Federal Court  Cour fédérale

Date: 20140918

Docket: IMM-8048-13

Citation: 2014 FC 895

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 18, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

JEAN PIERRE KENGURUKA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Kenguruka is a citizen of Burundi of Tutsi ethnicity. His sworn enemy in Burundi, Senator Pétronie Bagwire, is Hutu. He alleges that she and her associates resorted to violence to prevent him from possessing and enjoying the use of a piece of land inherited from his parents. His refugee claim in Canada was rejected because the property rights claim, although well founded, does not constitute a basis for a refugee protection claim according to the *United*

Nations Convention relating to the Status of Refugees and section 96 of the *Immigration and Refugee Protection Act*. The panel acknowledged that there is still ethnic tension in Burundi, but determined that the risk to the applicant stems from his own efforts with respect to the land that he and his brothers and sisters inherited. Indeed, his brothers and sisters abandoned their claim of the said property. Mr. Kenguruka's two brothers, who are still in Burundi, have not been the subject of any persecution.

[2] The member of the Refugee Protection Division made the following finding in paragraph 15 of her reasons:

> . . . the panel points out that the right to private property is not a fundamental right under Canadian law and is of the opinion that it is not unreasonable to expect the claimant to give up such a right in order to protect himself.

[3] It was only after his actions regarding the land inherited from his parents that he was attacked.

I. Issues

[4] Counsel for Mr. Kenguruka argues the following:

a. The decision under section 96 was simplistic. It was unreasonable for the panel to find that he was not persecuted by reason of his race, which, on its own, provides a ground for a refugee protection claim under section 96 of the IRPA; and

b. There was no analysis on section 97 of the IRPA according to which Canada offers protection to people who, on a balance of evidence, would be personally subject to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment, if they should return to their country.

[5] However, counsel for the Minister argues the following:

a. the standard of review is reasonableness;

b. the decision was reasonable; and

c. the section 97 analysis was implicit in the panel's reasons.

II. Analysis

[6] It is clear that a property rights claim is not a basis for a refugee claim under the *United Nations Convention relating to the Status of Refugees* and section 96 of the IRPA (*Ramirez v Canada (Solicitor General)*, 88 FTR 208 at paragraph 12, [1994] FCJ No 1888 (QL); *Chen v Canada (Minister of Citizenship & Immigration)*, [1995] FCJ No 189 (QL)).

[7] In light of the record, the panel did not act in an unreasonable manner when it decided that Mr. Kenguruka would not face persecution in Burundi if he abandoned his claim to the property that he inherited from his parents. That finding suggests that if Mr. Kenguruka was not the subject of persecution, he would also not be personally subject to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment. However, the panel did not

consider whether Mr. Kenguruka would be at risk, within the meaning of section 97 of the IRPA, if he did not abandon his claim for the property in question. If Mr. Kenguruka were arguing a right set out in the Convention and section 96, such as his right to freely practice his religion, he could not be forced to renounce his religion in order to avoid persecution.

[8] As a result, the issue is whether it was reasonable to conclude that he should give up the legal rights that he claims to have. Essentially, this is a question of law. Nevertheless, the Supreme Court has repeatedly stated that the standard of review for decisions of a tribunal on a question of law relating to its home or a related statute is reasonableness (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654; *Smith v Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 SCR 160; *McLean v British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 SCR 895).

[9] However, the presumption that the standard of review is reasonableness may be rebutted. In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the Supreme Court held that the Court on judicial review must verify whether the jurisprudence satisfactorily establishes the standard of review. If applicable, has that standard stood the test of time?

[10] Certain sections of the IRPA have been assessed on the standard of correctness and others on the standard of reasonableness. See *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559; the decision by Chief Justice Crampton in *Iao v Canada (Citizenship and Immigration)*, 2013 FC 1253, 240 ACWS (3d) 710; and *Canada (Citizenship and Immigration) v A011*, 2013 FC 580. In fact, given that decisions of this Court

cannot be appealed to the Federal Court of Appeal unless a serious question of general importance is certified, Justice Stratas questioned the correctness of *Agraira* in *Kanthasamy v Canada (MCI)*, 2014 FCA 113, 372 DLR (4th) 539.

[11] Regardless, I conclude that the decision is both reasonable and correct, and that it is therefore unnecessary for me to rule on the applicable standard of review. As a result, I will dismiss the application for judicial review.

III. Certified question

[12] Because I was ambivalent before making that finding, I fully understand that there may be another point of view on this matter. Even though neither party proposed a question for certification, I certify the following serious question of general importance to make it possible for Mr. Kenguruka to seek an appeal:

> In order for a claim under section 97 of the *Immigration and Refugee Protection Act* to be allowed, must a claimant first give up a private right to avoid the risk of torture or death?

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

2. The following serious question of general importance is certified:

   In order for a claim under section 97 of the *Immigration and Refugee Protection Act* to be allowed, must a claimant first give up a private right to avoid the risk of torture or death?

"Sean Harrington"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8048-13
STYLE OF CAUSE:	JEAN PIERRE KENGURUKA v MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Claudette Menghile Susan Ramirez	FOR THE APPLICANT
Myriam Larose	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudette Menghile Counsel Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT