Federal Court  Cour fédérale

Date: 20180301

Docket: IMM-3193-17

Citation: 2018 FC 232

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 1, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

RENOVAT HATUNGIMANA,
OLIVE NIRAGIRA, RYAN URIEL NTWARI,
AMY KARNIELLA MUCO

Applicants

and

THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of the decision rendered by the Immigration and Refugee Board of Canada [the Board] on June 22, 2017, rejecting the applicants' refugee protection claims. For the reasons that follow, the application is dismissed.

[2] The applicants—a family composed of a father (principal applicant), his spouse, and their two children—are citizens of Burundi. They allege that they are "Convention refugees" and "persons in need of protection" within the meaning of section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [the Act] as a result of their alleged political views and their Tutsi ethnicity.

[3] The principal applicant alleges that during protests held in April and May 2015 against President Nkurunziza's third term, he made a financial contribution to help the protesters. On April 15, 2016, police officers accompanied by members of the militant group Imbonerakure reportedly searched his home and found a receipt for his contribution to the protesters in Cibitoke, the neighbourhood where the family allegedly lived. The principal applicant was then allegedly brought to [TRANSLATION] "the dungeon" of the National Intelligence Service, where he was reportedly questioned about the protesters and tortured for 15 days.

[4] The principal applicant alleges that a Tutsi police officer became worried about what would become of him and decided to help him escape the prison on the night of April 30, 2016. After that day, the principal applicant allegedly lived in hiding in his region of origin, Rumongue, until he left Burundi.

[5] His spouse reportedly continued living in the family home until September 15, 2016, the day the Imbonerakure apparently returned for the principal applicant. Since he was not there, the Imbonerakure allegedly attacked and raped his spouse. Afterward, she reportedly lived in hiding [TRANSLATION] "here and there."

[6] Subsequently, the applicants began taking steps to leave Burundi. With the help of friends, they allegedly applied for an American visa on March 3, 2017, and were interviewed on March 23, 2017, the day their visa was apparently issued. With the assistance of a friend in the police who allegedly bribed his colleagues at the airport, the applicants reportedly left Burundi for the United States on April 13, 2017. They eventually applied for refugee protection at the Canadian border on April 18, 2017, after a few days of rest in the United States.

[7] The hearing took place before the Board on June 13, 2017. On June 22, 2017, the Board found that the applicants were not Convention refugees nor persons in need of protection within the meaning of section 96 and subsection 97(1) of the Act and rejected the refugee claim. The decision is based primarily on the applicants' lack of credibility.

[8] This application for judicial review raises purely factual issues: the applicants are trying to demonstrate that there are errors in the analysis of the evidence. Therefore, the decision is reviewable on the standard of reasonableness. A high level of deference applies to issues of credibility, and the assessment of the evidence regarding a claimant's credibility lies within the Board's expertise: *Jeyakumar v. MCI*, 2018 FC 124; *Dunsmuir v. New Brunswick*, 2008 SCC 9 [*Dunsmuir*].

II. Issue and analysis

[9] The applicants submit that the Board erred in its assessment of the evidence and that its findings on their credibility, including the alleged implausibilities in their account, are not intelligible or justified.

A. *Evidentiary errors*

(1) The applicants' language skills

[10] The applicants allege that the Board made a serious error in assessing the evidence on the principal applicant's language skills by finding that he could not understand a lease contract written in French, especially a contract containing technical language. The applicants also submit that, based on the difficulties the principal applicant and his interpreter had understanding each other during the hearing, the Board concluded that the principal applicant had not understood the content of this document.

[11] Even though another decision-maker could have decided differently, it was open to the Board to make an adverse finding of credibility against the principal applicant in this respect. I consider this finding to fall within a range of "possible, acceptable outcomes". In any event, the Board never stated that the principal applicant did not understand French or the lease. Rather, the Board stated that it was not satisfied with the principal applicant's explanations, which changed as the questions were asked.

[12] Concerning the communication difficulties with the interpreter, they have no probative value in this case given the considerable number of contradictions in the applicants' account. The applicants are focusing on isolated interpretation errors, which were not decisive in the rejection of their claim. It is rather the many contradictions and inconsistencies in the applicants' account that were deemed conclusive by the Board.

[13] In any event, the main purpose of the lease was to prove the applicants' place of residence during the protests. However, the Board considered the evidence intended to demonstrate the period during which the applicants claim to have lived in Cibitoke to be insufficient. In short, the Board found that the applicants' evidence was deficient and insufficient, including the evidence of their alleged residence in Cibitoke. This factor is also involved in the next argument raised by the applicants: [TRANSLATION] "presumptions of implausibility".

(2) Presumptions of implausibility

[14] The applicants allege that the Board erred in its assessment of the evidence, which was flawed by a presumption of implausibility regarding the following: (a) the start and end dates of the lease; (b) the fact that the lease is written in French rather than in Kirundi; (c) the son's birth certificate, which was issued outside of Burundi, namely in Kigali, Rwanda, where his wife went to give birth.

[15] However, they allege: (a) that it would have been reasonable to find that the date on which they took possession of the residence corresponded to the date on which the lease was signed and that the end of the lease corresponded to the time when the tenant ceased to pay the rent; (b) that it is not implausible that leases or certain technical or legal documents are written in French in Burundi because French is one of the official languages there and because the electronic lease template is not offered in Kirundi; (c) that it is also plausible outside a North American context that a woman may travel far from home to give birth.

[16] On the contrary, the respondent argues that: (a) the Board was entitled not to give the lease any probative value given that it specified no start or end date; (b) the applicants did not submit their explanations to the Board when they were confronted with the inconsistencies in the evidence; (c) the Board merely remarked that the only document submitted that mentions Cibitoke was the son's birth certificate and that the applicants were not in Burundi when that document was prepared. The respondent also argues that the Board was justified in considering all aspects of the evidence and testimony of the applicants, including the implausibilities in the refugee claimants' account, to reach a finding of non-credibility.

[17] As noted above, the Board's findings on the lease, including those based on the absence of start and end dates, were reasonable. According to the Board, the absence of dates stripped all probative value from the lease, which is the only document that could prove their place of residence.

[18] With respect to the birth certificate, once again, the Board rejected the applicants' arguments. The Board noted that the only document filed that references Cibitoke was the birth certificate of the applicants' son, which was prepared by the Embassy of Burundi in Kigali, Rwanda, where their son was born. Furthermore, the other documents filed do not in any way prove that the applicants lived in Cibitoke as they claimed, given that they were prepared by different communities.

B. *The applicants' credibility*

(1) Allegations of torture and rape

[19] The applicants submit that the Board did not thoroughly address their allegations of torture and rape.

[20] The respondent submits that the burden of proof is on the applicants and that they are responsible for establishing the merit of their allegations and providing evidence that may support their allegations.

[21] Clearly, the applicants' credibility was already undermined by contradictions and inconsistencies in their account. The Board had to determine whether the applicants have a subjective fear of persecution as a result of their alleged political views. However, they were unable to satisfy the Board on this point.

[22] Concerning the alleged torture of the principal applicant, the Board decided that the applicants did not have a subjective fear of persecution. Had that been the case, they would not have waited nearly six months after the principal applicant was released from prison—that is to say, from April 30, 2016, to September 2017—to take steps to leave the country. Once again, I consider this finding to be reasonable.

[23] Moreover, the panel found that the fact that the principal applicant's spouse continued to live in the residence where he had already been arrested by the authorities while he escaped imprisonment and was in hiding—all of which occurred in the context of the political and

military crisis in Burundi—was inconsistent with a subjective fear. I consider this finding to be entirely reasonable.

[24] With respect to the rape of the female applicant, the Board noted an inconsistency between the fact that the alleged rape in September 2016 was what triggered the applicants' decision to leave the country and that they did not take steps to obtain a visa until March 2017. This finding is also reasonable to me, which is once again based on a lack of subjective fear.

(2) Peripheral issues

[25] The applicants submit that the Board partly relied on some findings of credibility with respect to irrelevant and peripheral issues, including the reason why the principal applicant had not physically participated in the protests held on April 30, 2015, and his work history.

[26] On the contrary, the respondent argues that the principal applicant's inconsistencies with respect to the circumstances surrounding his participation in the protests are directly connected to his allegations of persecution for his political views and that the issues concerning his work history are directly related to his situation at the time of the alleged events.

[27] Once again, I share the respondent's view: the principal applicant's inconsistencies regarding his participation in the protests and his work history were directly related to his credibility and his subjective fear of persecution. The applicants' refugee claim is based on the fact that they lived in the dissenting community of Cibitoke during the protests that took place in 2015. However, the principal applicant was unable to demonstrate in a credible manner that he

and his family lived or worked in Cibitoke or that he had participated in the protests. Though his work history is not connected to the protests nor to the events leading to the flight from Burundi, the inconsistencies and the credibility issues identified by the Board generally undermine the claim: see *Tas v. Canada (Citizenship and Immigration)*, 2017 FC 702 at paragraph 18; *Gong v. Canada (Citizenship and Immigration)*, 2017 FC 165 at paragraph 9.

[28] Lastly, counsel for the applicants argued before this Court that the Board was unreasonable when it considered the alleged torture and rape because it did not thoroughly address these aspects nor give the applicants the opportunity to explain these vital elements of the refugee claim.

[29] Though this argument was not put forward in the applicants' memorandum, I reread the transcript and listened to the part of the recording that was mentioned by counsel. I cannot accept the applicants' arguments. On the contrary, I find that it was open to the Board to reach these findings and that they were explained with transparency and justification. Furthermore, the Board did not deny the applicants the opportunity to explain the circumstances that led to their refugee claim and their alleged persecution in Burundi.

III. Conclusion

[30] Reasonableness requires that the decision be justified, transparent and intelligible within the decision-making process and that it fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. In this case, the Board's reasons are justifiable, the result falls within the range of possible, acceptable outcomes, and the decision is

reasonable. The application for judicial review is dismissed. No question has been submitted for certification, and I am of the view that none are raised in this case.

JUDGMENT in IMM-3193-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Alan S. Diner"
Judge

Certified true translation
This 2nd day of October 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	RENOVAT HATUNGIMANA, OLIVE NIRAGIRA, RYAN URIEL NTWARI, AMY KARNIELLA MUCO v. THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
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