Federal Court  Cour fédérale

Date: 20211117

Docket: IMM-1831-20

Citation: 2021 FC 1258

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 17, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

KABERUKA, PIERRE
UWINEZA, KABERUKA CHANTAL
KABERUKA, JOEL
KABERUKA, INEZA JAEL
KABERUKA, JOANNA UWANTEGE

Applicants

and

THE MINISTER OF CITIZENSHIP REFUGEES AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Pierre Kaberuka and his family are seeking judicial review of the decision of the Refugee Protection Division [RPD] rejecting them as refugees or as persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The application for judicial review is made under section 72 of the IRPA.

I. Preliminary issues

[2] The Court raised two issues at the outset. First, under what basis can an RPD decision be presented to the Court without the matter being referred to the Refugee Appeal Division [RAD]? Second, how should a lengthy affidavit (nine pages) submitted more than six months after the RPD decision be treated? For the first, it is a matter of the Court's jurisdiction to hear a judicial review and for the other, it is a question of *ex post facto* evidence, meaning evidence adduced after an administrative tribunal has decided a case.

[3] Regarding the first issue, it is by virtue of subsection 110(2) of the IRPA that no appeal is permitted to the RAD when a foreign national arrives at a border crossing directly from the United States. The only recourse against the RPD's decision is then before the Federal Court because an appeal to the RAD is prohibited.

[4] The second issue requires further elaboration. The applicants submitted a 241-page application record. It included a nine-page affidavit from the principal applicant, with ten exhibits added. These exhibits were rather miscellaneous and without sources. Thus, it was not clear whether this was new evidence, contrary to the rule that judicial review must consider the certified tribunal record, since this was the evidence before the administrative tribunal. Indeed, a reviewing court can only consider the elements on which the decision under review was based (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263) [*Bernard*]. As Justice Stratas said on appeal in *Bernard*, it is fundamental that the different roles of administrative decision-makers and the courts be respected:

[17] Applications for judicial review are proceedings where a reviewing court is invited to overturn decisions Parliament has entrusted to an administrative decision-maker. In this context, the administrative decision-maker and the reviewing court have differing roles that must not be confused:

> In determining the admissibility of the … affidavit, the differing roles played by this Court and the [administrative decision-maker] must be kept front of mind. Parliament gave the [administrative decision-maker] – not this Court – the jurisdiction to determine certain matters on the merits, such as whether to make an interim tariff, what its content should be, and any permissible terms associated with it. As part of that task, it is for [the administrative decision-maker] – not this Court – to make findings of fact, ascertain the applicable law, consider whether there are any issues of policy that should be brought to bear on the matter, apply the law and policy to the facts it has found, make conclusions and, where relevant, consider the issue of remedy. In this case, the [administrative decision-maker] has already discharged its role, deciding on the merits to make an interim tariff and to refuse to amend it.
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> Now before the Court is an application for judicial review from this decision on the merits. In such proceedings, this Court has only limited powers under the *Federal Courts Act* to review the [administrative decision-maker's] decision. This Court can only review the overall legality of what the [administrative decision-maker] has done, not delve into or re-decide the merits of what the [administrative decision-maker] has done.
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> Because of this demarcation of roles between this Court and the [administrative decision-maker], this Court cannot allow itself to become a forum for fact-finding on the merits of the matter. Accordingly, as a general rule, the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the [administrative decision-maker]. In other words, evidence that was not before the [administrative decision-maker] and that goes to the merits of the matter before the Board is not admissible in an application for judicial review in this Court. As was said by this Court in *Gitxsan*

> *Treaty Society v. Hospital Employees' Union*, 1999 CanLII 7628 (FCA), [2000] 1 F.C. 135 at pages 144-45 (C.A.), "[t]he essential purpose of judicial review is the review of decisions, not the determination, by trial *de novo*, of questions that were not adequately canvassed in evidence at the tribunal or trial court." See also *Kallies v. Canada*, 2001 FCA 376 at paragraph 3; *Bekker v. Canada*, 2004 FCA 186 at paragraph 11.
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> (*Access Copyright*, above at paragraphs 17-19, adopted in *Connolly*, above at paragraph 7; see also *Delios v. Canada (Attorney General)*, 2015 FCA 117 at paragraphs 41-42.)
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> [Emphasis added.]

[5] In our case, it was never clarified how this affidavit and these exhibits were intended to be new evidence. There were writings that may have already been in the certified tribunal record (e.g., the Basis of Claim Form, a letter from Mr. Gitwaza dated April 26, 2016) while the sources of other exhibits remained unknown. The affidavit, which must be limited to facts of which the affiant has personal knowledge (*Federal Courts Rules*, SOR/98-106, rule 81), goes far beyond the rule that [TRANSLATION] "opinions, arguments and conclusions of law therefore have no place in an affidavit" (Bernard Letarte et al, *Recours et procédure devant les cours fédérales*, LexisNexis Canada, 2013, at # 3-44). Finally, this affidavit sought to reproduce excerpts of the principal applicant's testimony before the RPD without the full transcript being provided or the transcript being certified.

[6] The Court stated at the hearing that the affidavit did not meet the requirements in this regard. The affidavit is not admissible to a significant extent (opinions, arguments). As for the transcripts of excerpts from the principal applicant's testimony, they are subject to an assessment of their probative value given a lack of context and the fact that they are not subject to any form

of certification. In any event, the entire RPD decision is assessed on the standard of reasonableness and the principal applicant's affidavit, to the extent it is admissible, will be part of that. I note that the account found in the Basis of Claim Form (BOC Form) is a reasonable alternative to the affidavit offered after the decision has been made, in terms of establishing the facts that are presented by the principal applicant. The Court will adhere to this.

II. Facts

[7] The RPD, in its decision rendered on January 27, 2020, dismissed the applicants' allegation of their fear of persecution in their country of citizenship, Rwanda, by the Patriotic Front of Rwanda (RPF), the police and a man named Paul Gitwaza. It should be noted that the principal applicant's account spoke only of persecution by the RPF, the ruling party in Rwanda. But ultimately, the allegations were presented as going beyond the alleged persecution by the RPF.

[8] The applicants are Pierre Kaberuka, his wife, and their three children, all three of whom were born outside Rwanda. The principal applicant says he found his faith in 1990, when he was 23 years old and joined a local Pentecostal church. He became a pastor in charge of a church until 1994. In 1995, the principal applicant enrolled in the National University of Rwanda.

[9] Together with some colleagues, including Paul Gitwaza (whom the principal applicant claims to be "the legal representative"), the principal applicant founded the Zion Temple Churches in 1999. Thus, the principal applicant is a founding member of the Authentic Word Ministry / Zion Temple and served as the secretary general of the organization. The organization

has grown rapidly. In five years, many branches have been established, not only in Rwanda, Democratic Republic of Congo, Burundi and Tanzania, but also outside Africa (Belgium, Denmark, United Kingdom, United States of America, Sweden, France and Canada).

[10] This led him to travel a lot: it took him to countries where the Church had a presence and elsewhere (Australia, Philippines, South Africa and other African countries). With the expansion of the organization, six bishops were established, and the principal applicant was made one of them (responsible for the Eastern Province).

[11] In 2012, a development agency was founded to coordinate development activities throughout Rwanda and elsewhere; the principal applicant was made senior vice president. On this basis, the principal applicant alleged that he suffered persecution that resulted in his departure from Rwanda.

[12] The principal applicant alleged that the Rwandan state has implemented, since the beginning of 2014, what it called [TRANSLATION] “a policy of control of civil society” (non-governmental organizations and religious associations included). This policy is said to have intensified in the years that followed. The principal applicant alleged that it was intended to place civil society in a position of allegiance to the regime. He emphasized an incident in July 2015 where police authorities intervened to shut down an international conference organized by the Zion Temple Church.

[13] Mr. Gitwaza left for the United States in August 2015. The principal applicant claimed that intimidation and an unhealthy climate at Zion Temple Church were the reason for Mr. Gitwaza's absence for eight months. An article published in late 2015 stated that some bishops, including the principal applicant, wanted to oust Mr. Gitwaza from his responsibilities as legal representative. Mr. Kaberuka and his colleagues denied this news. However, it appeared that two members of Zion Temple Church traveled to the United States to confirm to Mr. Gitwaza the contents of the published article. The principal applicant's account is silent on what he or the bishops did to convince Mr. Gitwaza of their good faith. In any event, Mr. Gitwaza returned to Rwanda in April 2016. He seemed to have cleaned up his act afterwards. In the months following April 2016, the bishops were sent to work in the various provinces of Rwanda. They were essentially dismissed by October 2016.

[14] The principal applicant's wife was affected by a reorganization where she worked when her position was abolished in November 2016. The principal applicant alleged that he was informally summoned by the police to answer accusations of stirring up ill feelings and disturbing the peace. The principal applicant's account does not specify what might have prompted this warning.

[15] What the principal applicant says were abuses were reported on January 20, 2017, to the Rwanda Governance Board (RGB); according to the principal applicant, this is a [TRANSLATION] "state institution in charge of churches and non-governmental organizations." The principal applicant did not highlight the mandate of the RGB, which might have explained how this might have been relevant to what appeared to be internal governance issues at Zion Temple Church.

[16] The lack of action by the RGB prompted the bishops to approach the prime minister's office on May 24, 2017. They were ignored.

[17] The principal applicant stated that Mr. Gitwaza was slandering him during this time. He stated he filed a complaint for defamation and mismanagement. We do not know where, just that the complaint was ignored. Similarly, the principal applicant alleged that he was stopped, questioned and threatened with arrest by the police. No details are given in the narrative about the number of such actions, the dates, or the allegations made against him.

[18] The principal applicant's account alleged that Mr. Gitwaza sent a letter to the secretary general of the RPF on April 29, 2016, upon his return to Rwanda, which became public sometime in 2017. The letter is in the certified tribunal record and was before the RPD. The principal applicant referred to this letter as a [TRANSLATION] "letter of allegiance to the party" and the letter identifies the principal applicant as one of the five bishops with whom Mr. Gitwaza cannot work in the future. The bishops were subsequently exiled before being fired in October 2016 by Mr. Gitwaza.

[19] The principal applicant then chose to form another church in May 2017, called the Glory to God Temple. The principal applicant acknowledged the absence of [TRANSLATION] "legal documents authorizing us to operate" (it is unclear which ones); the new church began operations [TRANSLATION] "under the guise of another church." The principal applicant alleged that he was wiretapped and monitored, with regular visits by intelligence officers. As with other such allegations, no specifics are given on these allegations: neither the number, nor the dates, nor the

content of the [TRANSLATION] “unofficial interrogations”, other than [TRANSLATION] “to probe whether there was resentment towards the State or not”, were offered in evidence.

[20] The church founded by the principal applicant had begun operations in May 2017, but it was closed in March 2018 because it did not meet the prescribed conditions. The principal applicant readily acknowledges that there were many, many church closures during this [TRANSLATION] “current of events.” Six thousand churches throughout the country closed, and of these, seven hundred in Kigali alone closed.

[21] It seems that the space occupied by the new church with another church was blamed for the noise emanating from it. The adjustments made allowed this other church to resume its activities, while the authorization required for the principal applicant’s church continued to be lacking. The principal applicant took it personally, stating that [TRANSLATION] “we did not understand the selection criteria used to choose which church would continue its activities and which one would have to stop its activities”.

[22] The ousted bishops requested an audience with the RPF’s secretary general in June 2018 but were reportedly turned away without even being heard. They met with the district mayor in late September 2018. All the principal applicant stated is that they left her office after getting nowhere.

[23] The principal applicant then stated that he decided on that day in late September 2018 that [TRANSLATION] “I absolutely had to leave this country”. Why? Because once the faithful had

grown weary, [TRANSLATION] “the regime was not going to hesitate to imprison or kill us”. No clarification or explanation is offered for what might appear to be somewhat hyperbolic language, without other context or explanation.

[24] The principal applicant and his wife purchased airline tickets to the United States (they both had valid visas) on October 1, 2018. Two different flights were selected, on October 3 and 6, 2018. The family crossed the Canadian border at the Lacolle, Quebec border crossing, on October 10. Since the applicants have a family presence in Canada, they were not turned away at the border. The principal applicant concluded by stating that, [TRANSLATION] “for all these reasons I am seeking asylum and protection in Canada”.

III. Decision under judicial review

[25] The BOC Form was before the Refugee Protection Division. A substantial file was also before it (494 pages) and witnesses, including the principal applicant, were heard. The RPD found that neither section 96 nor section 97 of the IPRA could apply. I note that counsel for the applicants conceded before the RPD that the child born in the United States could not rely on sections 96 and 97, especially since the principal applicant stated that “he did not think that she feared anything in the United States” (RPD decision, paras 25–26).

[26] In the RPD’s view, the problems the applicants experienced in Rwanda do not constitute persecution. The RPD’s analysis did not lead it to question principal applicant’s involvement in the creation of Zion Temple Church, but it did conclude that the treatment allegedly suffered by the principal applicant “does not correspond to the definition set out in Ward” (RPD decision,

para 30). The applicants have alleged persecution because of their religion and imputed political opinion. The RPD disagrees. The ill-treatment cannot constitute persecution because it must be serious, meaning that it must be a major denial of a fundamental human right. The abuse suffered is not of this nature.

[27] The RPD reviewed these allegations:

a) Church closures

It was the principal applicant himself who testified about the large number of church closures in Rwanda, and in particular in Kigali. But he also stated that the closures were done so that the churches could meet certain criteria, including having their own premises (over a period of two years), having a parking lot, soundproof premises, toilets and a water tank. Compliance with these rules is required before a church can open. According to the RPD, the principal applicant's church was not targeted, but was one of six thousand churches that were closed. Religious practice is not prohibited. Rather, health and safety standards were not met. Not being able to reopen for the reasons stated does not constitute persecution. In fact, the RPD found that the mayor of Kicukiro had warned the principal applicant and his fellow followers that they had not received the required authorizations ("they did not have legal papers", RPD decision, para 37).

b) The secretary general of the RPF

The RPD found that the inability to discuss the administrative problems of the principal applicant's church does not constitute persecution. As testified by the applicant's wife, the Secretary General holds a very important position in the Rwandan government. He would, among other things, nominate candidates for positions as ministers, ambassadors and directors

for large companies. The wife of the principal applicant conceded at the outset that he could not deal with local issues. She testified that he was the third most important position after the president and vice president of the country. The RPF is the ruling party.

c) Paul Gitwaza

Mr. Gitwaza wants to keep the AWM/Zion Temple to himself. He had written to the secretary general of the RPF in April 2016, after returning from his stay in the United States when there was seemingly a tug of war between the five bishops, including the principal applicant, and Mr. Gitwaza. He complained about the five bishops. In addition, these bishops claimed he owed them unpaid wages from February 2017 onward. Things were clearly not going well between the two factions. These same bishops alleged embezzlement, use of false documents and public defamation. They even tried to stop the publication of changes to the AWM/Zion Temple's constitution in the Official Gazette. Changing the organization's constitution does not constitute persecution, and the other allegations are internal church difficulties and do not constitute a basis for a claim.

d) Imputed political opinion and "enemy of the country"

The principal applicant denounces what he calls imputed political opinion being held against him by the ruling party. He says he fears not a particular person, but the RPF party itself. He also complained about the police stopping him about ten times, he said, when he was allegedly questioned and threatened with arrest about various misappropriations: possession of money from the Zion Temple, holding bank accounts outside Rwanda and using that money. The police suggested that he leave the church. The principal applicant confirmed that he suffered no physical injury, but he said he was threatened psychologically.

The principal applicant complained that the police had labeled him and his colleagues as [TRANSLATION] “enemies of the country”. He stated that this label makes people afraid of you, makes your family disown you. When questioned by the RPD as to whether he or his fellow students were affected by this label, the principal applicant had to concede that nothing of the sort happened to them. In fact, the label received special attention from the RPD. The RPD looked at the documentary evidence and found that people like the principal applicant are not among the categories of people with this label. This showed that the fear was unfounded. There was no evidence to support the allegations and none of the other students were harmed.

As for the contacts with the police, there is no persecution. According to the principal applicant, the questions were of a financial nature. No arrests were made, and the principal applicant did not experience any violence and was able to continue his activities. There was no persecution in the RPD’s view.

e) Wife’s job loss and objective fear

During a restructuring that took place where the principal applicant’s wife worked, her position was abolished, and she was unable to find another job afterwards. This, the RPD found, does not constitute persecution. In the RPD’s view, on a balance of probabilities, the applicants failed to demonstrate a causal link between the hardship experienced by the principal applicant and the loss of the female applicant’s job.

[28] The RPD questioned the objective fear that must be demonstrated to succeed. It was even pointed out that it was very difficult for the principal applicant to identify the time that he began to fear for his life. Questioned eight times, he eventually responded that his fear began in 2016.

While he had traveled around the world, and in particular to the United States in 2016 and 2018, the principal applicant stated that he hoped things would work out. The RPD does not believe, on a balance of probabilities, that he is being persecuted or prevented from practising his faith. In fact, even subjective fear is questionable for anyone who has traveled outside Rwanda since 2016, including to the United States.

[29] The fear of a return to Rwanda because the applicants had been outside Rwanda was also not accepted. The RPD noted the numerous absences of the applicants over the past few years, often for long periods of time. There is nothing unusual about these applicants being outside of Rwanda. Their absence from Rwanda since coming to Canada does not constitute a prospective risk if they were to return to Rwanda.

IV. Arguments and analysis

[30] There is no question that the applicants are held to a standard of reasonableness. Everyone agrees with that. It is certainly not a standard without consequence.

[31] Therefore, the reviewing court must exercise judicial restraint and adopt an attitude of respect (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], paras 13 and 14), leading to the deference to which the administrative decision is entitled in light of the jurisdiction of administrative tribunals and the choice of Parliament to give them this decision-making power.

[32] This is evident in a reviewing court having to consider whether the decision "bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, para 99). The reviewing court ensures that it understands the reasoning of the decision-maker to determine whether the decision, as a whole, is reasonable. The applicant, the one challenging the decision, bears the burden of demonstrating that the decision does not have the characteristics of a reasonable decision; it must be shown to be unreasonable and not merely raise a doubt. Moreover, under the duty of judicial restraint, the reviewing court is not called upon to substitute its opinion for that of the administrative decision-maker. The reviewing court only reviews the legality of the decision.

[33] It follows that the reviewing court must be satisfied that the decision "[has] sufficiently serious shortcomings. . . such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, para 100). The question is often asked: what makes a decision unreasonable? The Supreme Court in *Vavilov* identifies two categories of fundamental flaws. First, a lack of internal logic in the reasoning will tend to lead to the conclusion that the decision is not reasonable. Second, a decision that is indefensible in some respect is in itself an unreasonable decision. But it will be up to the applicant to establish its unreasonableness on a balance of probabilities. Hence the importance of the burden of proof.

[34] Mere disagreement about the interpretation of the evidence will generally not be sufficient to convince a reviewing court that the decision is unreasonable.

[35] An objective reading of the evidence suggests a conflict between two factions within the Zion Temple Church, which was co-founded by the principal applicant. The principal applicant appears to have lost the battle. It was Paul Gitwaza who remained as the head of Zion Temple Church. Whether this result is correct is of little consequence for our purposes.

[36] The applicants argued that the RPD erred in its finding that, after the principal applicant was ousted from the Zion Temple Church, the church was not targeted and closed. The difficulty the applicants face is that they have not demonstrated that this finding by the RPD is unreasonable. The evidence presented does not establish that this new church was targeted. It should have been targeted along with six thousand other churches in Rwanda, including several hundred in Kigali. There is no evidence that it was singled out for special treatment. Rather, it appears that the regulations were not respected. This is at least a reasonable conclusion. The principal applicant alleged that other churches remained open despite also being in violation of the regulations. This is not convincing. First, this argument is not supported by the evidence. Furthermore, nothing is known about the particular circumstances of any churches that remained open. Finally, allowing certain churches to remain open does not imply that the church founded by the principal applicant must remain open. As noted above, thousands of churches have suffered the same fate.

[37] It is certainly not impossible that hidden reasons, other than the official health and safety reasons invoked by the authorities, are at the source of certain closures. The principal applicant argued that this is the case, but it remained only at the level of speculation. The evidence was lacking. In any event, the requirement to convince the Court that the decision was unreasonable,

under *Vavilov*, is not met on the basis of the principal applicant's statement alone. It would be open to the RPD to make its findings on the basis of the evidence offered.

[38] What is sorely lacking is evidence to the contrary. The principal applicant makes allegations that he is unable to support. For example, he complains of red tape that is designed to [TRANSLATION] "muzzle dissenting voices, and in this case, divide and weaken Zion Temple, exclude the claimant from the church, and deny him permission to open another, thus a serious violation, under cover of law, of religious freedom" (applicants' memorandum of fact and law, para 30). It is not a breach of reasonableness to make allegations that are not supported by the evidence.

[39] The principal applicant speculated, alleged, accused, and gave his interpretation of certain elements without any objective evidence. He had to show that the RPD's decision was unreasonable when it did not accept the conspiratorial interpretations offered by the principal applicant. Under another interpretation of the circumstances presented in this case, the principal applicant was ousted from the church he had helped found, failed with a new church he sought to found because he could not comply with regulatory requirements, and also failed in his attempts to overturn decisions in his country of nationality. The RPD could reasonably find that there is no persecution. The applicants have in any event failed to demonstrate the unreasonableness of an otherwise transparent and intelligible RPD decision that is not marked by inconsistency or lack of internal logic or that appears to be defensible. It is certainly not the role of a reviewing court to try to decide between versions of the facts if the one chosen by the administrative decision-maker is reasonable.

[40] The same is true of the allegations of prospective risk centered on Mr. Gitwaza and an imputed political opinion.

[41] Here again, we are swimming in a sea of speculation. The principal applicant's argument seems to rest exclusively on Paul Gitwaza's letter that he allegedly sent on April 29, 2016, to the secretary general of the RPF party. Said letter thanked the RPF for understanding the problems he had experienced (Mr. Gitwaza had just returned from the United States at the time following an announcement that some wanted to oust him from Zion Temple Church). He said he could not work with the five bishops, including the principal applicant, who objected [TRANSLATION] "whenever we decide to do something to support the party".

[42] The principal applicant used this letter, which showed the church's allegiance to the RPF party, to construct what can only be unsupported allegations ranging from terminating the services of the five bishops, which was done, to violence, of which there is no evidence. Rather, the RPD concluded that these issues of church allegiance were internal issues within Zion Temple Church. This does not constitute a basis for a claim. The applicants have not demonstrated how this conclusion would be unreasonable. Speculation and interpretations of a letter cannot be sufficient to support a conspiracy with the state against the principal applicant.

[43] The principal applicant continues in the same vein with his claim that he would be persecuted for his imputed political opinion. This argument allegedly stems from that same April 2016 letter where it is stated that he is one of the five bishops still opposing [TRANSLATION] "doing something to support the party." But the applicants must still establish a

connection between the imputed political opinion, which may not be in accordance with a person's deeply held beliefs but which are imputed to him (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*], pages 746–47), and the fear of persecution. The fear of persecution must have some objectivity to it, not merely arise from an alleged subjective fear.

[44] In fact, the jurisprudence of this Court is consistent that the incidents must be serious, which tends to demonstrate the objectivity of the fear in the sense that a reasonable person could have a real fear. In *Sefa v Canada (Citizenship and Immigration)*, 2010 FC 1190 [*Sefa*] we read:

> [10] The Board provided what the parties agree was a clear statement of the law regarding when discrimination of the kind suffered by the applicants will rise to the level of persecution sufficient to ground a claim for protection under the [IRPA]:
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> > 9. To be considered persecution, mistreatment suffered must be serious and the inflicting harm occurs with repetition or persistence, or in a systematic way. To determine what qualifies as serious one must examine the harmed interest of the claimant and to what extent the interest might be compromised. The courts equate seriousness with a key denial of a core human right. It is the requirement that the harm be serious that has led to a distinction between persecution and harassment. Persecution is characterized by the greater seriousness of the mistreatment involved. The courts have also distinguished between persecution and mere unfairness. At paragraph 54 of the *UNHRC Handbook* it is stated persons who receive less favourable treatment as a result of differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution, such as serious restrictions on one's right to earn a livelihood, right to practice religion or access to normally available educational facilities. Mistreatment may constitute discrimination or harassment and not be serious enough to be regarded as persecution. A finding of discrimination not persecution is within the jurisdiction of the RPD. Acts of harassment, none amounting to

> persecution individually, may cumulatively constitute persecution. The repeated instances of harassment in the past may lead to a serious possibility of persecution in the future. Whether or not measures of discrimination amount to persecution must be determined in consideration of all the circumstances.
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> The Court finds that the Board set out a clear and correct statement of the law with respect to this subject.
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> [Citations omitted.] [Emphasis added.]

[45] In *Balazs v Canada (Citizenship and Immigration)*, 2013 FC 62 [*Balazs*], the same concept was presented as follows:

> [27] In *Sagharichi v Canada (Minister of Employment and Immigration)*, 182 NR 398, 1993 CarswellNat 316 (FCA), it was established that, to be characterized as persecution, incidents of discrimination or harassment must be serious, systematic or support a finding of a serious possibility of persecution in the future. Furthermore, the intervention of the reviewing Court is not warranted unless the conclusion reached appears to be capricious or unreasonable.
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> . . .
>
> [30] Although some unfortunate events occurred in the case of the applicants, the RPD made a reasonable finding by stating that they are not entitled to refugee protection because the events do not constitute persecution. The events experienced by the applicants are not of a severity that entitles them to refugee protection. They were not prevented from studying or earning a living and the RPD was of the opinion that the events experienced by the applicants, including the treatment of children in school, do not constitute persecution in themselves even if the incidents are assessed cumulatively.
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> [Emphasis added.]

One must therefore be able to see the seriousness and the repetition of acts that could be discriminatory and that would cause serious consequences for the persons. Now, in this case, the

applicants complain that the imputed political opinion contributed to their eviction from the Church they had founded and the difficulties in creating a new one. It is not possible to see how this would be, in view of the objective evaluation of the risks, the foreshadowing of prospective risks.

[46] The Court finds that the persecution alleged by the applicants has not been established. The RPD's decision to find no persecution has not been shown to be unreasonable. The refugee protection regime, like the regime for persons in need of protection, is not an expedited way to immigrate to Canada. The law requires that both regimes be for the real protection of these persons. The seriousness and gravity of the alleged persecution has never been established. The applicants were not prevented from practising their faith. The principal applicant was ousted from his position as bishop in the Zion Temple Church. The RPD was satisfied that he did not subsequently establish a new church for reasons other than an inability to meet certain administrative, health and safety requirements imposed on all. This was certainly a conclusion that the RPD could reach. It was up to the principal applicant in particular to establish that this general conclusion was unreasonable. It is not possible to see in the evidence provided where the persecution lay: the conflict with Mr. Gitwaza is nothing more than an internal conflict within the organization. As mentioned earlier, it is not impossible that hidden motives are the real reason for his setbacks. But the RPD was not satisfied that this was the case, and this Court has nothing to say about it. In any event, it was up to the applicants to demonstrate the unreasonableness of the RPD's decision. Since the evidence is deficient, and too often based on speculation, the Court can only find that the RPD's decision has not been shown to be unreasonable.

[47] The applicants also expressed fear that they would be returned to Rwanda if they failed in their claim for refugee protection in Canada. This other allegation was also rejected. Absence from Rwanda would not be a new thing for the applicants, the RPD stated. The evidence is clear that they have spent a lot of time out of the country over the years, for long periods of time, without ever being bothered. In addition, the principal applicant testified that he did not tell anyone about his actions in Canada. The RPD therefore questioned how the authorities could have learned of the absence, even if the applicants are, in fact, of any interest to those authorities.

[48] To claim that a 2016 Rwandan law prohibiting speaking badly about Rwanda could be used against him, even though principal applicant testified that he did nothing of the sort, does not advance applicants' case. The omnipotence of the Rwandan government, as alleged by principal applicant, has not been demonstrated, nor has the government's special interest in applicants.

[49] Effectively, the applicants seek to reverse the burden of proof so that the RPD is required to establish that the foreign government will never know that applicants made a claim for refugee protection. In the absence of proof by the applicants, they seek to effectively reverse the burden. As stated earlier, it is up to the applicants to show that the decision is unreasonable, including that their absence could be noted and that this constitutes a prospective risk. Speculation cannot satisfy the burden of proof on judicial review.

[50] The reviewing court is not called upon to substitute its preferred solution for that of the administrative decision maker. Rather, it seeks to be satisfied of the legality of the decision. To the extent that a decision is reasonable, there is no reason to intervene.

V. Conclusion

[51] The evidence the applicants provided shows that the principal applicant was ousted from his position at Zion Temple Church sometime in 2016. His attempt to form a new church, when six thousand of them have closed, also failed. The evidence of ulterior motives for the closure and the inability to reopen did not satisfy the RPD. The applicants had to convince the reviewing court that the RPD's decision was unreasonable within the meaning of administrative law. This was not done. As a result, the application for judicial review must be dismissed. The parties have stated that they do not rely on section 74 of the IRPA. The Court agrees with the parties that there is no question to be certified.

JUDGMENT in IMM-1831-20

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1831-20
STYLE OF CAUSE:	PIERRE KABERUKA ET AL v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE IN OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 7, 2021
JUDGMENT AND REASONS:	ROY J.
DATED:	NOVEMBER 17, 2021

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