

Federal Court



Cour fédérale

**Date: 20140930**

**Docket: IMM-5716-13**

**Citation: 2014 FC 928**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, September 30, 2014**

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

**BETWEEN:**

**ALINE NGENDANKAZI, O'NEAL NESTA  
MUDUGU, and LENNY OWEN MUDUGU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. The nature of the matter

[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 of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada, dated August 2, 2013,

rejecting the applicants' claim for refugee protection and determining that they were neither "Convention refugees" nor "persons in need of protection". The applicants submit that the RPD assessed their credibility in an unreasonable manner.

[2] For the reasons set out in the analysis which follows, the application for judicial review is dismissed.

## II. The facts

[3] Aline Ngendankazi (the female applicant) is a citizen of Burundi and a survivor of the conflict between Hutus and Tutsis in 1993 during which many Tutsis were persecuted and killed. According to her testimony, she was also an activist for the AC-Génocide association until 2010.

[4] The evidence adduced shows that inter-ethnic tensions remain very present in Burundi. The army and police, comprised of both Hutus and Tutsis, instill less fear than before, but they do not inspire the people's confidence. Moreover, the Service national de renseignement (SNR) [National Intelligence Service] continues to sow fear throughout the country, as it is considered corrupt and ineffective.

[5] On January 27, 2013, a violent fire tore through the central market in Bujumbura. It was widely rumoured that the fire had been deliberately set. In the aftermath of the fire, a commission of inquiry was held, whose report was made public. The commission determined that the fire was caused by human error rather than arson. The cause of the fire remains nebulous and the report's validity has been questioned. One of the theories rejected by the commission involved the use of fire-accelerant powder.

[6] On January 30, 2013, the female applicant went to a shop owned by her friend, Ali Somji. While she was there, he confided in her that he had sold some flammable powder used to destroy expired medication to an SNR officer. Mr. Somji purportedly told the female applicant that he believed the powder had been used in the fire and that, after the incident, SNR officers stopped returning his calls.

[7] On February 3, 2013, M. Somji was found murdered in his shop. On the premises, the female applicant encountered officers from the SNR. Two days later, the female applicant was questioned about her friend's death and then released.

[8] On February 7, 2013, the female applicant allegedly received an anonymous call threatening her sons with death in the event she was to do anything to destabilise those in power.

[9] On February 15, 2013, the tires of the female applicant's car were slashed.

[10] On February 28, 2013, some SNR officers reportedly went to the female applicant's home to question her maid about the family's daily routine.

[11] On March 14, 2013, the female applicant and her two sons (the male applicants) claim that they were nearly struck by an SNR pickup truck. Following that, the female applicant's sons stayed with their grandfather temporarily for their safety. As for herself, the female applicant found temporary refuge in three different places, namely: Ngagara, Mutanga-Sud and Nyakabiga.

[12] Later, the female applicant, fearing for her life, obtained a visa from the United States. On April 30, 2013, the applicants arrived in the United States. On May 12, 2013, they arrived in Canada and claimed refugee protection.

[13] The applicants fear being killed by the regime in power if they were to return to Burundi; this is based on information the female applicant has regarding the fire in the market.

### III. The RPD decision

[14] The RPD rejected the refugee protection claim by reason of the applicants' credibility. The RPD submits, in particular, that the applicants had not adequately discharged their burden of establishing that there was a serious risk of persecution or that they would be personally subjected to a danger of torture, a risk to their lives, or a risk of cruel and unusual treatment or punishment if they were to return to their country.

[15] The RPD's decision is based entirely on the lack of credibility of the female applicant's testimony. The RPD drew negative inferences based on the following:

1. The female applicant hesitated when she was asked about the family of Mr. Somji, a man whom she described as a long-time friend. The female applicant hesitated when the RPD asked her what the name of her friend's spouse was before finally stating that her name was Assina. Furthermore, the female applicant did not know either the names or ages of her friend's children. She had never met Mr. Somji's family.
2. While in her written testimony the female applicant characterized Mr. Somji as a long-time friend, during her examination she stated that she had maintained a business relationship with him.

3. The female applicant indicated having met Mr. Somji's cousins and brothers on February 4, 2013. When the RPD asked her how she knew they were his cousins and brothers, she replied that she had met them before, thus adjusting her testimony.
4. The female applicant did not provide any documentary evidence of her relationship with Mr. Somji.
5. The female applicant was unable to say how the SNR had learned of the revelations that had been made to her by Mr. Somji. She mentioned that she had not revealed the contents of the conversation to the SNR but in her Basis of Claim form she stated that she [TRANSLATION] "had alluded to Mr. Somji's concerns". The female applicant has not clearly established that the authorities are aware of what Mr. Somji reportedly told her. In addition, the RPD did not believe the female applicant when she indicated that [TRANSLATION] "alluding" to his concerns in the presence of the SNR officers meant that she had been thinking about his concerns without mentioning them.
6. Information that a white powder may have been used as an accelerant and that Mr. Somji may have been murdered as a result of the provenance of the powder was widely known. Accordingly, the female applicant's explanation that she would be in danger due to this information, which had already been made public, was not accepted by the RPD.
7. Counsel for the female applicant submitted that it was not known whether members of Mr. Somji's family had had problems with the authorities. Given the media exposure of the matter, the RPD found that it would be reasonable to expect that if the family had been killed, the documentary evidence in the record would include some reference to it. Thus, in the RPD's view, it is surprising that the female applicant would be in danger when there was nothing to indicate that Mr. Somji's family was at risk.

8. The female applicant wrote in her Personal Information Form that the authorities were searching for anyone who had contact with Ali Somji before his death. When asked about this assertion, the female applicant explained that she was referring to herself.
9. The female applicant was hesitant during her testimony with respect to what measures she had taken to protect her children. The female applicant mentioned that she had taken them to their grandfather's, a five-minute drive from the applicants' residence, which is surprising in light of her fear of the SNR. The female applicant did not change her telephone number. In that regard she claims that she wanted to show that she had nothing to hide. The RPD relied on the conduct of the female applicant to make adverse findings as to the validity of her fear.
10. The female applicant testified that from January 2006 to January 2010 she had had problems with the authorities due to her involvement with AC-Génocide. Her counsel submits that this fact is indicative of the authorities wanting to go after her in relation to allegations made about the fire at Bujumbura's market. However, the female applicant testified that she had ceased participating in that association in 2010. There had been no conflict between her and the authorities from 2010 to 2013.
11. The female applicant told border services officers that she would return to Burundi once she had her Canadian papers, which is inconsistent with the conduct of someone whose life is in danger.
12. The female applicant's spouse continues to live and work in the places that were visited by the SNR, the same entity that had allegedly threatened and tried to kill his wife and children.

IV. Issues

[16] Numerous issues were raised in the female applicant's memorandum; these may be summarized as follows:

1. Did the RPD err in its assessment of the female applicant's credibility?
2. Did the RPD err in its assessment of the objective fear of persecution?

For the purposes of this decision, the analysis of these two issues may be grouped under a single analysis, namely, that of credibility.

3. Did the RPD properly consider the cumulative effect of the incidents?

V. Analysis

A. *Applicable standard of review*

[17] A standard of reasonableness is applicable to the assessment of credibility and of well founded objective fear of persecution (*Su v Canada (Minister of Citizenship and Immigration)*, 2013 FC 518, at paragraph 7 [*Su*]; *Ndokwu v Canada (Minister of Citizenship and Immigration)*, 2013 FC 22, at paragraph 20 [*Ndokwu*]; *Ramirez Bernal v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1007, at paragraph 11 [*Ramirez*]).

[18] The issue of whether the RPD ought to have considered the cumulative effect of the incidents is reviewable on a correctness standard (*Munderere v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 84, at paragraph 32 [*Munderere*]; *Martinez Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 610, at paragraph 16 [*Gutierrez*]).

B. *Credibility analysis*

[19] The role of the Court is limited with respect to findings of credibility “because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence” (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, at paragraph 42 [*Rahal*]).

[20] First, the RPD’s decision to draw a negative inference from the female applicant’s difficulty describing the nature of her relationship with Mr. Somji and providing details about his children is reasonable.

[21] In her written testimony justifying her claim for refugee protection, the female applicant stated: [TRANSLATION] “I was called by a long-time friend of Indian origin named Ali Somji”. Questioned by the RPD, the female applicant added that he was [TRANSLATION] “really more of a business friend”. The female applicant did not know the names of Mr. Somji’s children and, according to the RPD, hesitated as to the name of his wife. The RPD is entitled to take into account a witnesses’ demeanour, including hesitations, vagueness and changing or elaborating on their versions of events. (*Rahal* at paragraph 45).

[22] It is true that the female applicant’s testimony as a whole shows that she knew Mr. Somji’s business habits, the date of his funeral, the customs that were practised at the funeral, the frequency of their meetings, his nationality and the approximate ages of his children. However, even if I were to acknowledge the existence of a business relationship between the female applicant and Mr. Somji, and that the credibility of her testimony was affected by cultural components, as counsel for the female applicant submits, I am of the view that it is reasonable to believe that the nature of this relationship does not support a finding that she was a privileged confidante of Mr. Somji, a man whose life was in danger.



[23] The female applicant's testimony leaves no doubt that she had a solid relationship with Mr. Somji, but it is not enough to undermine the overall reasonableness of the RPD's findings. The RPD was not satisfied that there was enough evidence to support a conclusion that the female applicant and Mr. Somji had been close enough for Mr. Somji to reveal sensitive information to her. In my opinion, the RPD's findings in this regard are reasonable.

[24] Second, I am of the view that the RPD reasonably found the female applicant's testimony with regard to the persecution she was allegedly the victim of to be contradictory and inconsistent.

[25] It is reasonable to draw a negative inference from the fact that the female applicant was unable to provide a clear explanation of the reasons for her persecution. She asserted that she could be persecuted on the basis of her past as an activist. However, when asked about this by the RPD, she stated that since September 2010 she had not had [TRANSLATION] "any further problems [because she had] ceased participating in the activities of AC-Génocide". The female applicant affirmed that she could be persecuted because she had witnessed the fire firsthand and had been a close confidante of Mr. Somji's. However, the possibility that a chemical powder had contributed to the spread of the fire was common knowledge. The female applicant cannot be a privileged witness as even Mr. Somji did not have privileged information regarding the fact that the powder he had sold might have been used in the fire in the Bujumbura market. Moreover, there is no evidence in the record to the effect that the SNR suspected the female applicant of having privileged information.

[26] The female applicant claims to be persecuted and that she cannot find refuge anywhere in the country, yet her husband remains there and works in the same places that were visited by the SNR, even after she had shared Mr. Somji's secret suspicions with him.

[27] In addition, there is no indication that the family of Mr. Somji has been persecuted. Yet it would be reasonable to suppose that the female applicant, upon seeing her life threatened, would have at least tried to find out if the family of her long-time friend had also been persecuted.

[28] The jurisprudence of this Court has established that discrepancies between various versions of events afforded by a claimant provide a solid basis for adverse credibility findings (*Su* at paragraph 8; *Rahal* at paragraph 43). Drawing a negative inference from the aforementioned factual contradictions does not strike me as unreasonable.

[29] Lastly, the female applicant mentioned that she would return to Burundi once she had received her papers from Canada, but that she did not intend to return there for now. Overall, it seems reasonable to me to conclude that an individual seeking to flee certain death would not suggest to a border services officer that they were considering returning to their country once under Canada's protection. Even taking into account that she merely wished to indicate her desire to return to Burundi one day, the fact that she would consider this option barely one month after leaving the country of persecution does not weigh in her favour.

[30] Counsel for the female applicant submits that the RPD failed to consider Burundi's political context. First, the case law has established that it does not matter "if the RPD's reasons are not perfect or even if the Court agrees with the conclusion, let alone each step of the RPD's credibility analysis" (*Rahal* at paragraph 60). For example, in *Ndokwu* at paragraph 34, the

Honourable Justice Shore noted that the RPD's credibility findings ought to have considered the context of the country condition evidence, but nonetheless determined that RPD had reasonably found it implausible that the applicant would have kissed another man in a heterosexual nightclub knowing he could be imprisoned or executed for it. Second, all of the evidence in the record shows that the RPD made sure it understood the female applicant's explanations, questioning her several times about the political motive that might be behind the persecution of which she claimed to be a victim, but she was unable to provide a satisfactory answer.

C. *Cumulative effect of the incidents*

[31] In *Munderere*, at paragraph 42, the Federal Court of Appeal provides guidance on the cumulative effect of incidents:

These authorities make clear that the Board is duty bound to consider all of the events which may have an impact on a claimant's claim that he or she has a well founded fear of persecution, including those events which, if taken individually, do not amount to persecution, but if taken together, may justify a claim to a well founded fear of persecution.

[32] In *Gutierrez*, at paragraph 25, Justice Teitelbaum explains the application of the standard determined by the Federal Court of Appeal:

I am mindful of the high standard established by the Federal Court of Appeal with regard to the Board's analysis of the cumulative effects of refugee claimants' experiences: it must be more than a reasonable assessment of the circumstances – it must be correct. In this case, I am satisfied that the Board was, in fact, mindful of all aspects of the Applicants' various claims, how they had impacted them, and how they might affect the Applicants should they return to Mexico. The Board's failure to couch the analysis in terms of a "cumulative" approach does not betray an incorrect analysis. The Board clearly considered all of the events described by the

Applicants, both individually and as a group. I can see no basis, therefore, for overturning the Board's decision on these grounds.

[33] The female applicant argues that the cumulative effects of the acts of which she was a victim must be taken into consideration, namely, her detention for four days in 2006 by reason of her activism, the slashed tires of her car, the SNR's alleged attempt to run over her children with a pickup truck and her overall dealings with the SNR. However, after having read the record in its entirety, it appears to me that the RPD questioned the female applicant about all of the instances in which she claimed to have been persecuted and attempted to reconcile the various parts of her testimony. The following passage from the hearing transcript shows that the RPD tied various parts of her testimony together:

[TRANSLATION]

Q: You were arrested in 2006, according to your...the information you provided in your BoC. Following the arrest in 2006, did you have any further problems with the authorities prior to the issue about the fire?

A: I had no further problems because, well, since September 2010, I had ceased all participation in AC-Génocide activities.

Q: Do you have any proof, or evidence of your business connections or your friendship with Ali Somji?

A: I do not.

[34] The fact that the RPD drew negative inferences about the female applicant's credibility does not mean that her allegations were not considered cumulatively.

[35] In conclusion, the female applicant has not succeeded in demonstrating that the RPD's decision was unreasonable. Although the RPD's decision is imperfect, the fact remains that its

findings with respect to the credibility of the female applicant are reasonable. Moreover, the record and the decision indicate that all of the incidents were taken into consideration.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that:**

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

“George R. Locke”

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Judge

Certified true translation  
Sebastian Desbarats, Translator

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

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