

Federal Court



Cour fédérale

Date: 20121108

Docket: IMM-3015-12

Citation: 2012 FC 1304

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, November 8, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

VENUSTE MUPENZI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated February 29, 2012, under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), rejecting the applicant's claim for refugee protection because of the existence of serious grounds that the applicant had been complicit in crimes against humanity between the months of April 1994 and July 1994.

Facts

[2] The applicant is a citizen of Rwanda from a Hutu father and a Tutsi mother. He alleges the following facts in support of his application.

[3] In 1991, he became a member of the Democratic Republican Movement (the DRM), a conservative Hutu party, led by Faustin Twagiramungu. From October 1992 to April 6, 1994, he apparently also worked at Radio Rwanda as a journalist under the name Venuste Mupenzi. He also used the name Venuste Basinyize only a few times while on the air at Radio Rwanda when he was a sports commentator in this institution.

[4] During the period from April 1994 to July 1994, the applicant had been under the pressure of the military, who controlled the premises of Radio Rwanda. He stated that, during this period, it was impossible for him to leave the premises without putting his own safety at risk. It should be noted that these premises had also been his normal place of residence provided by his employer since he was hired. It was not until the army of the government in place left the premises of Radio Rwanda, after the troops of the Rwandan Patriotic Front had advanced, that he was able to leave the premises with the other employees of Radio Rwanda under the protection of the army of the regime in place.

[5] He went to the Democratic Republic of Congo in July 1994. Then he went to Belgium on August 29, 1996, and made a refugee claim. He used the name Venuste Basinyize in Belgium and it was under that identity that he obtained refugee status in Belgium in 1997.

[6] On March 10, 2008, the applicant left Belgium and requested refugee status in Canada. After he arrived in Canada, he was detained for identification purposes. He gave false identification at the point of entry because he had been influenced by a person who had helped him to go to Canada. The applicant subsequently provided proof of identity for Venuste Mupenzi, which was his real identity.

[7] The applicant claimed to have a well-founded fear of persecution both in Rwanda and in Belgium, on the one hand, because of Hutu extremists who allegedly accused him of spying on the political leaders of the diaspora on behalf of the government in Kigali and, on the other hand, because of Tutsi extremists who criticized him for asking embarrassing questions to the Rwandan leaders, including President Kagame.

Panel's decision

[8] For several reasons, the panel doubted the applicant's credibility as to whether he had in fact been a member of the DRM political party from 1991 until he left Rwanda in July 1994. Initially, the applicant stated in his original Personal Information Form (PIF) that he had never been part of a political organization and he never provided a reasonable explanation for this discrepancy. The panel noted that the applicant made a statement that he confirmed to be true, then stated that it was not because he was under the negative influence of an acquaintance.

[9] Further, it is implausible that, if he was an important member of the DRM, he would seek refuge on the first day of the genocide in the offices of Radio Rwanda, which was calling for the murder of members of the DRM. It is also implausible that he worked at Radio Rwanda without any problems and even followed the genocidal government in exile when his colleagues knew about his involvement with the DRM.

[10] The panel also found that the applicant's credibility was undermined by the applicant's statement that he had allegedly worked at Radio Rwanda only under the name Venuste Mupenzi. When confronted with the fact that he had stated in an interview on November 12, 2010, that he had used the name Venuste Basigize on the air at Radio Rwanda, he did not provide a reasonable explanation, stating that he was psychologically confused. Further, he did not provide a reasonable explanation as to why a search performed in Rwanda by the Royal Canadian Mounted Police (RCMP) revealed that no individual named Venuste Mupenzi had contributed to the welfare fund from 1992 to 1994. However, a citizen with the name Venuste Basinyize, born in 1971, had contributed as of November 2, 1993. The panel did not deny the fact that the applicant's name is Venuste Mupenzi, but it found that it was logical to infer from the information analyzed that the applicant could have worked as a journalist at Radio Rwanda from October 1992 to July 1994 under the name Venuste Basingize.

[11] During the genocide, Radio Rwanda was an organization with a limited and brutal purpose because it was impossible, during this period, to separate among its activities those that were legal from those that were not, particularly because they incited violence and murder. Therefore, Radio

Rwanda worked closely with the genocidal authorities in carrying out the genocide. The applicant voluntarily worked with Radio Rwanda and, during this period, his role was to broadcast hate messages.

[12] In addition, the applicant, from April to July 1994, was close to influential people who actively assisted in carrying out the genocide. For example, the father of his girlfriend (who subsequently became his wife) was the right hand man of the eldest son of President Habyarimana, an extremist.

[13] The panel found that it was possible to infer from the evidence on file as a whole that, under the name Venuste Basingize, the applicant personally participated, as a journalist with Radio Rwanda, in spreading information and points of view that, in practice, constituted assisting to commit genocide.

[14] Given its conclusion that there are serious reasons to believe that, from April to July 1994 in Rwanda, the applicant was complicit in crimes against humanity, the panel determined that the applicant could not be a Convention refugee or a person in need of protection, because he was a person covered by Article 1F(a) of the Convention relating to the Status of Refugees (the Convention) and section 98 of the Act.

Issues

- (a) Did the panel err in finding that the applicant was not involved in the DRM?

- (b) Did the panel err in finding that the applicant worked as a journalist at Radio Rwanda under the name of Venuste Basingize?
- (c) Did the panel err in finding that the applicant was close to influential people at the time of the genocide?
- (d) Did the panel ignore the materials submitted by the applicant that showed that the Rwandan authorities recognized him as Venuste Mupenzi?

The standards of review

[15] The correctness standard of review is applicable to the scope of the concept of complicity by association for the purposes of applying Article 1F(a) of the Convention (*Ezokola v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 224, [2011] 3 FCR 417, leave to appeal granted April 26, 2012 (2012 CarswellNat 1173) (SCC), judgment pending, at para 39 (*Ezokola*); *Nsika v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1026, [2012] FCA No 1112, at para 14).

[16] The question of whether the evidence in this case shows that there are serious reasons to believe that the applicant is a person covered by Article 1F(a) of the Convention is a question of mixed fact and law reviewable on a standard of reasonableness (*Dunsmuir v Nouveau-Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 53 (*Dunsmuir*); *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 46; *Multani v Canada (Minister of Citizenship and Immigration)*, 2012 FC 15, [2012] FCA No 25, at para 7; *Ezokola* at para 39).

[17] Reasonableness is mainly concerned with the existence of justification and intelligibility within the decision-making process as well as whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at para 47).

[18] In this case, the applicant does not dispute the panel's finding that there are serious reasons to believe that Radio Rwanda, as an institution, was complicit of genocide and that, from April to July 1994, Radio Rwanda became an organization with a limited, brutal purpose. He also does not dispute that, during the commission of the genocide, a journalist at Radio Rwanda under the name Venuste Basingize was complicit of crimes against humanity under Article 1F(a) of the Convention. Therefore, these matters are not at issue. It is not necessary to consider the principles that apply to the exclusion clause because they are well known and are not called into question in this matter.

[19] If the panel's conclusion that he is the journalist Venuste Basingize is reasonable, it is subject to Article 1F(a) of the Convention.

Analysis

(a) Did the panel err in finding that the applicant was not involved in the DRM?

[20] The applicant argued that it was unreasonable for the panel to find that he was not credible with respect to whether he was involved with the DRM from 1991 until he left Rwanda in July 1994 considering the letter of Mr. Twagiramungu, President of this party at the time, who also confirmed this fact to an officer of the Canadian Border Services Agency (CBSA), who accepted the statement as part of his investigation into the applicant's identity.

[21] The respondent argued that the panel, as a specialized tribunal, has significant discretion in weighing and assessing evidence submitted. It is open to the panel to reject a document if it finds that the underlying facts are not reliable (paragraphs 170(g) and (h) of the Act; *Nijjer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1259, at para 26). Be that as it may, the fact that the applicant may or may not have been a member of the DRM is not relevant and does not avoid the possibility that he could have participated in the genocide. It is the issue of the applicant's identity that is determinative as to the application of Article 1F(a) of the Convention.

[22] I share this opinion. The determinative issue in this case is the applicant's double identity and the fact that he may or may not have been a member of the DRM does not avoid the fact that he could have worked as a journalist at Radio Rwanda under the name Venuste Basingize and could have participated in the genocide. The letter of Mr. Twagiramungu does not establish that the applicant did not use the name Venuste Basingize on the air at Radio Rwanda or that he did not participate in the genocide.

(b) Did the panel err in finding that the applicant worked as a journalist at Radio Rwanda under the name of Venuste Basingize?

[23] The applicant argued that the evidence does not support the panel's conclusion that he worked as a journalist at Radio Rwanda under the name Venuste Basingize, who was a new trainee. To the contrary, the applicant submitted that he had been a journalist and a sports commentator (and not a mere trainee) at Radio Rwanda since 1992 under the name Venuste Mupenzi. However, the applicant admitted that he sometimes used the name Basinyize, not Basingize, on the air at Radio Rwanda to attract people's attention.

[24] The respondent noted that the applicant did not file any evidence from independent sources corroborating his allegation that he worked before and during the genocide as a journalist at Radio Rwanda under the name Venuste Mupenzi. It is implausible that the name Venuste Mupenzi is not mentioned anywhere in the documentary evidence, while applicant claims to have been a long-time employee and made several significant statements on air before and during the genocide. However, there are several similarities between the applicant and the journalist Venuste Basingize. Both had just finished their training at Radio Rwanda at the beginning of the genocide. They spoke on the radio on April 7, 1994. They stayed on the premises of Radio Rwanda during the genocide and the names of their parents are identical.

[25] As for the different ways to write the name Basingize, the applicant submitted that during the hearing before the panel on November 15, 2011, the applicant admitted that it was the same name and that the differences in spelling of that name could be explained by the different pronunciations of it, in his view. Accordingly, it was reasonable for the panel to find that the applicant had used the name Venuste Basingize when he was a journalist at Radio Rwanda. I share this opinion.

[26] As the respondent pointed out, it is implausible that the name Venuste Mupenzi is not mentioned anywhere in the documentary evidence, while applicant claims to have been a long-time employee. Further, the RCMP's investigation showed that the father of an individual named Venuste Basingize has the identical name of that of the applicant. The investigation also showed

that Basiyize's mother's name is Cyibamvunya. In his PIF, his mother's name is Marie Chibamvunya. Thus, the mothers' names are very similar.

[27] Moreover, at the hearing before the panel, the applicant did not give any reasonable explanation for the inconsistency between his testimony and his statement during an interview on the topic of his use of the name Venuste Basiyize on the air at Radio Rwanda when he was 24 years old, his age at the time of the genocide. He was also unable to explain why his name does not appear on the list of people who contributed to the welfare fund at the time where the applicant allegedly worked at Radio Rwanda under the name Venuste Mupenzi, while an individual by the name of Venuste Basiyize, born in 1971, appears on the list.

[28] Given the similarities between the two people, it was reasonable for the panel to find that it was the same person and that the applicant had used the name of Venuste Basingize in calling several times for hatred of and violence during the genocide.

(c) Did the panel err in finding that the applicant was close to influential people at the time of the genocide?

[29] The applicant argued that the panel erred in finding that the applicant was close to influential people at the time of genocide, including the father of his girlfriend, the right hand man of the eldest son of President Habyarimana. This finding is wrong because the applicant testified that he was not close to his father-in-law. In fact, his parents-in-law rejected him because he is a man of mixed origins from a social class that they consider to be inferior.

[30] As the respondent stated, the panel did not find that the applicant was complicit because of his closeness to his father-in-law, but because he personally participated in calling for violence and murder on Radio Rwanda during the genocide under the name of Venuste Basingize on the side of notorious extremists, such as Jean-Baptiste Bamwanga, recognized by the applicant as an extremist who controlled Radio Rwanda. I can find no error on this point that would justify the Court's intervention.

(d) Did the panel ignore the materials submitted by the applicant that showed that the Rwandan authorities recognized him as Venuste Mupenzi?

[31] The applicant submitted that the panel ignored the evidence relating to a travel document with the Rwandan authorities and that he obtained a Rwandan passport issued to him on April 8, 2011, under the name Mupenzi.

[32] The fact of obtaining a Rwandan passport under the name Venuste Mupenzi is not relevant to the panel's decision, because the passport does not prove that the applicant worked at Radio Rwanda under the name Venuste Basingize when he spoke on the air at Radio Rwanda before and during the genocide. As such this document has no probative value.

Conclusions

[33] In summary, the panel's finding as to the applicant's double identity is based on the evidence and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[34] The evidence supports the finding that Mr. Mupenzi used the name Venuste Basingize during the genocide to made several calls for hatred and violence on the air at Radio Rwanda and, therefore, that he contributed to the perpetration of the Rwandan genocide and was complicit in crimes against humanity.

[35] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed.

“Danièle Tremblay-Lamer”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Justice Tremblay-Lamer

DATED: November 8, 2012

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