Federal Court  Cour fédérale

Date: 20201008

Dockets: IMM-3458-19
IMM-3460-19

Citation: 2020 FC 955

Montréal, Québec, October 8, 2020

PRESENT: The Honorable Madam Justice St-Louis

Docket: IMM-3458-19

BETWEEN:

ALPHONSE TOGBE KUMAZA HUNGBEKE
JUSTINA NEWLAND
KOSSI AKATI KUMAZA HUNGBEKE
ALBERT AKATI KUMAZA HUNGBEKE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-3460-19

AND BETWEEN

KOFFI KUMAZA HUNGBEKE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Alphonse Togbe Kumaza Hungbeke, the principal applicant, his wife, Ms. Justina Newland, and their two children, Kossi Akati Kumaza and Albert Akati Kumaza, seek judicial review of the decision rendered on March 28, 2019 by the Visa Section of the High Commission of Canada in Accra, Ghana.

[2] The Visa Section refused Mr. Hungbeke's application for a permanent resident visa as a member of the Convention refugee abroad class, or as a member of the Humanitarian-protected persons abroad designated class, having determined that he did not meet the requirements for immigration to Canada.

[3] Mr. Hungbeke and his family's Application for judicial review were heard concurrently with that of Mr. Hungbeke's brother, Mr. Koffi Kumaza Hungbeke (Court file number IMM-3460-19), whose application for permanent residence in Canada was denied on the same date, for the same reasons. The files have not been consolidated; however, the factual situations and the arguments are identical in both files, and the parties have consented to one judgment being issued.

[4] Hence, the term Applicants will collectively refer to Mr. Alphonse Togbe Kumaza Hungbeke, his wife and their children, and to Mr. Koffi Kumaza Hungbeke.

[5] For the reasons exposed below, the Applications for judicial review will be dismissed.

II. Uncontested Factual Background

[6] Mr. Alphonse Togbe Kumaza Hungbeke and his two minor children are citizens of Togo, while Ms. Justina Newland is a citizen of Sierra Leone. Mr. Koffi Kumaza Hungbeke is also a citizen of Togo.

[7] In 1993, Messrs. Alphonse and Koffi Hungbeke left Togo for Ghana as children, and have since lived in Ghana. In 1999, Ms. Newland fled Sierra Leone for Ghana as a child.

[8] In December 2008, the UNHCR declared a cessation of refugee status for nationals of Sierra Leone who fled the country's civil war (see Respondent's Further Memorandum at para 33).

[9] The Roman Catholic Episcopal Corporation for the Diocese of Toronto in Canada successfully applied to sponsor the Applicants as Convention refugees abroad and Humanitarian-protected persons abroad. In 2017, Messrs. Alphonse and Koffi Hungbeke each applied for permanent residence in Canada under the Convention refugee abroad and country of asylum classes, governed by sections 143 to 147 of the *Immigration and Refugee Protection*

Regulations, SOR/2002-227 [the *Regulations*]. Mr. Alphonse Hungbeke included his wife and children as dependents.

[10] The applications Messrs. Alphonse and Koffi Hungbeke presented to the Canadian authorities contained the application forms and identification documents, namely birth certificates, marriage certificate, UNHRC registration certificates, and security clearances.

[11] In their applications, Messrs. Alphonse and Koffi Hungbeke each outlined that on March 3 1993, Togolese soldiers attacked their neighbourhood and their family home, and killed their grandparents. They immediately fled to Ghana with their mother and reunited with their father in a refugee camp. At the time of the attack, the brothers were too young to personally recall the events, and their parents thus explained to them the reasons for having sought asylum in Ghana after fleeing Togo in 1993. In their applications, the brothers further outlined that they would not be able to return to their home country because, they argue, nothing has changed in Togo and those who were persecuting them before are still in power. After the death of the ruling President, his son took over, and tribalism is ongoing.

[12] In her application, Ms. Newland outlined having fled Sierra Leone as a child with her mother and brothers, following a heavy rebel attack in 1999, and arriving shortly thereafter in Ghana as a refugee. She indicated not being able to return to her country of origin because she never heard about her family and believes that if she returned, she will be killed. She adds that the Ebola virus has killed other people in Sierra Leone.

[13] In their applications, the Applicants submitted no other information in relation with their fear of return, and submitted no documentary evidence, except for the aforementioned identification documents.

[14] On February 29, 2019, the Visa Section of the High Commission of Canada in Accra, Ghana sent each of Messrs. Alphonse and Koffi Hungbeke a notice to attend an interview scheduled for March 26, 2019. Mr. Hungbeke, his family, and his brother Koffi all attended the interview with an immigration officer at the Canadian High Commission in Accra.

[15] The Officer's interview notes are divided into three sections. "Interview Note Section 1" pertains to *introductory/personal information.* The Officer noted some personal information provided by the Applicants, including regarding their UNHRC documents. The brothers confirmed that they had left Togo because the Togolese government persecuted them, and they outlined their story, as it has been told to them by their parents. The Officer questioned the brothers on their current fear of returning to Togo. The brothers confirmed that they did not belong to a minority religious group and indicated that they feared they would be persecuted by the Togolese government because the same people (as in 1993) still have power and cannot protect them. They indicated having no knowledge of whether they still had family in Togo, whether any members of their group/clan/party had problems or whether there was any safe place for them to go in their country.

[16] “Interview Note Section 2” pertains to *admissibility and general questions*. The brothers confirmed they had never been members or supporters of a political party, a religious group or a student, ethnic or community or professional organisation.

[17] “Interview Note Section 3” pertains to *conclusions and settlement information*. The notes confirm that the Officer explained to the brothers that he/she had concerns that they were not targeted or personally persecuted, that conditions have changed in Togo, and that they failed to establish a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. The Officer also noted having explained to them that there is no ongoing war in Togo. The brothers responded to the Officer’s expressed concerns that their house was destroyed and their grandparents, killed (in 1993) and that they could not return, as the government would persecute them.

[18] On March 27, 2019, the Officer noted having reviewed the totality of the applications and narratives on file. The Officer noted not being satisfied that Mr. Hungbeke and his brother meet the definition of a Convention refugee, given their explanation of their fear of persecution during the interview and on the applications. In addition, the Officer noted that Messrs. Hungbeke had not articulated a credible fear of return, having only mentioned that the situation in Togo is not well and that the government would persecute them. The Officer added, in light of the information provided in the applications and of his/her knowledge of current country conditions in Togo, that he/she was not satisfied that the Applicants would be at risk of return or that Mr. Hungbeke and his brother have been, and continue to be, affected by civil war, armed conflict or massive violation of human rights in Togo.

[19] The Officer concluded by confirming that he/she had also assessed Ms. Newland's status. The Officer noted that Ms. Newland is from Sierra Leone and, based on the UNHRC declaration of 2008 effecting a cessation of refugee status for Sierra Leone citizens, the Officer found Ms. Newland to also be ineligible.

[20] The Applicants have submitted no affidavits before this Court; counsel has confirmed that the record is uncontested.

[21] On March 28, 2019, the Visa Section of the High Commission of Canada in Ghana issued identical decisions to Messrs. Alphonse and Koffi Hungbeke, denying their applications for status in Canada.

[22] The Visa Section cited section 96 and subsection 11(1) of the *Immigration and Refugee Protection Act* [the *Act*], as well as sections 145 and 147 and paragraph 139(1)(e) of the *Regulations*, and indicated that he/she was not satisfied that Mr. Hungbeke and his brother are members of any of the prescribed classes.

[23] The relevant provisions of the *Act* and *Regulations* are reproduced in the Annex for ease of reference.

[24] The March 28, 2019 decisions are the subject of these Applications for judicial review.

III. The Parties' Positions

[25] The parties agree that the Visa Section's decision should be reviewed under a reasonableness standard (under *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]), although they disagree on the scope of its application.

[26] In general terms, the Applicants submits two arguments. First, they argue that the Visa Section's decision is unreasonable, as it lacks the requisite transparency and intelligibility, leaving the reader to speculate as to the Officer's reasoning on central issues. In that regard, they argue that (1) the duty to justify the decision is heightened when it comes to applications by vulnerable persons such as the Applicants; (2) the Officer failed to justify the conclusion that Mr. Hungbeke is not a member of the Convention refugee abroad class; (3) no reasoning is provided to support the assertion that the Applicants' fear of return is not "credible;" (4) the Officer made no actual finding with respect to the country conditions in Togo; (5) no reasoning was offered in support of the refusal to categorise the Applicants as members of the "country of asylum" class; and (6) the Respondent's arguments seek to retroactively read in select portions of the interview notes as forming part of the reasons for the decision.

[27] Second, the Applicants submit that the Officer engaged in unreasonable reasoning with respect to the Applicants' UNHCR designation, not considering Messrs. Hungbeke's recognitions, while considering Ms. Newland's cessation of status. They argue that the Officer failed to conduct any independent analysis of Ms. Newland's claim *vis-a-vis* Sierra Leone.

[28] The Minister of Citizenship and Immigration [the Minister] responds that the reasonableness standard of review continues to apply post-*Vavilov*, and that the Court has recognised that the information in the record must also be considered in assessing the reasonableness of visa officers' decisions, given their typically brief nature (*Shah v Canada (Citizenship and Immigration*), 2020 FC 448 [*Shah*]).

[29] The Minister thus submits that the decision is reasonable in that (1) the Officer's notes form part of the decision, which is sufficiently justified; (2) the Officer's notes highlight the Applicants' failure to discharge their onus in making their refugee class visa applications; (3) the Officer made no error in finding the Applicants had not articulated a credible fear of return, since they only mentioned that the situation in Togo is not well and that the government would persecute them; and (4) the Officer's reliance on his own knowledge of current country conditions in Togo is an issue to be considered in the context of the defining feature of this case, i.e. the Applicants' failure to discharge their onus.

[30] Finally, the Minister submits that there is nothing unreasonable, or internally inconsistent, in the Officer's consideration of Messrs. Hungbeke's UNHRC refugee statuses *vis-a-vis* Togo in contrast to his/her reliance on Ms. Newland' UNHRC cessation of status *vis-a-vis* Sierra Leone.

IV. Analysis

A. *Standard of Review*

[31] The Court must examine whether the decision is or not reasonable and must particularly address (1) if it lacks the requisite justification, transparency and intelligibility and (2) if the Officer erred in the treatment of the UNHRC designations.

[32] In *Vavilov*, the Supreme Court sets out the principles which guide judicial review: "On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be 'justified to citizens in terms of rationality and fairness.' […] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (at paras 14-15).

B. *The Decision Does Not Lack Justification, Transparency and Intelligibility*

(1) The Duty to Justify the Decision

[33] The Applicants rely on a recent decision from our Court in *Rubaye v Canada (Citizenship and Immigration)* (2020 FC 665 [*Rubaye*]) to argue that we should hold the Officer to a higher standard of justification.

[34] In *Rubaye*, the Court noted: "In Vavilov the SCC also commented on the effect of administrative decisions on individuals at para 135, writing that '[m]any administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people,

including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.' In the case at bar, the Applicant faces significant personal consequences from a negative determination, particularly in terms of family separation" (at para 17).

[35] Given the extent of the notes left by the Officer in the GCMS system, and my conclusions on the other issues in this case, I am not satisfied that the standard recently set out by the Supreme Court in Vavilov *is insufficient to protect the Applicants, and should be heightened. I note, as the Minister pointed out,* that decisions by visa officers are typically brief, given the volume of cases officers review, that the GCMS notes form part of the decisions for that reason (as noted above, under consistent case law including *Shah*), and that the set of facts in *Rubaye* was different from the one at play here at it involved, notably, considerations of family separation.

(2) Proper Reasoning Was Provided to Support Assertion That the Applicants' Fear of Return Is Not "Credible"

[36] In the GCMS notes, the Officer states that the Applicants have not "articulated a credible fear of return" to Togo.

[37] The Applicants make much of the Officer's use of the word "credible." They argue that this amounts to a credibility finding, that it must thus be substantiated, and that the Officer's is

not – which would trigger the application of precedents on credibility findings (see paragraph 65 of the Applicants' Further Memorandum). The Minister responds that the use of the word "credible" essentially means that the Applicants have not provided a proper justification for their fear.

[38] It appears clear, in the context of the notes, that the Officer is not referring to the Applicants' credibility, but to the credibility of the *fear*, i.e. its likelihood of successfully meeting the applicable threshold. I am satisfied the Officer did not make a credibility finding. In the immigration context, it would be best for officers to use another adjective when assessing whether or not fears such as that the Applicants expressed are sufficient. However, although the Officer's choice of words could lead to some confusion, I am satisfied it does not relate to the Applicants' credibility.

(3) The Officer Properly Made a Finding As To Country Conditions in Togo

[39] The Applicants also take issue with the Officer's statement in the GCMS notes that he bases his decision, in part, on his knowledge of the situation in Togo (see paras 74 and following of the Applicants' Further Memorandum). The Applicants assert that this statement is unsubstantiated.

[40] The Minister responds that the Officer could rely on his personal knowledge of the situation in Togo and that in fact, they are expected to have such knowledge (see paragraph 31 of

the Respondent's Further Memorandum, citing *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at paras 30-31).

[41] The Officer's comments and finding must be read in the context that the Applicants, who bear the burden to make their case, have submitted nothing, except vague assertions, in support of their claim that they cannot return to Togo, some 26 years after the events that led them to flee (on the burden, see e.g. *Atahi v Canada (Citizenship and Immigration)*, 2012 FC 753 [*Atahi*] at para 21 and *Alakozai v Canada (Citizenship and Immigration)*, 2009 FC 266 [*Alakozai*] at para 33). The Officer's statement is not dispositive in his reasoning, and his other comments in the GCMS notes are sufficient to support his decision.

(4) The Officer Properly Justified His Refusal to Categorise the Applicants as Members of the "Country-of-Asylum" class

[42] The Applicants argue that the Officer made a bald statement that the Applicants did not properly explain their fear of persecution in Togo, but provided little evidence to support that conclusion.

[43] The Minister responds that the decision, when read in conjunction with the GCMS notes, properly supports the Officer's conclusion. He argues that the decision is indeed brief, due to the Officer's usual time constraints, but that the notes clearly show that the Officer concluded that the Applicants had not provided evidence which would justify an individualised fear of persecution.

[44] While the Applicants make extensive submissions on both the manner reasonableness review should be conducted under *Vavilov* and why they find the Officer's decision unreasonable, their arguments all pertain to the way in which an officer should (1) find that the Applicants have no reasonable fear of persecution or harm if sent to Togo and (2) express that finding.

[45] The Applicants correctly state the law under *Vavilov*, but fail to account for their burden of proof.

[46] Officers need to intelligibly express their findings (see *Vavilov* at paras 84 and following). However, as mentioned above, the *Applicants* bear the burden to adduce evidence to justify the conclusions they seek (see e.g. *Atahi* at para 21 and *Alakozai* at para 33). For an officer to state that the Applicants have not introduced such evidence does not constitute an unintelligible finding.

[47] As mentioned, the brothers left Togo at ages 3 and 5 when their grandparents were killed. 26 years later, they claim in their applications for status in Canada that they will be persecuted or otherwise harmed if they return to Togo. However, they have provided no details or evidence in support of their fear and the current conditions they allege exist in Togo.

[48] Furthermore, the Applicants fail to mention, whether in their applications or during the interview and despite being questioned on the subject, any political, religious, or other affiliations or memberships which could ground a claim under section 96 of the *Act*.

[49] The Officer found that the Applicants had not provided evidence to justify their fear of persecution. His/her decision is intelligible, and given the dearth of evidence adduced by the Applicants, it is reasonable.

(5) The Respondent's Arguments Do Not Seek to Retroactively Read in Select Portions of the Interview Notes as Forming Part of the Reasons for the Decision.

[50] At paragraphs 79 and following of their Further Memorandum, the Applicants take issue with the fact that the Officer's notes in the GCMS form part of the decision, and particularly the interview notes. They cite no precedents in support of their proposition.

[51] As noted by the Respondent, our Court has recognised that these notes, including the interview notes, form part of the decision in this context (see e.g. *Gebrewldi v Canada (Citizenship and Immigration)*, 2017 FC 621 at para 29, where the Court indicated: "It is important to note that this Court has repeatedly stated that when examining an officer's decision, the analysis is not limited to the decision letter. Rather, the Global Case Management System [GCMS] notes also form part of the officer's reasons.")

[52] The Applicants have not convinced the Court that the Supreme Court's indication regarding justification in *Vavilov* has displaced this established case law and requires the Officer to prepare reasons akin to, as an example, those of the Refugee Protection Division. Hence, the Court will consider the Officer's notes, as registered in the GCMS, as part of the Officer's decision.

[53] Furthermore, I am not convinced that the notes are contradictory, or that the Respondent is asking the Court to consider only a portion thereof.

[54] Finally, the Applicants argue that the Officer failed to consider all grounds for status, including those not raised by the Applicants.

[55] However, as noted by the Respondent, the Officer's duty to do so does not extend to grounds that are neither raised by the Applicants nor inferable from the record (see *Mariyadas v Canada (Citizenship and Immigration)*, 2015 FC 741 at paras 25 and 32 ("The Officer cannot invent fears and must rely upon what the Applicants say they fear. The Officer repeatedly asked the Applicants what they feared and then asked questions in an attempt to identify the objective basis for their stated fears. […] The Officer's role is not to suggest possible grounds for protection that the Applicants can then adopt. The Officer's role is to give the Applicants a full opportunity to identify the basis of their fears and then to explore their subjective fears with a view to identifying an objective basis.”))

[56] No other ground for status reasonably arose from the record or the interview with the Applicants.

C. *The Officer's Reasoning with Respect to the Applicants' UNHCR Designations Was Reasonable*

[57] The Applicants also argue that it was unreasonable for the Officer to purportedly treat the cessation of refugee status for Sierra Leone nationals as dispositive, without conducting an

independent analysis, while not according the Applicants' recognised UNHCR refugee status regarding Togo the same consideration.

[58] The Respondent argues that refugee status is not dispositive, which justifies the Officer's decision to conduct an independent analysis.

[59] We agree with the Respondent that the Officer was justified in independently investigating the status of Messrs. Hungbeke. Regarding Ms. Newland, the Officer's conclusion was justified, given that (1) Ms. Newland was included as a dependent on Mr. Alphonse Hungbeke's application; (2) Ms. Newland's statement was that her family had fled because of the war, and evidence as to her fear of returning to her home country is equally sparse; and (3) the cessation of refugee status for Sierra Leone nationals was *specifically* premised upon a finding that the civil war which caused Sierra Leoneans to flee the country had ended.

V. Conclusion

[60] For the reasons set out above, and given the record, the Applicants have not convinced me that the Visa Section's decision is not justified, intelligible and reasonable.

[61] The Applications for judicial review are therefore dismissed.

JUDGMENT in IMM-3458-19 and IMM-3460-19

THIS COURT'S JUDGMENT is that:

- The Applications for judicial review are dismissed;

- No question is certified.

"Martine St-Louis"
Judge

Annex: Relevant Provisions

Immigration and Refugee Protection Act, S.C. 2001, c. 27 [IRPA], s. 96:

A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR], s. 144:

The Convention refugees abroad class is prescribed as a class of persons who may be issued a permanent resident visa on the basis of the requirements of this Division.	La catégorie des réfugiés au sens de la Convention outre-frontières est une catégorie réglementaire de personnes qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

IRPR, s. 145:

A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.	Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.

IRPR, s. 146:

(1) For the purposes of subsection 12(3) of the Act, a person in similar circumstances to those of a Convention refugee is a member of the country of asylum class.	(1) Pour l'application du paragraphe 12(3) de la Loi, la personne dans une situation semblable à celle d'un réfugié au sens de la Convention appartient à la catégorie de personnes de pays d'accueil.
(2) The country of asylum class is prescribed as a humanitarian-protected persons abroad class of persons who may be issued permanent resident visas on the basis of the requirements of this Division.	(2) La catégorie de personnes de pays d'accueil est une catégorie réglementaire de personnes protégées à titre humanitaire outre-frontières qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

IRPR, s. 147:

A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(a) they are outside all of their countries of nationality and habitual residence; and	(a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

(b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d’avoir des conséquences graves et personnelles pour lui.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-3458-19
STYLE OF CAUSE:	ALPHONSE TOGBE KUMAZA HUNGBEKE, JUSTINA NEWLAND, KOSSI AKATI KUMAZA HUNGBEKE, ALBERT AKATI KUMAZA HUNGBEKE and THE MINISTER OF CITIZENSHIP
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