

**IMMIGRATION AND REFUGEE  
BOARD  
(REFUGEE DIVISION)**

**COMMISSION DE L'IMMIGRATION  
ET DU STATUT DE RÉFUGIÉ  
(SECTION DU STATUT DE RÉFUGIÉ)**

**MA1-08719**

**IN CAMERA  
HUIS CLOS**

**CLAIMANT(S)**

**DEMANDEUR(S)**

**XXXXXXXXXXXXXXXXXXXX**

**DATE(S) AND PLACE OF HEARING**

**DATE(S) ET LIEU DE L'AUDIENCE**

**February 25, 2002  
Montréal**

**DATE OF DECISION**

**DATE DE LA DÉCISION**

**April 16, 2002**

**CORAM**

**CORAM**

**Michel Venne**

**FOR THE CLAIMANT(S)**

**POUR LE(S) DEMANDEUR(S)**

**Marco-Pierre Caza**

**REFUGEE CLAIM OFFICER**

**AGENT CHARGÉ DE LA REVENDICATION**

**Filing of documents**

**DESIGNATED REPRESENTATIVE**

**REPRÉSENTANT DÉSIGNÉ**

**N/A**

**MINISTER'S REPRESENTATIVE**

**REPRÉSENTANT DU MINISTRE**

**N/A**

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This is the decision concerning the refugee claim of XXXXXXXXXXXXXXXXXXXX, a citizen of the Republic of Burkina Faso, on the ground that he has a reasonable fear of persecution for reason of his membership in a social group, disabled persons living in Burkina Faso.

The claimant states that he was born on XXXXX, 1972, in the capital of Ouagadougou, and that, around the age of two, he began experiencing motor disorders in his legs because he had been stricken by poliomyelitis. His parents, being Catholics, took him to be cared for in Sycaso, Mali, as soon as possible since his paternal grand-parents, the claimant says, had advised his mother and father that he should be killed because the fact he had such a disease was undignified and a calamity for the family.

The claimant was always protected by his parents and, around the age of seven or eight, seeing his neighbours and some of his friends going to school, he insisted with his father, who was hiding him, that he go to school, and, with his mother's support, his father sent him to a private school, the École XXXXXX, which was behind their house. The claimant went to that school until grade 6 and subsequently attended a school run by a French nun, Sister XXXXXXXX, whose school was called XXXXXXXX, where he earned his primary school certificate. The claimant states that, during the period when he attended Sister XXXXXXXX school, he lived with his father's younger brother and that 16 disabled children attended the school.

The school was purportedly closed after Sister XXXXXXXX left for France. The claimant subsequently registered at the Lycée XXXXXX, where he was discriminated against as a result of his disability, in that his father had to pay an additional amount so that he could attend the school, whereas the others did not pay. In addition, some courses were given to him in a discriminatory manner, such as the gardening course, which the teacher did not want him to take because of his disability. The claimant added that he had attended that school for three years with another disabled student and that authorities had ultimately preferred that he leave because of his disability. He also noted that the physical education teacher had wanted him and his disabled companion to do a written assignment on physical education without having taken any courses on the subject.

After being sent away from the Lycée XXXXXXXX, the claimant, as a result of his father's pressure on a friend who worked in the public service of the government of his home province, went to the Lycée XXXXXX in his father's home village, where he stayed for two years and earned his first cycle educational diploma. Subsequently, as his parents could no longer afford it, the claimant

attended evening courses given by volunteer students and earned his *Seconde C* diploma, which enabled him to apply for work in the public service, in particular as a certified nurse or in the national instruction of the financial authorities.

In response to a number of applications, the claimant was denied employment and ultimately learned from a person working at the secretariat of the public service that one of the conditions for working for the government was that applicants have no physical disabilities, even though that was not written in the conditions of hiring and employment. Seeing that, the claimant started a small business which was located approximately 450 meters from a market, and he states that things went well for three years until XXXXX 1998, when, without advance warning, the police, together with an officer of the highways department, asked him to leave the premises, and, on that occasion, the police officer overturned the table on which were sitting the objects the claimant was selling.

Since 1999, the claimant had been playing sports with an organization known as JAPHAF, "*Jeux de l'Avenir des Personnes Handicapées d'Afrique Francophone*", in particular certain sports such as "handyball". The organization, whose general secretariat has been located in Burkina Faso since 1994, involves persons with physical disabilities in sports activities in certain African countries such as Senegal, the Ivory Coast, Benin and Togo, as stated in Exhibit P-4.<sup>i</sup>

When the claimant lost his business in 1995, he became more involved in sports and took part in certain games organized by JAPHAF in Benin in 1996, Senegal in 1998, the Ivory Coast in 2000 and Senegal again in 2001. The claimant says that JAPHAF paid his expenses for those games and, when he went to the *Jeux de la Francophonie*, his expenses were paid by the disabled persons of Canada. He also says that the seats for playing sports were provided by organizations in foreign countries, in particular Switzerland and the disabled persons of Canada.

Once in Canada, the claimant, knowing his situation and the impossibility of his obtaining employment that would enable him to live suitably in his country and to have appropriate medical care and enjoy a certain status, decided, to claim refugee status for reason of his membership in a social group, the disabled persons of Burkina Faso.

#### ANALYSIS

The panel had the opportunity to read the documentary exhibits entered in the record, both those filed by the refugee claim officer as Exhibits A-1 to A-15<sup>ii</sup> and those filed by counsel for the claimant as Exhibits P-1 to P-4.<sup>iii</sup> The

panel also considered the exhibits that the claimant filed jointly as Exhibit T-1.<sup>iv</sup> The panel listened attentively to the claimant's testimony, which was sincere and in no way cast doubt on his credibility.

The point the panel must determine is whether, by reason of his physical disability, the claimant suffered abuses in his country which denied his human dignity in any key way and whether those sustained and systemic abuses resulted in a denial of the claimant's fundamental rights.

Since he was a child, the claimant has clearly been able to obtain an education. That was due, on the one hand, to the intervention of certain independent state organizations, that is to say private schools, and, on the other hand, to the use of his father's influence over and knowledge of certain persons. It appears from the claimant's testimony that he was able to find employment in the public service and that authorities closed the small business he had opened near a market and that, had it not been for the fact that he was living with his family and had the help of some of his friends, the claimant would have been destitute and unable to meet his most basic needs.

The claimant called an independent witness, XXXXXX, who had lived in Burkina Faso in the summer of 2000 working for the non-governmental organization Source et Vie, which she herself founded in XXXXXX more than 17 years ago to care for poor women and children. Ms. XXXXXX testified that she had observed in Burkina Faso that people with physical disabilities are considered by the entire population, which is 50 percent animist, as a calamity and a curse, as a result of which they are rejected by their families and by society in general. She had observed with their own eyes a young disabled person who sold bells in a market in the capital who was struck and isolated by the other merchants in front of the police, who absolutely did not intervene. She had also seen that elderly persons could not obtain medical care from the hospitals because medical staff refuse to touch them because of the curse that could be transmitted in that manner. Ms. XXXXXX also witnessed children abandoned in the desert near the capital, and she herself, in the short time she lived in Burkina Faso, found six children abandoned in the desert who were taken to orphanages managed by the churches or by organizations such as World Vision. Ms. XXXXXX was examined at length by the panel on the living conditions of physically disabled persons and also on those who have a mental disability. With regard to the latter, the evidence showed that they are restrained with pieces of wood. As to those with motor or physical disabilities, it appears from Ms. XXXXXX' testimony that they cannot attend school or obtain medical care because it is not free of charge and that, in addition, medical personnel may refuse to care for them since: they

cannot touch them; they have no work; the state, under its general policy, refuses to hire persons with disabilities; they are rejected by society and are discriminated against in all kinds of ways (for example, when the claimant won medals, his medals were confiscated by the state, and there was no official medal presentation ceremony for him or any amount of money); and, lastly, these persons with disabilities are not protected by police forces when they are beaten or chased away by the public.

It appears from Ms. XXXXXX' testimony that prejudice against persons with physical disabilities is repetitive, persistent and systematic, ultimately undermining the fundamental rights of persons with disabilities.

One of the definitions of the word "persecution" contained in the *Shorter Oxford English Dictionary* is as follows:

A particular course or period of systematic infliction of punishment directed against those holding a particular (religious) belief; persistent injury or annoyance from any source.

The repeated and persistent injury and annoyance suffered by the disabled persons of Burkina Faso, based on the evidence brought by the claimant and his independent witness, greatly undermine the fundamental rights of disabled persons, in particular their right to work to support themselves, thus potentially jeopardizing their survival in a country where medical care is not free of charge and where there is no system of state protection for those persons and they rely solely on the aid of their family or charities to survive. As the claimant showed that physically disabled persons in Burkina Faso suffer serious intellectual and economic hardship constituting persecution, the court concludes that the claimant discharged his burden of proof and that he has a well-founded fear of persecution in his country if he should return there.

**CONCLUSION**

Consequently, the panel finds that XXXXXXXXXXXXXXXXXXXX is a Convention refugee<sup>v</sup> for reason of his membership in a social group, the disabled persons of Burkina Faso.

*Michel Venne*

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**Michel Venne**

Dated at Montréal this 16th day of April 2002.

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- i P-4: Handicap International JAPHAP – Jeux de l’Avenir des Personnes Handicapées d’Afrique Francophone.
  - ii Exhibits A-1 to A-15.
  - iii Exhibits P-1 to P-4.
  - iv Exhibit T-1.
  - v "Convention refugee" is defined in subsection 2(1) of the *Immigration Act*, which reads in part as follows:  
"Convention refugee" means any person who
    - (a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
      - (i) is outside the country of the person's nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, or (...)