

Federal Court



Cour fédérale

**Date: 20140724**

**Docket: IMM-3643-13**

**Citation: 2014 FC 743**

**Toronto, Ontario, July 24, 2014**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**BANI-XAVIER BANGURA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision dated May 3, 2013 of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB]. The RPD determined that the applicant, Bani-Xavier Bangura, was not a convention refugee or a person in need of protection under sections 96 and 97 of the IRPA.

[2] The applicant is a 25-year-old male citizen of Burundi of Tutsi ethnicity. He states that he was active in a human rights group and became a target of the ruling government after attempting to report a kidnapping he witnessed of a member of an opposing party by a militia group affiliated with the government. The victim was subsequently found to have been executed.

[3] He alleges that after attempting to involve the local police force, an administrator of the town and the widow of the kidnapping victim, he became a target of a series of increasingly threatening events, including threats on his life. This led the applicant to seek the assistance of a priest friend to hide him from the authorities and to procure an American visa and other documents necessary to leave the country.

[4] In a series of discrete steps between November 2 and December 26, 2012, the applicant described how the priest helped him to remain hidden, including transporting him around to different places hidden in a potato sack. He testified that the priest undertook all of the necessary activities on his behalf to obtain his American student visa and a national identity card, finally delivering him to the airport for his flight to the United States on December 26, 2012. A few days later the applicant arrived in Canada, where he claimed refugee status.

[5] The RPD found with good cause that the applicant was not credible. His testimony was demonstrated to be seriously untruthful in relation to a constantly changing narrative on a wide range of issues. These failures of credibility included:

- A. How the priest could have obtained his American visa which necessitated the personal participation of the applicant, such as attending at the American embassy for an interview.

- B. How the applicant obtained his national identity card, ultimately claiming in his final version on this subject that officials visited him at his home to take his fingerprints and then have the priest attend at another municipality for issuance of the documents.
- C. Inconsistencies regarding his very specific testimony about his other movements to the first family's house, then to the second family's house, and then to the airport, all of which were carried out in the greatest of secrecy, only to have him travel to the American embassy in broad daylight.
- D. Inconsistencies in his testimony to the RPD that did not match his PIF narrative, such as when he stated that on his way to the airport the priest informed him that he had obtained an American student visa when the applicant was required to obtain it.
- E. Inconsistencies as to how the applicant had obtained an attestation d'identité complète when the applicant explained that after the priest's friend had come to the house to take the applicant's fingerprints, he had gone to the municipality in order to have the national identity card and attestation d'identité complète issued.
- F. Inconsistencies in the failure by his human rights group of 50 participants who the applicant stated supported him, but failed to assist him in his investigation into the kidnapping or to mention the kidnapping incident in their attestation on his behalf.
- G. The introduction of two letters, one from a radio station to whom he alleges having reported the kidnapping and the other from the priest who had helped him leave the country. Both undated documents were handwritten on ordinary paper, not bearing an official letterhead or otherwise attested to in some form to demonstrate or suggest authenticity.

[6] As a result of the numerous inconsistencies, omissions and changes in his narrative, the RPD found it more likely that the applicant was at liberty during that time period, and therefore able to procure identity documents and prepare for his departure. Since the applicant did not go into hiding, the RPD found that there were no grounds for his alleged subjective fear. The applicant did not seriously contest the reasonableness of these findings on credibility.

[7] Rather, the applicant made two principal submissions, only one of which he pursued during argument. He submitted that the RPD applied an elevated or incorrect standard of risk, claiming that the RPD required him to prove a "particular risk" (as translated from the reasons provided in French), at paragraphs 47 and 49:

[47] ... Par conséquent, le tribunal a évalué si le demandeur ferait l'objet de persécution ou de risque particulier en raison de son profil comme membre de l'association.

...

[49] ... Également, le demandeur n'a pas déposé des éléments de preuves démontrant que les membres d'AC Génocide font face à un risque particulier.

[8] In making these statements, I find that the RPD was simply pointing out that the applicant's evidence in support of his contention that he would face risks as a member of the organization AC Génocide Cirimoso consisted almost entirely of vague statements about the difficulties NGOs face operating in Burundi. The Member found that the applicant provided no evidence of any risk faced by members of the group. At paragraph 48, it is clear that the Board did not accept the applicant's statements that he was an active and implicated member of the Association. He was unable to answer questions regarding its activities, such as how it fulfilled its mandate of sensitizing the community on genocide or other details of how the associations' meetings were conducted, or subject matters discussed. This evidence contradicted that provided in a letter by the group.

[9] The term "particular" was employed simply to emphasize a lack of evidence of any risk at all. "A particular risk" was not intended therefore, as a substitute meaning for a "well-founded fear" or a risk of being in need of protection. Moreover, even if I were to conclude that the Board misspoke itself on the test, there is no basis in the evidence to support any claim by the applicant for refugee status under sections 96 or 97 of the Act.

[10] As a result, I can only conclude that the RPD's decision was justified and fell within a range of reasonable outcomes.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed; and
2. No question is certified.

"Peter Annis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3643-13

**STYLE OF CAUSE:** BANI-XAVIER BANGURA V. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 24, 2014

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

**DATED:** JULY 24, 2014

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