

Federal Court



Cour fédérale

Date: 20081003

Docket: IMM-987-08

Citation: 2008 FC 1113

Ottawa, Ontario, the 3rd day of October 2008

Present: The Honourable Madam Justice Mactavish

BETWEEN:

JOËLLE KANEZA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Joëlle Kaneza, a citizen of Burundi and a Tutsi, claimed refugee protection in Canada because of persecution of which she alleged to have been a victim at the hands of a Hutu family. The Refugee Protection Division of the Immigration and Refugee Board rejected this application because her account was found not to be credible.

[2] Ms. Kaneza is now seeking judicial review of the Board's decision, alleging that each one of the main conclusions of the decision concerning her lack of credibility is unreasonable and accordingly the decision should be set aside.

[3] I will examine the impugned conclusions. However, for the following reasons, I am not convinced that the Board erred in its overall assessment of Ms. Kaneza's credibility or that the Board's decision was unreasonable. Accordingly, this application for judicial review will be dismissed.

Standard of review

[4] The Board's conclusions concerning credibility are subject to judicial review according to the standard of reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, and *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449.

[5] In applying the standard of reasonableness to the conclusions reached by the Board, I must determine “. . . the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” (*Dunsmuir*, at paragraph 47.)

Analysis

[6] The Board gave numerous reasons in support of its conclusion that the account given by Ms. Kaneza is not credible. The main reason for which the Board did not believe Ms. Kaneza's account is the significant inconsistency between her statement given at the point of entry and the version she gave in her personal information form (PIF).

[7] At the point of entry, Ms. Kaneza based her claim on a fear of her neighbours, that is to say, a Hutu family who threatened her because she was a Tutsi. Her neighbours allegedly told her that they had a machete and they would not hesitate to use it against her and that they had used sorcery to do her harm. This made her fear for her life.

[8] On the other hand, in her PIF and in her testimony, Ms. Kaneza based her claim on a fear of the family of her fiancé, Terence, whose members were Hutu extremists involved in the massacre of Tutsis. According to Ms. Kaneza, this family opposed their relationship and considered that she was responsible for the disappearance of Terence.

[9] In addition, Ms. Kaneza stated that the family of Terence had threatened her because she was pregnant and the family was possibly involved in the death of Ms. Kaneza's father in an automobile accident which she described as [TRANSLATION] “rather mysterious.”

[10] Ms. Kaneza claims that there is no inconsistency between the two versions. According to Ms. Kaneza, she made a general statement at the point of entry and she simply added more details concerning her relationship with Terence in her PIF and in her testimony.

[11] The Board studied the explanation given by Ms. Kaneza and gave clear reasons for rejecting it.

[12] On this point, the Board noted that the two statements were completely different. Ms. Kaneza did not mention that she had been engaged to a Hutu, that his family had threatened her, that her father had died or that she had been pregnant and subsequently had a stillbirth.

[13] In addition, the Board noted that the agents of persecution were not the same in both statements, that the story had changed and that key events, including the very existence of Terence, on which the claim for refugee protection was based, had not even been mentioned.

[14] It is not up to the Court to substitute its own opinion for that of the Board concerning the inferences it made, except if the conclusions reached by the Board were unreasonable. In the case at bar, I am not convinced that the Board's conclusion was unreasonable.

[15] This was the main point on which the Board based its conclusion that Ms. Kaneza's account was not credible. However, the Board gave some other reasons for reaching this conclusion, which Ms. Kaneza did not contest.

[16] For example, the Board considered that Ms. Kaneza's oral statement showed an absence of subjective fear and lacked credibility. The Board noted that Ms. Kaneza could not explain why she had not fled her place of residence to seek shelter instead of continuing to reside at the same address in Bujumbura, and continuing her studies in that city until she left Burundi in July 2006, if she was convinced that her father had been killed by Terence's family in December 2005 and that her own life was in danger since she had received death threats in January 2006.

[17] In my opinion, the Board's conclusion that the testimony given by Ms. Kaneza in this regard was not credible is perfectly reasonable.

[18] Likewise, the Board underlined the fact that Ms. Kaneza had never been able to explain why she had been held responsible for the disappearance of Terence. She also testified at one point that she had never taken any steps to try to locate Terence because she resented him for having abandoned her, but later on during the hearing she said that she had tried to find out where he was.

[19] In addition, the Board noted that Ms. Kaneza had arrived in Canada via the Netherlands and the United States and rejected her explanation as to why she had not claimed refugee protection in either of those two countries as unreasonable. According to the Board, the fact that Ms. Kaneza had not claimed refugee protection in the Netherlands or the United States suggests that she did not have a subjective fear of persecution.

[20] It is true that Ms. Kaneza filed a copy of a death certificate of her father, confirming that he had died in an automobile accident. In my opinion, it is clear that the Board decided that this document was of no importance because it did not specify the cause of her father's death and this decision was perfectly reasonable.

[21] Finally, even if I were to accept Ms. Kaneza's submission that it was not reasonable to have concluded that a woman in her situation should have advised Terence's family of her stillbirth, this conclusion is not a sufficient basis to set aside the Board's decision.

Conclusion

[22] For all these reasons, the application for judicial review is dismissed.

Certification

[23] The parties did not suggest any question for certification and no question is raised in this case.

JUDGMENT

THE COURT ORDERS THAT:

1. This application for judicial review is dismissed;
2. No question of general importance is certified.

“Anne Mactavish”

Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-987-08

STYLE OF CAUSE: JOËLLE KANEZA v.
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 27, 2008

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

DATED: October 3, 2008

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