

Federal Court



Cour fédérale

Date: 20100702

Docket: IMM-5174-09

Citation: 2010 FC 725

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 2, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

RACHIDI EKANZA EZOKOLA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

SUPPLEMENTARY REASONS FOR JUDGMENT AND JUDGMENT

[1] Following a judgment issued on June 17, 2010, in this docket and bearing citation number 2010 FC 662, I gave the parties an opportunity to propose one or more questions to me for the purpose of paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act). The respondent, the Minister of Citizenship and Immigration, suggested such a question, and the applicant did not provide any comments in this regard.

[2] I agree with the respondent's submissions that the conditions have been met to state a question for the purposes of paragraph 74(d) of the Act. As the respondent notes in his remarks concerning the question he is proposing, the scope of the exclusion in Article 1F(a) of the *United Nations Convention relating to the Status of Refugees* is a serious question of general importance and is determinative in this dispute. The question that will be stated will, however, be worded differently but is similar to the one proposed by the respondent.

JUDGMENT

THE COURT ORDERS AND ADJUDGES:

1. The application for judicial review is allowed;
2. The panel's decision is set aside as it relates to its finding that the applicant is excluded by operation of Article 1F(a);
3. The matter is referred back to the Immigration and Refugee Board to be heard by a different panel of the Refugee Protection Division, which will determine *de novo* in accordance with the provisions of this judgment.
4. For the purpose of paragraph 74(d) of the *Immigration and Refugee Protection Act*, the Court certifies that this matter raises a serious question of general importance stated as follows:

For the purpose of exclusion under Article 1F(a) of the *United Nations Convention relating to the Status of Refugees*, is there complicity by association in crimes against humanity on the basis that a refugee claimant worked as a public servant for a government that committed such crimes, coupled with the fact that the refugee claimant knew about the crimes and did not denounce them, where there is no evidence that the refugee claimant personally participated, directly or indirectly, in these crimes?

“Robert M. Mainville”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5174-09

STYLE OF CAUSE: RACHIDI EKANZA EZOKOLA v. MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 5, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mainville J.

DATE OF ORDER: July 2, 2010

APPEARANCES:

Annick Legault

FOR THE APPLICANT

Daniel Latulippe

FOR THE RESPONDENT

SOLICITORS OF RECORD:

ANNICK LEGAULT
Counsel
Montréal, Quebec

FOR THE APPLICANT

MYLES J. KIRVAN
Deputy Attorney General of Canada

FOR THE RESPONDENT