Federal Court  Cour fédérale

Date: 20211217

Docket: IMM-3611-19

Citation: 2021 FC 1431

Toronto, Ontario, December 17, 2021

PRESENT: Justice Andrew D. Little

BETWEEN:

BERNARD APPEKIN YAO AGBODON SEDOH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

CORRECTED JUDGMENT AND REASONS

[1] The applicant, Mr Sedoh, is a citizen of Togo living in Krisan Refugee Camp, Ghana. He applied for judicial review of the decision of a migration officer dated April 12, 2019, made at the High Commissioner in Accra, Ghana.

[2] The officer refused Mr Sedoh's application for a permanent resident visa as a member of the Convention refugees abroad class or as a member of the humanitarian-protected persons

abroad ("country of asylum") class under paragraph 139(1)(*e*) and sections 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "IRPR). The officer found that Mr Sedoh did not meet the requirements of either class.

[3] The applicant submitted that the officer's decision was unreasonable under the principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[4] For the following reasons, I conclude that the application must be allowed.

I. Facts and Decision Leading to this Application

A. *Material Facts*

[5] The applicant is a citizen of Togo and is of Ewe ethnicity. He was born in 1998 and raised in a refugee camp in Ghana. He continues to live there with his parents and siblings.

[6] The applicant's claim for protection as a Convention refugee was based on his fear of persecution from the ruling party in Togo as a result of the persecution faced by his family. The applicant claims that in 1992, before he was born, his mother fled Togo for Ghana following his grandfather's murder by members of the Togolese armed forces. The military personnel killed his grandfather after he refused to persecute and kill persons and opposition political leaders in Togo.

[7] The applicant has been recognized as a Convention Refugee by the United Nations High Commission for Refugees ("UNHCR") and the government of Ghana.

[8] The Office for Refugees – Archdiocese of Toronto identified the applicant as a candidate for resettlement as a refugee. That office submitted an application to sponsor the applicant and it was approved.

[9] An officer interviewed Mr Sedoh in Accra on April 11, 2019.

B. *The Decision under Review*

[10] By letter dated April 12, 2019, the officer advised Mr Sedoh that he had completed an assessment of his application and determined that he did not meet the requirements for immigration to Canada.

[11] The letter set out the contents of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "IRPA") and IRPR sections 145 and 147 and paragraph 139(1)(*e*). Paragraph 139(1)(*e*) provides (in relevant part) that a permanent resident visa shall be issued to a foreign national in need of refugee protection if the foreign national is a member of one of the classes prescribed in that Division of the IRPR. Division 1 of IRPR Part 8 provides for two relevant classes: the Convention refugees abroad class under section 145 of the IRPR and the country of asylum class under section 147.

[12] After setting out those provisions, the officer's letter then advised the applicant:

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

[13] After referring to subsection 11(1) of the IRPA, the letter stated:

> 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.

[14] The officer made entries in the government's Global Case Management System, (the "GCMS"). Summarizing the questions and answers at the interview with the applicant, a GCMS entry stated in part:

> DETAILS OF REFUGEE CLAIM: "Why did you leave? I was born here[.] Why you parents left? My parents left because of persecution in Togo. What kind of persecution? I don't know [Were] you (or those similarly situated – family, associates, etc) ever threatened or harmed? I was born here but according to my mother, she was harmed and injured and my grandmother was also injured. My grand father was a military who has been killed by military of the ruling party of Eyadema. Why your grandfather was killed? According to my mother, my grandfather was killed because he refused to persecute and killed an opposition leader of President Eyadema[.] Have you personally been persecuted or harmed? No because I was born in Ghana
>
> […]
>
> What do you fear would happen if you were to return? Because I am [afraid] to be persecuted. Who would do this? The ruling party[.] Are you aware of any incidents that happened recently back home to anyone you know? No
>
> […]
>
> Have any of your family members had problems? According to my father, in 1993 he left the ruling party to join the opposition and was arrested and managed to free to cross the Ghana border

[15] With respect to the rationale for the refusal of Mr Sedoh's application, a GCMS entry on April 12, 2019 stated:

> ELIGIBILITY: REFUSED- Rationale for Refusal: Although PA [principal applicant] has been recognized as a refugee in Ghana,

> PA failed to satisfy me that he was persecuted and has a well-founded fear of persecution in Togo therefore PA does not meet the definition of a convention refugee. PA was born in Ghana and has never visited Togo and has never been personally affected by any persecution. According to open source, The Ghana Refugee Board (GRB) and UNHCR are working toward securing sustainable and durable solutions for Togolese refugees in Ghana. Support for local integration will be achieved by obtaining an alternative durable legal status (indefinite residence status or naturalization) based on the favourable legal and policy framework, coupled with issuing nationality documents to prevent statelessness. As part of the local integration project launched in 2014, the GRP, UNHCR and partners secured access for refugees to national social services, including education and health. In 2016, UNHCR and the GRB developed a protection and solutions strategy, pending an official endorsement by the Ministry of the Interior, leaving local integration (indefinite residence status and naturalization) subject to final approval by the Government. A local integration package proposition was drafted after consultations between UNHCR, stakeholders and refugees. … The situation has changed in Togo and is not the one prevailing in 1993 and 2005. I am also not satisfied that PA have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in Togo. Therefore PA does not meet the definition under the Country of asylum class.

II. Standard of Review

[16] The standard of review of the officer's decision is reasonableness, as described in *Vavilov*. Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov*, at paras 12-13. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at paras 85 and 99. On a judicial review application, the reviewing judge must consider both the reasons provided by decision maker and the overall outcome: at paras 83 and 87.

[17] The Supreme Court's decision in *Vavilov* emphasized the creation of a "culture of justification" in administrative decision-making: at paras 2 and 14. A decision must not only be justifiable; where reasons are required, the decision must actually be justified, by way of reasons, by the decision maker: at para 86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at para 28.

[18] The Federal Court of Appeal has held that *Vavilov* "did change the law substantially by requiring that reviewing courts be able to discern a reasoned explanation for administrators' decisions": *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 7.

[19] The reviewing court starts its review with the reasons because they are the "primary mechanism by which administrative decision makers show that their decisions are reasonable": at para 81. "[C]lose attention" must be paid to those reasons: *Vavilov*, at para 97. The reasons must be read holistically and contextually, in conjunction with the record that was before the decision maker: *Vavilov*, at paras 84, 88-97 and 103; *Canada Post*, at para 30; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 32. Relatedly, the legal requirements for justification cannot lose sight of the specific context in which the impugned decision arises. The decision must also be responsive to those affected by it, particularly if the impact of the decision on the individual's rights and interests is severe: *Vavilov*, at paras 95-96 and 133.

[20] Perfection is not the standard for reasons: *Vavilov*, at para 91. To apply that requirement would be to apply a correctness standard of review, rather than reasonableness: *Alexion Pharmaceuticals*, at paras 22-23. The decision maker must adequately explain the basis for the

decision in light of the evidence before it and its statutory task. The reasons must conform to the legal and factual constraints that bear on the decision and the issue at hand: *Vavilov*, at paras 105-107; *Canada Post*, para 30.

[21] A touchstone for unreasonableness is the reviewing court's ability to discern a reasoned explanation for key aspects of the decision: *Alexion Pharmaceuticals*, at paras 7, 32, 64-66 and 70. Reasons that simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion will generally be unreasonable because they rarely assist a reviewing court to understand the rationale for a decision: *Vavilov*, at para 102. If the reasons are read with the record and the reviewing court cannot understand the reasoning on a critical point, the decision will be unreasonable: *Vavilov*, at para 103.

[22] Appellate courts following *Vavilov* have concluded that an entirely conclusory analysis meets the same fate: *Canada (Attorney General) v Douglas*, 2021 FCA 89, at para 12; *Cowan v Grande Prairie No 1 (County of)*, 2020 ABCA 399, at para 9. On conclusory language, see also *Alexion Pharmaceuticals*, at para 43; and *R v HMH*, 2021 ABCA 118, at paras 18, 32 and 39.

[23] The requirement for reasons that actually justify the decision is meaningful. Since *Vavilov* and *Canada Post*, the Federal Court of Appeal has concluded in several cases that decisions were unreasonable because they were made without adequate reasoning on a key issue. In addition to *Alexion Pharmaceuticals* and *Douglas*, see *Bragg Communications Inc v UNIFOR*, 2021 FCA 59, at paras 6 and 9-11 and *Farrier v Canada (Attorney General)*, 2020 FCA 25, at paras 13-14 and 19.

[24] Under *Vavilov*, a reviewing court may not speculate as to what the decision maker was thinking and may not supply, supplement or "cooper up" the decision maker's reasons with its own reasoning: *Alexion Pharmaceuticals*, at para 10; *Vavilov*, at paras 96-97. However, a reviewing court is permitted to "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn": *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 (Rennie J.), at para 11 (expressly approved in *Vavilov*, at para 97). The Federal Court of Appeal has also held that a reasoned explanation for a decision may be found expressly, be implied or be implicit in a decision, and in some circumstances may be found outside the reasons themselves: *Mason*, at paras 31 and 38. In *Mason*, Stratas JA also cautioned against overly high expectations for legal reasoning, referring to some decision makers under the IRPA who need not be lawyers: *Mason*, at paras 39-40.

[25] On a judicial review application, the court's approach is deferential and disciplined. Not all errors or concerns about a decision will warrant intervention. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Mason*, at para 36; *Alexion Pharmaceuticals*, at para 13.

[26] The Supreme Court in *Vavilov*, at paragraph 101, identified two types of fundamental flaws: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

[27] With respect to reasoned explanations for administrative decisions, Stratas JA referred to two related components of the reviewing court's task in *Alexion Pharmaceuticals,* at para 12:

> - *Adequacy*. The reviewing court must be able to discern an "internally coherent and rational chain of analysis" that the "reviewing court must be able to trace" and must be able to understand. Here, an administrator falls short when there is a "fundamental gap" in reasoning, a "fail[ure] to reveal a rational chain of analysis" or it is "[im]possible to understand the decision maker's reasoning on a critical point" such that there isn't really any reasoning at all: *Vavilov* at paras. 103-104.
>
> - *Logic, coherence and rationality*. The reasoning given must be "rational and logical" without "fatal flaws in its overarching logic": *Vavilov* at para. 102. Here, the reasoning given by an administrator falls short when it "fail[s] to reveal a rational chain of analysis", has a "flawed basis", "is based on an unreasonable chain of analysis" or "an irrational chain of analysis", or contains "clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise": *Vavilov* at paras. 96 and 103-104.

[28] The onus on this application for judicial review is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

III. Analysis

[29] The applicant challenged the reasonableness of the decision on three general grounds:

a) As a matter of comity within the Federal Court, I should follow the recent decision of Justice Pentney in *Ezou v Canada (Citizenship and Immigration)*, 2021 FC 251, which set aside an officer's decision involving substantially the same facts and contents of a refusal letter;

b) The officer's decision was unreasonable because it lacked sufficient justification and transparency due to inadequate reasons, it failed to grapple with the ground of protection advanced, it relied on irrelevant considerations and it did not have adequate regard for the UNHCR's determination that the applicant is a refugee; and

c) The officer applied the incorrect legal test under section 96 of the IRPA.

[30] The applicant contended that the "central failing" of the officer's decision was its failure to justify and be responsive to Mr Sedoh's application, particularly because of his vulnerability as an individual seeking refugee protection who lives in a refugee camp. He asked the Court to find that the absence of justification in the officer's letter to him dated April 12, 2019, constituted a reviewable error sufficient to set aside the decision and that the Court should not even turn to the GCMS notes. The applicant characterized this application as a straightforward application of Justice Pentney's decision in *Ezou*. The applicant maintained that the letter sent to him was substantively identical to the letter sent to the applicant in *Ezou*. According to the applicant, neither one contained even a hint of explanation about why the officer refused the individual's application. In the applicant's submission, the "decision" was in the letter and at least some of the reasoning required by *Vavilov* must be in that letter.

[31] The respondent submitted that the officer's decision was reasonable, considering the letter and the contents of the GCMS notes. The letter referred to the legislative provisions at issue. The respondent noted that the GCMS notes formed part of the decision and adequately explained the reasons for the decision. The respondent relied on the GCMS entries, referring to

both the “Rationale for Refusal” entry and the entry containing notes of the interview with the applicant.

[32] The respondent attempted to distinguish *Ezou* on the basis that, unlike the letter to Mr Sedoh, the letter in *Ezou* included the word “because” without any explanation following it, which suggested that the *Ezou* officer intended to provide additional explanation but did not. The respondent characterized *Ezou* as an outlier decision and relied on *Hungbeke v Canada (Citizenship and Immigration)*, 2020 FC 955 (St-Louis J.).

[33] The positions of the parties both raise concerns about line-drawing. The applicant’s position would draw a line around the decision letter sent to an applicant and require that at least some of the officer’s reasoning be contained in that letter. On this view, the letter cannot simply set out the provisions at issue and state: “you do not qualify”, or “you do not meet those requirements”. This firm line is supported by the renewed attention on adequate justification since *Vavilov.* It has some practical attraction because it seems straightforward for an officer to write a précis of the reasoning that applies to the individual applicant in the GCMS and then copy/paste it into the decision letter sent to the individual. Further details would still be found in the GCMS in requested by the individual or for later judicial review purposes. However, the line drawn by the applicant creates tension with this Court’s case law holding that GCMS notes form part of the decision and may be considered when determining the reasonableness of the decision.

[34] The respondent’s position on this application raised two different line-drawing concerns: first, it recognizes no distinction between the decision letter sent to the applicant and the GCMS notes, even though the GCMS notes are not sent to the individual (absent a formal request):

Ezou, at para 26. If the letter to the applicant is entirely conclusory (as in this case), the individual would receive no substantive reasoning at all for the decision affecting them without asking for it. That circumstance diminishes accountability, responsiveness and transparency in administrative decision-making. Second, the respondent's position would incorporate all of the GCMS notes as part of an officer's reasoning. Yet some GCMS entries are not reasons, but are part of the factual record: see *Ezou v. Canada (Citizenship and Immigration)*, 2021 FC 1146 (Pallotta J.), at paras 22-23. Taking these two points together implies little or no distinction between the decision and the record, which discourages the culture of justification in administrative decision-making that *Vavilov* actively seeks to promote. It could also enable or entice creative counsel to supply purported reasoning for a decision, contrary to *Vavilov*.

[35] I agree with the applicant that the letter dated April 12, 2019, is entirely conclusory. It only set out the applicable legislative provisions and stated a bald conclusion with no supporting reasoning related to Mr Sedoh's application. The letter stated that the officer was "not satisfied that [Mr Sedoh met] the requirements of the Act and the regulations for the reasons explained above", but there were no "reasons explained above". Without the GCMS notes, there was no discernable reasoning at all to support the officer's refusal: see, similarly, *Ezou*, 2021 FC 1146, at paras 15-16. The respondent offered no legal basis to support the decision looking only at the letter and not also at the GCMS notes. The absence of the word "because" in the letter to Mr Sedoh is a difference without a distinction (and the difference does not assist the respondent).

[36] This Court has consistently held that the GCMS notes form part of an officer's decision: see e.g. *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 (LeBlanc J.), at para 35; *Thedchanamoorthy v Canada (Citizenship and Immigration)*, 2018 FC 690 (Southcott J.), at para

17; *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 (Strickland J.), at para 19. In an earlier case (mentioned by Pentney J. in *Ezou*), *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298, Barnes J. stated that in practice at the visa office in Beijing at the time, a form letter indicated in general terms what decision was made. He characterized GCMS notes as a "constituent part" of the administrative decision but noted that in that case, they provided "additional detail" to the contents of the formal decision letter: *Wang*, at para 22. The *Wang* case is also associated with Justice Barnes's discussion of the volume of visa and other applications processed at Canadian government offices overseas: *Wang*, at paras 20-22, cited as recently as *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 (McHaffie J.), at para 9.

[37] It is not necessary in this case to determine whether *Vavilov* and its progeny may require a decision letter to contain at least some reasoning (or, put another way, that the GCMS notes cannot form the entirety of the rationale for the decision: *Ezou*, 2021 FC 251, at paras 24-25). Here, even accounting for the GCMS notes, the officer's decision must be set aside as unreasonable.

[38] In the present case, the GCMS notes have an explicit entry for the "Rationale for Refusal" that may be considered in determining whether the officer's decision was reasonable.

[39] There are effectively three parts to the "Rationale for Refusal" entry. The first part concerned whether the applicant was a Convention refugee under IRPR section 145. Section 145 provides that 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.

[40] In the first part of the "Rationale for Refusal", the officer stated that although the applicant had been recognized as a refugee in Ghana, he did not satisfy the officer that he was persecuted and had a well-founded fear of persecution in Togo and therefore did not meet the definition of a Convention refugee. That aspect of the GCMS entry contributed no reasoning to the conclusory letter sent to the applicant.

[41] The officer then stated that the applicant "was born in Ghana and has never visited Togo and has never been personally affected by any persecution". That sentence implied that the officer conducted a retrospective assessment and based the section 145 conclusion on whether the applicant had himself experienced historical persecution in Togo, rather than looking at the well-foundedness of the applicant's fears of persecution prospectively, if he were to go to Togo. The officer also did not refer or assess the past or present ruling political party in Togo, which was the agent of persecution identified by the applicant. Further, although past persecution may be (and often is) a key indicator of future persecution, in law it is not the sole factor. It is well established that a claimant does not have to show a serious possibility that he had himself been targeted or persecuted in the past, or even that he would himself be persecuted in the future. A claimant may show a fear of persecution through evidence of the treatment of members of a group to which the claimant belongs (i.e. "similarly situated" persons) in their country of origin: *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 (CA), at paras 17-19; *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 (McHaffie J.), at para 19 (and the cases cited there); *Arocha v Canada (Citizenship and Immigration)*, 2019 FC 468 (Diner

J.), at para 23. In this case, so far as the reasoning can be discerned, the officer's restricted approach displayed errors on legal and factual issues that were fundamental to a proper assessment of the applicant's claim to Convention refugee status as a member of the class under IRPR section 145.

[42] The second part of the "Rationale for Refusal" concerned the situation in Togo. The officer comments that the Ghana Refugee Board (GRB) and UNHCR are "working toward securing sustainable and durable solutions for Togolese refugees in Ghana. Support for local integration will be achieved by obtaining an alternative durable legal status …" The second part of the entry concluded with: "The situation has changed in Togo and is not the one prevailing in 1993 and 2005." The bulk of these comments did not appear to address whether the applicant is a member of the class described in section 145 as a Convention refugee. Instead, they concerned the criteria in IRPR paragraph 139(1)(*d*) about whether the applicant is a "person in respect of whom there is no reasonable prospect of a durable solution" in Ghana of voluntary repatriation or resettlement. However, the officer's letter to the applicant did not mention paragraph 139(1)(*d*). It did mention paragraph 139(1)(*e*)—whether the applicant was a member of one of the classes prescribed, in this case by section 145 or section 147.

[43] It could be that this second part of the officer's "Rationale for Refusal" concerned both paragraph 139(1)(*d*) and section 145. However, reading the passage, the officer's assessment found that people were working towards a solution (not that a solution had been achieved); that government action was still needed; and that things were better at the time of writing than they were at certain points in the past. It did not consider or conclude on the prospective risk of persecution to this applicant in Togo if he were to return there, as was required for a lawful

analysis of the applicant's Convention refugee status under section 145. The second part of the GCMS entry offered no discernable reasoning or dots to connect with respect to Mr Sedoh's claimed fears of persecution (or the treatment of persons similarly situated to him).

[44] The third part of the "Rationale for Refusal" entry in the GCMS notes concerned the requirements of IRPR section 147. Section 147 provides:

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	147 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.

[45] The GCMS entry stated that the officer was not satisfied that the applicant "ha[s] been, and continue[s] to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in Togo. Therefore [the applicant] does not meet the definition under the Country of asylum class." Here, the officer simply recited the words in paragraph 147(*b*) and stated a conclusion. This entry revealed little or nothing about the officer's reasoning and added nothing of substance to the conclusory statements in the letter to the applicant dated April 12,

2019. The second part of the Rationale for Refusal entry also did not address section 147 as it concerned the applicant. The start of any chain of analysis contained a material gap.

[46] The respondent submitted that the officer was stationed at the High Commission in Accra and must be familiar with the region. On that basis, the officer was allowed to make conclusions based on the officer's knowledge of the situation in Ghana and Togo. I agree that this Court's cases permit and expect an officer to use knowledge of local conditions: see *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 (Mainville J.), at paras 30-31. However, in this case, unstated local knowledge did not yield any critical reasoning from the officer under IRPR section 145 or section 147. For the respondent's position to succeed, one would have to assume that the officer must know the risks to this applicant in Togo and that the risks were insufficient to meet the Convention requirements for this applicant, leading to a conclusion that the applicant did not satisfy the IRPR provisions, all without telling the applicant or the reviewing court what that local knowledge was or why the applicant would not be exposed to risk. In effect, it would permit an officer to say "trust me, I know" to ground a negative decision. That goes against the requirement to provide a discernable reasoned explanation, as described in *Alexion Pharmaceuticals*. In addition, I do not believe the cases on an officer's use of local knowledge do or should go that far: *Amanuel v Canada (Citizenship and Immigration)*, 2021 FC 662, at paras 44-48; *Hungbeke v Canada (Citizenship and Immigration)*, 2020 FC 955 (St-Louis J.), at paras 40-41; *Al Hasan v Canada (Citizenship and Immigration)*, 2019 FC 1155 (Grammond J.), at paras 10-11; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 (Norris J.) at paras 17-18 and 21; *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992 (Pentney J.) at paras 7, 10, and 20-21.

[47] The respondent submitted that the officer's decision was justified on the factual record, given the alleged absence of evidence in the record and the applicant's inability at the interview to articulate any grounds for fear of persecution if he were to return to Togo: *Hungbeke*, at paras 40-41; *Kore v Canada (Citizenship and Immigration)*, 2019 FC 1120 (Lafrenière J.), at para 20. This submission fails in this case: the decision was not justified because the officer did not articulate forward-looking concerns in stating a rationale for the decision. The decision must be both justifiable and actually justified and this Court may not supply its own reasoning: *Vavilov*, at paras 86 and 97. It is the officer's role to perform the assessment and provide the reasons. Accordingly, I make no comment on whether or not it was open to the officer to reach the conclusion proposed by the respondent on the evidentiary record.

[48] For these reasons, I conclude that the officer's decision was unreasonable. The letter to the applicant dated April 19, 2019 and the "Rationale for Refusal" in the GCMS notes did not contain discernable reasoning for refusing Mr Sedoh's application: *Vavilov*, at para 102; *Alexion Pharmaceuticals*, at paras 7, 32, 43, 64-66 and 70; *Douglas*, at para 12. The letter and the "Rationale for Refusal" were: (i) mostly conclusory with respect to IRPR section 145 and where a one-sentence reason was provided, it disclosed one or more errors of law and did not assess the basis for the applicant's fear of persecution; and (ii) entirely conclusory with respect to IRPR section 147. The officer's decision did not fulfil the requirements of *Vavilov* because it failed to provide sufficient, responsive and transparent reasoning to support the refusal of the application and it did not respect the constraints imposed by IRPR section 145 concerning a proper assessment of the applicant's claim for Convention refugee status.

IV. Conclusion

[49] The application must be allowed. The officer’s decision will be set aside. Neither party proposed a question for certification and none is stated.

JUDGMENT in IMM-3611-19

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The decision dated April 12, 2019 is set aside and the matter is remitted back for redetermination by a different officer. The applicant shall be permitted to provide additional information and/or submissions for his application.
2. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3611-19
STYLE OF CAUSE:	BERNARD APPEKIN YAO AGBODON SEDOH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 14, 2021
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	DECEMBER 17, 2021

APPEARANCES:

Samuel E. Plett	FOR THE APPLICANT
Meva Motwani	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Samuel E. Plett Desloges Law Group Toronto, Ontario	FOR THE APPLICANT
Meva Motwani Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT