Federal Court Cour fédérale

**Date: 20210323**

**Docket: IMM-3609-19**

**Citation: 2021 FC 251**

**Ottawa, Ontario, March 23, 2021**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**KOKOU MAWLOLO KOKOU
MAWULOLO EZOU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The Applicant, Mr. Ezou, seeks to overturn a decision made by a Migration Officer (Officer) that refused his application for permanent residence under the Convention refugee abroad class. He argues that the decision is unreasonable for a number of reasons.

[2] I agree. The Officer's decision does not meet the test of reasonableness when measured against the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[3] The Applicant is a citizen of Togo of Ewe ethnicity. He fled Togo in 1993 because he and his family were targeted by the ruling party in that country. He has been recognized as a Convention refugee by the United Nations High Commissioner for Refugees (UNHCR) and the government of Ghana.

[4] In December 2016, the Archdiocese of Toronto submitted an application to sponsor the Applicant for permanent residence in Canada. The Applicant was called in for an interview in connection with this on March 15, 2019, and the application for resettlement was rejected by decision letter dated March 28, 2019.

[5] The decision letter begins by stating the following:

> I have now completed an assessment of your application for permanent residence visa in Canada as a member of the Convention refugee abroad class or as a member of the Humanitarian-Protected Persons Abroad designated class. I have determined that you do not meet the requirements for immigration to Canada.

[6] After citing the relevant provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the letter states:

> After carefully assessing all factors relevant to your application, I am not satisfied that you are a member of any of the classes prescribed above because. Therefore, you do not meet the requirements of this paragraph.

[7] The letter concludes by stating: “Following an examination of your application, I am not satisfied that you meet the requirements of the Act and the regulations for the reasons explained above. I am therefore refusing your application.”

[8] When the Applicant sought judicial review of this decision, the Officer’s notes in the Respondent’s Global Case Management System were disclosed, as is the usual practice. These notes show that the Officer relied on a number of factors in reaching the decision to deny the application, including: (i) the fact that the Applicant said he “cannot remember how he was persecuted in Togo”; (ii) his claim that his father had been persecuted for membership in a political party related to incidents many years before; and (iii) the political party was still active in Togo and had once formed part of the government in that country.

[9] The Officer also relied on knowledge of local integration initiatives that had been proposed by the UNHCR and the government of Ghana, and found that the Applicant would not be at risk based on those integration initiatives and other unspecified knowledge held by the Officer of the country conditions in Togo. The Officer rejected the application.

[10] The Applicant seeks judicial review of this decision, arguing that: (i) the Officer made a fundamental error of law with respect to the test for refugee protection; (ii) the Officer’s decision lacks transparency and intelligibility because it leaves the reader to speculate as to the Officer’s reasoning on central issues; (iii) the Officer’s decision relies on a selective reading of the evidence; and (iv) the Officer’s decision relies on irrelevant considerations.

[11] It is not necessary to deal with each of these issues because I find the determinative issue to be the inadequacy of the decision letter that was communicated to the Applicant.

[12] The standard of review that applies is reasonableness. Under the framework of analysis set out in *Vavilov*, “where the administrative decision maker has provided written reasons, those

reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first" (*Vavilov* at para 84).

[13] In general terms, a reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Under this approach, "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons" (emphasis in original, *Vavilov* at para 86).

[14] The *Vavilov* framework requires that a reviewing court take into account a number of factors, including the context for decision-making and the administrative context. The written reasons must not be assessed "against a standard of perfection" (*Vavilov* at para 91) and the history of the proceedings and evidence and submissions made by the parties must be considered in assessing whether the decision is reasonable.

[15] This framework for judicial review is rooted in the core principle that judicial review functions to maintain the rule of law while respecting the choice made by the democratically elected government that certain decisions are to be made by administrative decision makers. It also "affirm[s] the need to develop and strengthen a culture of justification in administrative decision making" (*Vavilov* at para 2). One key aspect of this is expressed in the following passage from the majority decision in *Vavilov*:

> [95] That being said, reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the

> individuals subject to it. It would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party.
>
> [96] Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision. To the extent that cases such as *Newfoundland Nurses and Alberta Teachers* have been taken as suggesting otherwise, such a view is mistaken.

[16] Applying this framework to the facts of this case leads me to the conclusion that the decision is unreasonable.

[17] In many prior decisions, this Court has found that an officer's GCMS notes form part of the decision that is subject to review, so that a form letter or a very short letter to an applicant should be analyzed with reference both to what is expressed in the decision letter and the GCMS notes made by the officer (*Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 35 [*Rabbani*]).

[18] In many cases, applicants have argued that errors in the letter, or discrepancies between the wording of the letter and the GCMS notes, are sufficient grounds to overturn a decision. In some cases, this Court has agreed (see *e.g. Mohitian v Canada (Citizenship and Immigration)*, 2015 FC 1393; *Martinez v Canada (Citizenship and Immigration)*, 2016 FC 636). However, in other instances the Court has rejected such claims because the differences were trivial transcription errors and the applicant was aware of the officer's concerns. Even though such mistakes may have suggested "inattention or a hurried approach", they were not fatal since the record showed that the claimant was aware of the officer's true concerns (*Rabbani* at para 39, citing *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 24 [*Ekpenyong*]).

[19] In this case, as noted earlier, the key passage in the Officer's decision states: "After carefully assessing all factors relevant to your application, I am not satisfied that you are a member of any of the classes prescribed above because. Therefore, you do not meet the requirements of this paragraph" (emphasis added). This is clearly a mistake – the Officer somehow omitted to include the rationale or explanation for the denial of the application.

[20] This unfortunate error means that the decision letter contains a fundamental gap. "It is well recognized that the visa decision letter may not contain all of the reasons for a decision" and "[f]or that reason, the [GCMS] Notes form an integral part of the reasons" (*Ziaei v Canada (Citizenship and Immigration)*, 2007 FC 1169). However, this does not mean that GCMS notes can form the entirety of the reasons for a decision under review.

[21] Whether visa officers use a template in rendering their decisions (see *Ekpenyong*) or a "tick-box" document containing a variety of possible reasons, some of which have been "ticked" (see *Wardak v Canada (Citizenship and Immigration)*, 2020 FC 582), the decision letter must, at a minimum, indicate "in general terms why the decision was made" (*Wang v Canada (Minister of Citizenship and Immigration),* 2006 FC 1298 at para 18 [*Wang*]).

[22] Absent any explanation in the template letter used by the Officer to communicate to the Applicant the basis for the refusal, it is not for the Court to look to the record to speculate which elements of the GCMS notes the Officer might have intended to incorporate into the decision to explain and justify the result. There is simply no way to know.

[23] The Supreme Court of Canada in *Vavilov* cited with approval a decision of Justice Donald Rennie in *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11, which states that reasons will be sustained on reasonableness review when they allow "reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn" (see *Vavilov* at para 97).

[24] In my view, it is not possible to connect the dots in this instance, because the decision letter that was sent to the Applicant was lacking any explanation for the reasons for the decision; it simply declared a conclusion.

[25] Nothing in these reasons should be read as departing from the long-accepted doctrine that the GCMS notes can form part of the decision. All that I have found here is that the GCMS notes cannot form the entirety of the rationale for the decision. To find otherwise would run contrary to

the express direction in *Vavilov*. To take an extreme example, a decision letter that simply stated "application refused" could not be sustained as reasonable even if the CGMS notes showed a detailed and thorough analysis, because in that instance the notes are not simply forming part of the decision -- they are expressing the entirety of the reasoning. That is analogous to what happened in this case.

[26] A key factor in my determination is that the GCMS notes are not automatically disclosed to an applicant together with the decision letter. As a result of this, the Applicant was not provided any explanation for the denial of his application until he launched this legal proceeding. All that he was told was that his application had been refused because the Officer was not satisfied that he met the requirements of the law "for the reasons explained above." As noted earlier, the problem with this is that there were no reasons and no explanation.

[27] Finding such a decision to be reasonable would not be consistent with a framework that seeks to "affirm the need to develop and strengthen a culture of justification in administrative decision making" and which emphasizes that a decision must be "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at paras 2 and 95).

[28] In this case, the Applicant was told that his application had been denied. However, he was not given any reason why in the decision letter, beyond the generic description that he did not meet the requirements of the law. This does not satisfy the *Vavilov* standard of justification.

[29] It bears repeating that this does not call into question the decisions that have upheld the Respondent's use of standard forms with a series of general descriptions of reasons for refusal

that can be checked off by an officer (see *Wang*; *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097). In this case, the decision letter did not advise the Applicant of the reason for refusal in any meaningful way, and thus it provided even less to the Applicant than the "tick the box" form letter discussed in these cases.

[30] For these reasons, I find the Officer's decision to be unreasonable. The matter is remitted back for redetermination by a different migration officer.

[31] There is no question of general importance for certification.

**JUDGMENT in IMM-3609-19**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is granted.

2. The matter is remitted back for redetermination by a different migration officer.

3. There is no question of general importance for certification.

"William F. Pentney"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3609-19 |
| **STYLE OF CAUSE:** | KOKOU MAWLOLO KOKOU MAWULOLO EZOU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
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| **JUDGMENT AND REASONS:** | PENTNEY J. |
| **DATED:** | MARCH 23, 2021 |

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| Kareena Wilding | FOR THE RESPONDENT |

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