Federal Court Cour fédérale

**Date: 20230315**

**Docket: IMM-4312-22**

**Citation: 2023 FC 353**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, March 15, 2023**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**GÉRARD BUNAME**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

[1] The applicant, Gérard Buname, is a Burundian citizen of Tutsi ethnicity. He is seeking judicial review of a decision dated January 19, 2022, refusing his application for a pre-removal risk assessment (PRRA).

[2] After reviewing the reasons of the senior immigration officer (the PRRA officer), the evidence that was before him and the applicable law, I find no reason to overturn the decision under review. This application is therefore dismissed.

## I. Background

[3] The applicant, accompanied by his wife, arrived in Canada in September 2016 and claimed refugee protection. He claimed a fear of returning to Burundi because his life would be at risk by reason of his opposition to the ongoing violence in his country of origin.

[4] After reviewing all the evidence, the RPD rejected the applicant's refugee protection claim on August 27, 2020. The panel had [TRANSLATION] "serious reasons for considering" that the applicant was complicit in crimes against humanity because he had voluntarily made a significant and knowing contribution to the crimes committed by the Burundian administration in the district of Karusi in 1972. The RPD therefore concluded that the applicant could not be a refugee within the meaning of the United Nations *Convention Relating to the Status of Refugees* (Convention), since he fell within the scope of Article 1F of the Convention and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 21 (IRPA).

[5] The RPD also noted that the applicant failed to demonstrate the veracity of some of his main allegations. The panel therefore concluded that the applicant had not established his political involvement or the influence alleged in his story that could explain the Burundian authorities' interest in him.

[6] In June 2021, the applicant applied for a PRRA.

[7] The PRRA officer concluded that the applicant was excluded from consideration under section 96 of the IRPA because of the application of Article 1F of the Convention. Thus, the applicant was a person described in paragraph 112(3)(c) of the IRPA. and the PRRA was conducted exclusively under subsection 97(1).

[8] In his application, the applicant claimed a risk of persecution because of his ethnicity as a Tutsi. He also alleged that he was persecuted for his implicit political opinion resulting from the fact that he was opposed to the Hutu majority government of Burundi. The PRRA officer found that the applicant alleged the same risks as those argued before the RPD.

[9] The applicant submitted a number of documents as new evidence, and the PRRA officer considered them under paragraph 113(a) of the IRPA:

| **Consideration of application** | **Examen de la demande** |
|---|---|
| **113** Consideration of an application for protection shall be as follows: | **113** Il est disposé de la demande comme il suit : |
| **(a)** an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection; | **a)** le demandeur d’asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n’étaient alors pas normalement accessibles ou, s’ils l’étaient, qu’il n’était pas raisonnable, dans les circonstances, de s’attendre à ce qu’il les ait présentés au moment du rejet; |

[10] The officer concluded that the applicant did not provide sufficient objective evidence to demonstrate that he would be personally subjected to a danger believed on substantial grounds to exist, of torture, to a risk to his life or to a risk of cruel and unusual punishment in Burundi. In drawing this conclusion, the officer relied on the following facts:

a) The officer was in a position to consider only the potential risks that had arisen since the RPD decision. Although the articles submitted post-date that decision, their collective content refers to issues of persecution that were present at the time of the RPD process in 2020.

b) The articles were extracted from online sources. Essentially, they report on ethnic violence in Burundi, which began in the 1970s. The applicant had access to similar articles during the RPD process and he did not provide any convincing explanation as to why he could not have submitted similar articles to the RPD.

c) Furthermore, the applicant did not sufficiently explain how the events described in these articles applied to his situation.

d) The country reports deal primarily with issues of persecution based on ethnicity, membership in a particular social group or political opinion: issues covered by section 96 of the IRPA, not section 97.

e) The new evidence did not sufficiently overcome the restrictions imposed by Article 1F of the Convention and did not respond to the RPD's negative inference regarding the applicant's credibility, particularly regarding his political affiliations and his allegations of risk.

f) The applicant submitted a letter from the Alliance des Burundais du Canada [Burundian alliance of Canada] to substantiate his allegations of risk. However, the qualifications of the coordinator who was able to corroborate these allegations were not stated. Moreover, she did not provide objective evidence to explain why she believed that the applicant would be subjected to torture and even executed in Burundi. The coordinator referred to the applicant's political beliefs and ethnicity, but these two factors are generally associated with grounds under the Convention and subsection 96(1) of the IRPA. Consequently, the officer gave the letter no probative value.

[11] The PRRA officer refused the application on January 19, 2022, and the applicant is now seeking judicial review of that decision.

## II. Analysis

[12] The applicant submits that the PRRA officer failed to hold a hearing despite his doubts about the applicant's credibility (paragraph 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227). According to the applicant, the officer made a veiled credibility finding when he stated that [TRANSLATION] "the new evidence [did] not address the negative findings of previous decision makers regarding the applicant's credibility".

[13] The applicant's argument is not persuasive. As the respondent argues, the PRRA officer's statement must be taken in context. In the paragraph in question, the officer explains how the evidence filed in support of the PRRA application does not overcome the RPD's findings, including its negative inference regarding the applicant's political affiliations and the risks he would face in Burundi.

[14] In referring to the RPD's negative inference, the officer did not come to his own conclusion as to the applicant's credibility (*Hurtado v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 768 at para 10). He did not question the facts that were presented to him. Rather, the officer assessed the documents submitted by the applicant in light of the RPD decision and its findings regarding the same risks that the applicant raised in his PRRA application.

[15] More specifically, the officer did not justify his decision by assessing the applicant's credibility. He did not imply that he doubted the applicant's credibility. Moreover, the officer's reasons do not show that he was making veiled findings regarding the applicant's credibility.

[16] I find that the PRRA officer was not required to hold a hearing under paragraph 113(b) of the IRPA. My conclusion remains unchanged: the Court will consider this issue on the standard of reasonableness or that of procedural fairness (*Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447 at paras 11–21; *see Iwekaez v Canada (Citizenship and Immigration)*, 2022 FC 814 at paras 7–14).

[17] The applicant also challenges the merits of the decision under review. He argues that: (1) the PRRA officer failed to undertake an analysis of his application under section 97, and (2) that the officer placed an impossible burden of corroborating evidence on him.

[18] The standard of review applicable to decisions rendered by PRRA officers, including their assessment of the evidence, is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 [*Vavilov*]; *Tesfay v Canada (Citizenship and Immigration)*, 2021 FC 593 at para 5).

[19] The applicant submits that the PRRA officer's failure to consider his membership in certain social groups (the Tutsis and perceived political opponents) under section 97 and the objective evidence on the record is a reviewable error. According to the applicant, although he

did not explicitly state this in his PRRA application, it is clear that he would face an individualized risk of torture and cruel and unusual treatment in Burundi pursuant to section 97.

[20] I disagree. The decision demonstrates in a transparent and intelligible manner the officer's analysis of the new evidence provided by the applicant. The officer found that, despite the dates of the articles, [TRANSLATION] "their collective content refer[ed] to issues of persecution that were present at the time of the RPD process in 2020" (*Scotland v Canada (Citizenship and Immigration)*, 2022 FC 512 at para 16). The applicant himself acknowledged that the articles related to existing events and facts that [TRANSLATION] "had been ongoing" since the hearing before the RPD. Therefore, the burden was on him to show that this evidence was not available to him at the time of the hearing before the RPD or that he could not reasonably have been expected to have presented it at the hearing. Unfortunately, the applicant did not explain why he could not have submitted similar articles to the RPD given that those articles were taken from online resources. The officer therefore concluded that the applicant had access to similar articles during the RPD process and, in my view, the officer did not err in reaching that conclusion.

[21] The applicant also submits that the officer placed an impossible burden of corroborating evidence on him.

[22] In his PRRA application, the applicant referred to the same risks that [TRANSLATION] "have been ongoing" since the hearing before the RPD and he provided new evidence that corroborated these risks. The applicant points out that he is quite elderly and that he now lives in

Canada. In these circumstances, he can only file objective evidence of the same kind as that which he presented to the RPD. According to the applicant, the officer ignored the principles set out by this Court in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 (*Senadheerage*) by requiring evidence specific to his situation.

[23] After carefully considering the evidence on the record and the PRRA officer's reasons, I am not persuaded by the applicant's arguments. The burden was on the applicant to demonstrate the link between his personal circumstances and the existence of a personalized risk. In other words, the applicant had to establish that he would be personally subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment or punishment should he return to Burundi.

[24] The officer specifically considered the evidence on the record and the issue of the applicant's individualized risk in Burundi under section 97: [TRANSLATION] "In this regard, the applicant has not sufficiently explained how the events described in these articles apply to his situation". While the applicant may disagree with the officer's interpretation of his evidence, it is not this Court's role on judicial review to reweigh the evidence (*Vavilov* at para 125). The applicant alleges that the officer did not consider the issue of his personalized risk, but he does not demonstrate how the articles filed would apply specifically to him.

[25] The applicant explains that a decision maker can only require corroborating evidence if the decision maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding credibility (*Senadheerage* at para 36). According to the applicant, the applicant

was subject to [TRANSLATION] “an impossible burden of corroborating evidence” if the officer did not consider his new objective evidence sufficient.

[26] This case is distinguishable from *Senadheerage*, where Justice Grammond found that the RAD erred in failing to explain why it required corroborating evidence (*Senadheerage* at paras 22–43). In this case, the officer concluded that the applicant’s evidence and his arguments were not sufficient to establish a clear link between his situation and the general conditions in Burundi. The applicant simply failed to meet his burden of proof. He did not demonstrate how the objective and generalized evidence and the arguments in his PRRA application established his personalized risk. In my view, the applicant did not identify before the Court a reviewable error in the officer’s analysis or conclusion

[27] The parties have not proposed any questions for certification, and I agree that there are none.

[28] The style of cause should be amended to name the Minister of Citizenship and Immigration as the respondent, pursuant to subsection 4(1) of the IRPA, and as consented to by both parties.

**JUDGMENT in IMM-4312-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.

2. The style of cause is amended to name the respondent as the Minister of Citizenship and Immigration**.**

3. No question of general importance is certified.

"Elizabeth Walker"
Judge

Certified true translation
Janna Balkwill

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-4312-22 |
| **STYLE OF CAUSE:** | GÉRARD BUNAME v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | JANUARY 23, 2023 |
| **JUDGMENT AND REASONS:** | WALKER J. |
| **DATED:** | MARCH 15, 2023 |

**APPEARANCES:**

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|---|---|
| Arthur Ayers | FOR THE APPLICANT |
| Maryse Piché Benard | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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