Federal Court  Cour fédérale

**Date: 20130117**

**Docket: IMM-5821-12**

**Citation: 2013 FC 43**

**Ottawa, Ontario, January 17, 2013**

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

**BETWEEN:**

**RAOUL NDAGIJIMANA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant seeks judicial review of a negative Pre-Removal Risk Assessment (PRRA) rendered by a senior immigration officer ("the Officer") on May 10, 2012.

[2] For the reasons that follow, the application for judicial review is dismissed.

## I. Background

[3] The Applicant is a citizen of Burundi, who arrived in Canada in October 2006 and made an unsuccessful claim for refugee protection. His PRRA application, based on entirely new grounds from those claimed in his refugee proceeding, was received on May 5, 2011.

[4] In his PRRA, the Applicant claimed a well-founded fear of persecution or of cruel and unusual treatment or punishment were he to be returned to Burundi by virtue of his involvement with the Movement of Solidarity and Democracy (MSD), an opposition political party in Burundi. The PRRA officer accepted as new evidence all of the documents submitted by the Applicant, including a copy of his MSD membership card, a letter from the diaspora section of the MSD party, receipts documenting his financial contributions to the party between 2009 and the date of application, and documents relating to country conditions in Burundi.

[5] The Officer found that, while the documentary evidence established that MSD members had been subject to persecution in Burundi in the past, the Applicant had not sufficiently established that he was similarly situated to such individuals. Specifically, the Officer found that the Applicant provided insufficient evidence to demonstrate that he would be perceived to be an MSD member, or that he would be of interest to the authorities in Burundi.

## II. Issues

[6] The issues raised by the Applicant can be articulated as follows:

A. Whether the Officer erred in failing to hold a hearing; and

B. Whether the Officer properly applied section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

## III. Standard of Review

[7] An officer's decision with respect to whether to hold a hearing for a PRRA is a matter of discretion for which considerable deference is owed (*Matano v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1290, [2010] FCJ No 1659 at para 10; *Andrade v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1074, [2010] FCJ No 1348 at para 21). However, the fairness of the process as a whole is to be assessed on the standard of correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at para 43; *Matano*, above, at para 11).

[8] Similarly, whether the Officer applied the correct legal test is a question of law, equally reviewable on the standard of correctness (*Khosa*, above, at para 44; *Nagaratnam v Canada Minister of Citizenship and Immigration)*, 2010 FC 204, [2010] FCJ No 240 at para 17). The Officer's application of the test, however, is a mixed question of fact and law that is reviewable on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9; *Nagaratnam*, above, at para 14). As the Supreme Court stated in *Dunsmuir*, above, reasonableness

is concerned both with the existence of justification, transparency, and intelligibility in the decision-making process and with whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (para 47).

## IV. Analysis

### A. *Procedural Fairness*

[9] The Applicant relies on paragraph 113(b) of IRPA to argue that he ought to have had the opportunity to address the Officer's concerns with respect to his credibility at an oral hearing. He points to the following factors, listed in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, to determine whether a hearing should be held in PRRA matters:

| Hearing — prescribed factors | Facteurs pour la tenue d'une audience |
|---|---|
| **167.** For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following: | **167.** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise : |
| (*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act; | *a*) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur; |
| (*b*) whether the evidence is central to the decision with respect to the application for protection; and | *b*) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection; |

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| (*c*) whether the evidence, if accepted, would justify allowing the application for protection. | *c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection. |

[10] I am unable to accept the Applicant's characterization of the Officer's decision. While there is no evidence that the Officer directly considered these criteria, I am not convinced that the Officer decided on the basis of credibility. Rather, his determination was grounded in his observation that there was insufficient evidence to support the claim. It is incumbent upon the Applicant to submit evidence to support his claim, and the Officer was entitled to accord little probative value to the evidence submitted. The letter from the MSD, for example, was given little weight because it lacked specificity – a justifiable and intelligible reason for so doing. The non-engagement of the factors in section 167 of the Regulations leads me to determine that there was no breach of procedural fairness on the facts of this case.

B. *Section 96 Analysis*

[11] The Applicant posits that the Officer improperly applied the test set out in section 96 of IRPA by requiring him to demonstrate that he faced personalized risk. I am unable to accept this argument. While the Applicant is correct in pointing out that, under section 96, an Applicant need only demonstrate that he is a member of a particular group and that, as a member of that group, there is a serious possibility that he would face a risk of persecution, the Officer in this case was not satisfied that all members of the MSD formed a particular group that would face a serious possibility of risk of persecution. Rather, it is clear that the Officer considered that only members of

the MSD with some raised profile might fall within a particular group that might face such a risk. It is clear from the material that the Applicant provided no evidence in this regard, and as such, the Officer reasonably concluded that the Applicant would not face more than a mere possibility of persecution. Thus, the Officer came to his conclusion on the basis of his assessment of the evidence, an exercise that is well within his expertise, and that I find reasonable on the facts of this case.

## V. Conclusion

[12] The Officer reasonably exercised his discretion not to grant an oral hearing and properly and reasonably applied section 96 of IRPA.

**JUDGMENT**

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

" D. G. Near "
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | **IMM-5821-12** |
| **STYLE OF CAUSE:** | **RAOUL NDAGIJIMANA v MCI** |
| **PLACE OF HEARING:** | **TORONTO** |
| **DATE OF HEARING:** | **JANUARY 9, 2013** |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | **NEAR J.** |
| **DATED:** | **JANUARY 17, 2013** |

**APPEARANCES:**

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| Joel Etienne | FOR THE APPLICANT |
| A. Leena Jaakkimainen | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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|---|---|
| Gertler, Etienne LLP<br>Toronto, Ontario | FOR THE APPLICANT |
| William F. Pentney<br>Deputy Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |