

Federal Court



Cour fédérale

**Date: 20200908**

**Docket: IMM-3712-19**

**Citation: 2020 FC 883**

**Ottawa, Ontario, September 8, 2020**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**FABIOLA MPORE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2018, the Rwandan government closed thousands of churches, many of which were Pentecostal Christian churches. The government claimed they were closed for health and safety reasons, but many viewed the closures as an attempt to control religious groups and Pentecostal Christians in particular. One of the churches closed was the Pentecostal Church of Rwanda, Nyakabanda Parish, the church in Kigali where Fabiola Mpire worshipped and acted as a youth

and choir leader. When she continued to worship with the youth group from her church in rented rooms where she lived, the police arrested her landlords twice. She also continued to see police patrols she felt were looking for her. Later that year, Ms. Mpore left Rwanda for the United States, and shortly thereafter made a claim for refugee protection in Canada.

[2] Ms. Mpore asserts that in rejecting her claim, the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) acted unreasonably. She argues that the RPD made inappropriate findings about the plausibility and sincerity of her religious beliefs and the persecution she faced because of them, and improperly assumed that the Rwandan police would act in a rational or reasonable manner.

[3] I conclude that the RPD's decision was reasonable. The RPD did not make implausibility findings, and did not doubt the sincerity of Ms. Mpore's religious beliefs. Rather, it accepted Ms. Mpore's religious beliefs, but found that the evidence did not establish a serious possibility of persecution in Rwanda because of them. Nor did the RPD make any particular assumptions that the Rwandan police would act rationally. It concluded that there was insufficient evidence to show Ms. Mpore was at risk of harm in Rwanda, pointing to the lack of evidence the Rwandan authorities were looking for her. That conclusion was reasonably open to the RPD on the record.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] Ms. Mpore's arguments raise the following issues:

- A. Did the RPD err in its analysis of Ms. Mpore's religious beliefs?
- B. Did the RPD make improper assumptions about the rationality of the Rwandan authorities as an agent of persecution?

[6] The parties agreed that these issues are to be reviewed by this Court on a standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

III. Analysis

A. *The RPD's Analysis of Ms. Mpore's Religious Beliefs was not Unreasonable*

[7] The RPD referred to a Response to Information Request contained in the IRB's National Documentation Package (NDP) regarding Pentecostal churches in Rwanda. It noted that over a thousand Pentecostal churches were closed in early 2018, and that 300 were able to reopen by the end of August of that year. The RPD concluded that the evidence showed that the state wanted to have better control of religious activities, but did not show a systematic repression of Pentecostal churches. It found that the evidence did not show that members of Pentecostal churches were facing a serious possibility of persecution in Rwanda based solely on their belonging to a church.

[8] The RPD accepted that it was possible that in early 2018, the government was harassing individuals from closed churches who continued to hold group prayers. However, it found that the evidence did not show that by May 2019, the time of the hearing, the Rwandan government would continue to pursue such people, as the government had reworked the rules and allowed for the reopening of churches. While Ms. Mpore's church was not reopened, the RPD could not see why Ms. Mpore would not be able to go back and join another Pentecostal church to continue her religious activities.

[9] Ms. Mpore had disputed this latter point during the hearing. She gave evidence that even before she left, some churches were already open, but that her goal was to be in her specific church, as she had leadership roles in the church which she could not do elsewhere. She also noted that most churches have "different ideas," the example she gave being that some wanted members to part their hair, which she did not want, and that is why she went to her specific church. In its decision, the RPD did not accept this explanation, noting that there was no evidence to support this, and concluding that Ms. Mpore could join one of the thousands of Pentecostal churches still open in Rwanda.

[10] Ms. Mpore argues that the RPD improperly questioned the sincerity of her religious beliefs. She points to the Supreme Court of Canada's decision in *Amselem*, which underscored that those invoking freedom of religion should not be required to prove the objective validity of their beliefs, and that inquiries into the sincerity of religious beliefs should be limited to assessments of good faith: *Syndicat Northcrest v Amselem*, 2004 SCC 47 at paras 43, 51–54.

[11] On my read of the RPD's decision, however, it did not question the sincerity of Ms. Mpore's religious beliefs. Rather, it accepted those beliefs but concluded the evidence did not show that Ms. Mpore faced a serious possibility of persecution because of them. Ms. Mpore's argument that her attachment to her particular parish church amounted to a religious belief or practice whose sincerity should not be questioned overstates the evidence and mischaracterizes the RPD's decision. Ms. Mpore stated that her "goal" was to be in her specific church, which was closed, and that she went to her specific church because of rules at other churches such as the hair-parting example she gave. However, the question for the RPD was whether Ms. Mpore would be subject to a serious possibility of persecution upon her return. An inability to safely practice one's religion in the manner of one's choosing may amount to such persecution: *Chen v Canada (Citizenship and Immigration)*, 2012 FC 1324 at para 5. While recognizing that Ms. Mpore could not return to her parish church since it had been closed, the RPD was not satisfied that the evidence, including Ms. Mpore's evidence, established that she could not safely practice her religion upon return to Rwanda.

[12] In this regard, it is important to note that the basis for Ms. Mpore's claim for refugee protection was her risk of persecution as a Pentecostal Christian in Rwanda. In support of this, she pointed to the treatment of other Pentecostal churches and church leaders. She did not point to her inability to act as a church leader or inability to practice according to certain rules within the Pentecostal church, issues that only arose in response to the RPD's suggestion that she could attend another church if she returned. There is an inconsistency in Ms. Mpore's efforts to challenge the reasonableness of the RPD finding by distancing her church from others within the Pentecostal Church of Rwanda, when her refugee claim relied on her membership in the

Pentecostal Church of Rwanda, and on the evidence pertaining to treatment of those other churches.

[13] I also disagree with Ms. Mpore's assertion that the RPD's finding on this issue was one of implausibility. Ms. Mpore argued the RPD effectively concluded it was implausible that Ms. Mpore could not join another church, and cited this Court's jurisprudence indicating that plausibility findings should only be made in the clearest of cases: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7.

[14] However, the RPD's conclusion that Ms. Mpore would be able to continue her religious activities at another church was not an implausibility finding in the sense described in *Valtchev*. Rather, the RPD was simply not satisfied that Ms. Mpore's reasons for why she went to her particular church—that some other churches had rules such as requiring hair parting—were sufficient to establish that she would be unable to practice her religion if she returned to Rwanda.

[15] I also cannot accept Ms. Mpore's argument that the RPD ought to have engaged in more detailed questioning regarding her religious beliefs and practices. The onus was on Ms. Mpore to establish her refugee claim. The country conditions evidence in the NDP clearly showed that there were many Pentecostal churches in Rwanda. If Ms. Mpore claimed that she faced persecution as a Pentecostal Christian because she could not freely practice her religion at any Pentecostal church other than the Nyakabanda Parish, which had been shut down, she could have given evidence to establish that. But the RPD was not required, having raised the issue and asked

why Ms. Mpore could not worship at one of the other churches, to engage in further detailed questioning to elicit additional evidence on the issue.

[16] I therefore cannot conclude that Ms. Mpore has shown the RPD was unreasonable in its assessment of her religious beliefs or practices, or her ability to practice her religion upon return to Rwanda.

B. *The RPD's Analysis of the Conduct of Rwandan Authorities was not Unreasonable*

[17] The RPD concluded that the evidence did not establish that Ms. Mpore would face a serious possibility of persecution or a likelihood, on a balance of probabilities, of harm from authorities in Rwanda. In doing so, it pointed to the following evidence regarding the conduct of Rwandan authorities:

- Ms. Mpore's was able to leave Rwanda and travel through airport security without difficulty;
- Ms. Mpore's testified that nothing would happen to her upon her arrival if she returned to Rwanda;
- 300 Pentecostal churches were able to reopen by August 2018, as described above;
- during the time of closure of the churches in February and March 2018, the government may have harassed those who continued to hold group prayers in their homes, but the evidence did not indicate the government would continue to pursue such people;

- Ms. Mpore was able to continue working at her place of work in Rwanda until her departure in late 2018 without the authorities finding her there.

[18] Ms. Mpore argues that by relying on the first and last of the facts listed above—the lack of state intervention either while she continued to work or upon departure—the RPD fell into the error of assuming that an agent of persecution would act rationally or reasonably: *Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 at paras 8–11; *Thevarasa v Canada (Citizenship and Immigration)*, 2014 FC 234 at para 29.

[19] I disagree. The RPD pointed to the absence of state action in concluding that Ms. Mpore was not at risk of persecution. This does not mean the RPD assumed the state would act “rationally,” or required Ms. Mpore to prove it did. It is simply a conclusion that the evidence did not support Ms. Mpore’s claim that the state was looking for her and would persecute her if she returned to Rwanda. A refugee claimant must present sufficient evidence to show that they face a serious possibility of persecution. Where evidence shows that the state has not engaged in acts of persecution, it is reasonable to consider this.

[20] I note that in her written submissions, Ms. Mpore invited the Court to take judicial notice that police in Canada may warn individuals of a violation rather than formally charge them. Ms. Mpore did not pursue this argument at the hearing of the application. Even if the Court could take judicial notice of aspects of Canadian police practice, it cannot take judicial notice of Rwandan police practice: see *R v Spence*, 2005 SCC 71 at paras 53–62. In any event, there was no evidence that the Rwandan authorities had issued any warnings to Ms. Mpore.



[21] Ms. Mpore also relies on the Supreme Court of Canada's decision in *Ward* for the principle that a refugee claimant should not have to risk their lives in order to "test" the possibility that the police are pursuing them: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at p 724; *Gonsalves v Canada (Citizenship and Immigration)*, 2008 FC 844 at para 16. I note that *Ward* and the other cases Ms. Mpore relies on that cite *Ward* deal with the issue of adequate state protection. In this context, *Ward* concluded that "it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness": *Ward* at p 724. At the same time, the Court of Appeal has recognized that the principles in *Ward* apply where the state is alleged to be the agent of persecution: *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 54.

[22] In Ms. Mpore's case, the adequacy of state protection was not an issue, but I accept as a general principle that a refugee claimant need not put themselves in danger in order to obtain evidence of instances of persecution. Nevertheless, this does not displace the overall burden on a refugee claimant to present evidence that establishes that there is a serious possibility that they would face persecution. I agree with the Minister that there is nothing in the RPD's decision that indicates that it expected Ms. Mpore to put herself in danger to "test" whether she would be persecuted. Rather, it considered Ms. Mpore's status at the time she left Rwanda, the fact the police had not approached her even though she could be readily found at work for months prior to her departure, and the country condition evidence regarding the state's treatment of Pentecostal Christians and Pentecostal churches. The RPD concluded that this evidence did not

establish a serious possibility of persecution were she to return. This was a reasonable basis on which the RPD could reach its decision.

[23] In my view, the RPD did err in relying on Ms. Mpore's statement that nothing would happen to her on arrival as evidence that there is no risk of harm for her in Rwanda. Ms. Mpore's evidence was that *at the airport* nothing would happen to her, but that if she continued carrying out her roles in her church, she would be looked for. It was improper for the RPD to rely on the first part of her statement while ignoring the second part. However, as this was only one of the many elements contributing to the RPD's conclusion that Ms. Mpore did not face a serious possibility of persecution, I do not consider it a "sufficiently serious shortcoming" that it renders the decision as a whole unreasonable: *Vavilov* at para 100.

[24] Finally, I do not accept Ms. Mpore's argument that the RPD was required to accept her affirmation that what she experienced was persecution, absent compelling evidence to the contrary. As the Minister points out, whether certain state conduct amounts to persecution is a determination of mixed fact and law for the RPD to make: *Sagharichi v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 796 (CA) at para 3. The RPD is not required to accept, or defer to, the claimant's own assessment of whether the asserted conduct amounts to persecution.

#### IV. Conclusion

[25] Ms. Mpore has not established that the RPD's decision was unreasonable. The application for judicial review is dismissed.

[26] Neither party proposed a question for certification and I agree that none arises in the matter.

**JUDGMENT IN IMM-3712-19**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

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Judge

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

**DOCKET:** IMM-3712-19

**STYLE OF CAUSE:** FABIOLA MPORE v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JANUARY 8, 2020

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** SEPTEMBER 8, 2020

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