Date: 20081113

Docket: IMM-2148-08

Citation: 2008 FC 1261

Toronto, Ontario, November 13, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

RICHARD KWIZERA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male citizen of Burundi. He speaks Kirundi and claims to becoming more proficient in English but not yet fully proficient. His PIF says that he speaks French as a second language; his high school diploma is printed in French. The Applicant left Burundi and having travelled for a few days through Ethiopia, Italy and the United States on the same trip; he entered Canada from United States and claimed refugee protection. A hearing was held with the aid of a Kirundi/English interpreter, before a Member of the Immigration and Refugee Board of Canada. In a written decision dated April 14, 2008, the Member rejected the Applicant's claim for refugee protection. This application is a judicial review of that decision.

[2] For the reasons that follow, I find that the application is dismissed.

[3] The Applicant's Further Memorandum of Argument does not clearly state the issues in this case; it sets out several vague and jingoistic paragraphs. However, from the written material provided by both parties and oral argument of counsel for the parties, the issues are resolved into three:

1. Was the Member's negative credibility finding reasonable?
2. Did the Member ignore relevant evidence including relevant documentary evidence?
3. Was the Applicant denied procedural fairness in respect of errors alleged to have been made by the interpreter?

[4] The Applicant's history as recounted by him, in brief, is that he is an ethnic Tutsi who, with his family, lived in Burundi during the ethnic troubles there. He alleges that several members of his family were killed and that he was tortured by Hutus to the extent that he required hospitalization. He claims to have identified his assailants and reported them to the police. He claims to have returned to school at which time he encountered one of the Hutus who had killed a family member. Without recounting all of the alleged events, more violence and threats are said to have followed. Ultimately, some of the Hutus were arrested and imprisoned. The Applicant continued his education in Burundi including registering in university courses. It appears that some of the imprisoned Hutus were released and are alleged to have sought out the Applicant and family members with continued violence and threats. The Applicant was a member of an international

AIDS organization and arranged a United States visa to attend a conference there which he did. The applicant then came from the United States to Canada where he made his refugee claim.

[5] The Member considered the Applicant's evidence. He found it to be inconsistent and that it contained unexplained discrepancies. The Member was not persuaded with explanations given. As to the documents presented in support of the Applicant's claim, the Member placed little weight on alleged death certificates produced by the Applicant. Little weight was placed on a declaration made by the Applicant's cousin.

[6] In conclusion, the Member found that there was insufficient credible evidence in support of the Applicant's claim.

[7] This court will not reweigh evidence and will not interfere with findings made by a Member so long as they are reasonable within the criteria established by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190. Where it has been demonstrated to the satisfaction of the Court that evidence or documents that might have had an impact on the result otherwise arrived at by the Member, the Court is likely to intervene. However a Member is not required to set out in the Reasons given, mention of every document or every piece of evidence in the Record.

[8] In the present case, I am not persuaded that the Member overlooked or failed to give proper consideration to any relevant evidence or relevant document. The findings made by the Member are reasonable and ought not to be disturbed.

[9] As to procedural fairness and, in particular, the quality of the translation offered at the hearing. I remain puzzled as to why the hearing was not conducted in French.

[10] The French language is one of Canada's official languages and there are adequate facilities for holding these hearings in French. The Applicant's lawyer says that because he speaks English, not French, that the hearing was conducted in English. It is the needs of the party, not the lawyer that should prevail. There are many French speaking lawyers in Canada capable of handling those matters.

[11] It is to be noted that no issue was made at the time of the hearing as to the quality of the translation. It is only in filing this application is the translation issued raised in the Applicant's affidavit where he states that his English has improved to the extent that he can now detect errors. The Applicant has filed a transcript in English of the testimony given at the hearing and an affidavit of Henry Boyi who claims to be fluent in Kirundi and English. This affidavit filed by the Applicant, in fact attests that the translator from English to Kirundi was perfectly and clearly done and that the translation from Kirundi to English was good enough to convey the message. A few errors and misstatements were noted but none sufficiently material so as to affect the Applicant's story or the Member's decision. As stated by Snider J. in *Rafipoor v. Canada (MCI)*, 2007 FC 615 at paragraph 11, a translation does not have to be perfect. I am satisfied that no material errors were made in the translation at issue.

[12] The application will be dismissed. The matters are issue are fact specific, no question needs to be certified. There is no special reason to award costs.

JUDGMENT

For the Reasons given:

THE COURT ADJUDGES that:

1. The application is dismissed;

2. No question is to be certified;

3. No costs are awarded.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2148-08
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