

Federal Court



Cour fédérale

**Date: 20150713**

**Docket: IMM-2730-14**

**Citation: 2015 FC 854**

**Ottawa, Ontario, July 13, 2015**

**PRESENT: The Honourable Madam Justice Gleason**

**BETWEEN:**

**DICK PATRICK MUHENDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] In this application for judicial review, the applicant seeks to set aside the March 31, 2014 decision of a Citizenship and Immigration Canada [CIC] Officer dismissing the applicant's application for permanent residence under the Spouse or Common-Law Partner in Canada class.

I. Background

[2] The applicant is a citizen of Rwanda of Tutsi ethnicity. He arrived in Canada on May 7, 2000 and upon arrival made a claim for refugee status. His claim was denied by the Refugee Protection Division of the Immigration and Refugee Board [the RPD] on May 2, 2001 because the RPD found he lacked credibility as to the persecutory events he claimed to have experienced and as to the risk he alleged he would face upon his return to Rwanda. The RPD accepted, however, that the applicant had established his identity as Dick Patrick Muhenda, due to the testimony offered by another witness, who confirmed the applicant's identity and indicated that they had attended primary school together in Rwanda. The applicant did not seek to judicially review the RPD's decision.

[3] On June 23, 2001, the applicant married a Canadian citizen and on August 23, 2001 filed an application for permanent residence as her spouse, requesting consideration on humanitarian and compassionate grounds to allow his application to be made from within Canada. His application was approved in principle on February 21, 2002. Thereafter, his file was referred for a security assessment.

[4] The applicant was investigated by the Canadian Security Intelligence Services [CSIS] and the War Crimes Unit of the Canada Border Service Agency [CBSA]. He was first interviewed by CSIS in 2002. During this interview, the applicant admitted that he had made false declarations in his refugee claim and claim for permanent resident status in stating that he had attended secondary school and university in Tanzania. He also admitted that he had made

these misrepresentations in order to conceal the fact that he had been in Uganda during the period leading up to the genocide in Rwanda.

[5] In all subsequent materials the applicant filed in support of his claim for permanent resident status, he did not repeat the misrepresentation about being in Tanzania and instead disclosed that he had attended secondary school and university in Uganda, claiming to have attended St-Leo's College in Fort-Portal, Uganda and, thereafter, Makerere University in Kampala, Uganda.

[6] In July 2012, CBSA completed its security review and advised counsel for the applicant that the War Crimes Unit had determined it would not intervene in the applicant's file as there was insufficient information to establish that he was guilty of a war crime and that the CBSA had no concerns as to the applicant's admissibility under section 34 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the *IRPA*]. Section 34 sets out the various security-related grounds under which a foreign national may be deemed to be inadmissible to Canada; one of these grounds concerns engaging in espionage.

[7] The War Crimes Unit of CBSA also wrote a memo to CIC in July 2012. In it, the Unit concluded that there was insufficient evidence to establish that the applicant had committed a war crime. The War Crimes Unit also noted in the memorandum that the applicant had produced police certificates, fingerprints and copies of his diplomas, that CBSA had determined that there was no record of the applicant's having committed a crime based on his fingerprints, that there was no reason to doubt the police clearance certificates from Uganda and Rwanda and that the

diplomas filed by the applicant were authentic. The diplomas showed his name to be “Patrick Agaba Muhenda” and “Muhenda Patrick Agaba”.

[8] Following this, CIC resumed review of the applicant’s file and in January 2013 in connection with that review sought an updated security clearance from CBSA.

[9] In January of 2014, CBSA provided CIC with an Inadmissibility Assessment, in which it indicated that the National Security Screening Division had completed its assessment and concluded that there were reasonable grounds to believe that the applicant was inadmissible under paragraph 34(1)(f) of the *IRPA* for membership in an organisation known to have engaged in espionage against a democratic government, institution or process. Portions of the Inadmissibility Assessment have been redacted for national security reasons under section 87 of the *IRPA*; however, the non-redacted portions indicate that the Report was prepared based on information obtained from CSIS and that CSIS had questioned the applicant about his potential ties to the Rwandan government, the Rwandan Patriotic Front [the RPF] and the Rwandan Intelligence Service. The Report also comments at length about the subversive actions of the Rwandan Intelligence Service taken abroad, including in Canada.

[10] I have reviewed the redacted portions of the Report and the other documents that were redacted under section 87 of the *IRPA* in this file and do not believe that the redacted information is relevant to the issues that arise in this application. Thus, this case may be fairly and appropriately decided based on the Record before the Court.

[11] In February 2014, the Officer conducted an interview with the applicant for purposes of determining his admissibility as a permanent resident. The applicant was accompanied by counsel during the interview. Mid-way through the interview, the Officer requested that the applicant's counsel leave the room because the Officer felt that counsel was being disruptive and the Officer believed he was signalling answers to the applicant. For the remainder of the interview, the applicant was unaccompanied.

[12] The interview was conducted in English as the applicant spoke little French. The Officer's first language is French. Although the Officer conducted the interview in English, the bulk of her notes from the interview and her decision were written in French. The applicant has filed an affidavit from the lawyer who represented him at the interview. In the affidavit, this lawyer deposes that the Officer's English was so poor that it was difficult to understand her questions. This is disputed by the Officer, who filed a detailed affidavit in which she claims that her questioning of the applicant was clear and was clearly understood by him. The applicant has also filed an affidavit, in which he does not claim to have been unable to understand the Officer, but does note that his lawyer raised concerns about the Officer's command of the English language during the interview.

[13] During the interview, the Officer asked the applicant if he had been part of the Rwandan army during the time of the genocide in Rwanda and whether the applicant had acted as a spy on behalf of the Rwandan government. The Officer's notes show that the following exchange occurred at the end of the interview:

**20- We have received information regarding the fact that you were part of the army in Uganda at the time of the genocide in Rwanda.**

Not true; never.

**21- We also have received information about the fact that you are working for the government in Rwanda, acting as a spy for denouncing people who don't support Kagame.**

Not true; never.

**22- Are you aware that a lot of Rwandese living in Uganda were or are supporters of Rwandan Patriotic Front, the political party of President, Paul Kagame, in 1994?**

I am aware.

➤ **What about your family?**

Not supporters.

## II. The Decision

[14] In her decision dated March 31, 2014, the Officer denied the applicant's application for permanent residence, concluding that the applicant was inadmissible due to having committed a misrepresentation within the meaning of section 40 of the *IRPA*, and also because the applicant had not established that he was not inadmissible for having committed an act falling within section 35 of the *IRPA*.

[15] Section 40 of the *IRPA* provides in relevant part (in paragraph 40(1)(a)) that a foreign national is inadmissible if he or she directly or indirectly misrepresents or withholds a material fact "that induces or could induce an error" in the administration of the *IRPA*. Section 35 of the *IRPA* sets out the grounds for inadmissibility based on human and international rights violations,

which include the commission of war crimes. These provisions as well as section 34 of the *IRPA* are reproduced in the Appendix to these Reasons.

[16] In terms of misrepresentation, the Officer noted in the decision under review that the applicant had made inconsistent statements regarding his past activities and whereabouts between 1983 and 2000. She also found that there was no other evidence of the applicant's activities and whereabouts between January and July 1994, other than his claim that he was in Uganda. The Officer concluded that it was possible that the applicant was trying to conceal his involvement in the Rwandan genocide during that period. More specifically, she made the following findings:

- The applicant was inconsistent with respect to the date his parents sent him to study in Fort Portal, Uganda, claiming in various immigration applications or interviews to have left Rwanda in 1983, 1984 or 1986;
- The applicant had been inconsistent with respect to his living arrangements while he was attending St-Leo's College in Uganda, at one time indicating that he returned to his uncle's house every weekend and later stating that he stayed with his uncle on campus and they would only occasionally return to his uncle's house during holidays;
- The applicant lied in his refugee claim and initial permanent residence application about having completed his high school and university education between 1987-1997 in Tanzania rather than Uganda;

- An internet search revealed that the elementary school the applicant claimed to have attended between 1976 to 1982 in Rwanda, the Kigarama Public School, may actually be located in Uganda, approximately 22 kilometres from Fort Portal, Uganda as a school of that name was located there. The Officer found that there was no place in Rwanda called “Kigarama”. When the Officer pointed this out to the applicant and noted that it was unusual for a school in Rwanda to have an English name, she says that the applicant merely said that names of institutions changed frequently in Rwanda as the situation was unstable at that time. The applicant, however, disputes this, and in his affidavit says he told the Officer that the school exists in Rusumo Kigarama district in the former eastern province of Rwanda;
- The monthly allowance of 7,000 that the applicant claims to have received as an allowance during his university studies at Makerere University in Kampala, Uganda between 1990 to 1994 and to have used to pay for frequent return trips between Kampala and his permanent residence in Fort Portal, Uganda, a distance of approximately 296 kilometres, represented a significant sum. The Officer found that this allowance, if received monthly, was roughly equivalent to the median salary in Uganda at the time. She went on to speculate that the applicant therefore had significant support from his family, who were doubtless among the wealthiest in Uganda and therefore likely close to those in power. In his affidavit, the applicant says he told the Officer that the allowance was paid to all students at the university quarterly; and



- The Officer also noted that applicant does not speak French, which she felt was unusual for a Rwandan who attended elementary school in Rwanda. She also stated that many high-ranking Tutsi officials with links to the RPF, including the current President, Paul Kagame, are suspected of having actively participated in the genocide from their base in Uganda.

[17] The Officer concluded that the applicant's misrepresentations with respect to his whereabouts during the 1980s and 1990s could have induced an error in the administration of the *IRPA*, as she found that his security assessment was conducted on the basis of the applicant's representation that he had been living in Tanzania.

[18] The Officer also noted that there were several inconsistencies with regard to the applicant's identity, as follows:

- The applicant presented a Rwandan passport in the name of Dick Patrick Muhenda, showing him to have been born in Rwanda in 1972;
- However, other identity documents submitted to CIC were under the names Patrick Agaba Muhenda and Muhenda Patrick Agaba (two university diplomas from the University of Makerere in Uganda which ostensibly indicate that he received a Bachelor of Science in Botany and Zoology on August 8, 1993 and January 21, 1994, respectively). Also, a certificate from St-Leo's College Kyegobe in Fort Portal, Uganda, dated March 1990, lists the applicant's name as Patrick Muhenda Agaba. The applicant, however, claimed that "Agaba" was a nickname;

- During the interview on February 26, 2014, the Officer showed the applicant documents found on the internet concerning a person by the name of Muhenda Patrick Agaba, who appears to be a university graduate who was recently employed by the National Agricultural Advisory Services in Uganda. The Officer asked the applicant whether he used the identity documents of this person and the applicant said he did not know what to respond. The Officer found that he did not deny using the documents and held that his response could be interpreted as a tacit acquiescence; and
- The Officer also pointed to the fact that the applicant admitted during his interview with her to having used the alias Gashumba Damascewe to enter the United States. He claimed that Gashumba Damascewe is a friend who gave his identity documents to the applicant to allow him to travel to the United States and then to Canada. Subsequently, after the applicant's counsel intervened and suggested that his client had not understood properly, the Officer rephrased her questions and received a different response from the applicant—he used his own passport to enter the United States. The Officer indicated that the applicant's counsel became angry and disruptive at this point and appears to have mimed tearing up the passport to his client. The applicant then stated that he had arrived in the United States on his own passport, having obtained an American visa as he was working for a non-governmental organization, and that he destroyed his own passport in order to claim refugee status in Canada. (The Officer then asked counsel to leave the interview.)

[19] The Officer concluded that she was not satisfied as to the applicant's identity and believed that several of the documents he had submitted did not belong to him. She suggested that the applicant was attempting to conceal his identity in tandem with his past activities in the 1980s and 1990s. She indicated that she suspected his name actually is Dick Patrick Muhenda and that his Rwandan passport is legitimate.

[20] The Officer also found some inconsistencies with respect to the applicant's family, as follows:

- The applicant stated during his interview with the Officer that his father's name was Stephen Nzabakirira and that he was born in 1942 and died during the Rwandan genocide. The applicant further indicated that his father lived in Kigali and had one house in the Kicukiro district and another in the Gatsa district. The Officer showed the applicant an article from the New Times Rwanda indicating that a man by that name had died in October 2008. That man was purportedly in charge of administering scholarships at St-Leo's College Kyegobe (the school that the applicant attended in Uganda), which was linked to the Ministry of Finance and Economic Planning/Republic of Rwanda. Mr. Nzabakirira had apparently worked at the college from the mid-1970s to the mid-1980s, during the time that the applicant was allegedly attending the school. The applicant suggested that the fact that the man in the article had the same name as his father was coincidental. The Officer speculated that the applicant was attempting to conceal the fact that his father was a Rwandan exile living in Uganda who had strong links to the

Rwandan government and occupied an influential position amongst exiled Rwandan Tutsis living in Uganda;

- The Officer doubted the applicant's story with respect to when he met Christine Mukantaganda, the mother of his son Julius Nduwayezu, and when he met his current spouse, Illuminée Murekatete;
- The applicant said that he met Christine Mukantaganda in 1995 in Uganda and claimed that he only recently learned that he had a son with her, via his friend Danson Kagire. However, Julius' Facebook page indicates that he was born in Kigali, Rwanda, not in Uganda; and
- The applicant says that after their childhood acquaintance, he met his wife in Kigali, Rwanda in December 2014, while he was living in Uganda. He stated that he took the bus to Rwanda and met her there. The Officer noted that the security situation in Rwanda was extremely tense in December 1993, following the ratification of the Arusha Accords. The Officer found that it was doubtful that the applicant would travel to Rwanda from Uganda given the security situation.

[21] In sum, the Officer indicated that it was not possible to determine where the applicant lived at which times and under which identities. Accordingly, the Officer concluded that she was not satisfied as to his identity, particularly in light of his previous false declaration that he had studied in Tanzania, and she was consequently unable to determine his admissibility to Canada.

[22] The Officer indicated that she was not satisfied that the applicant had demonstrated he was not inadmissible on grounds of violating human or international rights, pursuant to section 35 of the *IRPA*. The Officer noted that the applicant bears the burden of proving that he is not inadmissible and speculated that the applicant was a member of a mostly affluent and educated Rwandan Tutsi diaspora living in Uganda and that he may have taken part in the Rwandan genocide.

### III. Issues

[23] The applicant submits the following issues arise in this application for judicial review:

1. Did the Officer err in law by finding that the applicant has the burden of proof?
2. Did the Officer violate natural justice by failing to confront the applicant with the extrinsic evidence the Officer had in her possession?
3. Did the Officer speculate and otherwise act unreasonably by making references based on generalisations and stereotypes of Rwandans living in Uganda?
4. Did the Officer make a perverse determination without regard for the historical record by stating that Tutsi Rwandan exiles living in Uganda participated in the 1994 Rwandan Tutsi genocide?
5. Did the Officer err in law by failing to advise the applicant of which subsection of section 35 of the *IRPA* he was supposed to have transgressed?
6. Did the conduct of the interview prejudice the outcome?

[24] In my view, these issues can be summarised and restated as two, namely:

1. Did the Officer breach the applicant's procedural fairness rights?
2. Was the Officer's decision reasonable?

IV. Did the Officer breach the applicant's procedural fairness rights?

[25] The applicant argues that his procedural fairness rights were violated principally for three reasons: first, because the Officer made an inadequate disclosure to him regarding CBSA's concerns flowing from his suspected involvement in espionage and his potential ties to the Rwandan government, the RPF and the Rwandan Intelligence Service; second, because the Officer's poor English language skills hampered effective communication during the interview; and, finally, because the Officer ought not have asked the former counsel for the applicant to leave mid-way through the interview.

[26] I do not believe that the applicant has established the existence of a procedural fairness violation under any of the foregoing three claims.

[27] With respect to the level of disclosure regarding CBSA's concerns that was provided to the applicant, the Officer did not premise her decision on section 34 of the *IRPA*. Had she done so, I would agree with the applicant that his procedural fairness rights were violated as the minimal disclosure made by the Officer at the conclusion of the interview regarding the applicant's suspected involvement in espionage and his potential ties to the Rwandan government, the RPF and the Rwandan Intelligence Service falls well short of adequately informing the applicant as to the issues raised in CBSA's Inadmissibility Assessment. However,

because the Officer did not premise her decision on the issues raised by CBSA under section 34 of the *IRPA*, I do not believe that the applicant's procedural fairness rights were breached.

[28] As concerns the Officer's command of the English language, given the conflicting affidavit evidence before me, I find that the applicant has not established that the Officer's English language skills adversely impacted the fairness of the interview. I agree with the respondent in this regard that the fact that the applicant does not claim in his affidavit that he did not understand what was discussed during the interview is determinative, and, accordingly, conclude that this argument likewise fails.

[29] Finally, as concerns the request for counsel to leave the interview, the evidence before me on this point is likewise conflicting. On one hand, the Officer deposes that the lawyer became disruptive and was trying to mime answers to his client, which is why she asked him to leave. The applicant's former lawyer and the applicant, on the other hand, depose that the lawyer intervened to point out the frailties in the Officer's English, which caused her to become angry and ask counsel to leave the room.

[30] Under either version of events, I do not believe that the request for the applicant's former lawyer to leave the interview amounted to a denial of the applicant's procedural fairness rights as the role of counsel during the interview was merely to act as an observer. In addition, the ejection of counsel occurred towards the end of the interview, according to the Officer's notes. I thus do not believe that the exclusion of counsel from the interview compromised the fairness of the interview or amounted to a denial of the applicant's procedural fairness rights.

[31] It follows that the first ground raised by the applicant must be dismissed.

V. Was the Officer's decision reasonable?

[32] Insofar as concerns the merits of the Officer's decision, the standard applicable to review of the decision is reasonableness as what is at issue are essentially factual findings: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] at paras 51 and 53; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 at para 50; *Khoja v Canada (Minister of Citizenship and Immigration)*, 2010 FC 142, 362 FTR 118 at para 52; *Hameed v Canada (Minister of Citizenship and Immigration)*, 2008 FC 271, 324 FTR 109 at para 22.

[33] The reasonableness standard is a deferential one and requires that the reviewing Court not intervene if the decision-maker's decision is justified, transparent and intelligible and the result reached falls within the range of acceptable outcomes in light of the facts and applicable law (*Dunsmuir* at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 [*Khosa*] at para 59).

[34] Insofar as concerns factual determinations, where such determinations contradict the evidence before the decision-maker, they are unreasonable as they cannot be justified (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 at paras 14-17; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, [2012] FCJ No 369 [*Rahal*] at paras 38-39). Likewise, determinations that are purely speculative or for which there is no support in the evidence before the decision-maker are



similarly subject to being set aside as unreasonable: *Khosa* at para 45; *Canadian Union of Postal Workers v Healy*, 2003 FCA 380, [2003] FCJ No 1517 at para 25; *Rahal* at paras 37-38.

[35] Here, I find that the Officer's decision is unreasonable because in one key respect it contradicts the evidence that was before her and in other respects is purely speculative.

[36] In this regard, the Officer's decision primarily turns on her finding that the applicant had made misrepresentations that rendered him inadmissible under section 40 of the *IRPA*. In order to fall within the section and give rise to an inadmissibility finding, a misrepresentation must be both material and capable of inducing an error in the administration of the *IRPA*. The Officer found that the applicant's misrepresentations with respect to his whereabouts during the 1980s and 1990s could have induced an error in the administration of the *IRPA* because his security assessment was conducted on the basis of the applicant's representation that he had been living in Tanzania. This finding, however, is completely at odds with the evidence that was before the Officer as the applicant revealed that he had lied about being in Tanzania during his first interview with CSIS in 2002. Therefore, the misrepresentation as to his having lived in Tanzania was not relevant to the security assessment as it was corrected well before the assessment was completed. Accordingly, the misrepresentation initially made by the applicant is not sufficient to found the inadmissibility determination since the misrepresentation did not and could not lead to an error in the administration of the *IRPA*. It follows that the Officer's conclusion to the opposite effect is unreasonable as it is unsupported by the evidence.

[37] In addition, the Officer's conclusions regarding the likely involvement of the applicant and his family with the RPF are based on pure speculation, centred on nothing more than presumptions about Rwandans of Tutsi ethnicity of apparent means that were part of the diaspora in Uganda. These speculations, moreover, are contradicted by the security assessments conducted by CBSA's War Crimes Unit, who found there to be insufficient evidence to conclude that the applicant had been involved in the genocide (which, in any event, as the applicant correctly notes, primarily involved the slaughter of Tutsis by the Hutu). In addition, the conclusion that the applicant's family possessed means based merely on the amount of the allowance he received is purely speculative.

[38] The Officer also unreasonably drew conclusions based on materials she found on the internet. In my view, it is improper speculation to conclude that the applicant had lied about the school he attended in Rwanda merely because another school of a similar name also exists in Uganda. Likewise, the fact that the Bursar at St-Leo's College in Kyegobe, Uganda might have had the same name as the applicant's father does not mean that the applicant had lied about his parentage (especially when his parentage was corroborated by his passport and a birth certificate he filed with CIC). In a similar vein, the fact that the internet indicated that another individual named Patrick Agaba Muhenda exists does not mean that the applicant's diplomas are necessarily false, especially in light of the fact that CBSA had confirmed their authenticity. In addition, the Officer unreasonably discounted the applicant's explanation that "Agaba" was a nickname.

[39] I also find that the Officer's treatment of the applicant's version of his meetings with Christine Mukantaganda and Illuminée Murekatete to be unreasonable. The fact that Ms. Mukantaganda's son was born in Rwanda is not inconsistent with his parents having met in Uganda and the mere fact that times were troubled after the signature of the Arusha Accords does not make it impossible for the applicant to have travelled by bus to Rwanda and to have met Ms. Murekatete as he claims.

[40] Given the lack of evidence for the Officer's key finding under section 40 of the *IRPA* and the multiple instances of improper speculation that I have found contained within the decision, it follows that the decision must be set aside as being unreasonable.

[41] Neither party suggested a question for certification under section 74 of the *IRPA* and none arises in this case.

**JUDGMENT**

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

1. This application for judicial review is granted and the Officer's decision of March 31, 2014 is set aside;
2. The applicant's permanent residence application shall be remitted to another CIC Officer for redetermination;
3. No question of general importance is certified under section 74 of the *IRPA*; and
4. There is no order as to costs.

"Mary J.L. Gleason"

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Judge

## APPENDIX

### **Security**

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;

(b) engaging in or instigating the subversion by force of any government;

(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

### **Human or international rights violations**

35. (1) A permanent resident or a foreign national is inadmissible on grounds of

### **Sécurité**

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

c) se livrer au terrorisme;

d) constituer un danger pour la sécurité du Canada;

e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

### **Atteinte aux droits humains ou internationaux**

35. (1) Emportent interdiction de territoire pour atteinte aux droits humains ou

violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the Crimes Against Humanity and War Crimes Act; or

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

internationaux les faits suivants :

a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la Loi sur les crimes contre l'humanité et les crimes de guerre;

b) occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la Loi sur les crimes contre l'humanité et les crimes de guerre;

c) être, sauf s'agissant du résident permanent, une personne dont l'entrée ou le séjour au Canada est limité au titre d'une décision, d'une résolution ou d'une mesure d'une organisation internationale d'États ou une association d'États dont le Canada est membre et qui impose des sanctions à l'égard d'un pays contre lequel le Canada a imposé — ou s'est engagé à imposer — des sanctions de concert avec cette organisation ou association.

## **Misrepresentation**

40. (1) A permanent resident

## **Fausses déclarations**

or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act; [...]

40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi; [...]

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

**DOCKET:** IMM-2730-14

**STYLE OF CAUSE:** DICK PATRICK MUHENDA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL, QUEBEC  
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ALBERTA)

**DATE OF HEARING:** APRIL 8, 2015

**JUDGMENT AND REASONS:** GLEASON J.

**DATED:** JULY 13, 2015

**APPEARANCES:**

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