

Federal Court



Cour fédérale

Date: 20220819

Docket: IMM-5642-21

Citation: 2022 FC 1214

[ENGLISH TRANSLATION]

Montréal, Quebec, August 19, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

SENANMI YANNICK TOLLO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Senanmi Yannick Tollo [Senanmi Tollo], a minor, is applying for judicial review of the decision of an immigration officer from the High Commission of Canada in Ghana [the Officer] dated August 2, 2021, refusing his application for permanent residence. In his decision, the Officer concluded (1) that Senanmi Tollo did not meet the immigration

requirements in Canada as a member of the family class, although he was sponsored by his father, Blaise Yelognisse Koffi Tollo [Blaise Tollo], a Canadian citizen, because the father had not declared his son on his own application for permanent residence (paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]); (2) that Senanmi Tollo did not meet the temporary public policy requirements; and (3) that the Officer was not satisfied, on a balance of probabilities, that Senanmi Tollo's request under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] reached the humanitarian and compassionate consideration threshold to provide an exemption to the excluded relationship under paragraph 117(9)(d) of the Regulations.

[2] Senanmi Tollo is challenging only the Officer's decision to refuse his request under subsection 25(1) of the Act. He argues that the Officer's assessment of humanitarian and compassionate considerations was unreasonable because the Officer did not apply the correct test for the best interests of the child and that his request was specific as to the hardships he would face if his request were refused.

[3] Moreover, in response to questions from the Court, Senanmi Tollo stated that the Officer had erred in requiring the applicant to meet a burden of establishing the hardships he would face if the requested exemption were not granted and, in the alternative, that the Officer had applied the hardship threshold in a way that fettered his ability to consider and weigh *all* relevant humanitarian and compassionate considerations, resulting in an unreasonable exercise of his authority.

[4] For the following reasons, the application for judicial review will be allowed.

II. Background

[5] In February 2013, Blaise Tollo, a citizen of Benin, arrived in Canada as a permanent resident having been selected under the Quebec Skilled Worker Program. In his application, Blaise Tollo stated that he was single and that he had no children. On October 11, 2017, Blaise Tollo became a citizen of Canada.

[6] In short, once settled in Canada, Blaise Tollo allegedly learned that he had three children, two born to Léonide Bertille Aguidissou in 2010 and 2012, and one born to Dede Blandine Teko in 2007, who is Senanmi Tollo, the applicant in this case. Around February 2018, Blaise Tollo travelled to Benin and met his children for the first time. On March 20, 2018, DNA test results confirmed that Blaise Tollo is the father of Senanmi Tollo. On June 29, 2018, a judge in Benin granted Blaise Tollo custody of the children and the possibility for them to travel with him to Canada [TRANSLATION] “to provide them with a better education”. On October 26, 2018, Blaise Tollo and Léonide Bertille Aguidissou were married.

[7] On December 6, 2018, Blaise Tollo filed a sponsorship application for his wife and three children. At the request of the Minister of Citizenship and Immigration [the Minister], on February 28, 2019, Blaise Tollo filed a separate application for sponsorship and permanent residence for Senanmi Tollo, the applicant in this case. In his submissions in support of this application, Blaise Tollo sought a regular sponsorship and, in the alternative, a humanitarian and compassionate sponsorship under subsection 25(1) of the Act.

[8] Through his counsel, Blaise Tollo then filed submissions and two affidavits in support of this application on humanitarian and compassionate grounds. In essence, he submitted that his request for exemption should be granted because

- He is ready and able to fulfill his role.

- He wants to love, raise, educate, cherish and share his life with his children and with his spouse.

- It is clearly in the best interests of the children to be reunited with their biological father, as every child needs a father.

- Since their father is Canadian, the children ought to join him in Canada, where they will have a better future.

- Their mothers are poorly educated and would not have the necessary knowledge to make the most of their education in Benin, the risk of dropping out is high, and the risk of being involved in crime is even higher.

- Children need their father in their daily lives to become productive adults.

- Senanmi's mother wants her son to have a better future; she has many hardships, is unemployed, has lost an eye and has tried to take her own life.

- Blaise Tollo fears that his children will become involved in youth crime and drop out of school.

[9] The Officer specifically addressed Senanmi Tollo's situation, stating that (1) there is little evidence of a relationship between Blaise Tollo and his son and between Ms. Aguidissou and the child; (2) more weight is given to Senanmi's relationship with his own mother, who raised him during his formative years; (3) no evidence was presented to corroborate the alleged plight of the child's mother; (4) it is not clear that it is in the best interests of the child to separate him from his mother and bring him to Canada; and (5) the children have no medical conditions and are in school. However, still in relation to the three sets of humanitarian and compassionate considerations raised by Mr. Tollo, the Officer ultimately concluded as follows: (1) "These reasons are given little weight as humanitarian or compassionate reasons because they do not speak to the hardships that would be faced if the exemption is not granted"; (2) "These reasons are given little weight. The onus is on the applicant to be clear about exactly what hardships would be faced without the exemption"; and (3) "Because the sponsor does not describe the specific hardships the children will face by not having their father in their lives, this reason is given little weight".

III. Positions of the parties

[10] The applicant alleges that the Officer's assessment of humanitarian and compassionate considerations is unreasonable because (1) the Officer did not apply the correct test for the best interests of the child; and (2) contrary to the Officer's conclusions, the request was specific as to the hardships the applicant would face if the request were refused. In response to questions from the Court, Senanmi Tollo states, in short, that the Officer erred in requiring the applicant

to meet the burden of establishing the hardships he would face if the requested exemption were not granted and in imposing a hardship threshold.

[11] The Minister responds that the decision is reasonable and that it is reasonable to conclude that the humanitarian and compassionate grounds are insufficient to override the requirements of paragraph 117(9)(d) of the Regulations. In response to the questions raised by the Court, the Minister essentially reiterates his initial arguments, emphasizing that substance ought to prevail over form (*Lopez Segura v Canada (MCI)*, 2009 FC 894; *Zamora v Canada (MCI)*, 2005 FC 1602).

IV. Analysis

[12] In light of the arguments raised and as acknowledged by the parties, the standard of reasonableness applies in this case (*Canada (Minister of Citizenship and Immigration v Vavilov*), 2019 SCC 65). Where the standard of reasonableness applies, the role of the reviewing court is to review the reasons given by the administrative decision maker and determine whether the decision is based on “an inherently coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The reviewing 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” (*Vavilov* at para 15). The reviewing court must therefore consider “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99, citing *Dunsmuir v*

New Brunswick, 2008 SCC 9 at paras 47, 74, and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

[13] I therefore find the Officer's decision to be unreasonable. The request can be disposed of on a single ground, that of hardship, and I will therefore not consider the other grounds that the applicant has raised.

[14] I would like to point out that the applicant correctly identified my concerns in his additional submissions.

[15] It seems clear from the above excerpts from the Officer's decision that the Officer applied a hardship test in assessing humanitarian and compassionate considerations.

[16] Furthermore, I note that the teachings of the Supreme Court of Canada in *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*] appear to be closely tied to (1) the fact that the applicant in that case was "in Canada" when he requested an exemption under subsection 25(1) of the Act; (2) the fact that the applicant was seeking exemption from the requirement to apply for permanent residence from outside Canada, as set out in the Act; (3) the fact that the "hardship" raised and assessed was essentially that of having to leave Canada and apply for permanent residence from outside Canada; and (4) the interpretation of subsection 25(1.3) of the Act, which provides that the Minister "must consider ... the hardships that affect the foreign national" and which applies only to a request made by a foreign national in Canada.

[17] In this case, Mr. Senanmi requested an exemption under subsection 25(1) of the Act while outside Canada. Therefore, subsection 25(1.3) of the Act does not apply to his request, and the hardships of a possible departure from Canada are also not at issue. However, the Officer does not state what the hardships are, nor does he provide a legal basis for considering a test or threshold of “hardships” in addition to humanitarian and compassionate considerations (as that term was defined in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, and adopted by the Supreme Court of Canada in *Kanthisamy*) in the case of a request for an exemption (subsection 25(1) of the Act) made by a foreign national “outside Canada”.

[18] In any event, even assuming, without deciding, that the hardship test developed for a request for exemption made by a foreign national “in Canada” (*Kanthisamy*) is fully applicable to a request for exemption made by a foreign national “outside Canada”, I find that the Officer’s decision is still unreasonable. It is possible that humanitarian and compassionate considerations may in themselves be insufficient to justify granting an exemption under subsection 25(1) of the Act. However, in this case, the Officer concluded, on several occasions, that he gave little weight to the humanitarian and compassionate considerations raised by the applicant because the required “hardship” threshold had not been met. The Officer applied a hardship threshold in a manner that restricted his ability to examine and weigh the humanitarian and compassionate considerations, in contravention of the teachings of the Supreme Court, leading to an unreasonable exercise of his power.

[19] The Officer's decision is not justified in relation to the facts and law that constrain the decision maker.

[20] Therefore, I will refer Mr. Tollo's file back for reconsideration with my concerns in mind.

JUDGMENT in IMM-5642-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The decision of the Officer is set aside, and the matter is referred back for reconsideration by another Officer.
3. Without costs.
4. No question is certified.

“Martine St-Louis”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5642-21

STYLE OF CAUSE: SENANMI YANNICK v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

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APPEARANCES:

Bruno-Olivier Bureau FOR THE APPLICANT

Chantal Chatmajian FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bertrand Deslauriers Attorneys FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec