

Federal Court



Cour fédérale

Date: 20140428

Docket: IMM-6017-13

Citation: 2014 FC 395

Toronto, Ontario, April 28, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**GAUSETTE KENGE KIANGEBENI
ADELYSE NSANGA
KENDRY NSANGA WA NSANGA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Gausette Kenge Kiangebani along with her children, Adelyse and Kendry, seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board, rejecting their claim for refugee protection on credibility grounds.

[2] The applicants submit that a number of the Board's negative credibility findings were unreasonable. In particular, they say that the Board erred in only paying "lip service" to the

presumption of credibility and to the Board's *Gender Guidelines*, without applying either of them "in spirit or in substance".

[3] For the reasons that follow, I am not persuaded that the Board erred as alleged.

Consequently, the application for judicial review will be dismissed.

I. Background

[4] Ms. Kenge is a 27-year old citizen of the Democratic Republic of Congo (DRC) and the mother of the two co-applicants. She says that she has three other children in the DRC, but that she does not currently know their whereabouts.

[5] Ms. Kenge says that her father, who was of Rwandan origin, was assassinated by the Congolese government in 1998 during the Rwandan massacre. Two months later, Congolese soldiers returned to the family's home and raped her sister. Ms. Kenge's family then moved to Kimpese, in Bas-Congo, where she remained for approximately two years.

[6] In 2000, when Ms. Kenge was 15 years old, she married a man who was ten years her senior. She had four children with him, and adopted one of his daughters. Ms. Kenge subsequently moved with her aunt and husband to Sonabata, Bas-Congo, where she attended school.

[7] In 2003, the family moved to Kinshasa. In or around April of 2005, Ms. Kenge's husband was arrested by the Congolese police and was jailed for two weeks, accused of supporting the Bundu Dia Kongo (BDK) movement. He was eventually released for lack of evidence.

[8] In July of 2007, Ms. Kenge's husband moved to Bukavu to work for an organization that helps refugees. He would then visit his family approximately five times a year. In December of 2010, Ms. Kenge herself moved to Bukavu with her youngest daughter, leaving her other children behind with her aunt because they were in school.

[9] In the meantime, Ms. Kenge's two older brothers were allegedly murdered for being members of the BDK movement, and for being of Rwandan origin. Ms. Kenge alleges that she then lost contact with her mother and the rest of her siblings.

[10] On February 11, 2011, Ms. Kenge's husband left for work in the morning as usual, but he did not return home at the end of the day. The next day, four men dressed in military apparel came to her house. According to Ms. Kenge, they asked about her husband's work and took away some documents.

[11] Ms. Kenge says that while the soldiers were still at her home, she was raped and beaten in front of her eighteen-month old daughter. One of the men mentioned they knew her husband was involved in activities against the government, telling Ms. Kenge that if they returned it would be to decapitate the family members. Ms. Kenge says that she then lost consciousness and was taken to a nurse by a neighbour.

[12] According to Ms. Kenge, some people helped her and her daughter fly from Kinshasa to Bukavu for her safety. When she got to Bukavu, she was informed that her aunt and children had disappeared. After approximately a month, Ms. Kenge says that "two white people" helped her and her daughter travel from Kinshasa to Brazzaville by boat.

[13] Ms. Kenge says that when she got to Brazzaville, she met a white man named Jean Lambert, who was a friend of her husband. Mr. Lambert assisted her by putting her up in a house for four months. On August 31, 2011, Ms. Kenge and Adelyse left Brazzaville. Ms. Kenge said that she did not know where she was being taken, and that she relied on Jean Lambert and other altruistic strangers to make all of the travel arrangements for Ms. Kenge and her daughter.

[14] According to Ms. Kenge, she and her daughter were initially accompanied on their journey by two people. However, during a stopover in an unidentified location en route to Canada, they were met by another white woman who then escorted them to Winnipeg, arriving there on September 1, 2011. This woman accompanied Ms. Kenge and Adelyse to the “Welcome Place” shelter, and then promptly left.

[15] Ms. Kenge made a refugee claim for herself and Adelyse several weeks later, on September 28, 2011.

[16] In December of 2011 or January of 2012, Ms. Kenge says that she received a telephone call from a man who she thought might have been Jean Lambert, who told her that Kendry had been located. It was not explained how Jean Lambert would have been able to locate Ms. Kenge in Winnipeg.

[17] On May 7, 2012, Ms. Kenge says that she received a telephone call from an unidentified individual telling her to go to the Winnipeg airport to pick up her son, and that a man named Gilles had brought him to the airport. A couple of months later, Ms. Kenge made a refugee claim on Kendry’s behalf.

II. The Board's Decision

[18] The Board noted that Ms. Kenge's testimony was generally consistent with her PIF narrative, and that her story was consistent with the country condition information with respect to the situation in the DRC. The Board also noted that the applicant had "demonstrated significant emotion in the recounting of her testimony".

[19] The Board was nevertheless troubled by gaps in Ms. Kenge's story, the "minimal corroborative documentary evidence" that she had provided with respect to her identity, and her unsatisfactory explanations for her failure to provide documentary evidence corroborating her claim.

[20] The Board also found that Ms. Kenge did not provide reasonable explanations for PIF omissions, and that material aspects of her story were simply not believable.

III. Analysis

[21] Ms. Kenge has challenged a number of the Board's negative credibility findings, asserting that they do not meet the *Dunsmuir* standard of justification, transparency and intelligibility: *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47, [2008] 1 S.C.R. 190.

[22] Having read the transcript of the applicants' refugee hearing, it is clear that the Board faced a significant challenge in trying to make sense of the applicants' claim. Ms. Kenge's testimony was often difficult to follow and was, at times, simply incoherent.

[23] The applicants' counsel points out that Ms. Kenge was testifying through an interpreter during portions of the testimony. That may be the case, but there has been no suggestion that there were any problems with the quality of the interpretation.

[24] There were, moreover, aspects of Ms. Kenge's story that were, on their face, highly improbable. Through no effort on her part, Ms. Kenge and her daughter were brought to Canada by a series of unknown individuals, who, she says, were acting out of the goodness of their hearts, because they knew her husband. Ms. Kenge was, moreover, unable to provide the Board with any information about her route to Canada.

[25] Eight or nine months later, Ms. Kenge says that she got a call telling her to go to the Winnipeg airport and pick up her five-year old son. Despite the fact that her other children were allegedly still missing, Ms. Kenge says that she did not ask "Gilles" where Kendry had been found, or whether he had any information as to the whereabouts of her other children. Nor did Ms. Kenge ever ask Kendry if he knew anything about his siblings' whereabouts. The Board found that this was simply not credible, a finding that was more than reasonable.

[26] While Ms. Kenge says that she has made some telephone calls in an attempt to locate her family members, she has not asked any of the social agencies that she has been dealing with for assistance in locating her family. Whether such a request for assistance would have generated any results is not the issue: the Board did not accept the explanations offered by Ms. Kenge for her lack of effort. This was a finding that was reasonably open to the Board on the record before it.

[27] Given the fact that the family's refugee claims were based, in part, on their Rwandan ethnicity, it was also reasonable to the Board to be concerned by Ms. Kenge's failure to mention persecutory actions that she says that her family had experienced based upon their Rwandan ethnicity in her Personal Information Form.

[28] It was also entirely reasonable for the Board to reject Ms. Kenge's explanation for her failure to mention these events in her PIF. Ms. Kenge had evidently felt secure enough with the staff of the "Welcome House" to reveal intimate details of a horrific sexual assault, notwithstanding the enormous social stigma associated with such an event. It thus makes no sense that she did not trust them enough and was "too scared" to tell them about an incident of rock-throwing and school-yard fights involving her son Kendry.

[29] One could take issue with the time spent by the Board on the question of Ms. Kenge's missing travel documents, and I agree with the applicants that the Board's finding as to how altruistic smugglers would act in relation to travel documents was based on nothing more than speculation.

[30] That said, when the Board's decision is read as a whole, it is intelligible, it accords with the evidence before it, and it is reasonable.

IV. The Gender Guidelines

[31] The applicant also submits that the Board erred in failing to properly consider the Immigration and Refugee Board's *Gender Guidelines*. While acknowledging that the Board made express reference to having taken the *Gender Guidelines* into account, the applicant nevertheless asserts that the Board only paid "lip service" to them.

[32] I do not accept this submission. Not only does the Board expressly state at several points in its reasons that it has taken the *Gender Guidelines* into account in assessing the applicant's testimony, it also demonstrated that it understood the significance of the *Guidelines* as they

related to individuals in the applicant's situation: see, for example, paragraph 15 of the Board's decision.

[33] The *Gender Guidelines* require that Board members be sensitive to the cultural and other considerations that may affect women seeking the protection of Canada in order that their evidence may be properly understood and their claims fairly assessed. They are not intended to provide a "cure-all" for major credibility concerns of the sort that existed in this case.

V. Conclusion

[34] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6017-13

STYLE OF CAUSE: GAUSETTE KENGE KIANGEBENI, ADELYSE
NSANGA, KENDRY NSANGA WA NSANGA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: APRIL 17, 2014

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

DATED: APRIL 28, 2014

APPEARANCES:

Mr. David Matas FOR THE APPLICANTS

Mr. Brendan Friesen FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas FOR THE APPLICANTS
Barrister and Solicitor
Winnipeg, Manitoba

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Winnipeg, Manitoba