

Federal Court



Cour fédérale

**Date: 20091223**

**Docket: IMM-3236-09**

**Citation: 2009 FC 1309**

**Ottawa, Ontario, December 23, 2009**

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

**BETWEEN:**

**MARGUERITE MANIRAKIZA  
MARCEL GAHUNGU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27 (the Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated May 25, 2009, determining that the applicants are not Convention refugees or persons in need of protection.

Issue

[2] The only issue in this case is whether the panel erred when it found that the applicants were not credible.

[3] For the following reasons, the application for judicial review will be dismissed.

Factual Background

[4] The applicants, Marguerite Manirakiza and Marcel Gahungu, are spouses and are citizens of Burundi. They allege that they have a well-founded fear of persecution by the government of Burundi by reason, in the case of Marguerite Manirakiza, of her nationality and membership in a particular social group, and, in the case of Marcel Gahungu, of his membership in a particular social group. The applicants are also claiming Canada's protection because of a danger of torture and a risk to their life or a risk of cruel and unusual treatment.

[5] The applicant Marcel Gahungu, who is of Hutu ethnicity, stated that in 2007 members of the Front National de Libération (FNL) proposed to levy contributions from him, but he refused. In retribution, his house was burned. He then went to the Democratic Republic of Congo with his children, on May 2, 2007.

[6] On April 9, 2008, the male applicant obtained a visa at the American consulate in Bujumbura and on April 15, 2008, he left Burundi and went to Rwanda to travel to the United

States, with his Burundian passport and his national identity card. The male applicant arrived in Canada on April 21, 2008, and made his claim for refugee protection on the same day.

[7] The female applicant, the wife of the male applicant, is of Tutsi ethnicity. She was formerly married to Emmanuel Mifiendegeri, who was murdered. Her former husband's brother, who is of Hutu ethnicity, accused her of killing his brother and tried to kill her. She escaped from the house she occupied with her children and went to Bwenzi. That was where she met her present husband, the male applicant in this case, and they were married in 2004. She stated that her former husband's brother went to visit them in May 2007 and their house was burned on the same day. A neighbour named Sylvestre Manirakiza gave the female applicant protection for three months, during which she had no further news of her husband and children. He then obtained a visa for her to go to the United States. The female applicant left Burundi on September 23, 2007, and arrived in Canada via the United States, with her Burundian passport, on September 27, 2007. The female applicant made her claim for refugee protection on September 28, 2007.

[8] At the hearing, a designated representative was appointed to assist the female applicant.

#### Impugned Decision

[9] After noting a number of contradictions, inconsistencies and omissions in the applicants' evidence, the panel concluded that they were not credible and their claim for refugee protection was rejected. The panel noted that the applicants each had a different perception of the cause of the fire of which they were allegedly victims and they based them on speculation.

### Standard of Review

[10] Where the issue is credibility and assessment of the evidence, the Court will intervene only if the decision is based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the evidence (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.)).

[11] Assessing credibility and assessing the evidence are matters within the authority of the administrative tribunal, which must assess a refugee claimant's allegation of subjective fear (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 at para. 14). Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the standard of review that has applied in circumstances like these is reasonableness.

### Analysis

[12] After analyzing and considering the transcript, the documents in the record, the written and oral submissions by the parties and the case law submitted, the Court is of the opinion that the panel's conclusion is reasonable.

[13] First, the panel demonstrated diligence by taking the female applicant's problems into account. The panel also had regard to the Guidelines on Procedures with Respect to Vulnerable Persons appearing before it. When it assessed the applicants' credibility, the panel took into account the explanations provided by the two spouses concerning the implausibilities and inconsistencies in their accounts, but it did not consider them satisfactory.

[14] Although counsel for the applicants argued that the explanations given by the female applicant and the male applicant were not two different perceptions of the same event, but rather two different hypotheses about the person who committed the crime, the Court cannot accept that argument, on reading the record. The panel identified a large number of contradictions and inconsistencies in the applicants' evidence. For example, the panel noted that the applicants gave two different versions of a single incident. The male applicant alleged that their home was burned by members of the FNL, while the female applicant claimed that the fire was set by her former brother-in-law. The panel also noted that at the port of entry the male applicant said that he feared the members of the FNL alone. The male applicant explained his failure to talk about his wife's former brother-in-law by noting that he had talked about him but the border services officer had failed to write it down in his notes. The panel found that explanation not to be credible, and this undermined the male applicant's credibility. This shows that the applicants are incapable of identifying whom they fear if they return to their country.

[15] In addition, the female applicant gave a precise description of the method used to start the fire, although she had said that when the fire at their house occurred, she had lost consciousness and did not know how she got out of the building. The female applicant then replied that it was her husband who had described to her the events she recounted at the hearing. The panel noted that this explanation contradicted the applicants' narrative, in that the female applicant alleged that she had next seen her husband only in Canada. It is important to note that the female applicant arrived in Canada before the male applicant, and she completed her Personal Information Form (PIF) before she saw her husband again. It is impossible for the male applicant to have described the events

surrounding the fire to her because she had not yet seen him. When the female applicant was confronted with this contradiction, she changed her account and stated that she had learned the details of the event from her neighbours. In this case, this is one example among others noted by the Court of the applicants adjusting their testimony when they were confronted by the panel.

[16] With respect to the male applicant's employment, the PIF shows that he stated that the only employment he held was as a pastor, while the male applicant's marriage certificate, dating from 2004, shows that he was warehouse worker. Apart from a reference provided by the Église de réveil de Galilée for a visa application, there are no other documents attesting to his being a pastor.

[17] Having found that the applicants were not credible, the panel considered whether their subjective fear of persecution was well-founded. The male applicant stated that he went to the Democratic Republic of Congo after the fire, to protect himself. He stated that he returned to his country of origin several times from his hiding place to obtain a passport and to apply for and obtain a visa.

[18] As the respondent correctly pointed out, it is settled law that returning to the country of persecution, delay in leaving the country of persecution or failure to claim protection in countries that are signatories to the 1951 *Geneva Convention* or the 1967 *Protocol Relating to the Status of Refugees* can seriously undermine a claimant's credibility (*Lopez v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1318, 136 A.C.W.S. (3d) 894 at para. 5; *Prayogo v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1508, 143 A.C.W.S. (3d) 1087 at para. 26; *Ilie v. Canada*

*(Minister of Citizenship and Immigration)*, (1994), 88 F.T.R. 220, 51 A.C.W.S. (3d) 1349; *Saez v. Canada (Minister of Employment and Immigration)*, (1993), 65 F.T.R. 317, 41 A.C.W.S. (3d) 719 (F.C.A.); *Nguyen v. Canada (Minister of Citizenship and Immigration)*, (1998), 79 A.C.W.S. (3d) 136, [1998] F.C.J. No. 420 (QL); *Sokolov v. Canada (Minister of Citizenship and Immigration)*, (1998), 87 A.C.W.S. (3d) 1193, [1998] F.C.J. No. 1321 (QL)).

[19] It was reasonable for the panel to conclude that the applicants were not able to prove that there is a serious possibility they would be subjected personally to a danger or a risk of persecution in Burundi and that they did not discharge their burden of proving on a balance of probabilities that there is a serious possibility they would be persecuted on the basis of one of the grounds in the Convention.

[20] For all these reasons, intervention by the Court is not warranted. This application raises no serious question of general importance.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. No question will be certified.

“Richard Boivin”

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Judge

Certified true translation  
Brian McCordick, Translator



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

**DOCKET:** IMM-3236-09

**STYLE OF CAUSE:** Marguerite MANIRAKIZA, Marcel GAHUNGU v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** December 17, 2009

**REASONS FOR JUDGMENT:** BOIVIN J.

**DATED:** December 23, 2009

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