

**Date: 20071114**

**Docket: IMM-1912-07**

**Citation: 2007 FC 1193**

**Edmonton, Alberta, November 14, 2007**

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

**BETWEEN:**

**FREDDY BIHOZAGARA CYOYA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant is a citizen of Rwanda who makes a claim for protection on the principal ground that, as a political dissident, he fled Rwanda in 2004 because of his subjective and objective fear that he will be persecuted by the Rwandan government should he return. The Refugee Protection Division (RPD) found the Applicant's evidence to be credible; indeed, the RPD was very complimentary of the Applicant's honesty. Nevertheless, the RPD decided to reject the Applicant's claim because he failed to produce sufficient objective evidence to support his subjective fear. For the reasons which follow, I find that this decision is made in reviewable error.

[2] Before the RPD, the Applicant produced objective evidence on four factors to support his present subjective fear of the government of Rwanda: between 2001 and 2004 he authored and operated an internet discussion group (the “MSN”) in which he published material critical of the government; the government in power in 2004 is presently in power and is repressive; the government will identify him and his past conduct upon his return because he is an undisputed member of a prominent Rwandan family; and, most importantly, in 2004 he was advised not to return to Rwanda by a family friend, Mr. Damascene, who worked in Intelligence in Rwanda.

[3] With respect to his identity as a political dissident, the Applicant was asked the following question and gave the following answer:

Q: Okay. Now, did you really openly criticize the Rwandan government?

A: Yes.

(Transcript, p.13);

[4] As recounted by the Applicant, Mr. Damancene’s statement was:

With your ideas, you can’t go back to Rwanda, not in your frame of mind, not in your present frame of mind.

(Transcript, p.12)

[5] Evidence of present in-country conditions in Rwanda includes the following:

Significant human rights abuses occurred, although there were important improvements in some areas. Limits on political party activities continued to restrict citizens’ rights to peacefully change their government. There were reports that security forces committed extrajudicial killings and tortured and abused suspects with impunity. Prison and detention center conditions remained harsh despite positive measures taken by the government. Security forces

arbitrarily arrested and detained persons, including street children and other “vagrants”, and members of Jehovah’s Witnesses. Prolonged pretrial detention, limits on judicial independence, unfair public trials, and the holding of former political figures – including former President Pasteur Bizimungu – remained problems. There continued to be limits on freedom of speech, press, and association. Government corruption and restrictions on civil society remained problematic. In addition, societal violence and discrimination against women, trafficking in persons, child labor, and restrictions on labor rights continued to be problems. (Tribunal Record, p.155)

The constitution provides for freedom of speech and of the press “in conditions prescribed by the law”; however, the government at times restricted these rights in practice by enforcing overly broad and vaguely defined laws. International press freedom NGOs reported instances in which the government harassed, convicted, fined, and intimidated independent journalists who expressed views that were deemed critical of the government on sensitive topics, or who were believed to have violated journalistic standards monitored by a not-wholly independent medical regulatory council. Some journalists practiced self-censorship. (Tribunal Record, p.165)

[6] With respect to the Applicant’s objective evidence, the RPD had this to say:

With respect to the discussion group on MSN [sic], the topics that the claimant told us about are certainly lively topics, as far as Rwanda is concerned [young entrepreneurs, lack of freedom of expression, sexuality, HIV AIDS, liberation of women; Transcript, p.12, p.22]. I can understand that intelligence officers in Rwanda might want to monitor discussion groups like that on the internet. So it makes sense to me that your father’s colleague, Mr. Damascene, would have, or might well have, known about that discussion group. I can understand that he was giving you a warning to be careful. But I see nothing in the subject that was, in fact, directly political and of such a sensitive nature that it would lead to a serious investigation by the Rwandan authorities.

The group was active until 2003, maybe 2004. There is no evidence that it has been active or alive since then or that anybody involved in that discussion group has suffered any negative consequence in Rwanda or upon returning to Rwanda. I have no evidence to

conclude that at this point in time the Rwandan authorities would consider you a serious threat because of those activities.

(Emphasis added)

(RPD Decision, pp.3-4)

[7] In my opinion, the RPD failed to properly evaluate the evidence presented in four respects. First, at the time the Applicant fled Rwanda, the Applicant's activities were directly political in opposition to the government. Second, Mr. Damascene's statement establishes that the government considered the Applicant's activities as directly political and a threat against its interests. Third, the government in Rwanda continues to repress political opposition; the RPD's opinion that the Applicant would not be of interest to the government should he return is sheer speculation. And fourth, with respect to the prospective risk of persecution to the Applicant if he returns to Rwanda, the RPD judged the evidence by too high a standard. It is not necessary for the Applicant to establish that the Rwandan authorities would consider him "a serious threat" because of his activities up to 2004; it is only necessary for him to establish that there is more than a mere possibility that he would suffer persecution for these activities should he return. In this respect, the RPD's finding is an error in law.

[8] As a result, I find the RPD's decision is made in reviewable error.

**ORDER**

Accordingly, I set aside the RPD's decision, and refer this matter back for redetermination by a differently constituted panel.

There is no question to certify.

"Douglas Campbell"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1912-07

**STYLE OF CAUSE:** FREDDY BIHOZAGARA CYOYA

v.

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Edmonton

**DATE OF HEARING:** November 14, 2007

**REASONS FOR ORDER  
AND ORDER BY:** Campbell J.

**DATED:** November 14, 2007

**APPEARANCES:**

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