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CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Related subjects: Official Languages; Administrative Law; Judges and Courts

Judicial review of Immigration and Refugee Board, Refugee Protection Division (RPD) decision dismissing applicant's claim under *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ss. 96, 97 — Applicant, family fleeing Rwanda to Belgium because of fear from Hutu extremists, Rwandan authorities — Applicant later abandoned Belgian refugee claim to return to Rwanda in exchange for job, freedom from persecution — Before his departure, applicant learning of arrest warrant against him in Rwanda — Applicant later claimed asylum in Canada — RPD finding that determinative issue was applicant's credibility — Holding that lack of documentation regarding applicant's refugee claim in Belgium undermined overall credibility, as applicant did not submit copy of his or his wife's Belgian refugee claims — Finding contradictions, implausibility regarding withdrawal of claim for asylum in Belgium, plans to return to Rwanda — RPD assigned no probative value to arrest warrant against applicant due to irregularities, namely that arrest warrant issued in French, included word "Public" on line by itself — Finally, holding that applicant's explanation on failure to seek permanent resident status in Belgium not reasonable with regard to his subjective fear of persecution in Rwanda, desire to obtain such status in Belgium through family reunification — Applicant issued notice of decision in French, language used at RPD hearing, accompanied by reasons in English — Received French translation of those reasons three months later — Whether RPD's decision reasonable — RPD erred in giving no probative value to arrest warrant based on fact arrest warrant written in French — Statement made by RPD that only English, Kinyarwanda used by public agencies in Kigali finding no support in evidence — RPD not meaningfully engaging with evidence, clearly failed to consider conflicting evidence when concluding that arrest warrant could not have been issued in French — RPD's finding on use of French language by public agencies in Rwanda directly contradicted by very evidence relied on by RPD, therefore lacking justification, transparency, intelligibility — Typographical representation (i.e. word "Public" on line by itself, followed by comma on next line) not sufficient to conclude that document fraudulent, erroneous or unreliable — This irregularity singled out by RPD nothing but minor, insufficient to reasonably refuse Rwandan arrest warrant — RPD's refusal of this document based on two unreasonable grounds undermining reasonableness of decision itself — RPD also erring in stating that applicant should have provided written statement he prepared for his refugee claim in Belgium — RPD's failure to respect applicant's language rights important additional element contributing to unreasonableness of decision — Preferable for RPD to provide its reasons in French right from start — RPD's issuance of decision in official language other than applicant's preferred official language, with no simultaneous translation, not "minor" error — As a federal tribunal, RPD bound by requirements implemented by *Official Languages Act*, R.S.C.,

1985, c. 31 (Act), which states that judge or officer hearing proceeding in French must be able to understand French without assistance of interpreter — Issue in case of applicant whether obligation for federal tribunal like RPD to issue its decision in official language chosen by a litigant, when litigant does not understand other official language — Act, s. 20 not dealing with this situation — Strange to interpret Act as protecting right of litigants to understand what happens in hearings, but not right to understand decisions resulting from such hearings — Issuance by RPD of decision in language other than official language of choice of applicant calling for intervention herein as it contributes to make decision unreasonable — Administrative decision makers must be concerned with general consistency of administrative decisions — Issuance of decision in English rather than in French, without making translation simultaneously available, contrary to RPD's own usual practice — This unjustified departure from past practice raising questions of arbitrariness in decision-making process, undermining public confidence in administrative decision makers, justice system as whole — Here, RPD abdicated its responsibility to justify to applicant, in transparent, intelligible manner, basis on which it arrived to its conclusion — Proper, effective remedy to rectify unreasonableness of decision to send matter back for redetermination by new panel of RPD — Application allowed.

NAMBAZISA V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-6658-22, 2023 FC 617, Gascon J., reasons for judgment dated April 27, 2023, 22 pp.)