Federal Court  Cour fédérale

**Date: 20150505**

**Docket: IMM-6346-14**

**Citation: 2015 FC 580**

**Ottawa, Ontario, May 5, 2015**

**PRESENT: The Honourable Mr. Justice S. Noël**

**BETWEEN:**

**EDGAR MBARAGA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] This is an application by Edgar Mbaraga [the Applicant] for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of Senior Immigration Officer W. Manshad [the PRRA Officer] of Citizenship and Immigration Canada dated July 9, 2014, which rejected the Pre-Removal Risk Assessment [the PRRA application].

## II. Alleged Facts

[2] The Applicant is a Tutsi, citizen of Rwanda, born on April 21, 1994.

[3] The Applicant travelled to the United States as a visitor on June 28, 2010. The Applicant then arrived in Canada on August 23, 2010 and claimed refugee protection on the same day.

[4] The Applicant claimed to fear a high ranking official of the Rwandan army, M. Rugumyer Gachinya, who allegedly wanted to enrol him in the army.

[5] The Applicant claimed to being targeted due to his father's, Joshua Mbaraga [Joshua] problems. He claimed that his father was a former colonel of the Rwanda Patriotic Front [RPF] and was an important member of the Rwanda army when Paul Kagame took control of the country. The Applicant alleged that his father was demoted from the army and subsequently fell into disgrace in 2003.

[6] The RPD rejected the Applicant's refugee claim on August 1, 2011. It determined that the Applicant's allegations were not credible. The application for leave and judicial review of the RPD decision was dismissed in December 2011.

[7] On August 20, 2012, the Applicant submitted an application for permanent residency based on humanitarian and compassionate considerations [H&C application]. The application was rejected on June 13, 2013. On July 26, 2013, the Applicant submitted an application for

leave and judicial review of the H&C decision. This application was also denied in November 2014.

[8] On December 23, 2013, the Applicant submitted a PRRA application. This application was rejected on July 9, 2014. This is the decision under review.

## III. Impugned Decision

[9] The PRRA Officer first noted that the Applicant reiterated the same allegations in his PRRA application as the ones presented to the RPD for his refugee claim.

[10] After assessing the Applicant's evidence, the PRRA Officer admitted the following documents as new evidence:

1. Copy of documents related to the refugee claim in the United States [USA] of Kenneth Bahizi [Kenneth], the Applicant's brother;

2. Copy of documents related to the refugee claim in the USA of Susan Batamuliza [Susan], the Applicant's sister, which includes a copy of an affidavit dated November 30, 2012 by Joshua Mbaraga and a copy of Jonathan Musonera's declaration dated November 25, 2012, both in support of Susan's refugee claim;

3. Copy of a declaration by Joel Bright Mutsinzi [Joel], the Applicant's brother, regarding his refugee claim in the USA;

4. Copy of a summons dated August 9, 2011, for Joshua Mbaraga with English translation;

5. Document entitled Proclamation Establishing the Rwanda National Congress [RNC] (where the name Jonathan Musonera is mentioned) and other documents related to the RNC;

6. Document from the London Police dated May 12, 2011;

7. Letter by Jonathan Musonera dated November 25, 2012;

8. News articles and country condition reports dated after the RPD's decision.

[11] The PRRA Officer rejected the other documents presented by the Applicant as new evidence.

[12] The documents regarding the Applicant's siblings' refugee claim were not given any probative value by the PRRA Officer. With regards to Kenneth's refugee claim, the Applicant did not submit evidence to show that he was accepted on the same allegations as the Applicant, but only submitted documents that states that the refugee claim was approved. As for Susan and Joel's documents, they do not indicate whether their refugee claim was accepted. The PRRA Officer also wrote that the Applicant's PRRA application is independent of any other decision made by other immigration tribunals.

[13] The PRRA Officer also did not give probative value to Joshua's summons, the Applicant's father, because it did not demonstrate a link between the embezzelment accusations against his father and his father's problems with the Kagame's government.

[14] The PRRA Officer explained that he could not examine the document from the London Police dated May 12, 2011, due to the lack of quality of the document and illegible words.

[15] As for the letter by Jonathan Musonera dated November 25, 2012, the Applicant did not provide sufficient evidence to demonstrate that he is a relative of this individual. Little probative value was also given to this document.

[16] As for the news articles and country conditions reports, the PRRA Officer determined that neither related to the Applicant's personal story nor did they demonstrate that he is personally at risk in Rwanda. The PRRA Officer thus rejected the Applicant's PRRA application.

## IV. Parties' Submissions

[17] The Applicant submits that a "heightened duty" was imposed of the PRRA Officer for three reasons: (1) the Applicant was a minor when he claimed refugee protection and also went through the Canadian refugee system without the support of his parents, (2) he only met with his designated representative for one hour before the refugee hearing and (3) he was denied the services of an interpreter at the refugee hearing, despite an interpreter being present. The PRRA Officer should therefore not have placed so much weight on the negative credibility determinations of the RPD. The Applicant adds that he was also poorly represented by counsel in his application for leave and for judicial review before the Federal Court with regards to the RPD decision. The Applicant adds that because of the changes made to IRPA with regards to PRRA applications, a higher burden was on the PRRA Officer to fully assess the Applicant's risk and to

consider other grounds based on all of the evidence presented by him. The Respondent argues that the Applicant's argument of a necessary "heightened duty" on the PRRA Officer in this case lacks merit because the Applicant had representation and also because the PRRA Officer adequately considered the risks with respect to the Applicant. The Respondent adds that this judicial review is also not the proper venue to challenge the competence of his previous legal representation.

[18] The Applicant adds that the PRRA Officer placed an unreasonable burden on him and applied a double standard in assessing his case as a whole. The Applicant further argues that the PRRA Officer did not properly assess his risk profile based on the documentary evidence. He states that the PRRA Officer erred in rejecting the documentation regarding his siblings' refugee claims in the USA because he specified in his affidavit that the facts in his siblings' refugee claims are the same as his. The Applicant adds that the PRRA Officer provided inadequate reasons for the rejection of those documents. The Respondent replies by stating that simply swearing an affidavit does not absolve the Applicant of meeting the evidentiary burden that he would be at risk of persecution.

[19] The Applicant submits that the document from the London Police dated May 12, 2011, should not have been disregarded by the PRRA Officer due to its poor quality because the content of the document was important. The Respondent responds that the fact the Applicant's counsel submitted his own interpretation of the said document in its memorandum is irrelevant since it was never put before the PRRA Officer.

[20] The Applicant also submits that Rwanda is a dangerous country and that as such, the government's obligation against *refoulement* should be at its highest. The PRRA Officer therefore ought to have assessed all possible risks. The Applicant also critics the PRRA Officer's assessment of the country condition reports and news articles because they relate to his story and his personal risk in Rwanda. The Respondent argues on this point that the Applicant cannot rely solely on general country conditions as a substitute for evidence of personalized risk.

## V. Issue

[21] I have reviewed the parties' submissions and their respective records and state the issue as follow:

1. Was the PRRA Officer's decision reasonable?

## VI. Standard of Review

[22] The question as to whether the PRRA decision is reasonable is to be reviewed on the reasonableness standard (*Pareja v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1333 at para 12; *Kandel v Canada (Minister of Citizenship and Immigration)*, 2014 FC 659 at para 17). The Court shall only intervene if it concludes that the decision is unreasonable, and falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47).

VII. Analysis

[23] A PRRA application by a failed refugee claimant is not an appeal or a reconsideration of the decision of the RPD to reject a claim for refugee protection (*Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at para 12 [*Raza*]; *Sayed v Canada (Minister of Citizenship and Immigration)*, 2010 FC 796 at para 37 [*Sayed*]). A PRRA application may however require consideration of some or all of the same factual and legal issues as a claim for refugee protection (*Raza*, above at para 12). Paragraph 113(a) of IRPA is "based on the premise that a negative refugee determination by the RPD must be respected by the PRRA Officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD" (*Raza*, at para 13). A PRRA Officer may properly reject evidence that addresses the same risk issue considered by the RPD if it cannot prove that the relevant facts as of the date of the PRRA application are materially different from the facts as found by the RPD (*Raza*, at para 17). In the case at bar, the Applicant's allegations are the same one as alleged before the RPD. The PRRA Officer also properly assessed all of the evidence presented. There is thus no need for this Court to intervene.

[24] The Applicant first argues that there were reasons in the present matter to impose a "heightened duty" on the PRRA Officer because he was a minor at the time of the RPD hearing and lacked proper representation. He relies on the decision of *Jama v Canada (Minister of Citizenship and Immigration)*, 2014 FC 668 [*Jama*] in support of this argument. I however disagree with the Applicant. The case of *Jama* was decided on three grounds: (1) the applicant filed his PRRA application without the help of a counsel, (2) the PRRA application was decided

eighteen months after it was submitted and (3) the applicant came from Somalia, described as a dangerous country (at para 21).

[25] In the case at bar, contrary to the facts in *Jama*, the Applicant did have representation in preparing his PRRA application as well as before the RPD. The Applicant however argues that his counsel before the RPD was incompetent. This argument cannot stand. Such allegations are very serious and the threshold for demonstrating incompetence is a high one (*Tjaverua v Canada (Minister of Citizenship and Immigration)*, 2014 FC 288 at para 15). The Applicant failed to comply with the Federal Court's Procedural Protocol: *Re Allegations against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court*, dated March 7, 2014, which specifically explains that former counsel or authorized representative must be notified of the allegations made against them. Moreover, Justice Martineau stated in *Parast v Canada (Minister of Citizenship and Immigration)*, 2006 FC 660 at paragraph 11 that:

> [11] The applicant must accept the consequences for his choice of counsel and for his deliberate decision to lie about his personal situation. It is only in the most exceptional circumstances that the Court considers the incompetence of counsel. According to the case law, evidence of counsel's incompetence must be so clear and unequivocal and the circumstances so deplorable that the resulting injustice caused to the claimant is blatantly obvious: see *Dukuzumuremyi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 278 at paragraph 9, [2006] F.C.J. No. 349 (QL); *Drummond v. Canada (Minister of Citizenship and Immigration)* (1996), 112 F.T.R. 33 at paragraph 6 (F.C.T.D.).

[26] In the case at bar, the Applicant argued the incompetence of his previous counsels in his PRRA submissions. On that point, the PRRA Officer determined that:

> First of all, I note that the Board stated in their decision the applicant was "an intelligent young man who understood the procedure and the questions that were asked of him." Secondly, the applicant did not submit evidence (copy of a complaint against his former counsel, and so on) to demonstrate that his designated representative and counsel at the refugee hearing failed to do their work properly. For all these reasons, I reject the applicant's explanation […] (Applicant's Record [AR], PRRA decision page 14).

[27] The same can be said here. The Applicant did not provide clear evidence of his counsels' incompetence or of his designated representative or his interpreter at the RPD hearing. Also, as it can be seen above, the RPD found the Applicant to be an intelligent young man who understood the procedures and what was asked of him.

[28] Also contrary to the facts in *Jama*, the Applicant's PRRA application in the case at bar was decided less than seven months after it was submitted. In the present matter, the PRRA Officer also assessed the recent news articles and country conditions presented by the Applicant. Even though the PRRA Officer stated that these documents did not relate to the Applicant's story or that they demonstrated that he is personally at risk in Rwanda, he still considered and analysed them in his decision, along with "other recent objective sources regarding the country conditions in Rwanda based on the Applicant's personal profile" (AR, PRRA decision page 017). Unlike the situation in *Jama* where the PRRA officer stated that the situation had worsened in Somalia since the RPD decision, in the case at bar, the PRRA officer recognized that the human rights situation in Rwanda was not without problems, but that the Applicant had neither submitted sufficient evidence showing a personal risk if he was to return to Rwanda or that his situation is different than the rest of the population (AR, PRRA decision page 018). There was therefore no "heightened duty" to be imposed on the PRRA officer. Lastly, on this issue, I want to add that to

say that a "heightened duty" should be imposed in certain cases versus other cases is unsettling. PRRA officers have an equal duty in all cases to fully and properly review the files before them before rendering a decision. All PRRA decisions should be awarded the same level of attention, and it should not be that some cases deserve more attention than some others.

[29] The Applicant also criticizes the PRRA Officer's assessment of the new evidence presented. He adds that the PRRA Officer applied an unreasonable burden on him along with applying a double standard to the assessment of his case as a whole. Again, this argument does not stand. The Applicant argues that the document from the London Police dated May 12, 2011, should not have been disregarded due to its poor quality. I have reviewed the document contained in the Certified Tribunal Record, as it was presented to the PRRA Officer (Certified Tribunal Record [CTR] page 265), and I agree that its content is very difficult to read. As the PRRA Officer noted, the Applicant neither provided the original document nor did he explain why that was. The Applicant's counsel, in his Memorandum of Arguments, transcribed the document (AR page 353 at para 100). It is settled law that a judicial review of an administrative decision is made on the basis of the evidence that was before the decision-maker (*Alabadleh v Canada (Minister of Citizenship and Immigration)*, [2006] FCJ No 913 at para 6). Although this piece of evidence was before the PRRA Officer, it was not presented as it is now in this judicial review. Based on the quality of the presentation of the document, it was reasonable for the PRRA Officer to have disregarded it. It will also not be considered in its new form in this judicial review.

[30] The Applicant also takes issue with the PRRA Officer's assessment of his siblings' refugee claim in the USA, whereby the PRRA officer determined that the Applicant had not demonstrated that the Applicant's siblings' refugee claims were based on the same ground as his. The Applicant submitted a sworn affidavit in which he wrote that he and his siblings' allegations were all based on the same facts. The Applicant further relies on *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 to argue that his statements, in his sworn affidavit, are presumed true. I have reviewed the documents presented with regards to the Applicant's siblings' refugee claims in the USA (CTR pages 250, 254-260 and 261) and I agree with the reasonableness of the PRRA officer's analysis on this issue. First, the PRRA officer noted that there was no evidence to demonstrate that Kenneth's refugee application was accepted on the same grounds as the ones alleged by the Applicant. The document regarding Joel is simply a declaration from him regarding his fear in Rwanda. With regards to Susan's refugee claim, the documents presented simply support the fact that she presented a refugee claim based on a similar story as the Applicant. Although I agree with the Applicant's argument that the PRRA Officer erred when he wrote that there is no indication that Susan's claim in the USA was accepted since the hearing for her refugee claim is scheduled for November 28, 2016, it does not, on its own, render the whole decision unreasonable. Therefore, overall, the PRRA Officer provided adequate reasons for the little weight he afforded to these documents; there is thus no need for this Court to intervene (*Sayed*, above at para 24).

[31] Moreover, in the case at bar, the Applicant's refugee claim was refused by the RPD, along with its judicial review. The PRRA Officer also noted that the alleged risks in the present PRRA application were not significantly different than those presented before the RPD (AR page

016). Even so, the PRRA Officer decided to assess the Applicant's documents, including those of his siblings (AR page 016). Even though the Applicant presented a sworn affidavit stating that the allegations of his siblings' refugee application were the same, the Applicant still bears the burden of proof that he would be at risk of persecution (*Gao v Canada (Minister of Citizenship and Immigration)*, 2014 FC 59 at paras 36 and 39 [*Gao*]). Here, the PRRA Officer properly assessed the evidence and concluded not to give it any probative value. The PRRA Officer came to a reasonable conclusion and there is no need for this Court to intervene.

[32] With regards to the rejection by the PRRA Officer of the copy of the Applicant's father's summons, the PRRA Officer, reasonably concluded that the Applicant did not demonstrate a link between the content of the document and his PRRA application since the document concerns the accusations of embezzlement of government funds of his father. He did not demonstrate a link between this document and his father's problems with the Kagame government. The PRRA Officer's determination with regards to this document and the reasons provided for not giving it any probative value is reasonable (*Sayed*, above at para 24).

[33] Also, with regards to the Applicant's father, at the hearing for this judicial review, counsel for the Applicant explained that the Applicant's father was unable to leave the country, because the government had seized his passport as a way to keep him in Rwanda, as the Applicant explained in his affidavit (AR, Applicant's affidavit, page 022 at para 15). Counsel for the Respondent however pointed out that the Applicant stated in his affidavit that while the Applicant's father is said to have started to have problems with the Rwandan government in 2003 (AR, Applicant's affidavit, page 020 at para 4) and received the said summons in 2011,

him and his family remained in Rwanda. Counsel added that as per the Applicant's affidavit, his father's passport was "recently seized". The Applicant's affidavit was sworn on September 24, 2014 (AR, Applicant's affidavit, page 022 at para 15). As counsel pointed out, if the Applicant's father's situation was such that it was dangerous for his family and if he truly feared the Kagame government, he and his family could have left Rwanda many years ago. This reinforces the reasonable assessment of the PRRA officer's determination with regards to summons and the reasons provided for not giving it any probative value.

[34] The Applicant also disagrees with the PRRA Officer's conclusion that there was not enough evidence to confirm that Jonathan Musonera, who wrote a letter of support to Susan's refugee claim in the USA, was the uncle of the Applicant, as he stated in his affidavit. The PRRA Officer however reasonably concluded to give little probative value to this document, since no birth certificate of the Applicant's father or that of Jonathan Musonera were provided to demonstrate a link between the latter and the Applicant. As mentioned above, although the Applicant's statements in his affidavit are presumed to be true, namely that Jonathan is a relative of his, he still bears the burden of proof that he would be at risk of persecution. No link between the Applicant and Jonathan Musonera was demonstrated before the PRRA Officer. It was therefore reasonable not to give it much weight. There is thus no need for this Court to intervene.

[35] The Applicant's argument that the PRRA Officer improperly assessed the newspaper articles and the country documentation presented also fails. The Applicant claims that the newspaper articles were overlooked by the PRRA Officer (AR page 357 at para 116). He also disagrees with the PRRA Officer's assessment of the country conditions documents (AR page

358 at paras 118 to 125). This is inaccurate. As mentioned above, the PRRA Officer did consider all of the evidence presented and commented on the newspaper articles and the country documentation presented and even considered other objective sources regarding the country conditions in Rwanda based on the Applicant's profile (AR, PRRA decision page 017). It is after this assessment that the PRRA reasonably concluded that the Applicant did not demonstrate a personal risk if he were to return to Rwanda or that his situation is different from that of the rest of the population. The fact that some of them referred to the treatment of family members due to some family members opposing the Rwanda regime does not create a personal risk when the assessment impacts seriously on the veracity of the story given.

[36] Based on the above, the PRRA Officer reasonably concluded that the Applicant did not discharge himself of the burden to prove his allegations. The decision is reasonable.

## VIII. Conclusion

[37] The PRRA Officer's decision is reasonable. No heighted duty was to be imposed on the PRRA Officer. The PRRA Officer considered all of the evidence on the record and adequately assessed and commented on each piece of evidence. There is no need for this Court to intervene.

[38] Neither party proposed a question for certification.

## JUDGMENT

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

1. The application for judicial review of the PRRA Officer's decision is dismissed.

2. No serious question of general certification is certified.

"Simon Noël"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6346-14 |
| **STYLE OF CAUSE:** | EDGAR MBARAGA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | APRIL 27, 2015 |
| **JUDGMENT AND REASONS:** | NOËL S J. |
| **DATED:** | May 5, 2015 |

**APPEARANCES:**

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| Sarah Jane Harvey | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| William F. Pentney<br>Deputy Attorney General<br>of Canada | FOR THE RESPONDENT |