

Date: 20080314

Docket: IMM-2088-06

Citation: 2008 FC 347

Ottawa, Ontario, March 14, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

CHARLES MUKASI

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Charles Mukasi is former leader of the Union pour le progrès national (UPRONA) in Burundi. He arrived in Canada in 2005 and claimed refugee protection based on a fear of political persecution in his home country. A panel of the Immigration and Refugee Board granted Mr. Mukasi's claim without holding a hearing. The Board concluded that Mr. Mukasi had established his identity, did not present any issues that might exclude him from refugee protection, and had shown that his account of events was consistent with documentary evidence on the conditions in Burundi.

[2] The applicant, the Minister of Citizenship and Immigration, argues that the Board erred when it failed to refer Mr. Mukasi's claim for a hearing and by granting his claim in the face of reliable contradictory evidence. I agree that the Board should have not have granted Mr. Mukasi's claim without a hearing. Therefore, I must allow this application for judicial review.

I. Issues

1. Did the Board err in failing to hold a hearing?
2. Was the Board's decision out of keeping with the evidence before it?

[3] Given my conclusion that the Board should have referred Mr. Mukasi's claim for a hearing, it is unnecessary for me deal with the second issue. The evidence will have to be reconsidered by a different decision-maker.

II. Analysis

1. The Statutory Framework

[4] Generally speaking, the Board must hold a hearing into a refugee claim (*Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (IRPA), s. 170 ((b); enactments cited are set out in an Annex). However, the Board may allow a claim without a hearing if the Minister has not given notice of an intention to intervene (s. 170(f)). In addition, if a refugee protection officer recommends

that the Board allow a claim without a hearing, the Board may do so only if the case does not disclose any issues that should be brought to the Minister's attention, the claimant's identity has been sufficiently established, there are no serious issues of credibility involved, the claimant's account of events is consistent with information on conditions in the country of origin, and the claimant has established that he or she meets the definition of a Convention refugee or a person in need of protection (*Refugee Protection Division Rules*, SOR/2002-228 (RPD Rules), s. 19(4)(a)-(d)).

[5] If any of these conditions is absent, the Board must hold a hearing. Further, the Board has a duty to notify the Minister if it believes there is a possibility that the claimant should be excluded from Convention refugee status (RPD Rules, s. 23(1)).

2. The Board's Decision

[6] The Board concluded that Mr. Mukasi had established his identity with a genuine passport. It also found that the documentary evidence confirmed Mr. Mukasi's account of events and that his claim of political persecution was well-founded.

[7] The Minister points out that there was also evidence before the Board showing:

- Mr. Mukasi led a faction of UPRONA that was opposed to the peace process in Burundi. He was arrested for his stance.

- UPRONA was associated with a violent militant group.
- Mr. Mukasi was believed personally to have incited violence in the late 1990s.
- Mr. Mukasi was ousted from his leadership role because of his opposition to peace negotiations, yet he refused to accept his dismissal.

III. Discussion and Conclusion

[8] Considering the evidence before the Board, it appears to me that the Board erred in granting Mr. Mukasi's claim without a hearing. First, there was evidence that Mr. Mukasi was associated with violence. This should have alerted the Board to the possibility that Mr. Mukasi might be excluded from the definition of a Convention refugee based on Article 1(F) of the Convention. That provision states, among other things, that the Convention does not apply to persons who have committed a crime against peace, a war crime, a crime against humanity, or acts contrary to the purposes and principles of the United Nations.

[9] Further, this evidence indicated that, while there was some documentary support for Mr. Mukasi's claim, there were also serious questions about its veracity. The Board should have noted that the credibility of some of Mr. Mukasi's assertions would have to be assessed at a hearing and measured in the light of the documentary evidence as a whole.

[10] Accordingly, I will allow this application for judicial review and direct the Board to refer Mr. Mukasi's claim for a hearing. I will entertain any submissions regarding a question of general importance that are filed within ten days of this judgment.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed;
2. The Court will consider any submissions regarding a certified question that are filed within ten (10) days of the issuance of these reasons.

"James W. O'Reilly"

Judge

Annex "A"

Immigration and Refugee Protection Act, S.C.
2001, c. 27

*Loi sur l'immigration et la protection des
réfugiés, L.C. 2001, ch. 27*

Proceedings

Fonctionnement

170. The Refugee Protection Division, in
any proceeding before it,

170. Dans toute affaire dont elle est saisie,
la Section de la protection des réfugiés :

...

[...]

(b) must hold a hearing;

b) dispose de celle-ci par la tenue d'une
audience;

...

[...]

(f) may, despite paragraph (b), allow a
claim for refugee protection without a
hearing, if the Minister has not notified the
Division, within the period set out in the
rules of the Board, of the Minister's
intention to intervene;

f) peut accueillir la demande d'asile sans
qu'une audience soit tenue si le ministre ne
lui a pas, dans le délai prévu par les règles,
donné avis de son intention d'intervenir;

*Refugee Protection Division Rules, SOR/2002-
228*

*Règles de la Section de la protection des
réfugiés, DORS/2002-228*

Allowing a claim without a hearing

Demande accueillie sans audience

19(4) If the refugee protection officer
recommends that the claim be allowed without
a hearing, the Division may allow the claim if

19(4) Si l'agent de protection des réfugiés
recommande que la demande d'asile soit
accueillie sans audience, la Section peut
l'accueillir si les conditions suivantes sont
réunies :

(a) there are no issues that should be
brought to the attention of the Minister;

a) aucun point litigieux ne doit être porté à
l'attention du ministre;

...

[...]

(d) the information given by the claimant is
consistent with information about
conditions in their country of nationality or,
if they have no country of nationality, their

d) les renseignements que le demandeur
d'asile a fournis sont compatibles avec les
renseignements sur les conditions du pays
dont il a la nationalité ou, s'il n'a pas de
nationalité, du pays dans lequel il avait sa

country of former habitual residence, and establishes that the claimant is a Convention refugee or a person in need of protection.

résidence habituelle, et ils démontrent qu'il est un réfugié au sens de la Convention sur les réfugiés ou une personne à protéger.

Notice to the Minister of possible exclusion — before a hearing

Avis au ministre avant l'audience d'une exclusion possible

23. (1) If the Division believes, before a hearing begins, that there is a possibility that sections E or F of Article 1 of the Refugee Convention applies to the claim, the Division must notify the Minister in writing and provide any relevant information to the Minister.

23. (1) Si elle croit, avant l'audience, qu'il y a une possibilité que les sections E ou F de l'article premier de la Convention sur les réfugiés s'appliquent à la demande d'asile, la Section en avise par écrit le ministre et lui transmet les renseignements pertinents.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2088-06

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