

Federal Court



Cour fédérale

Date: 20150304

Docket: IMM-1436-14

Citation: 2015 FC 269

Montréal, Quebec, March 4, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**JEAN CLAUDE MUHENDANGANYI
CLAUDE STEPHANE NICITEGETSE
MICHAELLA ISHIMWE
NATHALIE NDAYISHIMIYE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The principal claimant in this case, Mr. Muhendanganyi, a citizen of Burundi, alleges that he fears return to that country because he witnessed a murder with political overtones of a member of his own political party. The goons who committed the murder were aware that he saw them and were persecuting him.

[2] The other claimants are his children, whose fear of persecution if returned is based on his own.

[3] The Refugee Protection Division of the Immigration and Refugee Board of Canada found that he was not credible. The member was not satisfied that he had witnessed a murder and was not satisfied that he was a member of the political party in question, the Movement for Solidarity and Democratic Political Party.

[4] The applicant submits that he was denied natural justice in that the interpretation at the hearing before the Board was inadequate. He was testifying in Kirundi. The interpreter, who was translating from English into Kirundi, and then back again to English, had Kinyarwanda as his mother tongue. Although the languages are similar, they are not identical and confusion arose during the hearing.

[5] The second issue advanced is that the member placed too much weight on the port of entry form he signed in which he stated that he was “never” a member of any political party.

I. Analysis

[6] In my opinion, even if there were errors in interpretation, such errors were trifling and do not figure in the decision. On the political party issue, given that he personally signed a form at the port of entry in which he declared that he was “never” (“jamais”) a member of a political party, it was not unreasonable for the Board member to take that fact into account and, coupled

with his lack of knowledge of the party, as well as his vacillation as to his own role within it, to find that the applicant was not credible.

[7] Issues of procedural fairness are beyond the scope of the standard of review. Put another way, the standard is correctness, not reasonableness. The quality of the translation is a matter of procedural fairness (*Zaree v Canada (Citizenship and Immigration)*, 2011 FC 889 at para 7).

[8] There was considerable discussion at the hearing as to whether the applicant waived the inadequacy of the translation by failing to raise it at the earliest opportunity, and whether it is necessary to establish that the failings of interpretation were material to the Board's decision.

[9] It is not necessary to reach a conclusion in this case. The authorities, including the leading case of *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, were recently reviewed by Madam Justice Gleason in *Mah v Canada (Citizenship and Immigration)*, 2013 FC 853.

[10] In *Mohammadian*, it was pointed out that the interpretation need not be perfect as long as it is "continuous, precise, competent, impartial and contemporaneous" (paras 4, 6). Although Madam Justice Gleason leaned to the view in *Mah* that errors need not be material to the outcome of the decision (compare this with the decision of Mr. Justice Scott, as he then was, in *Yousif v Canada (Citizenship and Immigration)*, 2013 FC 753 at paras 44 and 45), she went on to say at paragraph 24 that the claimed errors must be more than trifling.

[11] After the decision in this case was rendered, the recording of the hearing was audited by a Kirundi speaker. She points out a few errors which can only be considered as minor.

[12] Furthermore, the fact that Mr. Muhendanganyi had signed a form saying he had “never” been a member of a political party is not attributable to any interpretation error. He said that he had intended to raise the matter later. This is illogical as his membership in the party was one of the two prongs of his refugee claim.

[13] The applicant relies upon the decision of *Diaz Puentes v Canada (Citizenship and Immigration)*, 2007 FC 1335. In that case, Mr. Justice Campbell raised concerns about reliance on omissions in port of entry notes. However, reliance on that case is misplaced. Mr. Justice Campbell was referring to notes taken by an officer at the port of entry. That is quite different from the present case in which the port of entry form was one signed by the applicant himself.

II. Certified Question

[14] No certified question was proposed by the parties and none arises.

ORDER

FOR REASONS GIVEN;

THIS COURT ADJUDGES that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1436-14

STYLE OF CAUSE: JEAN CLAUDE MUHENDANGANYI ET AL V MCI

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 24, 2015

JUDGMENT AND REASONS: HARRINGTON J.

DATED: MARCH 4, 2015

APPEARANCES:

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