

Federal Court



Cour fédérale

Date: 20130312

Docket: IMM-3677-12

Citation: 2013 FC 227

Ottawa, Ontario, March 12, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

CHARLES KAYITARE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Charles Kayitare sought refugee protection in Canada based on his fear of persecution as a person of mixed Tutsi-Hutu race in Rwanda. Many of his Tutsi relatives, including his mother, were killed during the genocide of the 1990s. Mr Kayitare fled to Congo with his father and siblings. His father died along the way and Mr Kayitare became permanently separated from his

brother. Mr Kayitare returned to Rwanda in 1994 after the Rwandese Patriotic Front took control of Kigali in July of that year.

[2] In 2008, Mr Kayitare was summoned to testify before the Gacaca courts. He was concerned that he would be forced to take sides as between the Hutu and the Tutsi. Before he actually testified, someone threw a stone at him, smashing the window of his car. He considered this to be a warning against testifying. He fled Rwanda and claimed refugee protection in Canada based on his fear of persecution as a person of mixed race, and for his failure to appear before the Gacaca courts.

[3] A panel of the Immigration and Refugee Board dismissed Mr Kayitare's claim. It found that his testimony lacked credibility. It also found that conditions in Rwanda have changed since he left; in particular, the Gacaca courts are no longer in operation.

[4] Mr Kayitare argues that the Board's decision was unreasonable. He suggests that the Board's reasons do not make clear why it disbelieved him or what parts of his testimony it doubted. He asks me to quash the decision and order another panel of the Board to reconsider his claim.

[5] I can find no basis for overturning the Board's decision. I find that the Board's reasons make sufficiently clear why it found Mr Kayitare's testimony lacked credibility. Accordingly, I must dismiss this application for judicial review.

[6] The sole issue is whether the Board's credibility findings were unreasonable.

II. The Board's Decision

[7] The Board found that Mr Kayitare's testimony overall was evasive and unforthcoming. It cited a number of areas where the evidence was unclear:

- Mr Kayitare did not know who threw the stone at him, and he did not experience any other consequences of having been summoned to testify;
- Mr Kayitare could not definitively identify anyone whom he feared; he mentioned his mother's relatives, yet could not explain why they might wish to harm him. He speculated that they might have expected him to testify against his Hutu uncles, but he had never received any direct threats from them;
- Regarding an incident in 1995, when he was struck from behind, Mr Kayitare could not say who was responsible, but said it was either his mother's or his neighbour's relatives;
- Mr Kayitare testified that a person was calling and threatening his wife in Rwanda. He speculated that this person could be associated with the Gacaca courts, but he had personally never received any threats. He said that his wife had complained to police, but her letters did not mention this fact.

[8] Finally, the Board found that circumstances had changed since Mr Kayitare left Rwanda. The Gacaca courts have wound up. In any case, Mr Kayitare had not personally suffered any particularly appalling treatment.

III. Were the Board's credibility findings unreasonable?

[9] Mr Kayitare submits that the Board seemed to have made a general, adverse credibility finding against him, and yet simultaneously found that a number of the incidents he testified about had actually occurred. He suggests that the Board's reasons were inconsistent and confusing, contrary to its obligation to provide a clear rationale for making adverse credibility findings.

[10] I agree that the Board's decision could have been clearer. By stating that Mr Kayitare's testimony "overall" lacked credibility, the Board suggested that it did not believe any of his evidence. However, it seems to have accepted that someone threw a stone at Mr Kayitare in 2008 and that he had been assaulted in 1995. The Board referred to documents supporting these incidents – photos of the damaged car window and a hospital record – and made no adverse comment on them.

[11] As for the other evidence that concerned the Board, namely Mr Kayitare's inability to identify the alleged agents of persecution, the Board noted the various possibilities Mr Kayitare had identified – his mother's relatives, his neighbour's relatives, or someone else. Here, Mr Kayitare's evidence was clearly inconsistent and justified an adverse credibility finding.

[12] As I read the Board's decision, it appeared to accept that Mr Kayitare had experienced some adverse events, particularly an assault in 1995 and a stone-throwing in 2008. However, it doubted Mr Kayitare's testimony that he was the object of any persecution. On that issue, it found that Mr Kayitare's evidence "overall" was not credible. Mr Kayitare had simply been unable to identify any agent of persecution. He suggested various possibilities but his evidence was inconsistent.

[13] Therefore, I cannot conclude that the Board erred when it found Mr Kayitare's testimony not to be credible. Its conclusion was not unreasonable based on the facts and the law.

[14] The Board went on to conclude that there were no compelling circumstances that would justify granting Mr Kayitare refugee protection given the improved circumstances in Rwanda. However, that was an alternative finding premised on the assumption that Mr Kayitare had made out a valid refugee claim. Given the Board's reasonable conclusion that the evidence did not support Mr Kayitare's claim, I need not address the question whether there were compelling circumstances justifying a decision in his favour.

IV. Conclusion and Disposition

[15] In my view, the Board reasonably concluded that Mr Kayitare's testimony did not support his claim for refugee protection. While the Board accepted that Mr Kayitare had experienced some adverse events, it reasonably concluded that he had not identified any particular source of persecution. Accordingly, I cannot find that the Board's decision was unreasonable and must

dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3677-12

STYLE OF CAUSE: CHARLES KAYITARE
v
MCI

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: February 7, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 12, 2013

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