Federal Court  Cour fédérale

Date: 20211118

Docket: IMM-3054-20

Citation: 2021 FC 1259

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 18, 2021

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

JEANINE NAHIGOMBEYE,
ALEXIS-TRESOR BARUTWANAYO
QUERENE IRADUKUNDA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Jeanine Nahigombeye is a Burundian citizen who was granted refugee status in Canada. She is trying to include her husband, Alexis-Trésor Barutwanayo, and his minor daughter in her application. A visa officer refused the permanent residence application of Mr. Barutwanayo and

his daughter because he did not believe that the applicants' marriage, celebrated in 2015, was genuine. In his opinion, the marriage had been entered into for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The officer also criticized Mr. Barutwanayo for failing to disclose a prior temporary resident permit application that refers to a son who was born in 2016 but is not included in this application. That decision is the subject of this application for judicial review.

II. Facts

[2] According to the facts presented to the visa officer, Mr. Barutwanayo and Ms. Nahigombeye have been a couple since 2012 and began cohabiting in 2013.

[3] The facts that gave rise to Ms. Nahigombeye are not at issue here; it suffices to say that, according to Mr. Barutwanayo, they celebrated their marriage in haste in Burundi in July 2015, less than three weeks before Ms. Nahigombeye's departure for Canada. She obtained refugee status in October 2015.

[4] In June 2016, Ms. Nahigombeye made an application for permanent residence in which she included her husband and his minor daughter from a pervious relationship. Permanent residence was granted to Ms. Nahigombeye, but the applications of the other two applicants were considered incomplete.

[5] The officer first asked Mr. Barutwanayo, on three occasions, to provide him with evidence of communication between him and Ms. Nahigombeye; seven months after the first request, he received a number of text messages exchanged by the spouses.

[6] The officer then sent a procedural fairness letter in which he asked to be provided with the following: (1) details of the development of the relationship between the adult applicants given that Ms. Nahigombeye left Burundi shortly after her wedding and there seems to have been little contact between them since then; (2) an explanation regarding a temporary resident visa application allegedly filled out by Mr. Barutwanayo in 2016 in which he declared a son born in January 2016; (3) a divorce certificate for Mr. Barutwanayo's previous marriage; and (4) authorization from the biological mother of the minor child included in this application for her immigration to Canada.

[7] According to the notes entered into the Global Case Management System [GCMS], the applicants replied with the requested information in March 2019.

[8] To proceed with their application, the officer requested a meeting with Mr. Barutwanayo, which was held in February 2020.

III. Impugned decision

[9] In the GCMS notes, the officer summarizes the concerns he brought to Mr. Barutwanayo's attention during the interview.

[10] First, according to Mr. Barutwanayo, his wife left Burundi in December 2015, while she in fact arrived in Canada in July 2015. His inability to identify the time of his new wife's departure from Burundi undermines his credibility with respect to the genuineness of the marriage.

[11] Second, Mr. Barutwanayo denied having filed a visitor visa application in 2016. According to him, the application must be fraudulent. He could not, however, explain why a fraudster would be interested in spending time and financial resources to file an application in Mr. Barutwanayo's name, which, while not signed by him, does include several items of personal information, including his date of birth and his parents' names. In the GCSM notes, the officer states that it was possible that Mr. Barutwanayo was lying about this application to hide the existence of a child born to another woman after the applicants married. According to the officer, the explanation provided by Mr. Barutwanayo also undermines his credibility.

[12] Finally, the officer was dissatisfied with the evidence of financial support submitted by the spouses. The documentation provided does not show the recipient of the funds, only that a few bank transfers were made by Ms. Nahigombeye to Burundi.

[13] Because of Mr. Barutwanayo's lack of credibility, the officer was not satisfied that the relationship between the adult applicants is genuine or that it was not entered into for the primary purpose of acquiring a status or privilege under the Act.

[14] The permanent residence application of Mr. Barutwanayo and his daughter was therefore rejected.

IV. Issues and standard of review

[15] The applicants raise three issues:

A. *Did the officer breach the principles of procedural fairness?*

B. *Did the officer err in his analysis of the evidence of the applicants' marriage?*

[16] The standard of review applicable to the first issue raised by this application is or is akin to the standard of correctness. The Court must intervene if it finds that the principles of procedural fairness have been breached (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 36, 54).

[17] The issue of "whether the marriage is genuine or whether it was entered into for the purpose of acquiring a status under the Act" must be analyzed according to the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17; *Kaur v Canada (Citizenship and Immigration)*, 2010 FC 417 at para 14).

V. Analysis

A. *Did the officer breach the principles of procedural fairness?*

[18] Mr. Barutwanayo argues that the officer was biased against him during the interview conducted to validate the genuineness of the marriage. According to him, the officer placed undue emphasis on the 2016 visa application and was aggressive when addressing this topic.

[19] It should be noted that in response to the procedural fairness letter, Mr. Barutwanayo sent the officer an email containing blunt and rather accusatory statements against the Canadian authorities:

> [TRANSLATION]
>
> . . . You say that I applied for a temporary resident visa in 2016, but I am sorry to inform you that the only application that has been made is the family class application made by my wife, who is currently in Canada.
>
> I am telling you that I have only one child, a daughter, . . . , and she is included in the application. If anyone has ever spoken to you of another child, it was a criminal, a child trafficker, and I ask that your service transfer the child's file to the police so that he can be protected. If you do not do so, you will be considered complicit in the trafficking and could be accused of failure to assist a person in danger.
>
> This matter of a so-called child I don't know now makes me realize why my file has been taking so long to process. It is because there is clearly an officer who is involved in child or visa trafficking.
>
> Furthermore, this situation is creating conflict with my wife, who has begun to have doubts and ask me questions. I also hold you responsible for this dispute in my relationship.
>
> Finally, I am sufficiently informed about how things work in Canadian society. All that is necessary is to inform the media, and

> they will investigate and figure out what is really going on, establish whether there has been an error—which I highly doubt—or whether this involves trafficking within the High Commission of Canada in Dar es Salaam, Tanzania.
>
> . . .
>
> I expect you to finish processing my file as soon as possible, before the end of March, and to deal with this case of child or visa trafficking, which clearly reflects very badly on a service of the Canadian government.

[20] While Mr. Barutwanayo himself set the tone for his future meeting with the visa officer, the officer's interview notes do not reveal any bias on his part. What is apparent is a degree of skepticism and dissatisfaction with respect to the explanations provided regarding the 2016 application to visit. The officer does not explain where this application might have come from, to the extent that several of the pieces of information it contains correspond to the permanent residence application at issue here.

[21] Mr. Barutwanayo does not refer to any concrete evidence that would allow the Court to conclude that the officer showed bias when processing his permanent residence application. In my view, Mr. Barutwanayo's arguments in support of this issue relate more to the weight given to the evidence by the officer (*Pasion v Canada (Citizenship and Immigration)*, 2008 FC 91 at paras 10–11).

B. *Did the officer err in his analysis of the evidence of the applicants' marriage?*

[22] Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-27 [Regulations], states that a foreign national shall not be considered a spouse, a common-law

partner or a conjugal partner for the purposes of the application of the Act and the Regulations if the marriage or partnership was entered into primarily for the purpose of acquiring any status or privilege under the Act or if it is not genuine.

[23] A close reading of the interview notes made in February 2020 demonstrates that the officer placed a great deal of weight on the 2016 visa application form in his assessment of Mr. Barutwanayo's credibility and the genuineness of the marriage.

[24] Contrary to what Mr. Barutwanayo argues, he was informed of the existence of this visa application in an email sent by the officer in February 2019, and, according to the officer's notes, he was confronted with the form during the interview. However, nothing in the notes indicates that Mr. Barutwanayo had enough time to examine the form and note all of the irregularities it contained.

[25] First, the form was not signed by Mr. Barutwanayo. Also, while the adult applicants are identified and their dates of birth match those listed in the permanent residence application, their address in Burundi does not match. Ms. Nahigombeye's address is in Burundi, even though we know that she has been in Canada since 2015 and was granted refugee status here in October 2015. The dates of birth of Mr. Barutwanayo's parents are not provided in full; only the years are listed, and they differ from those that appear in the permanent residence application. The 2016 visa application lists two brothers and a sister, born between 1980 and 1988, while the permanent residence application lists five brothers and sisters, all different from the three

previously mentioned, born between 1970 and 1982, and all residing at the same address as their deceased parents.

[26] The officer makes absolutely no note of these discrepancies. On the contrary, here is how he addresses the 2016 visa application in his interview notes:

> PA [PRINCIPAL APPLICANT] DOES NOT ACKNOLEDGE [*sic*] EVER APPLYING FOR A TRV [TEMPORARY RESIDENT VISA], WHICH CONTAINED INFORMATION ABOUT A SON THAT HE DENIES HAVING. STATES ALL OF THE OTHER FAMILY INFORMATION ABOUT HIS PARENTS AND SIBLINGS ON THE TRV APPLICATION WAS CORRECT BUT STATES INFORMATION ABOUT THE SON WAS FABRICATED.

[27] It therefore appears clear that the numerous discrepancies between the application for permanent residence and the 2016 visa application were not brought to Mr. Barutwanayo's attention. Given that the 2016 form was not signed by Mr. Barutwanayo, it seems to me that the officer should have raised them before concluding that the only possible explanation was that Mr. Barutwanayo was attempting to hide a son he had with another woman.

[28] If Mr. Barutwanayo had been given the opportunity to examine the 2016 visa application more closely, or if he had been confronted with the information it contained that differed from the information included in his permanent residence application, he may have been able to answer the officer's questions differently.

[29] I would add that it is impossible for the Court to know how this form ended up in the Certified Tribunal Record. Was this application processed by Immigration Canada despite the

fact that it was unsigned? If so, what became of it? It appears to me that if it had been rejected, Immigration Canada would also have in its possession a letter of refusal that would likely have been sent to Mr. Barutwanayo. He could have been confronted with this letter as well.

[30] Given all of the irregularities on the face of the 2016 visa application, notably the fact that it was not signed, I am of the opinion that it was unreasonable for the officer to give it as much weight as he did. This is all the more true if we consider the decision as a whole.

[31] The officer criticized Mr. Barutwanayo for his confusion regarding the date on which Ms. Nahigombeye left Burundi for Canada. He replied that she had left in December 2015, when in fact she had left in late July 2015. However, the officer did not take into account the fact that when he asked Mr. Barutwanayo to explain the events that precipitated Ms. Nahigombeye's departure, he also placed the burning of the radio station where she worked and the attempted coup d'état in Burundi in December 2015. The attempted coup in fact took place in May 2015. This could explain his confusion with respect to Ms. Nahigombeye's date of departure, especially given that Mr. Barutwanayo himself took refuge in Rwanda not long after his wedding.

[32] Although the officer states that he was satisfied with the evidence of regular communication between the applicants, he considered the evidence of the handful of bank transfers allegedly made by Ms. Nahigombeye to Mr. Barutwanayo since their wedding insufficient. First, the officer states that the name of the recipient does not appear on the document issued by Western Union; all that can be seen is that transfers were made from

Ms. Nahigombeye to a recipient in Burundi. However, Mr. Barutwanayo produced some of his own bank account statements which show a number of deposits from Western Union. The officer does not seem to take this evidence into account in his analysis. Nor does he seem to take into account the fact that for most of the period covered, Mr. Barutwanayo was working in Burundi. This could explain why little financial assistance from Ms. Nahigombeye was required.

[33] I am therefore of the view that, given the relative weakness of the other grounds raised by the officer to undermine Mr. Barutwanayo's credibility, the fact that he did not properly inform him of the irregularities in the 2016 visa application undermines the officer's decision and renders it unreasonable. I consider this an error that warrants the Court's intervention.

VI. Conclusion

[34] For these reasons, I allow the application for judicial review and remit the matter to a different immigration officer for redetermination. The parties have not proposed any question of general importance for certification, and I am of the view that no such question arises from the facts of this case.

JUDGMENT in IMM-3054-20

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The decision issued by the High Commission of Canada in Dar es Salaam, dated February 27, 2020, is set aside, and the matter returned to the High Commission for redetermination by a different officer.
3. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3054-20
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APPEARANCES:

Lia Cristinariu	FOR THE APPLICANTS
Mario Blanchard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Montréal, QC	FOR THE RESPONDENT