Date: 20060629

Docket: IMM-6821-05

Citation: 2006 FC 826

Ottawa, Ontario, June 29, 2006

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

LIONEL AUGUSTE NTUNZWENIMANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

INTRODUCTION

[1] There is no doubt that appreciation of the evidence is a matter for determination by the Board, however, in this case it neglected to distinguish the documentary evidence as I have stated above. It also failed to relate the evidence before it to the particular circumstances of this applicant. …

Since the Board failed to consider the evidence in light of the "particular situation" of the applicant, I am satisfied that it committed an error in law. The application for judicial review is allowed. The decision of the Board is set aside….

Jeyachandran v. Canada (Solicitor General),[1995] F.C.J. No. 487 (QL), as Mr. Justice McKeown stated at paragraph 9.

NATURE OF JUDICIAL PROCEEDING

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated October 19, 2005, which held that the applicant was not a Convention refugee or a person in need of protection.

[3] Mr. Lionel Auguste Ntunzwenimana is seeking judicial review of the impugned decision under section 18.1 of the *Federal Courts Act*, SOR/98-106.

FACTS

[4] The applicant, Mr. Lionel Auguste Ntunzwenimana, is a citizen of Burundi. He alleges that he has a well-founded fear of persecution because of his ethnic origin and the fact that the rebels have targeted him for his imputed political opinions.

[5] Mr. Ntunzwenimana alleges that on October 15, 2004, his country's army found rebels near the apartment where he was living. Some were arrested and imprisoned. The rebels of the Forces nationales de liberation (FNL) Palipehutu, thinking they had been denounced by the local people, decided to seek revenge. In the night of October 24, 2005, the rebels attacked Mr. Ntunzwenimana's neighbourhood. He escaped with his suitcase through the rear of the house. The rebels threw a grenade at him when they saw him running away.

[6] On the morning of October 24, 2004, Mr. Ntunzwenimana went to the church and met with the priest, who advised him to leave the country. The priest helped him to obtain a United States visa. He also gave him some money to enable him to leave the country. With a passport issued in October 2004, Mr. Ntunzwenimana left Burundi on October 31, 2004, travelling through Kenya and Holland before arriving at New York on November 1, 2004. Someone whose name is unknown to him came to get him at the airport and gave him instructions on how to get to Canada. Mr. Ntunzwenimana arrived in Canada on November 3, 2004, and immediately expelled his intention to seek Canada's protection.

[7] M. Ntunzwenimana's family is dispersed throughout the world. His father is in Montréal, where he too has claimed refugee status. His mother is in Bujumbura with some of his brothers and sisters, while one of his sisters has been accepted as a refugee in Norway.

IMPUGNED DECISION

[8] The Board rejected Mr. Ntunzwenimana's refugee claim since he had not discharged his onus of demonstrating that he had a well-founded fear of persecution or that he would risk his life or cruel and unusual treatment or punishment should he return to Burundi.

[9] The Board found that Mr. Ntunzwenimana was not credible in regard to his subjective fear since his conduct was incompatible with that of a reasonable person alleging fear of persecution in his country and seeking international protection. He did not seek the protection of

Burundi before claiming international protection and did not seek refuge elsewhere in Burundi. Also, Mr. Ntunzwenimana did not make a refugee claim in Holland or the United States.

POINTS AT ISSUE

[10] Did the Board err in assessing Mr. Ntunzwenimana's credibility?

[11] Did the Board err in finding that Mr. Ntunzwenimana should have sought protection in his own country before claiming international protection?

ANALYSIS

Statutory framework

[12] Section 96 of the Act provides that a person is a refugee if that person fears persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut

themself of the protection of each of those countries; or	se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[13] Subsection 97(1) of the Act reads as follows:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

that country,	
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Standard of review

[14] Purely factual questions such as credibility and the issue of State protection, decided by an administrative tribunal, are reviewable according to the standard of patent unreasonableness (*Harb v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 39, [2003] F.C.J. No. 108 (QL), at paragraph 14; *Ontario Assn. of Architects v. Assn. of Architectural Technologists of Ontario*, [2003] 1 F.C. 331 (F.C.A.), 2002 FCA 218, [2002] F.C.J. No. 813 (QL), at paragraph

31; *Stadnyk v. Canada (Employment and Immigration Commission)* (2000), 257 N.R. 385 (F.C.A.), [2000] F.C.J. No. 1225 (QL), at paragraph 22; *Jaworski v. Canada (Attorney General)* (2000), 255 N.R. 167 (F.C.A.), [2000] F.C.J. No. 643 (QL), at paragraphs 49 and 72).

Credibility

[15] Although there is a presumption that the Board has examined all of the evidence, that presumption is rebuttable.

[16] In this case, to assess the credibility of Mr. Ntunzwenimana's story, the Board discussed all of the evidence adduced before it. The most recent documents concerning the conditions in the country (Burundi) were not examined and assessed with Mr. Ntunzwenimana's story.

[17] At the hearing, Mr. Ntunzwenimana provided some explanations that are consistent with the most recent information concerning the conditions of the country as they affect him.

As to the evidence related to the availability of protection in the state of origin, the following elements should be considered

[18] In *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 150 N.R. 232, [1992] F.C.J. No. 1189 (QL), the Court ruled:

> Where, however, the state is so weak, and its control over all or part of its territory so tenuous as to make it a government in name only, as this court found in the case of *Zalzali v Canada (Minister of Employment and Immigration)* [1991] 3 FC 605, a refugee may justly claim to be unable to avail himself of its protection. Situations of civil war, invasion or the total collapse of internal order will normally be required to support a claim of inability.

[19] *Mendivil v. Canada (Secretary of State)* (1994), 23 Imm. L.R. (2d) 225, [1994] F.C.J. No. 2021 (QL), a decision that the Federal Court of Appeal handed down after *Villafranca*, *supra*, is also enlightening. In that case, the Court's majority ruled as follows:

> The question the Board members should address in assessing the evidence as a whole is whether, on the facts as shown, it can still be assumed that the state of Peru is able to protect the claimant or whether such a presumption has been rebutted by him. Isolated cases of persons having been victimized may not reverse the presumption. A state of profound unrest with ineffective protection for the claimant may, however, have reversed it. In such a case, as I understand La Forest J., a "subjective fear of persecution combined with state inability to protect the claimant creates a presumption that the fear is well-founded."
> [Emphasis added]

[20] However, notwithstanding the abundant documentary evidence produced by Mr. Ntunzwenimana concerning the situation in Burundi and the State's inability to protect its citizens, the Board member found that: "Consequently, the panel believes that there was a form of protection available in the capital of Burundi and that, unfortunately, the claimant did not see fit to seek protection from his country's authorities."

[21] Given the Board's error in finding that the protection afforded by the State was sufficient and effective because some armed groups were patrolling in the neighbourhoods of Bujunbura, since it failed to take due account of the evidence showing the contrary, and the Board's apparent failure to take into account the state of profound insecurity prevailing in Burundi because of the State's inability to protect its nationals, the Board committed a reviewable error.

[22] Normally, persecution is understood as an action that emanates from the authorities of a country. Such action may also emanate from groups within the population that do not conform to the standards established by the laws of the country. When acts of a serious or extremely offensive discriminatory nature are committed by the general population, they may be considered persecutions if they are knowingly tolerated by the authorities or if the authorities refuse or are unable to provide effective protection.

[23] The principle governing State protection was laid down by the Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74 (QL), in which the Court held that a state's capacity to protect its citizens is only a presumption which may be rebutted when a claimant presents clear and convincing evidence that the state is unable to protect him. The kind of evidence that could help a court to arrive at such a finding was addressed by Mr. Justice La Forest when he stated, at paragraph 50, that:

> … a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize.

[24] In this case, Mr. Ntunzwenimana testified that the State is unable to protect its citizens, since the many actions of the rebels over the entire territory of Burundi, since 1993, had resulted in thousands of victims, and the State was not and is not capable of stopping this war or resolving the ethnic problem that is the source of these conflicts.

[25] Although a number of agreements have been signed, culminating in the Aroucha agreement, which gave rise to hopes for a cessation of confrontations, the State has proved unable to resolve the ethnic problem and stop the conflicts.

[26] In the case at bar, the Board based its conclusion concerning the availability of State protection solely on a portion of the documentary evidence mentioning that the authorities are pursuing the people in the FNL Palipehutu; that the state apparatus has not broken down or collapsed; that the State is attempting to regulate actions in this country; and that the soldiers conduct surveillance in the applicant's neighbourhood and most neighbourhoods in the capital, and thus that there is some form of protection in the capital of Burundi.

[27] Finally, the Board found that Mr. Ntunzwenimana had failed to exercise his duty to seek the protection of his country of origin.

[28] It is clear that the Board engaged in a discussion that was incomplete in view of the documents that were not examined or discussed, and this means that its finding concerning the protection of the State is unreasonable.

[29] As long as there is a moratorium against Burundi — Canada considers the life of the people of Burundi completely insecure, as the ethnic conflicts have not ceased and the civil war continues — how can it be found that the State of Burundi could guarantee effective protection to its citizens? More precisely, in Mr. Ntunzwenimana's case, the situation is clearly one in

which his protection would in all probability be precarious, in the sense that it is beyond what is considered feasible by the State.

[30] The Board found that "[b]ased on all of the documentary evidence that the panel has seen" (without citing the documentary evidence in support of its conclusion) there is nothing that would suggest a breakdown of the State.

[31] In the first place, the Board did not examine or cite in its decision the conflicting evidence indicating that notwithstanding the government's efforts in this regard, there are still some major problems.

[32] This contradictory documentary evidence was referred to in a document, "Everyday Victims: Civilians in the Burundi war" (Human Rights Watch, December 2003):

> (a) The civilian population and individual civilians generally are to be protected against attack. Civilians or civilian objects may not be the object of deliberate attack. An attack is indiscriminate and in violation of international law....
>
> (b) In the early morning of April 23, FNL combatants attacked the national police brigade at Kabezi. Other FNL combatants ambushed soldiers en route to reinforce the brigade, occasioning an exchange of fire in which several civilians were killed. Soldiers then deliberately killed civilians in and near the ambush site. <u>These killings illustrate the disregard of civilian lives by both government soldiers and FNL combatants as well as the deliberate killings of civilians by government soldiers.</u> [Emphasis added]
>
> (c) At some point during the exchange of fire between government soldiers and FNL combatants or shortly thereafter, the soldiers reportedly turned their guns directly on the civilians who were streaming down the road towards them.

(d) National authorities made no comment on the Kabezi killings. ... A number of eyewitnesses to the events have been summoned by soldiers and have fled the area, making establishing the truth more difficult. [Emphasis added]

(e) The next day the military commander of Socarti camp and the zone head held a meeting with local residents at their request. According to one witness who attended the meeting, the commander said that if there were another policeman or administrative official killed, "It was the population of Kinama that would pay. I will erase Kinama." Emphasis added]

(f) Members of the Burundian armed forces stationed in relatively small posts around the country lived in close proximity to civilians and often appropriated their property or extorted services from them. Some deliberately killed or otherwise injured civilians in the course of robberies or as punishment for noncompliance with their orders. If such crimes were reported to the commanding officers of the accused, military authorities rarely investigated and, more rarely still, prosecuted such crimes. [Emphasis added]

(g) **Killings and Abductions by the FDD and FNL**

While engaged in their war against government soldiers, combatants of both rebel movements sometimes have deliberately targeted civilians, often because they knew them to have or believed them to have links to the authorities. In other cases, they have killed civilians to demonstrate that government officials could not or would not protect the people of a given area.

(h) In early September FDD and FNL combatants began fighting each other, first in parts of Bujumbura rural, Bubanza, and Muramvya provinces and soon after in the streets of Bujumbura. The forces sometimes engaged in skirmishes, especially at the start in the rural areas, but more recently they have targeted specific persons presumed to be linked to the rival movement. In many cases, the combatants deliberately killed family members or others found in the company of their supposed target. [Emphasis added]

(i) Witnesses can sometimes identify the attackers in these incidents, but often they cannot or will not do so, usually from fear of reprisals. [Emphasis added]

(j) In several cases witnesses reported that soldiers responded to calls for help and intervened to protect them, but more often victims say that the military or police do little or nothing to stop violence by the combatants.... there was at least one part of Bujumbura where the FDD combatants rather than city officials controlled the movement of citizens. [Emphasis added]

(k) In the documentary evidence, "Burundi: Suffering in Silence: Civilians in Continuing Combat in Bujumbura Rural" (Human Rights Watch Briefing Paper, June 2004):

> Government soldiers operating in Bujumbura rural include units stationed at fixed military posts, who generally spend weeks or months in the same place and who often become known to the local population, as well as mobile units sent in for temporary missions who are rarely in any one place very long. Rebels may belong to the FDD led by Pierre Nkurunziza or to the FNL led by Agathon Rwasa. With different forces operating in the same area, those accused of abuses often claim innocence and assign the blame to their opponents, as in the case of rape at Kirombwe described above. The FDD accuse the FNL and vice versa. Even between the supposedly allied forces of the government army and the FDD, each side accuses the other of responsibility for abuses.
>
> If perpetrators of crimes and their military units cannot be identified, then accountability becomes impossible. [Emphasis added]

[33] This Court has held that all of the documentary evidence must be assessed as a whole, and not examined piecemeal (*Owusu v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 33 (F.C.A.) (QL); *Lai v. Canada (Minister of Employment and Immigration)* (1989), 8 Imm. L.R. (2d) 245 (F.C.A.), [1989] F.C.J. No. 826 (QL); *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.), [1991] F.C.J. No. 228 (QL)). Where the Board has not so proceeded, the Court's intervention is warranted.

[34] This Court therefore holds that the Board erred in stating that Mr. Ntunzwenimana had not discharged his obligation to seek the protection of his country of origin.

That the applicant might have an internal flight alternative

[35] The Court holds that the Board also erred when it found, based on prior documentary evidence, that Mr. Ntunzwenimana's "last move was within the capital but dates back to July 2003. Following the events that he alleges occurred in October 2004, the claimant did not move to another house, city or state in the country. Observing that the authorities are trying by various means to eliminate the FNL Palipehutu rebels, the panel believes that, in addition to the fact that he did not seek the state's protection, he could at least have moved to another city or state in his country to escape the threat of the FNL Palipehutu."

[36] Yet the recent documentary evidence pointed in the opposite direction. If the Board had bothered to comment on this evidence, it would in all probability have found that an internal flight alternative in Burundi was not a conceivable solution for Mr. Ntunzwenimana in his particular situation, as evidenced by the objective documentation.

[37] The case law is well settled: in order to find that an internal flight alternative (IFA) exists, a two-pronged test must be passed.

[38] The Board must be persuaded on a balance of probabilities that Mr. Ntunzwenimana did not seriously risk persecution in Burundi and that, in view of all the circumstances, including those peculiar to him, the situation in Burundi was such that it would be unreasonable for Mr. Ntunzwenimana to seek refuge there.

[39] In *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 (C.A.) (QL), Mr. Justice Linden made the following comment about the second prong of the internal flight alternative test:

> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable.

[40] The Board did not rule on the third country issue since it failed to pay any heed to Mr. Ntunzwenimana's explanations and the descriptions of the present situation in Mr. Ntunzwenimana's country of origin.

That Mr. Ntunzwenimana was not credible in regard to his subjective fear and that he did not seek protection from his country's authorities

[41] To make this finding, the Board based itself on the fact that Mr. Ntunzwenimana had managed to escape from his apartment during the attack of the FNL rebels but "was able to finish packing his suitcase and escape by the back door of the house". (See *Yé v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 584 (F.C.A.) (QL), *per* Mr. Justice MacGuigan of the Federal Court of Appeal.)

[42] But Mr. Ntunzwenimana never stated that he had packed his suitcase. For persons living in a country where a civil war is raging, and who are in constant survival mode, it is quite usual to have a minimum of things ready to take away.

Mr. Ntunzwenimana did not seek protection… from other countries by demonstrating the reasons for it

[43] Mr. Ntunzwenimana left Burundi on October 31, 2004, travelling through Holland for a few hours and spending a day in the United States while in transit.

[44] In *Papsouev v. Canada (Minister of Citizenship and Immigration)*, (1999) 168 F.T.R. 99, [1999] F.C.J. No. 769, the claimant stayed eight days in the United States (and not only one day as in the case of Mr. Ntunzwenimana). Mr. Justice Rouleau made the following comment:

> No doubt many authorities support the position that a Board may take into account the delay in making a claim for refugee status to impugn a claimant's credibility but all of the jurisprudence cited in referring to this principle does not assist since it was not the primary reason for denying the claim. It is usually a corollary reason to what is considered to be more central for refusing a claimant.
>
> Therefore, even if the Board found that the applicants were not credible and rejected their account of what happened to them in Russia because of their delay in making their refugee claim, it still had to consider or comment on the central question of whether or not the applicants had a well-founded fear of persecution in Russia as a result of their religion….

[45] In *Gavryushenko v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1209 (QL), the applicant spent three weeks (21 days) in the United States. The Court, referring to *Ilie v. Canada (Minister of Citizenship and Immigration)* (1994), 88 F.T.R. 220, [1994] F.C.J. No. 1758 (QL), cited comments by Professor Hathaway in *The Law of Refugee Status* (Toronto: Butterworths, 1991):

> The fact that a person does not seize the first opportunity of claiming refugee status in a signatory country may be a relevant factor in assessing his or her credibility, but it does not thereby constitute a waiver of his or her right to claim that status in another country.

[46] Following the pronouncements of Mr. Justice Rouleau in *Dcruze v. Canada (Minister of Citizenship and Immigration)*, (1999) 171 F.T.R. 76, [1999] F.C.J. No. 987 (QL), the Court held that a delay of two years and six months between the applicant's departure from Bangladesh and his refugee claim in Canada was not as great as in *Cruz v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1247 (QL) (a seven-year delay) or in *Safakhoo v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 440 (QL) (a five-year delay) and should not have been decisive in that case.

[47] The Board stated that it understood that Mr. Ntunzwenimana could come to Canada to join his father, who is undergoing medical treatment in Canada, but, as a person in distress, he should claim protection in the first third country he enters.

> There is no requirement in the Convention that a refugee seek protection in the country nearest her home, or even in the first state to which she flees. Nor is it requisite that a claimant travel directly from her country of first asylum to the state in which she intends to seek durable protection.
>
> (See *Gavryushenko*, *supra*)

[48] In *Soueidan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 956, [2001] F.C.J. No. 1397 (QL), Mr. Justice Blais stated:

> However, earlier decisions indicate that the delay in making a claim is usually only one of many reasons for concluding that a claimant lacks credibility and does not generally, by itself, constitute a sufficient basis for dismissing a claim.

[49] Therefore, the manner in which the Board proceeded was patently unreasonable, in view of the evidence that was not, unfortunately, examined adequately, irrespective of the conclusion the Board would have reached. However, it was necessary for the Board to proceed logically,

even if its method had differed from that of the Court, to show that it had assessed the major factors.

[50] The Board erred several times concerning the status of Mr. Ntunzwenimana's father; first, the father is not an advisor to his country's embassy in the United States, but simply an official with duties in connection with the Ministry of Foreign Affairs and Co-operation.

[51] Furthermore, Mr. Ntunzwenimana's father never came to Canada to receive medical treatment. Mr. Ntunzwenimana's father is a refugee claimant in Canada and, at the time when Mr. Ntunzwenimana entered Canada, he was in the United States.

[52] Also, Mr. Ntunzwenimana's mother, as a result of the bomb attack of June 24, 2004, no longer lives in the family residence and no longer works at the Ministry of Finance, as the Board stated. The Board's statement that Mr. Ntunzwenimana could have been protected due to his parents' positions illustrates a dearth of specific information.

[53] In *Muzychka v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 279 (QL), Madam Justice Tremblay-Lamer stated:

> Indeed, it is clear law that overlooking or excluding relevant evidence constitutes a reviewable error of fact.

[54] In *Jeyachandra*, *supra*, Mr. Justice McKeown stated:

> There is no doubt that appreciation of the evidence is a matter for determination by the Board, however, in this case it neglected to distinguish the documentary

> evidence as I have stated above. It also failed to relate the evidence before it to the particular circumstances of this applicant. …
>
> Since the Board failed to consider the evidence in light of the "particular situation" of the applicant, I am satisfied that it committed an error in law. The application for judicial review is allowed. …

[55] Although there is a presumption that the Board has examined all of the evidence, that presumption is rebuttable.

CONCLUSION

[56] Therefore, the Board's find on credibility is arbitrary in view of the objective and subjective evidence.

[57] In view of the foregoing, the Court rules that there are serious reasons to refer the matter back to the Board for redetermination by a differently constituted panel.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review is allowed and the matter is referred for redetermination back to a differently constituted panel.
2. No serious question of general importance is certified.

"Michel M.J. Shore"
Judge

Certified true translation
Richard Fiddler

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6821-05
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APPEARANCES:

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