Federal Court  Cour fédérale

**Date: 20160909**

**Docket: IMM-1189-16**

**Citation: 2016 FC 1030**

**Ottawa, Ontario, September 9, 2016**

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

**BETWEEN:**

**JEAN-PIERRE KAYITANKORE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The applicant, Mr. Jean-Pierre Kayitankore, is a citizen of Rwanda. After a failed refugee claim made in Belgium, Mr. Kayitankore came to Canada in March 2015 and asked for refugee protection, alleging he would fear for his life in Rwanda on the basis of accusations made against him in May 2010. According to Mr. Kayitankore, he was arrested and questioned by Rwandan

police officers because of his frequent trips to Uganda and police officers and, as his employer was the brother-in-law of a political opponent to the Rwandan regime, he was accused of being a messenger for exiled dissidents living in Uganda.

[2] In June 2015, the Refugee Protection Division [RPD] of the Immigration and Refugee Board concluded that Mr. Kayitankore was not a Convention Refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD found that Mr. Kayitankore failed to prove that he was a person of interest for the Rwandan authorities, as the simple fact of having been an employee of a political opponent's brother-in-law was not sufficient to support his claim. In addition, many years had elapsed since the alleged events. Mr. Kayitankore appealed the RPD decision to the Refugee Appeal Division [the RAD], arguing that the RPD erred by applying the wrong legal tests under sections 96 and 97 of IRPA and by failing to consider certain documentary evidence. In March 2016, the RAD dismissed Mr. Kayitankore's appeal as it concluded that the RPD applied the correct tests and would have reached the same conclusion as the RPD.

[3] Mr. Kayitankore now seeks a judicial review of the RAD decision, raising before this Court the same questions he had brought before the RAD in appeal of the RPD decision. Mr. Kayitankore contends that the RAD applied the wrong tests and failed to consider the evidence before it, and that its decision is thus unreasonable. He asks this Court to quash the RAD decision and to order that a different panel reconsider his appeal of the RPD decision.

[4] The sole issue to be determined is whether the RAD decision is reasonable. For the reasons that follow, I conclude that Mr. Kayitankore's application for judicial review must be dismissed. Having reviewed the RAD decision, the evidence before the decision-maker and the applicable law, I find no basis for overturning the tribunal's findings. I am satisfied that the RAD applied the correct tests, conducted its own analysis and thoroughly reviewed the evidence. Its decision falls within the range of possible, acceptable outcomes based on the facts and the law. There is no reason justifying this Court's intervention.

## II. Background

### A. *The RAD decision*

[5] In its decision, the RAD first reviewed its role in connection to the RPD decision before analyzing the questions submitted by Mr. Kayitankore. The RAD stated that it followed the reasoning of this Court in *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 [*Huruglica FC*] at para 55.

[6] The RAD then reviewed the analysis conducted by the RPD and found that the correct legal tests were applied under both sections 96 and 97 of IRPA, even though the RAD did not separate the two analyses. The RAD explained the two tests and the differences between them. The RAD stated that, while the standard of proof is the balance of probability in both instances, the legal test under section 96 is to establish "a reasonable chance or a serious possibility of persecution" whereas, under section 97, it requires that "the risk of death, torture or cruel and unusual punishment is more likely than not". The RAD explained that it "reviewed the decision

of the RPD in detail with regard to the testimony of [Mr. Kayitankore], the documentary evidence submitted by [Mr. Kayitankore] and the documentary evidence submitted by the Minister to determine how and on what grounds the RPD reached the decision". The RAD ruled that "[a] plain reading of the decision" from the RPD "leads to the conclusion that the RPD did not find that [Mr. Kayitankore] was at risk at all of returning to Rwanda and thus did not meet either test".

[7] With respect to Mr. Kayitankore's claim that the RPD failed to consider all the documentary evidence, the RAD reviewed each of the documents that the RPD did not specifically refer to. The RAD concluded that while these documents support the background story told by Mr. Kayitankore, they did not add significant information to his refugee claim. It also noted that the RPD "appears to have accepted the information contained in these documents when evaluating the claim".

[8] The RAD thus confirmed the RPD decision as it found, based on its review of the file and of the recorded hearing, that it would have reached the same conclusion.

**B.** ***The standard of review***

[9] It is now established case law that the standard of review to be applied by this Court to a decision of the RAD or the RPD on the legal requirements under sections 96 and 97 of IRPA is the deferential standard of reasonableness.

[10] Since its seminal decision in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*] at paras 39 and 41, the Supreme Court of Canada has systematically held that, when an administrative tribunal interprets or applies its home statute, there is a presumption that the standard of review applicable to its decision is reasonableness (*Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at para 32; *Mouvement laïque Québécois v Saguenay (City)*, 2015 SCC 16 at para 46; *Tervita Corp v Canada (Commissioner of Competition)*, 2015 SCC 3 at para 35; *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 25-27). The Federal Court of Appeal has indeed recently reaffirmed this principle in the RAD context and stated that the reasonableness standard applies when this Court is reviewing the RAD's determination of its standard of intervention in regard to the RPD's decisions (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica FCA*] at paras 31 and 35).

[11] The presumption that the appropriate standard of review of a decision of an administrative tribunal interpreting or applying its home statute is reasonableness can be rebutted (*Alberta Teachers* at para 39). However, that presumption has not been rebutted in the instant case. The issues raised by Mr. Kayitankore do not belong to the narrow class of matters for which the applicable standard is correctness, such as questions of law that are of central importance to the legal system as a whole and outside the decision maker's area of expertise (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 55 and 60).

[12] Despite her written submissions to the contrary, counsel for Mr. Kayitankore acknowledged at the hearing that the issues raised in this application for judicial review do not

attract a standard of review of correctness.

[13] Similarly, with regard to the assessment of the evidence submitted, the standard of review is also reasonableness.

[14] When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and a decision-maker's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 16).

[15] The reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*] at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). To determine the reasonableness of a decision, not only must the Court review the reasons but it can also look at the underlying

record (*Newfoundland Nurses* at para 15). That said, a judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Canada (Citizenship and Immigration v Ragupathy*, 2006 FCA 151 at para 15).

## III. Analysis

[16] Mr. Kayitankore contends that the RAD failed to make the connection between Mr. Kayitankore's employer, his detention and his fear of returning to Rwanda. He also argues that the RAD erroneously found that Mr. Kayitankore did not fit the profile of a person of interest for the Rwandan authorities. According to Mr. Kayitankore, the evidence on the record supports the fact that he will be at risk if he had to return to Rwanda. Mr. Kayitankore submits that the RAD was wrong when concluding that Mr. Kayitankore was not at risk in Rwanda and that it did not apply the correct legal tests. Mr. Kayitankore claims that the RAD did not indicate why he did not meet the tests under sections 96 and 97 of IRPA and that the RAD should have provided its own, different analysis rather than simply repeating and reiterating the RPD's legal analysis.

[17] Mr. Kayitankore further argues that the RAD ignored evidence confirming the link between his former employer and a high profile political opponent of the Rwandan regime, and failed to explain why this evidence should not be considered even though it was found to corroborate Mr. Kayitankore's claim.

[18] I do not agree with Mr. Kayitankore and instead conclude that the RAD decision fits well within the boundaries of reasonableness.

[19] The RAD properly took into account the *Huruglica FC* decision and found that the RPD reasonably determined that Mr. Kayitankore was not likely to face persecution if returned to Rwanda. Further to my review of the RAD decision, I am not persuaded that the RAD committed any reviewable error. I find that the RAD conducted an analysis of its own and reasonably found that Mr. Kayitankore was not targeted by the Rwandan authorities and that the RPD had applied the correct tests under both sections 96 and 97 of IRPA.

[20] There is no question that an appeal before the RAD is intended to be a full fact-based appeal involving a complete review of the questions of fact, law and mixed law and fact raised in the appeal, in order to correct any error made by the RPD, and that the RAD must make its own independent assessment of the evidence (*Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928 at para 28). The RAD owes deference to the RPD only when issues of credibility arise; otherwise, the correctness standard applies, and the RAD needs to carry out its own analysis (*Huruglica FCA* at paras 39 and 103).

[21] The language used by the RAD in its decision could perhaps have been clearer in certain respects and could have explained in more detail how it "would have reached the same conclusions" as the RPD. However, it certainly does not fall outside the range of acceptable, possible outcomes. The RAD has not overlooked any important factor nor has it misapprehended the circumstances of Mr. Kayitankore. Under the reasonableness standard, as

long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, a reviewing court should not intervene even if its assessment of the evidence might have led it to a different outcome. This is clearly the case here.

[22] True, the RAD decision does not explicitly state that the RAD is reviewing the RPD decision under the correctness standard, but I am satisfied that the RAD did not simply conduct a judicial review instead of a true appeal. Nowhere in the decision did the RAD simply state that the RPD decision was "reasonable" or suggest that it applied a reasonableness standard to the RPD decision. The RAD rather reviewed the whole decision of the RPD and concluded that the RPD applied the correct tests.

[23] I do not agree with Mr. Kayitankore that the RAD was required to provide a "different analysis". The RAD was just required to conduct its own assessment. The fact that it followed and repeated the RPD legal analysis before concluding that it was correct and that it would have reached the same conclusion does not mean or imply that it did not do its own analysis. The RAD cannot be faulted for not having done its own independent assessment simply because it followed the approach and reasoning of the RPD, and found it convincing. In exercising its appeal function, the RAD was entitled to echo the RPD analysis and to agree with it. In this case, the RAD reviewed the RPD's reasoning and analysis of the record in detail, it determined that the RPD did not err and did use the correct legal tests under sections 96 and 96 of IRPA, and it confirmed the RPD decision. In doing so, the RAD clearly performed the analysis summarized in *Huruglica FCA* at para 103, applying a correctness standard.

[24] Indeed, the RAD decision explicitly states, at paragraph 16, that it "reviewed the decision of the RPD in detail with regard to the testimony of [Mr. Kayitankore], the documentary evidence submitted by [Mr. Kayitankore] and the documentary evidence submitted by the Minister". I do not believe, further to my review of the RAD decision, that it can be said that the RAD did not make its own assessment or conduct its own analysis.

[25] On the evidence issue, the RAD clearly explained how it took the evidence into consideration, and deferred to the RPD's findings on credibility to reach the conclusion that the evidence submitted by Mr. Kayitankore was insufficient to meet the tests under sections 96 and 97 of IRPA. It is well recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). A decision-maker is not required to refer to each and every piece of evidence supporting its conclusions if the reasons permit the Court to understand why the decision was made and determine whether the conclusion falls within the range of possible, acceptable outcomes (*Newfoundland Nurses* at para 16). Similarly, a failure to mention a particular piece of evidence does not mean that it was ignored (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at paras 16-17). It is only when a tribunal is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact. This is not the case here, as the evidence was clearly referred to and all the facts contained in the evidence were taken into consideration by the RAD.

[26] It is also trite law that the inadequacy of reasons is no longer a stand-alone basis for quashing a decision. In *Newfoundland Nurses*, the Supreme Court provided guidance on how to approach situations where decision-makers provide brief or limited reasons. Reasons need not be fulsome or perfect, and need not address all of the evidence or arguments put forward by a party or in the record. The reasons are to be read as a whole, in conjunction with the record, in order to determine whether they provide the justification, transparency and intelligibility required of a reasonable decision (*Agraira* at para 53; *Dunsmuir* at para 47). Reasonableness, not perfection, is the standard. Even where the reasons for the decision are brief, or poorly written, this Court should defer to the decision-maker's weighing of the evidence, as long as the Court is able to understand why the decision was made. I am of the view that, in this case, the RAD decision is transparent and intelligible and clearly falls within such a range.

## IV. Conclusion

[27] For the reasons detailed above, the RAD decision represented a reasonable outcome based on the law and the evidence. Therefore, I must dismiss Mr. Kayitankore's application for judicial review. Neither party has proposed a question of general importance for me to certify, and I agree there is none.

## JUDGMENT

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

1. The application for judicial review is review is dismissed, without costs;

2. No question of general importance is stated.

"Denis Gascon"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-1189-16 |
| **STYLE OF CAUSE:** | JEAN-PIERRE KAYITANKORE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | AUGUST 31, 2016 |
| **JUDGMENT AND REASONS:** | GASCON J. |
| **DATED:** | SEPTEMBER 9, 2016 |

**APPEARANCES:**

| | |
|---|---|
| Anabella Kananiye | FOR THE APPLICANT |
| Helene Robertson | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Anabella Kananiye<br>Barrister, Solicitor and Notary<br>Ottawa, Ontario | FOR THE APPLICANT |
| William F. Pentney<br>Deputy Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENT |