referred to in paragraph 1F(*a*) of the Refugee Convention. A reading of the lengthy reasons for the impugned decision reveals that

this conclusion is essentially based on the fact that "there are serious reasons for considering that students, professors and university officials at the NUR campus in Butare personally participated or were complicit in the Rwandan genocide of April to June 1994".

[17] In reaching this conclusion, the panel referred to the documentary evidence filed by the Minister, which establishes that "from the time the Rwandan genocide began, specifically, on the morning of April 7, 1994, the massacres followed a pre-established plan and were carried out with ruthless violence". The panel stated that, during the night of April 7 to 8, 1994, a warmongering government, comprising members of the NRMD, the Coalition for the Defence of the Republic [CDR] and the Hutu Power group, was formed. The panel added that, according to the evidence, the massacres had been committed either, as part of organized operations, by NRMD units, assisted by either Interhamwe and CDR militia or Presidential Guard soldiers, or both; or by ordinary individuals who decided on their own to kill (*La crise rwandaise: structure et déroulement*, Writenet, July 1, 1994).

[18] The panel questioned the applicant about her membership in the Democratic Republican Movement [DRM] from January 1991 to April 1994, which she mentioned in her claim for refugee protection dated June 30, 2009. However, the panel drew no conclusion in that regard, nor did it examine the activities of the DRM party and its role in the 1994 genocide. In its reasons, the panel merely reported the applicant's testimony that, in her youth, she joined the party simply because they wore a uniform in the colours of her country's flag.

[19] The panel's conclusion on the applicant's complicity, as a student of law at the NUR, in the 1994 massacres (that is, her "personal and knowing participation" within the meaning of *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 224 at para 68 [*Ezokola*]) is rather based on an excerpt from André Guichaoua's book *Rwanda 1994. Les politiques du génocide à Butare* (Karthala: Paris, 2005) at pp 127-128 [André Guichaoua]. For a better understanding of the panel's reasons, I have reproduced in its entirety the excerpt the panel refers to several times:

> [TRANSLATION]
>
> The RPF's attack on Ruhengeri in February 1993 that made the repatriation of all programs and students of the Nyakinama university campus to Butare necessary, heightened the tensions. Many teachers and students had already returned to Butare, fleeing the terror that reigned on the Ruhengeri campus as a result of the threats and violence of the pro-Hutu militia groups and intelligence services. The political and ethnic divide, widened by regional confrontations, reinforced insurmountable barriers. In late 1993, a university Power group claiming to represent the DRM set itself up outside the party's official structure and led a violent campaign against the Twagiramungu team's usurpation of title and position.
>
> Consideration must also be given to the active mobilization of the students of the Faculty of Law in Kigali, a mobilization that was controlled from the prefecture by atypical students. Among these students was the "CDR wives" trio. A prominent figure in this trio was Geneviève Kabera (*Tutsi bagowe* [footnote: identified as a Hutu at the NUR], *CDR, Gisanyi*), a student from 1991 to 1994 and the wife of Lieutenant Colonel Léonard Nkundiye (*Hutu, NRMD, Ruhengeri*). The other two wives were Françoise Niwemwana (*Hutu, NRMD/CDR, Gisenyi*), wife of Viateur Nvuyekure (*Hutu, NRMD, Gisenyi*) and cousin of Juvénal Habyarimana, also a university student; and Laurence Nyiraguhirwa (*Hutu, NRMD, Gisenyi*), wife of Jean-Baptiste Ndarihooranye (*Hutu, NRMD, Gisenyi*), Minister of Health for a short time at the start of 1992 and one of the persons in charge of the NRMD in Gisenyi.
>
> I will not, in this work, rediscuss the massacres that were committed at the NUR from mid-April 1994 on, or the role of the various

> university structures over the course of the months that followed. It should be noted, however, that, as of April 6, those in charge of the NUR were aware of and ready to respond to national instructions. After the removal of Prefect Jean-Baptiste Habyalimana, a militia group started operating on the university campus under the orders of Vice-Rector Jean-Berchman Nshimyumuremyi. The majority of opponents and Tutsis—administrative staff, teachers and students—who failed to leave Butare before mid-April were murdered then.

[20] The applicant admitted that she had been among the students who were displaced by the war, but stated that, after the evacuation of the Kigali campus between April 11 and 14, 1994, she did not travel with the Interahamwe militia but with students and professors. However, the panel noted that, according to the documentary evidence, in April 1994, the Butare prefecture was still openly holding out against the authorities that were controlling Kigali and the rest of the country, and that, on April 11, 1994, buses full of Interahamwe militia arrived in Butare (André Guichaoua, at page 251). According to the applicant, Interahamwe arrived only in May 1994. The panel concluded that despite the applicant's testimony, the abovementioned evidence had sufficient probative value to suggest that there were serious reasons to believe, and not mere suspicions, that the applicant had been involved in the acts of genocide committed in Rwanda from April to June 1994.

[21] Other than the documentary evidence, the panel noted the fact that the applicant was formally charged with genocide and murder and that she had been imprisoned for several months. It also noted that, in a broadcast in October 1993 by Radio Télévision Libre des Mille Collines, the applicant was named as being among those displaced by the war and invited to participate in a student meeting at the Faculty of Law.

[22] The panel drew a negative inference from the fact that the applicant failed to mention in her PIF that she had been a student at the Faculty of Law during the 1994 genocide and that she had been displaced to the Butare campus with other students and university officials. The applicant replied that this was mentioned in her refugee claim dated June 30, 2009, even though she did not state there to which faculty she had belonged. The applicant told the panel that she had provided the information that she had thought to be most important and that she was not trying to conceal any relevant facts. The panel found this to be a significant omission that undermined her credibility, adding that "the [applicant] was not credible when she stated that she escaped the massacres of Tutsi students living on the NUR campus in Butare from April to May 1994 and that, on the contrary, there are serious reasons for considering that she was among the students mobilized by extremist elements who were close to influential soldiers and who personally participated or were complicit in the Rwandan genocide". The panel found it unlikely that the applicant had succeeded in getting across the various identity check roadblocks, while, according to the documentary evidence, during the period during which she lived on the Butare campus, Tutsi students were sought out and identified by other students, and, in some cases, tortured or killed (Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda*, March 1, 1999, at pages 218-220). In Kigali and in the suburbs, the militia created roadblocks, and anyone thought to be a Tutsi or opposed to the massacres was executed (Amnesty International, *Report 1995*, January 1, 1995, at pages 52-53).

[23] The panel finally rejected the testimony of the applicant's sister, who has refugee status in Canada, on the ground that the overall objective of this testimony was to present the applicant as a victim in her country. The panel pointed out that, at the hearing of the applicant's sister's

claim for refugee protection in February 2006, the release order describing the accusation against the applicant's sister was brought to the member's attention, but neither the panel nor the parties raised the possibility of exclusion under section 1F of the Refugee Convention.

[24] The panel drew a negative inference regarding the applicant's credibility from her admission that she used the text of the documents her sister had submitted in support of her claim for refugee protection to complete her PIF, meaning that several aspects of the applicant's narrative were "identical to those presented by her sister on her own PIF". However, the panel did not note any falsehoods in her narrative, other than the statement that Hutu extremists had raped her two older sisters after their mother's arrest in 1990 given that the applicant is one of the older sisters and she herself had allegedly been raped during this incident.

Issues

[25] The only issue is whether the panel erred in concluding that it had reasonable grounds to believe that the applicant had been an accomplice in crimes against humanity. More specifically, the applicant raised the following questions to challenge the panel's findings:

1) Did the panel err in concluding that the applicant committed crimes against humanity even though it was never clarified which crimes she had allegedly committed?

2) Did the panel err in concluding that the applicant belonged to the group of students, professors and other members of the Faculty of Law who committed the killings at Butare or that she had, personally, or as an accomplice, committed acts equivalent to crimes against humanity?

3) Did the panel err in not analyzing the applicant's participation in a "brutal (limited purpose) organization" to establish her complicity in the alleged crimes?

4) Did the panel err in not analyzing the six factors established to determine whether the applicant was a member of an organization responsible for crimes against humanity?

Standard of review

[26] According to the more recent case law of the Federal Court of Appeal and of this Court, the appropriate standard of review for the panel's conclusions on the concept of complicity for the purposes of section 98 of the Act and section 1F of the Refugee Convention is correctness, while the issue of whether the facts in this case trigger the operation of section 1F is a question of mixed fact and law, meaning that deference is owned to the panel in this regard (*Ezokola*, above, at para 39; *Nsika v Canada (Minister of Citizenship and Immigration)* 2012 FC 1026 at paras 14-15; *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 at para 11).

[27] The panel's conclusions on the applicant's credibility and the implausibility of her allegations are also reviewable on reasonableness (A*guebor v Canada (Minister of Employment and Immigration*) (FCA), [1993] FCJ No 732).

[28] For the following reasons, it is my opinion that the panel erred in its application of the legal tests to establish the application's complicity. No deference is owed to this aspect of the impugned decision.

[29] Moreover, the tribunal arrived at largely speculative and unreasonable findings of fact in concluding that there were serious reasons for considering that every student, professor and university official of the NUR's Faculty of Law displaced to the Butare campus in early April 1994 personally participated in or was complicit in the 1994 genocide. Such a conclusion

does not fall ‘‘within a range of possible, acceptable outcomes which are defensible in respect of the facts and law’’(*Dunsmuir v New Brunswick* [2008] 1 SCR 190 at para 47).

Analysis

The panel erred in concluding that the applicant committed crimes against humanity without establishing which crimes she had been accused of and which crimes she had committed

[30] The concept of “crime against humanity” within the meaning of paragraph 1F(*a*) of the Refugee Convention is defined at section 4 of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, as meaning “murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission”. In *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100, at paragraph 128 [*Mugesera*], the Supreme Court defined the three components of a crime against humanity, other than the intention to commit the offence: one of the enumerated proscribed acts is committed; the act occurs as part of a widespread or systematic attack; and the attack is directed against any civilian population or any identifiable group.

[31] Even though the reasons for the impugned decision are by no means explicit in this regard, the panel seems to have concluded that the applicant participated or was complicit in the

"Rwandan genocide of April to June 1994" and/or in "the hunt for Tutsis" that took place on the NUR campus at Butare while she was living on that campus with other displaced members of the Faculty of Law. The applicant submits that she was excluded without the Minister demonstrating that she had, personally or by complicity, committed acts constituting crimes against humanity while she herself had been the victim of the persecution of which she stands accused.

[32] Even if the panel did not find the applicant to be credible regarding the reasons that allowed her to survive her time in Butare, it should not have speculated on her direct or indirect participation in the massacres that took place in Rwanda in April and May 1994 in the absence of any evidence in that regard. The panel did not identify the acts of which the applicant is accused or her intention to commit them.

[33] In *Ramirez v Canada (Minister of Employment and Immigration)* (FCA), [1992] 2 FC 306 at para 17 [*Ramirez*], the Federal Court of Appeal determined that a person's presence at the scene of an offence of persecution is not enough to establish that person's personal and knowing participation in the crime, unless other factors suggest such participation:

> [M]ere presence at the scene of an offence is not enough to qualify as personal and knowing participation (nor would it amount to liability under s. 21 of the Canadian Criminal Code), though, again, presence coupled with additional facts may well lead to a conclusion of such involvement. In my view, mere on-looking, such as occurs at public executions, where the on-lookers are simply bystanders with no intrinsic connection with the persecuting group, can never amount to personal involvement, however humanly repugnant it might be. However, someone who is an associate of the principal offenders can never, in my view, by said to be a mere on-looker. Members of a participating group may be rightly considered to be personal and knowing participants, depending on the facts.

[34] In the absence of any evidence on file, the panel essentially relied on the fact that the applicant was officially accused of genocide and murder and that she had been temporarily imprisoned, without being tried or sentenced, for several months. If the only reason to believe that a person was involved in a crime against humanity is based on the fact that accusations were made against that person, this amounts to denying the person the presumption of innocence. The applicant further submits that, while the panel alleges that she was complicit in the massacre committed on the Butare campus, the conditional release order and the summons issued to her actually refer to incidents that occurred in the town of Kabgayi, yet she was not even in Kabgayi at the time of the events.

[35] It is settled law that personal and knowing participation does not require physical presence on the scene of the crime and may be proved by showing the existence of a common intention (*Mazima v Canada (Minister of Citizenship and Immigration)*, 2012 FC 698 at para 26). It is also trite law that "[t]hose who become involved in an operation that is not theirs, but that they know will probably lead to the commission of an international offence, lay themselves open to the application of the exclusion clause in the same way as those who play a direct part in the operation" (*Bazargan v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1209 at para 11). However, an exclusion determination must include an analysis of the alleged acts, which is missing from the panel's decision. The documents filed by the applicant contain no mention of the crimes, acts or incidents in which her involvement is alleged or of the time or place where these may have taken place. The applicant's imprisonment dates back several years, that is, to the years following the 1994 genocide; she was released without any charges being laid

against her; and the two first summons she received in 2006 and 2009 bore her sister's name and not her own. The panel erred in not considering any of these facts, and it based its conclusion solely on the fact that the applicant had been charged, in addition to her presence at the scene of the offence.

[36] The lower standard of proof required to establish that the applicant committed certain acts (*Ezokola*, above, at paras 47-49) does not allow the panel to draw speculative conclusions that are not supported by the evidence. The evidence before the panel did not support its finding that the Minister had discharged his burden of proving that the applicant had committed a crime against humanity, be it personally or by complicity.

The panel erred in its complicity analysis

[37] A refugee claimant can be excluded from protection from Canada if it is established that he or she was complicit in the commission of one of the crimes enumerated in paragraph 1F(*a*) of the Refugee Convention. The test for complicity is that of "personal and knowing participation", which is presumed when the claimant was a member of an organization "principally directed to a limited, brutal purpose" (*Ramirez*, above, at paras 15-16). Where the organization is not directed to a limited, brutal purpose, the Federal Court of Appeal and this Court have established six factors to assess the degree of a refugee claimant's complicity in a crime against humanity, namely, the nature of the organization, the method of recruitment, the position or rank within the organization, knowledge of the organization's atrocities, the length of time in the organization and the opportunity to leave the organization (*Ardila v Canada (Minister of Citizenship and Immigration)*, 2005 CF 1518 at para 11 [*Ardila*]).

[38] In the case under review, I am satisfied, on reading the lengthy reasons for the impugned decision, that the panel failed to perform the necessary analysis to establish that the applicant, through her actions or by acquiescence, was complicit in the 1994 genocide and/or the atrocities committed on the Butare campus while she was living there with all the other Faculty of Law students.

[39] The panel noted that the applicant had belonged to the DRM political party from 1991 to 1994, without, however, questioning her role and level of involvement in that organization – minimal according to her testimony – or making any finding of fact.

[40] Instead, the panel reached a generalized conclusion that "students, professors and university officials at the NUR campus in Butare personally participated or were complicit in the Rwandan genocide of April to June 1994". The panel is therefore not referring to all the students, professors and university officials and failed to explain why the applicant would have been part of these students who were complicit in war crimes. In other words, the panel did not establish a link between the fact that the applicant was part of the students displaced by the war and the documentary evidence describing an [TRANSLATION] "active mobilization of the students of the Faculty of Law in Kigali . . . controlled from the prefecture by atypical students". Any inferences drawn from the circumstances of the present case are pure speculation.

[41] Contrary to the situation of Mr. Teganya (a moderate Hutu) in *Teganya v Canada (Minister of Citizenship and Immigration)*, 2006 FC 590 at paras 15-16 [*Teganya*], the applicant

never admitted that she had been aware of the atrocities committed on the campus where she lived, and the evidence does not establish that she shared a common purpose with the perpetrators of these crimes.

The panel made unreasonable findings of fact on the basis of the evidence

[42] Even though these reasons suffice to set aside the impugned decision and refer the matter back to the Refugee Protection Division, it is my view that a generalized conclusion that the students and all academic and administrative staff of the Faculty of Law who were displaced to the NUR campus at Butare and who survived this displacement personally participated or were complicit in the 1994 genocide is simply unreasonable. The applicant held a Hutu identity card, and she testified that she herself struggled to survive during this difficult period by living in hiding and restricting her movements. I do not find these explanations to be implausible, particularly given the applicant's dual ethnicity. They are also not implausible given that the applicant's entire narrative suggests that she was persecuted by both the Hutu (before the genocide) and the Tutsi (after the genocide).

[43] The panel also erred in finding that the applicant concealed the fact that she had been a student of law at the NUR at the time of the 1994 genocide. The evidence demonstrates that the applicant stated in the refugee claim she completed on June 30, 2009, at her port of entry that she had been a student at NUR in Kigali from 1992 to 1994, that she had been a member of the DMR from 1991 to 1994 and that she is now charged with genocide and murder by her country's government. She produced the conditional release order describing this charge and the summons she received before leaving Rwanda. The applicant also admitted at the hearing that she had been

one of the students who were displaced by the war and evacuated to the Butare campus in April 1994. In light of all this evidence, the panel could not reasonably question the applicant's credibility by presuming that she had deliberately concealed part of her history.

[44] The issue before me is not a request to extradite the applicant or the merits of her refugee claim. Even though it would be desirable for the applicant to return to her country to face the charges that have been or that could be brought against her (an issue on which I will not rule), that is insufficient to find that there are serious reasons to consider that she committed a crime against humanity.

[45] For all of these reasons, the present application for judicial review of the panel's decision should be allowed, and the matter should be referred back to the Refugee Protection Division of the Immigration and Refugee Board for redetermination by another member, taking into account the present reasons. No question of general importance was proposed, and none will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The present application for judicial review is allowed;
2. The matter is referred back to the Refugee Protection Division of the Immigration and Refugee Board for redetermination by a differently constituted panel, taking into account the present reasons; and
3. No question is certified.

"Jocelyne Gagné"

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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