

Federal Court



Cour fédérale

Date: 20130729

Docket: IMM-5952-12

Citation: 2013 FC 821

Ottawa, Ontario, July 29, 2013

PRESENT: THE HONOURABLE MR. JUSTICE PHELAN

BETWEEN:

ELVIS PACIFIQUE BIZIMA

Applicant

and

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

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review of the PRRA decision is related to IMM-5955-12 (a Humanitarian and Compassionate decision). The basic facts are set forth in the decision in IMM-5955-12 (*Bizima v Canada (Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness)*, 2013 FC 822).

II. BACKGROUND

[2] The Immigration Officer [Officer] concluded that the Applicant's proof of membership in the Mouvement pour la Solidarité et la Démocratie [MSD] was not sufficient to establish that the Applicant would be perceived as an enemy of the Burundian government. The Officer dismissed the evidence from a third party that the Applicant was on a list of MSD members in exile. The Officer considered it speculative that the government even has such a list.

[3] The Officer ultimately concluded that, despite evidence of government sanctioned human rights abuses, the self-imposed exile of MSD members and the brief detentions for illegal political meetings, there was insufficient proof of the Burundian government imprisoning and torturing members of the MSD.

III. ANALYSIS

[4] The Applicant has raised as issues breach of procedural fairness – breach of s 167 *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. As such, this issue is subject to the correctness standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190). The relevant provision is set out below:

167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

(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;

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) 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;

(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.

[5] The Applicant has also challenged the decision on its merits which, being an issue of mixed law and fact, is subject to the reasonableness standard of review (*Kheloufi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 481, 2013 CarswellNat 1335).

[6] With respect to the issue of alleged breach of procedural fairness of s 167 of the Regulations, the Applicant says that he should have a hearing because the Officer questioned his credibility concerning the list of MSD members in exile held by the Burundian government.

[7] The membership list certainly meets the criterion of s 167(b) and arguably s 167(c). The real issue is whether the Officer's finding is one based on the credibility of the Applicant or on the sufficiency of the evidence. This Court in *Shafi v Canada (Minister of Citizenship and Immigration)* 2005 FC 714, 48 Imm LR (3d) 283, acknowledged that frequently credibility and sufficiency cannot be easily separated.

[8] To the extent that credibility was in issue, it was the credibility of the third party not the Applicant on which the Officer assessed the evidence. As such, s 167(a) is not directly in play.

Moreover, s 167(a) does not mandate a hearing where credibility is in issue but merely provides that where credibility of an applicant is in issue, it is a factor in determining whether a hearing is required.

[9] I need not decide whether a hearing was required because the Applicant is entitled to succeed on the second issue. Whether a hearing would be required may be influenced by a proper consideration of the evidence which will be the result of this judicial review.

[10] On the matter of the reasonableness of the Officer's decision, the overriding error was the failure to consider significant evidence which runs counter to the Officer's determination. That evidence was more current and cogent than that relied on by the Officer.

[11] The Officer relied on evidence from 2010 notwithstanding the existence of 2011 evidence available before the May 3, 2012 decision. There had obviously been significant changes over the course of a year.

[12] There was evidence as of September 2011 that the Burundian government had commenced a campaign to methodically eliminate opposition supporters and that this had involved widespread killings.

[13] The 2011 US Department of State [DOS] Report outlines human rights abuses, intimidation and executions committed against those opposed to the current regime. As reported by the United Nations High Commissioner for Refugees (UNHCR) and described in the 2012 DOS Report, the

victims in many cases were members of the opposition parties, the National Liberation Front (FNL) and the MSD. In addition, there were a significant number of detentions of members of opposition political parties.

[14] Given the failure to consider relevant, current evidence in respect of a PRRA application, it was unreasonable to dismiss the PRRA application without regard for this evidence.

IV. CONCLUSION

[15] Therefore, this judicial review will be granted, the PRRA decision quashed and the matter remitted to a different official for a new determination.

[16] There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted, the PRRA decision is quashed and the matter is to be remitted to a different official for a new determination.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5952-12

STYLE OF CAUSE: ELVIS PACIFIQUE BIZIMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION AND THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

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

DATED: JULY 29, 2013

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