

Federal Court



Cour fédérale

Date: 20250214

Docket: IMM-11719-23

Citation: 2025 FC 293

Ottawa, Ontario, February 14, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

BUGARI MUHUDIN MOHAMUD

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Bugari Muhudin Mohamud, fled Somalia, his country of citizenship, and made a difficult journey from Somalia to South Africa, where he was found to be a Convention Refugee in 2016. Mr. Mohamud has been living in South Africa since that time.

[2] In 2020, a group of five Canadians and/or permanent residents applied to sponsor Mr. Mohamud's application for permanent residence through the Convention Refugee Abroad Class or the Humanitarian-Protected Persons Abroad Designated Class ("Resettlement Application") under sections 144 to 146 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Following an interview with Mr. Mohamud in June 2023, a Migration Officer in South Africa (the "Officer") refused this application, finding Mr. Mohamud had a durable solution in South Africa.

[3] Mr. Mohamud challenges the Officer's refusal on judicial review. He argues that the Officer failed to engage with his evidence about integration challenges in South Africa for refugees like himself that he submits accords with the objective country condition evidence of which the Officer should have been aware (*Saiffee v Canada (Citizenship and Immigration)*, 2010 FC 589 at paras 28-32 [*Saiffee*]).

[4] The Minister argues that the Officer dismissed the application because Mr. Mohamud's evidence was insufficient to establish there was no durable solution in South Africa.

[5] I agree with Mr. Mohamud. Similar to Justice Brown's finding in *Haile v Canada (Citizenship and Immigration)*, 2023 FC 1424 [*Haile*], I find the Officer's reasons to be a boilerplate template that fail to engage with the relevant evidence Mr. Mohamud provided in his interview on the availability of a durable solution in South Africa.

II. Analysis

[6] Mr. Mohamud’s application for permanent residence was refused because the Officer found he had a durable solution in South Africa, the country in which he was residing with formal refugee status. The only issue on judicial review is the Officer’s analysis of whether Mr. Mohamud had, in fact, a durable solution in South Africa. The parties agree, as do I, that I ought to review the Officer’s assessment on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 12-13, 84).

[7] The requirement that there be “no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada” comes from paragraph 139(1)(d) of the IRPR, which reads in full:

General requirements

139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that

[...]

(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada,

Exigences générales

139 (1) Un visa de résident permanent est délivré à l’étranger qui a besoin de protection et aux membres de sa famille qui l’accompagnent si, à l’issue d’un contrôle, les éléments suivants sont établis :

[...]

d) aucune possibilité raisonnable de solution durable n’est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :

namely

(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or

(ii) resettlement or an offer of resettlement in another country;

[Emphasis added.]

(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,

(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;

[Je souligne.]

[8] The term “durable solution” is not defined in the legislation. This Court has described the durable solution inquiry as a “forward-looking assessment that depends on the applicant’s legal status and personal circumstances, as well as the conditions in the person’s country of residence” (*Woldemariam v Canada (Citizenship and Immigration)*, 2023 FC 891 at para 7; see also *Kediye v Canada (Citizenship and Immigration)*, 2021 FC 888 at para 12). At issue here is the Officer’s consideration of Mr. Mohamud’s personal circumstances and the conditions in South Africa for someone in his position when determining whether a durable solution was available to him.

[9] Mr. Mohamud was not represented by counsel when he completed his permanent residence forms or when he was interviewed by the Officer in South Africa. The Officer raised the availability of a durable solution outside Canada in the interview with Mr. Mohamud. The Officer asked Mr. Mohamud to explain how his formal refugee status did not give him a durable solution in South Africa. Mr. Mohamud explained that while he had rights on paper, in reality he could not enjoy these rights: “You are judging from afar while I am living in the discrimination,

systematic and public. The government says they recognize but the document does not give much value.”

[10] In his interview with the Officer, Mr. Mohamud talked about systemic discrimination he experienced as a Somali refugee living in South Africa, including facing targeted xenophobic violence, the inaction of the police, his inability to rent a home, and the lack of access to stable employment.

[11] I find that the Officer did not meaningfully evaluate Mr. Mohamud’s personal circumstances. The Officer’s reasons on Mr. Mohamud’s personal experiences are limited to the following:

I note that the applicant raised the issue of crime and xenophobia. While I note that crime is significantly more pervasive in South Africa than in Canada, I am not satisfied that the applicant does not have a durable solution as a result of crime. I note that the applicant has indicated reporting incidents of crime to the police; it appears that he has received the assistance of police and authorities when requested in line with duties and obligations of a national police force. I accept that xenophobia may be a greater risk in South Africa than in Canada. However, I am not satisfied that there is information before me to suggest that the level of xenophobia in South Africa, and that the applicant may have been subject to, is such that the applicant does not have a durable solution in South Africa, nor that he does not have rights and privileges (such as employment, education, healthcare, mobility, etc.) as a formally recognized refugee. I note that many of the issues the applicant raised, such as level of crime, are issues faced by South African citizens as well.

[12] On judicial review, Mr. Mohamud also argued that the objective evidence in the National Documentation Package of the Immigration and Refugee Board of Canada, which would have been before the Officer, as this Court affirmed in *Saifee* at paras 28-32, is consistent with the

experiences he described to the Officer. For example, he pointed to a 2023 United States Department of State Report which states: “Although the law provides for asylum seekers, migrants, and refugees to have access to basic services, including education, health, social support, police and judicial services, NGOs reported that health care facilities and authorities discriminated against asylum seekers, migrants, and refugees,” and further provides that “Police were sometimes involved in the violence; however, more frequently, police were accused of condoning violence, particularly xenophobic, vigilantism or political violence.”

[13] The Officer did not mention Mr. Mohamud’s evidence that he faced systemic discrimination, including the inability to rent a home or find stable employment or that he faced a violent, xenophobic attack without effective protection from the police. Like in *Haile*, no negative credibility inferences were made relating to Mr. Mohamud’s account. Yet, as in *Haile*, the Officer did not explain how the evidence provided by Mr. Mohamud in his interview was considered in their finding that there was a durable solution in South Africa. The Officer’s lack of responsiveness to Mr. Mohamud’s evidence on his personal circumstances renders their assessment on this core issue to be unreasonable (*Haile* at paras 26-28; *Anku v Canada (Citizenship and Immigration)*, 2021 FC 125 at paras 30-35).

[14] Determining whether Mr. Mohamud will be able to receive Canada’s protection and resettle permanently in Canada is undoubtedly a decision of profound consequence to him. In these circumstances, there is a heightened obligation on an officer to provide responsive reasons that justify their decision to an applicant (*Vavilov* at para 133). The decision is unreasonable

because the Officer failed to grapple with and respond to Mr. Mohamud's personal circumstances in determining he had a durable solution in South Africa (*Vavilov* at para 103).

[15] I therefore allow Mr. Mohamud's application for judicial review. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-11719-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The IRCC decision dated June 25, 2023 is set aside and sent back to a different decision-maker for redetermination; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11719-23

STYLE OF CAUSE: BUGARI MUHUDIN MOHAMUD v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: FEBRUARY 4, 2025

JUDGMENT AND REASONS: SADREHASHEMI J.

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