

**Date: 20030120**

**Docket: IMM-83-02**

**Neutral citation: 2003 FCT 47**

**Ottawa, Ontario, January 20, 2003**

**PRESENT: THE HONOURABLE MR. JUSTICE BLANCHARD**

**BETWEEN:**

**ALPHONSE NTAGANZWA**

**Applicant**

**- and -**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Court has before it an application for judicial review of a decision by the Refugee Division of the Immigration and Refugee Board (“the Refugee Division”) on November 22, 2001 that Alphonse Ntaganzwa (the “applicant”) is not a refugee within the meaning of the United Nations Convention Relating to Refugee Status (the “Convention”).

***Facts***

[2] The applicant, born in Burundi, is a national of Rwanda. He alleged a valid fear of persecution for his political opinions.

[3] The applicant's family allegedly moved to Burundi from 1960 to 1973. His parents returned to Rwanda in 1973, whereas he lived with an aunt in Burundi from 1974 to 1991. His parents died in the 1994 genocide.

[4] The applicant alleged that he was a journalist. He said he worked in the Muhabura radio from 1992 to 1994. From October 1996 to December 1997, he said he studied in Switzerland.

[5] From March 1998 to July 1999 the applicant was employed by an international NGO, the Lutheran World Federation, and worked as officer in charge of information and external relations in a rural development project. Among the applicant's duties were assisting foreign journalists who were covering the situation in the country. The purpose of this work was to encourage foreign investors to continue subsidizing this NGO. According to the applicant, when he was serving as an interpreter for South African journalists in April 1998 he was arrested, detained and beaten because of his contacts with these investors.

[6] The applicant alleged he was threatened by the Agents de renseignements militaires (DMI) and by the Local Defence Forces (LDF), since they suspected him of being a spy for the Tutsis and giving information to Western journalists.

[7] In January and April 2000 soldiers allegedly came to the applicant's residence and asked to see his computer and check the messages he had sent. According to the applicant, the soldiers made copies of them.

[8] According to the applicant's testimony, he was elected secretary of the Association des journalistes rwandais, a fact which was not reported in his PIF.

[9] At a press conference held in March 2000 following the death of Mr. Kabera, an advisor in the office of the vice-president, the applicant testified that he asked questions about the government's effort to identify those responsible for the attack. According to the applicant, shortly after this conference he was summoned to the office of Maj. Jacques Nziza, who accused him of being a traitor. He said the latter reminded the applicant of his oath as a member of the Front Patriotique Rwandais (FPR) and referred to a paragraph in the oath that being categorized as a traitor by the movement was a very serious matter. The applicant interpreted this threat as being a death threat.

[10] The applicant said he left Rwanda with the passport of a friend who had the same name as himself. All his documents remained at his home and he stated that his residence was vandalized after he left.

***Decision***

[11] The Refugee Division refused to grant the applicant refugee status since it found that he was not credible and had not discharged his burden of showing that he had a valid fear of persecution. The Refugee Division gave the following reasons in support of its decision:

- The applicant's testimony was often general and evasive.
  
- The witness' testimony was not reliable as he said that the claimant was still working at the radio station in October 1997, whereas the claimant stated that he was studying in Switzerland at that time.
  
- The claimant had no documentation in support of his being a journalist. The only identification he had was a French driving licence.
  
- It is unlikely that the customs officers would not have noticed that the passport photo was not of himself.

- It is unlikely that a seasoned journalist would not have taken care to seal and/or secure his journalistic documents. The claimant could have used this means of supporting the allegations that he had been a journalist in Rwanda since 1991. Accordingly, the absence of these documents greatly undermined his credibility.
- The claimant also produced no document to support his involvement as an information officer in the rural development project.
- The RD noted that the letter of January 29, 2001 from the Lutheran World Association did not refer to the problems the claimant allegedly experienced while working for that organization.
- The claimant did not mention in his PIF the important role he claimed to have played as secretary of the association of journalists. The documentary evidence indicated that at that date the Government of Rwanda had not yet certified the existence of the association, so the organization was not able to receive grants. Nevertheless, the claimant said that he obtained grants.
- The claimant stated that he did not publish the information he had about Kabera's death. He said he was waiting for the proper time. The documentation was seized at his residence in Rwanda. The RD found it unlikely that he would not have kept this information secure.

- The letters the RD received after the hearing confirming the alleged training of the applicant raised certain questions. One of the letters mentioned that the claimant's family was concerned about him, whereas in his testimony he said that the members of his family died in the genocide. Additionally, the letter stated that the police used violence in a search and confiscated and ruined the computer hardware. However, the claimant alleged that the soldiers made a copy of his messages and that his personal papers were seized after he left Rwanda.
  
- The claimant did not act like a person who said he was in fear of his life, as he did not claim refugee status in the U.S., where the claimant went for one day on the way to Canada.
  
- The claimant had contacts with persons close to power in his country. He received assistance from his government to study in Switzerland, he said he was invited to a celebration for the appointment of the new counsel to the Kigali court and the community organizations to which he belonged received support from the government.

*Points at issue*

- (i) Did the Refugee Division render a decision based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it?
  
- (ii) Did the Refugee Division err in its assessment of the evidence?

*Analysis*

[12] The Refugee Division came to the conclusion that the applicant was not credible. The Refugee Division essentially based this conclusion on the fact that the applicant could not prove he was a journalist in Rwanda and in particular did not provide concrete documentary evidence to support his testimony that he had been a journalist in Rwanda since 1991. I reproduce the following passage taken from the Refugee Division's reasons at pp. 4, 5 and 7:

[TRANSLATION]

This absence of documentation confirming the claimant's status as a journalist greatly undermined his credibility.

.....

His role in the association of journalists was not further corroborated by any documentation whatsoever.

.....

The evidence has not established that he was a journalist in Rwanda or that he was subjected to persecution while he worked for non-governmental organizations.

[13] The applicant maintained that three uncontradicted documents from a credible source were filed to show that he worked as a journalist and information officer in the development project in his rural area:

- a letter from the press agency Info-Sud located at Lausanne in Switzerland;
- a letter from OMSV - ORGANISME MÉDICO-SOCIAL VAUDOIS;
- a letter from the Lutheran World Federation, a non-governmental organization of international reputation, certifying the applicant's services.

Looking at the first exhibit, in particular a letter from the press agency Info-Sud located at Lausanne in Switzerland, it reads as follows:

[TRANSLATION]

The press agency Info-Sud, founded in 1988, publishes over 1,000 articles annually on north-south matters and international issues in the Swiss, French, Belgium and African media.

A quarter of these articles are signed by Sud journalists, especially Africans, as part of a program titled [TRANSLATION] "the voice of the South in the media of the North", maintained by the Direction du Développement et de la Coopération (DDC) (Coopération officielle), the State of Geneva and various large Swiss NGOs. We also participate in another program financed by the Agence intergouvernementale de la francophonie, titled "Syfia International", an association bringing together nine agencies (see footnote) - totalling 70 correspondents in 30 Francophone countries.

Knowing our experience in north-south journalism the Institut universitaire d'études du développement (IUED-Geneva) asked us to welcome Mr. Ntaganzwa, a Rwandan journalist, who was taking courses at this institute at the time in a four-month developmental training exercise from June to September



1997. Mr. Ntaganzwa, a journalist trained in radio, wanted to do a training period in the written press and improve his knowledge of major international issues. During his training period, he also prepared a valuable assessment of the operation of our agency, a work which he then submitted to the IUED. We appreciated his human qualities and can attest to his ability as a journalist.

Our agency is aware of the problems Mr. Ntaganzwa has in his country. The situation in Rwanda is far from stable and the pressures placed on exposed professions can be very dangerous. (My emphasis.)

[14] The Refugee Division completely ignored this important document, which corroborated the applicant's testimony that he was a Rwandan journalist and attested to the problems which he was experiencing in his country of nationality, Rwanda. The respondent maintained that the Agence de presse Info-Sud was not in a position to indicate that the applicant was a journalist and that the letter was not evidence that the applicant was a journalist.

[15] I do not accept the respondent's arguments. That letter is a document directly relating to the question of whether the applicant was a journalist. In my opinion, it is a fundamental question dealt with in the Refugee Division's decision, since the latter found that "the absence of documentation confirming the [claimant's] status as a journalist" greatly undermined his credibility. The dismissal of the claim was based on this finding of a lack of credibility. The failure to make any mention of this letter, evidence directly applicable to a fundamental question dealt with in the decision, is a reviewable error.

[16] I therefore conclude that the Refugee Division based its decision on an erroneous finding of fact made without regard for the material before it (see *Atwal v. Canada (Secretary of State)*, [1994] F.C.J. No. 1113, Court No. IMM-4470-93, at para. 10).

[17] It will therefore not be necessary to consider the other points at issue raised by the applicant.

[18] I am satisfied that the error made and discussed above is sufficient to justify this Court's intervention.

### ***Conclusion***

[19] For these reasons, the application for judicial review will be allowed.

[20] The parties did not suggest certification of a serious question of general importance as contemplated by s. 83 of the *Immigration Act*, R.S.C. 1985, c. I-2. I do not propose to certify a serious question of general importance.

## **ORDER**

**THE COURT ORDERS THAT:**

1. The application for judicial review is allowed.

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Edmond P. Blanchard  
Judge

Certified true translation

Suzanne M. Gauthier, C. Tr., L.L.L.

**FEDERAL COURT OF CANADA**  
**TRIAL DIVISION**

**SOLICITORS OF RECORD**

**FILE:** IMM-83-02

**STYLE OF CAUSE:** Alphonse Ntaganzwa v. MCI

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** September 3, 2002

**REASONS [FOR ORDER OR JUDGMENT]:** Blanchard J.

**DATE OF REASONS:** January 20, 2003

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