

Date: 20090401

Docket: IMM-4178-08

Citation: 2009 FC 335

Toronto, Ontario, April 1, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

THIERRY ISHIMWE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Thierry Ishimwe (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”), dated August 20, 2008. In its decision, the Board found that the Applicant is not a Convention refugee nor a person in need of protection as defined in sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant, a citizen of Burundi, fled his country of birth on April 14, 2006. He arrived in Canada on April 21, 2006 via Addis Ababa, Ethiopia, and Washington and Buffalo, United States of America. He filed his claim for refugee protection at the Canada-U.S. border on April 21, 2006.

[3] The Applicant based his claim for protection upon fear of death at the hands of persons recently released from prison who had been charged with offences during the ten-year civil war in Burundi. These prisoners had been released when the National Council for the Defence of Democracy-Forces for the Defence of Democracy came to power in 2005.

[4] The Applicant's parents had been killed during the civil war. The Applicant said that the people who killed his parents were among the prisoners who were released in February 2006. The Applicant saw one man named Delphin approximately ten days after his release. The Applicant says that Delphin, upon seeing him, slid his hand across his throat, threatening that he would kill him.

[5] The Applicant says that the released former prisoners hold considerable power in Burundi. In his Personal Information Form ("PIF"), he noted that Delphin's brother is a police commander.

[6] The Applicant claims that after sighting Delphin on the street, he received a number of anonymous telephone calls, warning that he would end up like his parents. He says that people began visiting his house at the end of February. He did not report these events to the police due to the connection between Delphin and others, and the police.

[7] The Applicant applied to an American university and was granted admission. His application to the American authorities for a visa was granted on April 6, 2006.

[8] The Board's decision was based on its negative credibility findings, including the inconsistencies in the Applicant's evidence concerning his intended time of departure from Burundi, inconsistencies about the visits to his home, his characterization of Delphin's brother in his PIF as a police commander while referring to this man in his evidence before the Board as the Chief of the National Police and the lack of documentary evidence in support his claim.

[9] In this regard, the Board drew a negative inference from the Applicant's failure to produce the acceptance letter from the American university where he had supposedly gained admission. The Board also commented on the employment letter from a Canadian employer; this letter was unsigned and was dated March 17, 2006, prior to the Applicant's departure for Canada.

[10] The Applicant argues that the Board erred in two respects in making its credibility findings. First, he challenges the Board's treatment of his evidence, both in his PIF and at the hearing regarding the status of Delphin's brother as being both a police commander and the Chief of the National Police. He says that the alleged contradiction here is more apparent than real.

[11] Second, he takes issue with the Board's finding that American universities do not grant admissions in the time frame that he described. The Applicant argues, as well, that there is no

evidence to support the Board's conclusions that the American Embassy in Burundi does not issue student visas in the time frame indicated.

[12] For his part, the Minister of Citizenship and Immigration (the "Respondent") notes that the Applicant is challenging only two of the credibility findings made by the Board. However, these findings are reasonable in light of the evidence before the Board and there is no basis for judicial intervention.

[13] Pursuant to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, administrative decisions of statutory decisions makers are reviewable on either the standards of reasonableness or correctness. It also noted that where existing jurisprudence has established a standard of review, a reviewing court may adopt that standard. In *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, the Federal Court of Appeal found that credibility findings should be reviewed on the standard of patent unreasonableness. Since the decision in *Dunsmuir*, that standard has merged into the standard of reasonableness. That standard will be applied in this case.

[14] The Board asked the Applicant why he had initially described Delphin's brother as a commander and that later referred to him as the police chief. The Applicant replied that he "explained that in French. The one who is in charge of the police we call him the commander."

[15] This answer was unsatisfactory to the Board. The answer, in my opinion, does not explain the inconsistency. The Applicant wrote his PIF in English. It was open for the Board to find an inconsistency in the Applicant's evidence and to draw a negative conclusion as to his credibility.

[16] As for the timing of his departure and the admission letter, the Board provided the Applicant with the opportunity to answer its concerns. He did not do so. The burden lay upon the Applicant to produce documentary evidence in support of key elements of the claim. It was open to the Board to reject the Applicant's explanation as to why he was unable to produce a relevant document.

[17] In the result, there is no basis for judicial intervention. The application for judicial review is dismissed, there is no question for certification arising.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed, no question for certification arising.

“E. Heneghan”

Judge

SOLICITORS OF RECORD

DOCKET: IMM-4178-08

STYLE OF CAUSE: THIERRY ISHIMWE v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: March 3, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** HENEGHAN J.

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