

Third Circuit Court

Case: *Ndayshimiye v. A.G.*, 557 F.3d 124 (3d Cir. 2009) **[Follows from *In re J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007)]** **Date:** Feb. 24, 2009

Panel: Scirica, Fuentes, Hardiman

Opinion: Fuentes

Tags: Immigration, asylum, persecution, mixed motives, nexus, protected ground

Question(s) Presented: Was the persecution based on protected ground, as at least one motivation?

Holdings: Petition denied. BIA affirmed. A ground-based motive for persecution may be dismissed if it is merely incidental, tangential, or superficial. 130

Rationale: “BIA’s rationale that petitioners’ Burundian background was at most **incidental** to other reasons for their persecution does support the Board’s ultimate conclusion.” 126

Facts: Rwandan citizen couple sought asylum in 2006, claiming persecution by family member on account of their having been born in Burundi while their parents were refugees there. Uncle deeded husband some land; they began building on it in 2004. Aunt with government connections started harassing them. Got tourist visas, but when they arrived in U.S. they learned these had been cancelled by someone in Rwanda.

Procedural History:

- **2007 IJ:** Denied asylum application because persecution seemed to be just about a land dispute
- **BIA:** Affirmed; any persecution based on nationality was only incidental.

Appeals to Statute & Precedent:

- **INA § 208(b)(1)(B)(i) / 8 U.S.C. § 1158(b)(1)(B)(i):** REAL ID Act 2005-mixed motives for persecution

Relevant Rwandan History:

- **1994:** Rwandan genocide: Tutsis were massacred and dumped in the Akagera river.
- **1996—**several hundred thousand Rwandan refugees returned from Burundi. They are known as “old case-load” refugees. They have a different social status in Rwandan society, depending on the country from which they have repatriated. Those from Burundi have little influence or power.

Discussion:

- “Section 208’s use of the phrase ‘*one* central reason’ rather than ‘*the* central reason,’ which, as *amicus* points out, was a deliberate change in the drafting of this provision, demonstrates that the mixed-motives analysis should not depend on a hierarchy of motivations in which one is dominant and the rest are subordinate.” 129 (emphases original)
- “This plain language indicates that a persecutor may have more than one central motivation for his or her actions; whether one of those central reasons is more or less important than another is irrelevant.” 129

Commentary:

- Applies *Chevron* here to BIA's interpretation of REAL ID Act requirement that a protected ground be at least one central motivation for persecutor's actions.
 - BIA had said the reason must not be "subordinate" to a non-protected motive. This particular term is inconsistent with the plain language of the statute.