

Federal Court



Cour fédérale

**Date: 20170223**

**Docket: IMM-3565-16**

**Citation: 2017 FC 228**

**Toronto, Ontario, February 23, 2017**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**JULIA NJILABU MPOYI  
JOY-RACHEL TSHIABU MPOYI  
MAURICE KALONJI KAPUTU MPOYI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Proceeding**

[1] The Applicants have applied for judicial review of a decision (the Decision) of an immigration officer (the Officer) dated July 29, 2016 rejecting their application for permanent residence (PR) in Canada on humanitarian and compassionate (H&C) grounds. This application

is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA).

## II. Background

[2] The Applicants are a mother (the Applicant) and her two minor children, who were aged eleven and seven at the time the H&C application was filed (the Children). They are all citizens of the Democratic Republic of Congo (DRC) and they all have status as refugees and permanent residents in South Africa. The Applicant is divorced and has sole custody of the Children.

[3] Until her departure from South Africa, the Applicant worked for the federal government's Revenue Service and owned her own business selling clothes and accessories. She was successful and travelled widely on vacation and for business.

[4] In 2008, foreigners in South Africa became targets of discrimination, intimidation, threats and physical violence at the hands of black South Africans who accused them of taking their jobs. In 2012, the Applicant's shop in Cape Town was bombed and destroyed. In 2014, when hostility towards foreigners again developed, the Applicant left Cape Town for Johannesburg. However, she soon started to receive telephone calls telling her to "go home". Though she reported the calls to police, they did not provide assistance. On April 1, 2015, the Applicant was abducted at gunpoint from her shop and taken to her apartment. There she was held captive and robbed. Her captors threatened her before leaving. They said: "If you don't leave, we will rape your kids and kill you (the Threat)" (These events will be referred to collectively as the Attacks).

[5] On April 28, 2015, the Applicant and her Children arrived in Canada.

[6] The Applicant has not worked since coming to Canada. She applied for a work permit but was refused for failing to complete a medical examination. She subsequently completed the medical examination, and re-submitted her application. However, at the time of filing her H&C application, the work permit had not yet been issued and she had been receiving social assistance.

### III. The Impugned Decision

[7] The Officer did not doubt the Applicant's credibility during her assessment of the Applicant's establishment in Canada, the best interests of the Children, conditions in South Africa, and the psychiatric evidence.

[8] The Officer gave little weight to the Applicant's establishment. The Officer found that since she had not worked, the Applicant had not demonstrated financial independence in Canada. Further, the Officer was not convinced that the Applicant would be unable to work in South Africa given her education, world-wide travel, and previous employment. The Officer was also not convinced that the Applicant would be unable to reopen her business. The Officer noted and gave weight to the Applicant's volunteer work and to the presence of her sister and cousin in Canada. Nevertheless, the Officer concluded that the Applicant had failed to demonstrate that her ties to Canada were stronger than her ties to South Africa.

[9] The Officer found that the Children have the right to attend school in South Africa and did so in the past. The Officer concluded that, given that they have lived in South Africa for a significant part of their lives and that they will be supported by their mother, they will be able to adapt to life in South Africa. The Officer also found that the Applicant had not demonstrated why the Children would not have access to health care and eventual employment. The Officer concluded that it had not been demonstrated that the Children's development and well-being would be compromised if they were to return to South Africa.

[10] The Officer also gave little weight to the adverse country conditions in South Africa. The Officer found that while there is evidence of human rights violations and xenophobic violence against foreigners, notably those of African origin, the Applicant had failed to demonstrate that those problems would apply to her own situation, given her profile as a long term permanent resident. The evidence shows that, while the Applicant was the victim of arson and received death threats, she was able to study, work, operate and re-open her business and travel freely. Indeed, she has benefited from all the advantages associated with having permanent resident status. She also failed to establish that all foreigners are victims of xenophobic violence.

[11] Finally, the Officer gave little weight to the Applicant's psychological state. The Officer accepted the diagnosis which showed that the Applicant has severe post-traumatic stress disorder (PTSD). The doctor recommended that she should not experience fear or further trauma. However, the Officer drew a negative inference from the fact that no updated evidence had been provided about her current health status, future health care needs, or treatment for her PTSD.

There was also no evidence to show that she would be unable to receive adequate health care in South Africa.

[12] In her conclusion, the Officer gave little weight to all the factors, found the Applicant to have been a victim of vandalism, theft and xenophobic comments and found that she could resettle in South Africa without difficulty.

IV. Issues

1. *Whether the Officer unreasonably examined adverse country conditions in South Africa*
2. *Whether the Officer unreasonably assessed the psychological evidence*
3. *Whether the Officer unreasonably assessed the best interests of the Children*

V. Discussion and Conclusions

[13] In my view, the Officer's treatment of the Applicants' establishment in Canada was reasonable but the balance of the Decision was unreasonable for reasons which include the following:

- The Officer appeared to conclude that country conditions were only relevant if all foreigners were victimized. The Officer said: "... the claimant has not demonstrated that all foreigners are victims of violence." There is no such onus.
- The Officer said "I believe the claimant has not demonstrated that the (country) conditions would apply to her own situation given her profile." Given the Attacks, this conclusion is unreasonable.

- The Officer minimized the Attacks and did not appear to appreciate the violence associated with them or their severity. The reference to the Attacks as “two episodes of vandalism and theft” in the Officer’s conclusion illustrates this point. This is not a reasonable description of a bombing; an abduction at gunpoint and threats of death and child rape.
- The Officer does not consider whether the Applicant’s PTSD will be aggravated by the stress of returning to South Africa.
- The Officer failed to appreciate that the Applicant was receiving trauma counselling through the Canadian Centre for Victims of Torture.
- The Officer did not consider whether the Children’s re-establishment in South Africa will be negatively impacted by the Applicant’s PTSD and did not mention that the Threat was, in part, made against the Children.

VI. Conclusion

[14] For all these reasons, this application will be allowed.

VII. Certification

[15] There were no questions posed for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed and the Applicants' H&C application is to be reconsidered by another Officer.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3565-16

**STYLE OF CAUSE:** JULIA NJILABU MPOYI, JOY-RACHEL TSHIABU  
MPOYI, MAURICE KALONJI KAPUTU MPOYI v  
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IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 23, 2017

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