

Federal Court



Cour fédérale

**Date: 20140930**

**Docket: IMM-5915-13**

**Citation: 2014 FC 925**

**Montréal, Quebec, September 30, 2014**

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

**BETWEEN:**

**THIERRY MAKUZA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review of the June 18, 2013 decision (the Decision) of the Refugee Protection Division of the Immigration and Refugee Board (the RPD) finding the Applicant to be neither a Convention refugee nor a person in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *IRPA*).

[2] For the reasons provided below, I grant the application and set aside the Decision.

II. Facts

[3] The Applicant is a 27-year-old man from Congo. He is a member of the Banyamulenge community, an ethnic minority community who originate from Eastern Congo, near Rwanda.

[4] Though they have lived in what is now Congo for a considerable period of time, the Banyamulenge are often considered by other Congolese as outsiders because they speak a language that is similar to those spoken in Rwanda and Burundi, and because their ancestors (prior to the 19th century) originally came from elsewhere. The Banyamulenge are sometimes called Congolese Tutsis because many are closely related to Tutsis in Rwanda. The Banyamulenge find themselves in present-day Congo because of the way national boundaries were drawn by colonial powers in the 19th century.

[5] There is a history of attacks and persecution against the Banyamulenge by the Government of the Congo and by other ethnic groups since the 1960s.

[6] The Applicant claims that his brother was killed by a Hutu militia in 1996. He also claims that another brother and other family members were killed in 2004 in other massacres.

[7] The Applicant began attending university in Rwanda in 2005. He claims that he joined an organisation called INKINGI plate forme (INKINGI), which advocates for the safe return to Congo of Banyamulenge refugees in other countries.

[8] The Applicant also claims that on a trip home to Congo on December 24, 2007, he was arrested by Congolese police after being identified as a Banyamulenge and then imprisoned with

a number of other Banyamulenge, then interrogated and tortured over a period of 10 days until he was released.

[9] After his release, the Applicant returned to school in Rwanda and completed his education. He returned to Congo thereafter to help his mother on the family farm.

[10] The Applicant also claims that on February 5, 2011, he was arrested again, this time by the Congolese military, while attending a meeting of INKINGI. This time he was held for 17 days during which he was tortured, left hungry and otherwise mistreated and subjected to violence.

[11] Following his release from this second arrest, the Applicant claims he went into hiding and escaped to neighbouring Burundi. From there, he fled to Canada, arriving in Montreal on March 2, 2011. He claimed asylum in Ottawa on March 4, 2011.

### III. Decision Under Review

[12] The Applicant's hearing before the RPD took place on June 11, 2013, and, as indicated above, the RPD's Decision was rendered on June 18, 2013.

[13] The RPD accepted the Applicant's identity. Importantly, this also appears to include an acceptance that the Applicant is indeed a member of the Banyamulenge community.

[14] The bulk of the Decision is devoted to noting a series of assertions made by the Applicant which the RPD finds not credible. For reasons provided in the Decision, the RPD does not believe that:

- The Applicant was an active member of INKINGI;
- The Applicant was arrested on February 5, 2011 at a meeting of INKINGI;
- The Applicant came to Canada from Burundi as he described;
- The Applicant was arrested on December 24, 2007.

[15] The Decision is also notable for its silence on the relevance of the Applicant's status as a Banyamulenge to his application for asylum.

#### IV. Issues

[16] The Applicant challenges the reasonableness of the findings of a lack of credibility in the Decision. He also asserts that the RPD erred in failing to consider whether, aside from any involvement in INKINGI, the Applicant's status as a Banyamulenge in Congo was sufficient to qualify him as a Convention refugee or a person in need of protection under sections 96 or 97 of the *IRPA*.

[17] Because of my findings, it is not necessary for me to consider the reasonableness of the findings of a lack of credibility.

[18] The issue addressed in this decision is whether the RPD erred in failing to consider the Applicant's status as a Banyamulenge in Congo.

[19] Normally, the RPD's assessment of the evidence before it is a matter of fact or of mixed fact and law, and therefore is reviewable by this Court on a standard of reasonableness. To the extent that there is evidence that is relevant but has not been considered by the RPD, this may indicate an unreasonable conclusion by the RPD.

V. Analysis

[20] As indicated above, the Applicant asserts that his status as a Banyamulenge from Congo (which does not appear to be disputed) is sufficient, by itself, to qualify him for asylum in Canada. The Applicant refers to a number of references that speak of the persecution and dangers faced by members of the Banyamulenge community in Congo.

[21] Mauro de Lorenzo is an expert on the Banyamulenge community of Eastern Congo. His Affidavit dated June 6, 2013, in this matter indicates that the Applicant is a member of that community. The Affidavit also sets out a history of the Banyamulenge as well as some detail of the persecution suffered by that community since at least the 1960s.

[22] The Applicant also refers to a 2012 publication by UBUNTU – Initiative for Peace and Development on the “Security Situation of the Banyamulenge in the D.R. Congo” entitled “Information note on the security situation of the Banyamulenge and other Tutsi Congolese in the Democratic Republic of Congo”. This publication provides a detailed account of the history that created the current security situation for Banyamulenge in Congo. It also discusses the current security situation in some detail.

[23] In the Decision, the RPD never refers to either of these documents, or indeed any of the other evidence concerning the security situation in general of Banyamulenge in Congo. In fact, it appears that the RPD never considered this issue.

[24] The findings of a lack of credibility in the Decision are mainly related to the Applicant’s assertion of involvement in INKINGI. None of these findings appears to concern the situation faced by the Applicant as a member of the Banyamulenge community.

[25] There may or may not be evidence suggesting that members of the Banyamulenge community in Congo do not face persecution and are not in need of protection, but the Applicant was certainly entitled to have all of the evidence on the issue carefully considered, and for reasons to be provided if the RPD determined that the evidence of persecution was insufficient or inadequate. In my view, that consideration was not done in this case, and no reasons for preferring other evidence was provided. The Decision is unreasonable in that respect.

VI. Conclusions

[26] This application for judicial review should be granted, and the Decision set aside.

[27] The parties have not proposed a question for certification. I do not find that the facts in this case warrant the certification of a question for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted;
2. The decision of the RPD dated June 18, 2013 is set aside, and this matter is referred back to a different Board Member for re-determination;
3. No serious question of general importance is certified.

“George R. Locke”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5915-13

**STYLE OF CAUSE:** THIERRY MAKUZA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** AUGUST 27, 2014

**JUDGMENT AND REASONS:** LOCKE J.

**DATED:** SEPTEMBER 30, 2014

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