

Federal Court



Cour fédérale

**Date: 20151023**

**Docket: IMM-1016-15**

**Citation: 2015 FC 1199**

**Ottawa, Ontario, October 23, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**LIBERAT NKESHIMANA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Liberat Nkeshimana sought refugee protection in Canada, claiming to have a well-founded fear of persecution in Burundi at the hands of the Hutu rebels who killed his parents and two of his brothers in 2004. The Refugee Protection Division of the Immigration and Refugee Board rejected Mr. Nkeshimana's claim on credibility grounds. Despite the deference that is owed to the Board's credibility findings, I have concluded that several of the Board's negative credibility findings were unreasonable. As a result, the application for judicial review will be granted.

**I. Background**

[2] Mr. Nkeshimana was 14 years old when four members of his Tutsi family were killed. He believes the murderers were Hutu rebels who were motivated by ethnic hatred and his father's occupation as a journalist. One of Mr. Nkeshimana's sisters was threatened after she pushed for an inquiry into the murders, and she was granted refugee protection in Canada in 2009. An uncle obtained refugee protection in Canada in 2006.

[3] Mr. Nkeshimana says that he received several death threats from the killers in late 2011 and early 2012. He believes that he was threatened because the killers wanted to stop him from denouncing them. The first call came in late 2011. Mr. Nkeshimana says that he reported this threat to the police, but they dismissed his concerns.

[4] Mr. Nkeshimana says that he then received a second call. This time, the caller told him that he was aware that Mr. Nkeshimana had gone to the police, and that "they" would find him and kill him. Mr. Nkeshimana testified that the caller mentioned Mr. Nkeshimana's name and that of his father, which is why Mr. Nkeshimana thinks that these calls were related to the murders of his family members.

[5] Mr. Nkeshimana claims that he was assaulted by two men on February 5, 2012. He says that he sought medical care for the injuries that he suffered in the attack, and that he reported the assault to the police the next day. Mr. Nkeshimana produced medical and police reports to corroborate his testimony.

[6] According to Mr. Nkeshimana, he received a third threatening call after this incident in which the caller indicated that he was aware that Mr. Nkeshimana had reported the assault to the police.

[7] Mr. Nkeshimana says that he then decided to leave Burundi because he feared for his life. He says that he was assaulted again just before he left the country, but that he was able to escape his assailants. Mr. Nkeshimana left Burundi on August 22, 2012, arriving in the United States on August 23, 2012. He then made his way to Canada and claimed refugee protection on August 28, 2012.

## **II. Analysis**

[8] The Board had a number of reasons for disbelieving Mr. Nkeshimana's story. While several of these findings were reasonable, one key finding relating to Mr. Nkeshimana's knowledge of the identity of the killers was not. An error in relation to one of several negative credibility findings would not ordinarily be sufficient to render a decision unreasonable. However, as both parties noted, the Board's credibility findings in this case were cumulative, and several of them were based, at least in part, on the Board's finding that Mr. Nkeshimana had given inconsistent evidence as to his knowledge of the identity of the killers. As a result, the error in this case has the effect of rendering the Board's decision unreasonable.

[9] Central to the Board's analysis was its finding that Mr. Nkeshimana had provided inconsistent testimony as to whether he knew the identity of his family's killers. Having carefully reviewed Mr. Nkeshimana's testimony and his statements in his Personal Information Form, I am satisfied that there were no such inconsistencies.

[10] Mr. Nkeshimana consistently stated that he believed that the murderers were CNDD-FDD rebels who were serving under the command of a former rebel who fought under the name of “Major Miros”. Mr. Nkeshimana did not, however, know the names of the individuals who killed his family. The Board appears to have confused Mr. Nkeshimana’s ability to provide a general description of the killers with his inability to actually name them. The Board’s finding on this point was thus unreasonable.

[11] The Board then relied on its concerns about Mr. Nkeshimana’s ability to identify his family’s killers as a reason to reject his claim that the killers would want to kill him out of fear that he could denounce him. This finding is thus tainted by the Board’s earlier error.

[12] It is also evident from paragraph 58 of the Board’s reasons that the finding regarding Mr. Nkeshimana’s ability to identify his family’s killers was a key reason why the Board disbelieved his claim to have been threatened and assaulted in 2011-2012.

[13] Finally, the Board relied on the alleged inconsistency in Mr. Nkeshimana’s evidence regarding his knowledge of the identities of the killers to question whether these individuals even existed. The Board did, however, accept that Mr. Nkeshimana’s family members had been murdered. It is difficult to follow the Board’s logic on this point: if the family was indeed murdered, then someone had to have done it and the killer or killers had to have existed. If the killer or killers did not exist, then the murders could not have happened.

[14] The Board also noted that eight years had passed since the murder of Mr. Nkeshimana’s family members. This caused the Board to question why the murderers would suddenly be interested in silencing him. However, Mr. Nkeshimana points out that the country condition

information that was before the Board states that in 2011-2012, the Burundian government took steps towards establishing a Truth and Reconciliation Commission to examine the mass killings that had occurred during the ethnic conflict in that country, arguing that this may have triggered a renewed interest in protecting the killers. There is, however, no indication in the Board's reasons that it took this evidence into account.

### **III. Conclusion**

[15] While it is true that the Board had other reasons for rejecting Mr. Nkeshimana's refugee claim, the cumulative effect of the errors identified above is to render it unsafe to allow the Board's decision to stand. Consequently the application for judicial review will be granted. I agree with the parties that the case is fact-specific, and does not raise a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed,  
and the matter is remitted to a differently constituted panel for re-determination.

"Anne L. Mactavish"

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Judge

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

**DOCKET:** IMM-1016-15

**STYLE OF CAUSE:** LIBERAT NKESHIMANA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 20, 2015

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

**DATED:** OCTOBER 23, 2015

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