

Federal Court



Cour fédérale

**Date: 20140107**

**Docket: IMM-3579-13**

**Citation: 2014 FC 14**

**Ottawa, Ontario, January 7, 2014**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**LOUIS RUTAGAYINTABAZA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr Louis Rutagayintabaza arrived in Canada in 2012 from Rwanda. He claimed refugee status based on his fear of persecution by persons he had identified as being associated with the 1994 genocide. They murdered members of Mr Rutagayintabaza's family.

[2] A panel of the Immigration and Refugee Board accepted that Mr Rutagayintabaza had been persecuted, but refused his claim because it found that he could live safely in the town of Remera, even though his persecutors lived just four kilometres away in Ndera.

[3] Mr Rutagayintabaza argues that the Board treated him unfairly by not specifically presenting the question of whether Remera offered a safe haven for him (*ie* whether he had an “internal flight alternative” (IFA)), and by not giving him a chance to respond to that issue. Further, he contends that the Board unreasonably concluded that he had a viable IFA in Remera. He asks me to quash the Board’s decision and order another panel of the Board to reconsider his claim.

[4] I cannot find that Mr Rutagayintabaza was treated unfairly. However, I agree with Mr Rutagayintabaza that the Board’s finding of an IFA was unreasonable. The Board failed to take account of Mr Rutagayintabaza’s testimony that he felt his safety was constantly at risk in Remera and could not find a job there.

## II. Issue One – Did the Board treat Mr Rutagayintabaza unfairly?

[5] Mr Rutagayintabaza argues that the Board failed to identify Remera with sufficient particularity as a potential IFA. He concedes that the issue of IFA was brought to his attention both before and at the hearing. However, he contends that the Board did not explicitly ask him whether he could live safely in Remera.

[6] At his hearing, when the Board asked Mr Rutagayintabaza about his safety, he said that in 2006 the family moved from Ndera to Remera, a suburb of Kigali, after receiving threats from their

neighbours. The family stayed there until March 2007. During that time, they avoided the threatening neighbours. After the rest of his family left for Canada, Mr Rutagayintabaza lived in Remera and worked in Kigali until 2009. He continued to avoid his neighbours but saw them when he attended the Gacaca courts in Kigali. Later that year when he went back to Ndera his neighbours continued to threaten him.

[7] Mr Rutagayintabaza returned to Remera in 2010. The next year, he went to Uganda looking for work. During that period, he would occasionally see his persecutors, but avoided them out of fear. He returned to Remera again in 2011. He continued to avoid those who had threatened him because he felt they still wanted to kill him.

[8] The Board asked Mr Rutagayintabaza if he could live in Remera if his neighbours did not cause him any further problems. Mr Rutagayintabaza did not accept the premise that his persecutors would leave him alone. Further, he said he would not be able to find a job there.

[9] In his submissions to the Board, counsel for Mr Rutagayintabaza pointed out that Rwanda is a small country, which makes an IFA a very limited recourse for people in Mr Rutagayintabaza's circumstances.

[10] In my view, in these circumstances, it was not unfair for the Board to consider whether Remera offered a safe place for Mr Rutagayintabaza to live. He was aware that a viable IFA was an issue at his hearing and he was specifically asked about his experiences in Remera. He could not have been taken by surprise by the Board's consideration of that possible recourse.

III. Issue Two – Was the Board’s decision unreasonable?

[11] Mr Rutagayintabaza argues that the Board’s conclusion that he could live safely in Remera was unreasonable. He consistently stated that when he lived in Remera he felt compelled to take steps to avoid his aggressive neighbours, constantly feared them, and had trouble finding employment.

[12] I agree with Mr Rutagayintabaza that the Board’s decision was unreasonable. While Mr Rutagayintabaza had spent a considerable amount of time in Remera without incident, he repeatedly told the Board that he remained in fear while he lived there and took measures to avoid his persecutors, who lived in close proximity. In addition, he clearly had trouble securing employment in Remera.

[13] Therefore, I cannot conclude that the officer’s finding that Mr Rutagayintabaza had a viable IFA in Remera represents a defensible outcome based on the facts and the law. It was unreasonable.

IV. Conclusion and Disposition

[14] While I am satisfied that Mr Rutagayintabaza was treated fairly by the Board, I find that the Board’s conclusion that Mr Rutagayintabaza could live safely in Remera was unreasonable. It failed to take account of the evidence showing that he constantly lived in fear of his neighbours, and could not find employment there. Therefore, this application for judicial review is allowed. Neither party proposed a question of general importance for certification, and none is stated.

**JUDGMENT**

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

1. The application for judicial review is allowed.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3579-13

**STYLE OF CAUSE:** LOUIS RUTAGAYINTABAZA v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** DECEMBER 2, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** JANUARY 7, 2014

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