

Immigration and
Refugee Board of Canada
Refugee Protection Division



Commission de l'immigration
et du statut de réfugié du Canada
Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : TA6-04007

Private Proceeding / Huis clos

Claimant(s)	XXXXXX XXXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	15 February 2007	Date(s) de l'audience
Place of Hearing	Toronto	Lieu de l'audience
Date of Decision	23 May 2007	Date de la décision
Panel	José Wa Tshisungu Tshisungu Ana Costa Daniel G. McSweeney	Tribunal
Counsel for the Claimant(s)	Anthony Kako Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Refugee Protection Officer		Agent(e) de protection des réfugiés
Designated Representative(s)		Représentant(e)(s) désigné(e)(s)

Counsel for the Minister

Conseil du ministre

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XXXXXX XXXXXX a citizen of Burundi, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)* based on his race, political opinion and membership in a particular social group.

Allegations

The claimant is a Tutsi. He alleges that the current government of Burundi cannot protect him from physical abuse and death threats, which he received from a man claiming he was a recently released prisoner affiliated with the ruling political party, the National Council for the Defense of Democracy – Forces for the Defense of Democracy (CNDD/FDD). Mr. XXXXXX worked as a XXXXXX with the XXXXXX office (XXXXXX, Ministère de la XXXXXX) between XXXXXX XXXXXX and XXXXXX. His principal functions were to prepare cases and to prosecute individuals accused of serious crimes including robbery, rape, drugs, and gang activities. Many of the individuals he prosecuted were Hutus. The claimant alleges that he began to receive threatening telephone calls from a man who indicated that he had just been released after six years in XXXXXX prison, as part of a government amnesty program. The man said: “XXXXXX, I know you very well, as you were in charge of my file and I want to tell you that the time for payback has arrived. We are in power and I have friends who are highly placed in the government.” The caller threatened to have the claimant dismissed from his job, as well as threatened to physically hurt or kill him. Over a two-month period the claimant alleges receiving approximately 30 threatening telephone calls, one physical assault at a nightclub, a grenade thrown at his home, and almost being run over by a car. The claimant reported the threats to the police on XXXXXX, 2006; however, the police officer stated that he could not do anything for the claimant and that: “It was time for people like you to pay for what you did.” In addition, the police officer indicated that the claimant was no longer a XXXXXX and that he could not benefit from special protection.

Determination

The panel finds that the claimant is a Convention refugee in that he has a well-founded fear of persecution in Burundi by reason of his race as a Tutsi and membership in a particular

social group (former XXXXX of the Burundi XXXXX office) for the reasons outlined below.

Analysis

Overall, the panel finds the claimant's testimony to be credible. The claimant answered questions spontaneously and without embellishment, and his testimony conformed with evidence submitted by the claimant and documentary evidence in the RPD Index for Burundi, April 2006.¹

The panel finds that the claimant's identity and citizenship of Burundi was established by his passport, and driver's license,² as well as his knowledge of political and social conditions in Burundi. The panel also finds that the claimant established his identity as a Tutsi based on his oral testimony at the hearing.

In making its determination, the panel focused on three issues: the credibility of the claimant's allegations of threats; the link between the threats and the claimant's work as a XXXXX; and the ability of the government to provide him protection.

Credibility of Allegations of Threats

The panel finds that the claimant was individually targeted and threatened based on his oral testimony. The claimant received threats at his office, at his home, and while he was out (night club, on the street). The man who made the threats referred to the claimant by his first name and said that he knew him very well. In addition, the claimant received telephone calls after his assault, the grenade attack on his home, and his near car accident. The panel found it reasonable that the claimant could not identify the caller, as he had handled over 100 criminal files during his tenure as XXXXX.

The claimant testified that he was not aware of any other XXXXX who had received similar threats. This was confirmed by his call to a colleague in the XXXXX office.

Link Between Threats and Claimant's Role as XXXXX

The panel finds that the claimant was a prosecutor with the XXXXX office. This finding

¹ Exhibit R/A-1, Toronto Documentation Package – Burundi, April 2006.

² Exhibit R/A-2.

was based on the following documents: University of Burundi diplomas, Ministry of Justice identity cards and letter of service provided,³ as well as his testimony at the hearing regarding the scope of his practice. The panel found it credible that the claimant prosecuted individuals charged with serious crimes such as rape, gang activity and drug offences. The panel found it reasonable to believe that a recently released political prisoner could have been prosecuted by the claimant for non-political crimes, especially since the timing of the threats coincided with the prisoner release.

Ability of Government to Protect Claimant

The panel finds that the claimant's assertion that the government of Burundi was unable to protect him is reasonable. The U.S. Country Reports⁴ indicated that: "The human rights record of both the transitional and post-transitional governments remained poor; despite improvements in some areas, both governments continued to commit numerous serious human rights abuses". In addition to political instability, the current government is continuing to fight with rebel forces. As such, the panel found that the government of Burundi is unable to provide protection to its citizens in general, and to the claimant in particular.

In addition, the panel noted that the government and its institutions (including police) in Burundi is now primarily Hutu. The Burundi Constitution provides that 60% of the seats in the National Assembly be filled by Hutus, the majority ethnic group in the country, and 40% be filled by Tutsis, who constitute about 15 percent of the citizenry.⁵ The claimant self-identified as a Tutsi and acted as a **XXXXXX** during a time when Tutsis governed Burundi. The claimant indicated he sought out and was denied protection both from the local police and the **XXXXXX** office. Based on the shift in power from Tutsis to Hutus in Burundi, the panel found it plausible that government authorities would deny Tutsis protection. In addition, the panel found that the government of Burundi's release of political prisoners (majority Hutus), many of whom were

³ Exhibit D-3; Exhibit R/A-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ Exhibit R/A-1, Toronto Documentation Package – Burundi, April 2006, p. 2.1.1, United States Department of State, Country Reports on Human Rights Practices - 2005, March 8, 2006.

⁵ Ibid., p. 2.1.12.

⁶ Exhibit D-4, Ministerial Ordinance Number 550/18; Ibid., Article du journal *Le Renouveau du Burundi*, le 11 janvier 2006.

⁷ *Bouianova, Tatiana v. M.E.I.* (F.C.T.D., no. 92-T-1437), Rothstein, June 11, 1993.

convicted of murder, presented evidence of the government's willingness to put political considerations ahead of public safety.⁶

Other Considerations

Mr. XXXXXX was born in XXXXXX, Belgium; however, the panel noted that he could not avail himself of Belgian citizenship, as it would be more than a mere formality for him to acquire Belgian citizenship and *Bouianova*⁷ would not apply.

The panel did not assign any negative inference to the claimant's failure to claim in the United States, as well as the brief delay in claiming. The panel found the claimant's desire to seek refuge in Canada because of its Burundian community, reasonable.

Summary

The panel finds that the claimant has been targeted because of his former position of XXXXXX. The panel also finds that, as a Tutsi, the claimant could not depend on protection from the Hutu-based government, and that there is a serious possibility that the claimant would be persecuted should he return to Burundi.

Conclusion

Based on the analysis outlined above, the panel finds that the claimant is a Convention refugee and therefore accepts his claim.

(signed)

"Daniel G. McSweeney"

Daniel G. McSweeney

Concurred in by:

(signed)

"José Wa Tshisungu Tshisungu"

José Wa Tshisungu Tshisungu

Concurred in by:

(signed)

"Ana Costa"

Ana Costa

23 May 2007

Date