

Federal Court



Cour fédérale

Date: 20120208

Docket: IMM-4974-11

Citation: 2012 FC 151

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 8, 2012

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MUNEZERO PAMELA KARAMBIZI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is challenging the lawfulness of a decision by the Refugee Protection Division of the Immigration and Refugee Board (panel), dated July 12, 2011, rejecting her refugee claim on the basis of a lack of credibility and subjective fear, and based on state protection, which also was available, according to the panel.

[2] The applicant is a citizen of Rwanda. During the 1994 genocide, she was nine years old; she states that she fears the perpetrators of genocide who attacked and raped her and against whom she testified before the Gacaca court in October 2006 (Gacaca court). In August 2007, the applicant moved away from the city she was living in. In the following months, she took some training and worked. In June 2008, she left for the United States, where she claimed asylum, having obtained a student visa in March 2008. However, she withdrew her American claim and left for Canada in June 2009, where she filed the refugee protection claim at issue here.

[3] The applicant's fear of persecution is based on a series of events that occurred in the fall of 2006. In her Personal Information Form and during the hearing, the applicant stated that she testified against her former attackers before the Gacaca court in October 2006. After that testimony, she allegedly received death threats and was purportedly attacked and raped by those same perpetrators of genocide. After the attack, she underwent a medical exam at the King Faisal Hospital. The panel did not believe the applicant because it found many contradictions in the essential aspects of her narrative.

[4] First, the certificate of participation in the Gacaca court indicates that the applicant testified on November 10, 2006, and not in October of that same year. The applicant specifies that, in November, she had requested protection from the judges, but the panel rejected that explanation: the certificate does not mention any request for protection, but rather the testimony date. If the applicant did not testify in October 2006, but in November 2006, as indicated by the Gacaca court certificate, she could not have been attacked by those same perpetrators of genocide in October 2006 further to

testimony that had not yet occurred. Today, the applicant states that she simply got the date wrong. That explanation was never advanced before the panel.

[5] Second, the medical certificate from the King Faisal Hospital dated October 19, 2006, does not mention that the applicant suffered injuries, but simply states that she underwent a physical exam. The applicant explained that she did not mention that she had been raped because she was ashamed, but the panel rejected that explanation, after considering the psychologist's comments that sexual assault victims often remain silent. The fact remains that the medical certificate does not mention any injury. Similarly, when the panel asked her why her father had never filed a complaint with the police, the applicant stated that her parents were not aware of the rape, only the attack. The panel rejected that explanation because her father holds a position at the top of the political hierarchy in Rwanda. Because he knew about the supposed attack on his daughter—he even accompanied her to the hospital—it is not plausible that her father failed to report the attack to the police.

[6] It should be noted that the panel is in a better position than the Court to assess credibility issues. In its decision, the panel properly explained the contradictions on which it relied to support its negative credibility finding. The panel did not rely on insignificant contradictions—it relied on a significant contradiction with respect to the date of the persecution at the heart of the refugee claim. In addition, the medical certificate does not support the claim of assault or rape. Furthermore, the panel was correct in considering the time lines at issue and the applicant's future conduct in Rwanda and in the United States, where she clearly invented another story of persecution. It was exclusively up to the panel to assess the applicant's credibility and it was entitled to reject the explanations

provided. The Court is not here to substitute its judgment for that of the panel when its finding is based on the evidence and falls within the range of possible outcomes which are defensible in respect of the facts and law.

[7] It should be noted that the alleged attack on the applicant purportedly occurred in October 2006. However, she did not leave Rwanda until June 2008. Even though she states that she tried to get information from the embassies during that time as she was without the financial means to leave earlier, the panel rejected that explanation. The panel believes that if she had actually been a victim of an attack and threats, she would not have waited more than ten months before taking steps to leave the country. Instead, she took some training and worked. The applicant's conduct is therefore not consistent with that of a person who fears persecution or fears for his or her life. That is another reasonable finding of fact under the circumstances.

[8] Finally, in the alternative, the panel finds that even if it had believed the applicant's narrative, the applicant did not rebut the presumption of state protection. It is unnecessary to focus on the state protection issue because the negative credibility finding and the absence of a subjective fear were sufficient to reject the refugee claim. The panel relied on the documentary evidence in the record. Moreover, it was exclusively up to the panel to assess the explanations provided by the applicant. Although she never filed a complaint with the Rwandan authorities, the applicant alleges that she asked for help from the Gacaca court judges in November 2006 after the hearings, which is also implausible in the panel's opinion. Regardless, the judges apparently told her the following [TRANSLATION] "be on your way and everything will be fine". Furthermore, the Gacaca court is not responsible for protecting those who testify before it. Even though the applicant generally alleges

that the panel disregarded the documentary evidence, she did not identify any specific document that the panel failed to consider.

[9] Finally, there is no support for the proposition that the panel did not consider the fact that she belongs to a vulnerable group, her psychological state and the situation in Rwanda. In short, the panel did not fail to consider the *Gender Guidelines* or any piece of contradictory documentary evidence in the record. The issue was clearly the credibility of the applicant's narrative, and in that regard, the panel's findings, which are noted above, are reasonable in all respects. Furthermore, even though the applicant generally alleges that the panel disregarded the documentary evidence, she did not identify any specific document that the panel failed to consider.

[10] For these reasons, the application for judicial review must fail. Counsel raised no question of general importance.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No question will be certified.

“Luc Martineau”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4974-11

STYLE OF CAUSE: **MUNEZERO PAMELA KARAMBIZI v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 31, 2012

REASONS FOR JUDGMENT: MARTINEAU J.

DATED: February 8, 2012

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