

Federal Court



Cour fédérale

**Date: 20150514**

**Docket: IMM-3535-14**

**Citation: 2015 FC 636**

**Toronto, Ontario, May 14, 2015**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**FRANCOIS REGIS DUSHIMIYIMANA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench in Toronto, Ontario on May 11, 2015)**

[1] The Applicant has applied for judicial review of a negative decision dated April 10, 2014 (the Decision) of the Refugee Protection Division of the Immigration and Refugee Board (the Board) in which it decided that the Applicant was neither a Convention refugee nor a person in need of protection.

[2] This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[3] The Applicant is a 21 year-old Tutsi citizen of Rwanda. During the 1994 Genocide his father and several members of his family were killed by members of the Hutu militia (the Militia) and his family home was burned to the ground.

[4] The Applicant's claim for refugee protection is based on his fear of persecution at the hands of the Militia. Some members of his family including his mother testified against Militia members during the Gacaca trials that followed the Genocide. They involved 11,000 community courts at which thousands of witnesses testified in public proceedings. As a result of that testimony certain Militia members were imprisoned in 1996. However, following their release in 2005, the Applicant claims that his family began to receive threats over the phone, such as "We know where you live"; "It is not over yet"; and "You will regret opening your mouths."

[5] His family took the threats seriously because they were aware that other witnesses had been killed following Gacaca trials. They reported the threats to police once in 2005 but were criticized for being vengeful. As a result of the police's failure to act the Applicant says that his family moved ten times between 2005 and 2013 within the city of Kigali. However, they continued to receive telephone threats regardless of their location.

[6] One evening in June 2010, when he was sixteen, the Applicant was abducted by two men (the Attack). The men knew his mother's name. They dragged him to an abandoned construction

site and tortured him with knives until he was rescued by passers-by. The Applicant was badly hurt.

[7] The Applicant has five siblings; one brother and one sister fled Rwanda and were accepted as Convention refugees in Canada in March of 2010. His other sister is married and lives with her husband near Chicago; two other brothers remain in Rwanda with his mother.

[8] In 2007, the Applicant applied for a visa for the United States, but it was denied. However, in 2013, his sister's father-in-law agreed to pay for his attendance at university in the US. In September 2013, he travelled to the United States on a study visa with the expectation that his sister's family would eventually sponsor him.

[9] However, at the end of his first semester, his sister's father-in-law found that he could no longer afford to pay his tuition and his sister could not take care of him because she had her own family. Accordingly, in December 2013 the Applicant travelled to Canada to join his brother and sister who live here and he made a refugee claim.

#### I. The Decision

[10] The Board believed that the Applicant's mother had testified against the Militia and believed that the Attack had occurred. However, for several reasons it concluded that the threats had not been as constant or as serious as the Applicant claimed.

[11] The RPD also found that it could not conclude that the presumption of state protection had been rebutted. The RPD reached that conclusion because the family only went to the police on two occasions during a nine year period, once in 2005 and once after the Attack in 2010. The RPD concluded that the documentary evidence was preferable to the Applicant's testimony and that it showed that state protection would be available. The RPD referred to reports from the US Department of State and the UK Home Office but counsel for the Respondent has acknowledged that a more recent report which was provided to the Board by the Applicant entitled *Testifying to Genocide: Victim and Witness Protection in Rwanda* from REDRESS, which is a human rights organization (the REDRESS Report) is the most authoritative report on state protection.

## II. Issues

[12] There were many issues but state protection was the one that was determinative.

## III. Discussion

[13] In my view, the finding that state protection was available was unreasonable for the following reasons:

1. The RPD did not appear to understand the REDRESS Report. The RPD conflated the services available to witnesses being transferred to Rwanda from UN proceedings with those available to domestic witnesses who had appeared before Gacaca courts. It seemed to conclude that protection was adequate because of reforms introduced for the UN transferees when the evidence was clear that the

protections they are provided are separate from those available to Gacaca witnesses.

2. The RPD did not appear to appreciate the Rwandan reality. It is a country that remains home to a vast number of citizens who are threatened with reprisals following their participation in Gacaca trials. The REDRESS Report shows that the government does not have the resources to provide protection.

#### IV. Certification

[14] No question was posed for certification for appeal pursuant to section 74(d) of the IRPA.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that** for these reasons, the Application will be allowed. The matter will be sent back for redetermination by a different panel of the Board.

“Sandra J. Simpson”

---

Judge

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

**DOCKET:** IMM-3535-14

**STYLE OF CAUSE:** FRANCOIS REGIS DUSHIMIYIMANA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 11, 2015

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** MAY 14, 2015

**APPEARANCES:**

Raoul Boulakia FOR THE APPLICANT

Suran Bhattacharyya FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Raoul Boulakia FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

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