

Federal Court



Cour fédérale

Date: 20160115

Docket: IMM-2903-15

Citation: 2016 FC 46

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, January 15, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**SALVATOR KANYARUGANO
ANGE ORNELLA KANEZA
JESSIE MICAL KEZA
MIKE KANYARUGANO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review. The applicants are challenging a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated May 4, 2015,

which found that the applicants were neither Convention refugees nor persons in need of protection.

II. Facts

[2] The applicants are Tutsi citizens of Burundi, who lived in Bujumbura. The principal applicant, Salvator Kanyarugano, is the father of the three other applicants. His wife, Domitille Nsengiyumva, was a party at the RPD hearing, but is not included in this application for judicial review.

[3] The applicants are claiming a fear of General Alain Guillaume Bunyoni, his employee Moïse and the Imbonerakure militia. In December 2013, General Bunyoni allegedly refused to pay the principal applicant for a construction contract because he twice refused to join the CNDD-FDD, a political party. The principal applicant alleges that he instituted legal proceedings against the general, who threatened him when he heard about the suit.

[4] On January 4, 2014, strangers allegedly followed the principal applicant and his wife by car. On March 10, 2014, some Imbonerakure allegedly kidnapped the female applicant (and principal applicant's daughter), Ange Ornella Kaneza, and later the principal applicant when he went to meet them. They were released on March 11, 2014, in exchange for 10 million Burundian francs and were ordered to disappear.

[5] The applicants allege that they immediately fled to a friend's home in Makamba (Dominique Niyondiko). On May 23, 2014, the applicants received their US visas, and, on

August 3, 2014, they flew to the United States, eventually claiming refugee protection at the Canadian border. In the meantime, Ms. Nsengiyumva took refuge in the Democratic Republic of the Congo until December 2014, when she returned to Bujumbura to fly to Canada to join her family. She had obtained a Canadian visa on July 23, 2014.

III. Decision

[6] The RPD found that the applicants' fear of persecution was not credible. Their account contained inconsistencies and omissions, and, at the hearing, they did not provide a reasonable explanation or documentary evidence that could corroborate their story.

[7] Among other things, the RPD relied on the lack of documentary evidence for the suit against General Bunyoni and the withdrawal of 10 million Burundian francs, and on the contradictions surrounding the applicants' activities between the time of their release by their kidnappers and their arrival in Makamba. The RPD also focussed on the time it took them to leave Burundi. Lastly, the RPD noted several instances where the applicants' testimony was vague and hesitant.

IV. Issue

[8] Did the RPD err in its assessment of the applicants' credibility?

V. Standard of review

[9] The parties agree, and I concur, that the RPD's decision is reviewable against a standard of reasonableness (*Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 21).

VI. Analysis

[10] Since the RPD's decision is based on several findings of lack of credibility and lack of corroboration, the applicants submit that these findings should be reviewed as a whole. Even though some errors, seen individually, are not reviewable, a series of errors could lead to the conclusion that the decision was unreasonable: *Khemiri v Canada (Solicitor General)*, 2005 FC 821 at para 21.

[11] Consequently, the Court must discuss the RPD's more important findings. I will first look at the findings that are incorrect or ill supported and then turn to the relevant, well-supported findings.

A. *Incorrect or ill-supported findings*

[12] The parties agree that the RPD's decision contains at least three errors:

1. The principal applicant never alleged that General Bunyoni received the complaint he filed with the court in Burundi (see para 28 of the decision);
2. There are no contradictions in the principal applicant's statements regarding the threats he received from Moïse (see paras 34 to 36 of the decision); and

3. The principal applicant's wife never stated that she had trouble finding the house of Mr. Niyondiko in Makamba (see para 72 of the decision).

[13] I would add that there is another error: the RPD erred in stating that the applicants did not take any preventive measures so as not to be found by their alleged enemies when they returned to Bujumbura on two occasions in order to obtain US visas (see para 44 of the decision). The principal applicant testified that Mr. Niyondiko helped them with these trips. Mr. Niyondiko drove them directly to the US embassy and took them out of the city immediately after their appointment.

[14] In my opinion, the RPD's decision contains a number of other findings that are ill supported, even though they are not clearly wrong:

1. Questions 8 and 12 of Schedule A to the principal applicant's Basis of Claim form (which concern his personal history and previous addresses) are not as simple and clear as the RPD suggests. In my opinion, the applicants' explanation of why they omitted their stay in Makamba is reasonable. The RPD's conclusion not to accept this explanation seems unjustified (see paras 41 to 43 of the decision);
2. According to my reading, the transcript of the RPD hearing does not confirm that the principal applicant's wife was vague and evasive on the subject of the location where the principal applicant and his daughter were held. Even though she had trouble clearly identifying the location, she explained that it was in the Kinama neighbourhood north of Bujumbura, that she was not very familiar with this neighbourhood and that the streets in this neighbourhood did not have official names (see paras 65 to 67 of the decision);

3. The RPD's decision does not provide the basis for the finding that it is unlikely that the kidnappers would have brought the principal applicant's wife to their hiding place. It may be true that kidnappers in Canada do not generally reveal their hiding places to their victims, but the same is not necessarily true of Burundi (see paras 68 and 69 of the decision); and
4. The RPD rejected the principal applicant's wife's explanation of her decision to return from the Congo to Burundi in order to travel to Canada without considering that her best option would have been to cross the Congo (a notoriously unstable country) to Kinshasa (on the other side of the country) (see para 54 of the decision).

B. *Relevant, correct and well-supported findings*

[15] Considering these incorrect, ill-supported findings, I must examine some other findings that seem to be relevant, correct and well supported.

1. The RPD determined that the testimony of the principal applicant's wife regarding the applicants' movements immediately after the release of the principal applicant and his daughter contradicted her written account (see paras 70 and 71 of the decision);
2. The RPD noted the absence of documentary evidence that the principal applicant filed a complaint with the court in Burundi against General Bunyoni (see paras 29 and 45 of the decision);
3. The RPD noted the absence of documentary evidence confirming that the applicant's wife withdrew 10 million Burundian francs, which were paid to the kidnappers (see paras 73 and 74 of the decision); and

4. The RPD noted that the applicants left Burundi on August 3, 2014, approximately two and a half months after obtaining their visas and almost five months after the principal applicant and his daughter were released by their kidnappers (see paras 48 and 49 of the decision).

[16] The principal applicant's wife testified clearly that the applicants left for the home of Mr. Niyondiko, in Makamba, at around 12:30 p.m. on March 11, 2014, while her account contradictorily states that, after her release, they [TRANSLATION] "spent all day and all night working out how to flee" before Mr. Niyondiko agreed to put them up. The applicants submit that (i) the RPD did not clearly conclude that this was a contradiction; (ii) in her account, the principal applicant's wife might have been referring to the night before the release rather than the night following it; and (iii) if the principal applicant's wife had been confronted with the contradiction, she might have been able to explain it. I accept none of these submissions.

[17] In my opinion, the RPD clearly concluded at paragraph 71 of its decision that this was a contradiction: "Her written account tells a completely different story". According to the evidence, this finding was reasonable. The incorrect statement at paragraph 72 (that the principal applicant's wife had trouble finding Mr. Niyondiko's house in Makamba) does not affect this finding.

[18] I cannot accept that the principal applicant's wife was referring to the night before her husband and daughter's release because the account clearly states that the night to which she was referring was the night following the release.

[19] Lastly, I was not provided with another explanation that the principal applicant's wife could have given had she been confronted with her contradiction.

[20] Regarding the lack of documentary evidence for (i) the complaint before the court in Burundi; and (ii) the bank withdrawal, it was reasonable, in my opinion, to draw a negative conclusion regarding the applicants' credibility. These are clearly important documents, and they would not have been difficult to obtain by contacting the court in Burundi and the principal applicant's bank.

[21] The applicants note that the principal applicant's wife explained that the documentary evidence for the bank withdrawal was originally sent to their former home in Bujumbura (to which the family has not returned) and that the RPD seemed to accept this explanation, saying "Okay, that makes sense. That makes sense." In light of this statement, the applicants state that they find it hard to understand how the RPD reached its negative conclusion. The RPD's statement constitutes recognition of the reason why the applicants did not have documentary evidence for the withdrawal upon their arrival in Canada. However, I accept the respondent's reply that the statement does not suggest that the RPD was satisfied with the absence of this evidence at the hearing.

[22] Regarding the time it took the applicants to leave Burundi after they were threatened and after they obtained their visas, I am not satisfied that the RPD's analysis is unreasonable. The RPD considered the applicants' explanations, but reasonably concluded that they were inadequate.

VII. Conclusion

[23] I now arrive at the stage of weighing the RPD's correct and well-supported findings against those that are not. I am satisfied that the negative findings described in paragraph 14, above, are significant enough for the RPD's decision to be reasonable as a whole, despite its other findings. For these reasons, I would dismiss the application for judicial review.

[24] Neither party submitted a serious question of general importance for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application is dismissed.
2. No serious question of general importance is certified.

“George R. Locke”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2903-15

STYLE OF CAUSE: SALVATOR KANYARUGANO, ANGE ORNELLA
KANEZA, JESSIE MICAL KEZA, MIKE
KANYARUGANO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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