

Federal Court



Cour fédérale

Date: 20110311

Docket: IMM-4345-10

Citation: 2011 FC 296

Ottawa, Ontario, March 11, 2011

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

THEONEST KATO

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a Rwandan national of Tutsi ethnic origin who was found by the Immigration and Refugee Board (Board) to be neither a refugee nor a person in need of protection despite his role as a witness in genocide proceedings in the Gacaca courts.

II. BACKGROUND

[2] Mr. Kato, the Applicant, claimed that during the Rwandan civil war in 1994, his parents and two of his siblings were killed by Hutus. Only he and a sister survived.

[3] In 2006 the Applicant testified in the Gacaca trials, presented his views and as a community member, questioned various witnesses.

[4] The Applicant claimed that during his involvement in the trials, his house was attacked and he received death threats. Having moved and being recalled to testify at the trials, he was attacked at his new residence. The police were unable to locate his assailants.

[5] The Applicant remained in Rwanda for 16 months after his testimony ended until such time as he secured a U.S. visitor's visa. He then entered Canada and made his claim.

[6] The Board found the Applicant to be credible despite the fact that CBSA seized a package of documents couriered to his address which contained blank, pre-signed and pre-stamped Gacaca summons, death certificates and genocide survivor certificates along with completed documents to be used in evidence before the Board.

[7] Despite finding that the Applicant had filled in the documents for use in the Board's proceedings and evidently not accepting the Applicant's claim of ignorance about the blank documents, the Board did not find the matter determinative of credibility.

[8] The Board, however, rejected the claim because the Applicant had remained in Rwanda for 16 months after the last assault and that during the 16 months, nothing further had happened to him.

[9] The Board noted the winding down of Gacaca trials, and considered that the Applicant continued to go to work but stayed in after 18:00. The Board also referred to documents which showed improvement in tensions within Rwanda while also noting some continuing difficulties in areas of police success in apprehending those who had killed or assaulted.

III. ANALYSIS

[10] The Applicant argues that the Board erred in failing to consider relevant evidence and failed to provide adequate reasons.

[11] The standard of review on both these issues is correctness because one is a matter of law and the other of procedural fairness. However, the assessment of personalized risk is principally a factual determination for which deference is owed (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[12] The real debate about the evidence is not that of a failure to consider but of the weight to be given the evidence. The Board considered the relevant documents and the evidence, both pro and con, as to stability in Rwanda and risk to the Applicant.

[13] It was open to the Board to find that, considering the documentary evidence and the 16 months that the Applicant remained in Rwanda without incident, there was insufficient evidence to support the refugee claim or personalized risk.

[14] The Applicant was fortunate that the Board found his story credible but having done so, it did not err by not considering evidence.

[15] The Board's reasons were more than adequate to explain its rationale – to inform the Applicant of the basis for its rejection of his claim. There was no breach of procedural fairness.

IV. CONCLUSION

[16] Therefore, this judicial review will be dismissed. There is no issue for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4345-10

STYLE OF CAUSE: THEONEST KATO

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: February 24, 2011

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

DATED: March 11, 2011

APPEARANCES:

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Mr. Carl H. Swenson

FOR THE APPLICANT

Ms. Jamie Freitag

FOR THE RESPONDENT

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