

Federal Court



Cour fédérale

Date: 20140715

Docket: IMM-6526-13

Citation: 2014 FC 698

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 15, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

KHALIDI KEZA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act* (IRPA) of a decision dated July 16, 2013, by a member of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) to reject the refugee protection claim of the applicant, Khalidi Keza.

[2] For the following reasons, the application for judicial review is dismissed.

I. Factual background

[3] The applicant, Khalidi Keza, is a citizen of Burundi. He alleges that his father was a member of the Burundian political party of the National Council for the Defence of Democracy—Forces for the Defence of Democracy (CNDD/FDD) and that two days after the arrest of the chairman of the CNDD/FDD, Hussein Radjudu, the applicant's father was also arrested, on April 29, 2007, and never seen again.

[4] The applicant alleges that, on May 1, 2007, his spouse received a visit from officers of the National Intelligence Service (SNR), but he was not at home. Those men returned that evening to inform him that he was under arrest. They handcuffed him and drove him to the SNR office. He was interrogated about his occupation and Hussein Radjudu. One of the men struck him, and when he was on the ground, he was punched and kicked. He was put in a cell at their office and released at around 9:00 p.m., two days later.

[5] The applicant testified that the day after he had been released, after he had been imprisoned for the first time, he returned to the SNR with his wife and mother to check whether they had any information on his father.

[6] On May 15, around 2:30 a.m., the applicant alleges that he was again arrested at his home by two SNR officers and three police officers. They handcuffed him and searched his house, stating that they were looking for weapons. They found nothing and took him by truck to their

office. He was tortured again and was kicked in the shins. They cut his right hand with a blade and burned him on his arms and legs. They also added a weight to his testicles. In the end, he lost consciousness. He was kept for three days and, on the third night at around 3:00 a.m., he was driven into the city and told to get out of the vehicle.

[7] The next day, he went to the Prince Régent Charles hospital, where he was hospitalized for two weeks. He returned home on June 2, 2007, and, on August 15, he received a notice to appear from the SNR. It was then that he decided to flee the country. He sought refuge at a friend's house and, on November 18, 2007, he left Burundi. A few days later, his mother, wife and children went to Uganda, as those officers kept going to his home, and they raped his wife.

[8] The applicant entered the United States on November 19, 2007, where he claimed asylum. His claim was rejected. On July 17, 2012, he left the United States for Canada.

II. Impugned decision

[9] The RPD found that the applicant was not credible by reason of the omissions, contradictions and inconsistencies that arose in his testimony.

[10] The applicant alleges that he waited from June 2, 2007, when he was released from the hospital, until August 15, 2007, when he received the notice to appear, before deciding to go into hiding and leave his country. During that period, he continued to live at his house and go to work. Given the alleged abuse and the two arrests, after the disappearance of his father, the RPD

does not believe that he was ever actually arrested because he waited more than two months until he received a notice to appear before deciding to leave his country.

[11] Furthermore, the applicant does not possess the original notice to appear or medical certificate. He explained in his testimony that that was because the originals were in the United States and that the truck driver who took him over the border had lost his suitcase containing all of his American immigration documents. He alleges that he tried to obtain copies of those documents through his American lawyer, but despite the promises made, he has still not received them. The RPD found that he entered Canada on July 17, 2012, and that he waited until July 2013 to take steps to obtain the original documents. Given that the applicant has had the help of an experienced lawyer, the panel found that the applicant was passive in his efforts to obtain his documents, which undermines his credibility with respect to his intention to submit those documents. Because he could not submit his original notice to appear, the RPD did not attach any probative value to that notice to appear.

[12] The RPD also found that when the applicant was asked about how he obtained the medical certificate, he did not mention that he had to produce a piece of identification or pay a fee to obtain it, as it states in the documentary evidence. He was unable to provide a convincing explanation for that omission, so the RPD did not attach any probative value to the medical certificate. The RPD thus did not believe that the applicant went to see a doctor or stayed for two weeks in the hospital.

[13] Regarding the steps the applicant took at the passport office (PAFE) to obtain a passport to leave the country, the applicant testified that he had no problems during his passport interview, and that no one tried to arrest him. He explained that those people did not necessarily know that the SNR was looking for him. The RPD did not find credible that he obtained his passport from the PAFE without any problems if he was wanted by the State, and found that if the applicant received a notice to appear after being imprisoned twice, his name would be among those of individuals whose movements were under surveillance. The RPD therefore found that that inconsistency undermined the applicant's credibility regarding the fears alleged.

[14] Furthermore, the RPD found that the applicant testified that the day after he was released, after he was imprisoned for the first time, he returned to the SNR with his wife and mother to check whether they had any information on his father. The RPD found that if the applicant was able to return to the service that had arrested and tortured him two days after his release, he did not have a genuine fear of the SNR.

[15] Finally, in his immigration questionnaire that he signed on July 27, 2012, the applicant alleged that his mother and father still lived in Bujumbura, whereas in his Personal Information Form (PIF) that he filed on August 9, 2012, he noted that his mother lived in Uganda and that his father had disappeared. As a result, the RPD did not believe that the applicant's father had disappeared or that his mother had sought refuge in Uganda. It therefore found that the applicant was not arrested because of the link between Hussein Radjudu and his father.

[16] Because the RPD did not believe that the applicant was arrested and tortured, it attached little weight to the medical document from the doctor because the alleged injuries or marks could have been caused by events other than those claimed by the applicant.

[17] Considering that the RPD found most of the applicant's allegations not credible, it determined that the applicant failed to establish that there was a serious possibility that he would be persecuted on a Convention ground, or that he would be personally subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment or punishment.

III. Issues

[18] The sole issue in this case is as follows:

1. Was it reasonable for the RPD to find that the applicant is not credible?

IV. Standard of review

[19] The standard of review applicable to the RPD's credibility findings is reasonableness (see, for example, *Wei v Canada (Citizenship and Immigration)*, 2012 FC 911 at paragraph 28; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA); *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773, at paragraph 21; *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929, at paragraph 17).

V. Analysis

[20] The applicant maintains that the panel erred in assessing his credibility.

[21] With respect to the RPD's findings on the applicant's credibility, it must be remembered that the case law has clearly established that the RPD is best placed to assess the applicant's testimony, and its findings are reviewable on a standard of reasonableness (see *Aydin v Canada (Citizenship and Immigration)*, 2012 FC 1329 at paragraph 22, per Justice Near. Furthermore, as stated by Justice Kane in *Huntley v Canada (Citizenship and Immigration)*, 2014 FC 573 at paragraph 37, "[t]he Board is entitled to draw inference based on implausibility, common sense and rationality".

[22] In order to rule on the reasonableness of the RPD's findings, the decision must be considered as a whole. After reviewing the record and the parties' submissions, I am of the view that the RPD's concerns about the applicant's credibility led to a finding that falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[23] First, it is reasonable for the panel to draw a negative inference as to an applicant's credibility from the fact that the documents submitted in evidence were not originals (*Aydin v Canada (Citizenship and Immigration)*, 2012 FC 1329 at paragraph 24). As noted in the respondent's memorandum, Rule 42 of the *Refugee Protection Division Rules* states that the applicant must provide the originals of all of his documents without delay, on the written request of the RPD; or if the RPD does not make a request, no later than at the beginning of the proceeding at which the document will be used.

[24] The explanation that the documents were lost when he entered Canada, or that his American lawyer did not cooperate with him by sending him his file, all after doing nothing for one year in Canada, undermines his credibility.

[25] Second, the story about his father disappearing and his mother being forced to leave Bujumbura is not credible because he stated in his questionnaire that the two parents still live there. His explanation about losing his concentration is also implausible, given two weeks after his arrival in Canada.

[26] I believe that all of the RPD's other negative comments are also supported by the evidence, namely: how he obtained a medical certificate from the hospital in Burundi; the steps taken at the passport office (PAFE) to obtain a passport to leave the country; his apparent wait from June 2, 2007, when he was released from the hospital, until August 15, 2007, before deciding to go into hiding and leave his country; and his return to the SNR with his wife and mother to check whether they had any information on his father.

[27] Consequently, the application for review is dismissed. There is no serious question of general importance to certify.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and
2. there is no serious question of general importance to certify.

“Peter Annis”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6526-13

STYLE OF CAUSE: KHALIDI KEZA v THE MINISTER OF CITIZENSHIP
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