Federal Court  Cour fédérale

Date: 20250624

Docket: IMM-11168-24

Citation: 2025 FC 1133

Ottawa, Ontario, June 24, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HIYWAT LAMBAMO ABIRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision [the Decision] of an officer [the Officer] of Immigration, Refugees and Citizenship Canada [IRCC], dated May 8, 2024, which refused the Applicant's application for a permanent resident visa in Canada as a member of the Convention refugee abroad class or as a member of the humanitarian-protected persons abroad class. The Decision turned on the Officer's conclusion that the Applicant had a reasonable

possibility, within a reasonable period of time, of a durable solution in South Africa where she resides.

[2] As explained in greater detail below, this application for judicial review is dismissed, because the Decision is reasonable and was reached in a procedurally fair manner.

II. **Background**

[3] The Applicant is a citizen of Ethiopia. She and her husband assert that they were subject to persecution by the Ethiopian government and fled Ethiopia, ultimately arriving in South Africa, in 2010.

[4] Upon arrival in South Africa, the Applicant made a successful refugee claim. However, neither she nor her husband has been granted permanent resident status in South Africa. Although the couple have three children who were born in South Africa, the Applicant explains that the South African government has erroneously registered them as refugees.

[5] The Applicant submitted an application for permanent residence in Canada under the Convention refugee abroad or humanitarian-protected persons abroad class, and she and her husband attended an interview with the Officer in Pretoria, South Africa on April 15, 2024.

[6] By letter dated May 8, 2024 [the Decision Letter], the Officer conveyed the negative Decision that is the subject of this application for judicial review.

III. **Decision under Review**

[7] The negative Decision turned on the Officer's conclusion that the Applicant did not meet the requirements of paragraph 139(1)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], which provides as follows:

General requirements	**Exigences générales**
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	**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) 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, namely	**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 :
(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or	**(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) resettlement or an offer of resettlement in another country;	**(ii)** soit la réinstallation ou une offre de réinstallation dans un autre pays;

[8] In the Decision Letter, after reciting paragraph 139(1)(d), the Officer stated the following conclusion:

> After carefully assessing your application, I have determined that you do not meet these requirements. You currently reside in a country that is a signatory to the Geneva Convention on Refugees, South Africa, where you have a reasonable possibility, within a reasonable period of time, of a durable solution. You have been

> able to benefit from the protection of South Africa and have been able to obtain formal recognition of refugee status. Therefore, you do not meet the provisions of this paragraph.

[9] The Officer's Global Case Management System [GCMS] notes provide the following more detailed reasons for the Decision:

> Both PA and spouse have been issued formal recognition of refugee status in SA and they have been able to renew their status numerous times since issuance. Formal recognition provides applicants access to healthcare, the right to work and study in SA as well as a pathway to permanent residency. Although pa has experienced criminality in South Africa. Criminality is widespread in South Africa and experienced by all citizens and migrants alike.
>
> PA indicated at interview she experiences difficulties with the permit she has been issued and that is [*sic*] it is not considered a valid or reliable document. However, both applicants have managed to be employed earning a stable monthly income – their joint income declared at interview is over the minimum wage in South Africa. I note the information spouse provided concerning his employment premises however, it appears he did not own this building and it is not clear what evets lead [*sic*] to the demolishment of these premises. Applicants have also managed to obtain local medical care /services and their three children are attending private school in South Africa.
>
> Reviewed applicants submission following interview. PA refers to the white paper recently drafted/released in NOV23 by the SA Dept. of Home Affairs (DHA), proposing an overhaul of the Migration system in South Africa, including refugee resettlement. The white paper suggests South Africa withdraw from key refugee conventions which would result in refugees having limited access to healthcare, education and birth registration.
>
> Applicant further explains that this leaves them in a precarious position, combined with the hostile environment in SA. Applicant fears that South Africa's withdrawal from the applicable conventions, would leave them void of any protection and thus does not have a durable solution.
>
> The final white paper on Citizenship, Immigration and Refugee Protection was approved by the Cabinet and published in the government gazette on 17APR2024. The paper is expected to be

> submitted to Parliament to be passed into law in the coming months however at this time it has not yet been passed. The paper does not propose loss of status for current permit holders.
>
> Government gazette - https://www.dha.gov.za/images/gazettes/ANNEXURE_A_Gazette-50530.pdf
>
> I note that PA raised the issue of crime and xenophobia at interview. 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.
>
> High rates of unemployment, criminality and the availability of only informal employment in high risk areas is widespread resulting in economic hardship for both migrants and South Africans in South Africa. There is likely a greater risk oft [*sic*] xenophobia in South Africa than in Canada and may be influenced by general civil unrest or poor service delivery in South Africa.
>
> However, I am not satisfied that there is information before me to suggest that xenophobia is such that the applicant does not have a durable solution in South Africa, nor that they do not have rights and privileges (such as employment, education, healthcare, mobility, etc.) as a formally recognized refugee. I find that the applicant has a durable solution in South Africa and does not meet requirements of IRPR 139(1)(d) - Refused.

IV. **Issues and Standard of Review**

[10] The parties' submissions raise the following issues for adjudication by the Court:

A. Did the Officer breach the Applicant's right to procedural fairness by failing to contemporaneously record the whole of the interview questions and answers?

B. Did the Officer breach the Applicant's right to procedural fairness by failing to provide on opportunity to respond to the ground of refusal?

C. Is the Decision unreasonable, for overlooking the white paper published by the South African government and systemic barriers, discrimination, and xenophobic attacks experienced by the Applicant and her family in South Africa?

D. Did the Officer err in finding the Applicant and her family face no risk of refoulement to Ethiopia due to the temporary nature of their status in South Africa and their unique personal circumstances?

[11] The latter two issues, which concern the merits of the Decision, are reviewable on the standard of reasonableness, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The first two issues, related to procedural fairness, are reviewable on a standard akin to correctness, requiring the Court to consider whether the procedure followed was fair, having regard to all the circumstances (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to SCC refused, (5 August 2021)).

V. **Analysis**

A. *Did the Officer breach the Applicant's right to procedural fairness by failing to contemporaneously record the whole of the interview questions and answers?*

[12] The Applicant argues that she was deprived of procedural fairness, because the GCMS notes of the interview are incomplete, distorted, and incohesive. She takes the position that she had a legitimate expectation that the Officer would adhere to the past practice of recording the interview and accurately documenting her and her husband's answers. The Applicant submits

that the Officer's failure to do so therefore represents a breach of her right to procedural fairness, as a result of which the Decision should be set aside.

[13] I find no merit to these arguments. As explained in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, a case on which the Applicant relies, the doctrine of legitimate expectations applies where a public authority has made representations about the procedure it will follow, or has consistently adhered to certain procedural practices in the past, in making a particular sort of administrative decision (at para 94). However, the Applicant has not provided any evidence of a representation made to her, or evidence of her acquaintance with a particular procedural practice, that would allow her to invoke the doctrine of legitimate expectations in the case at hand.

[14] Moreover, I agree with the Respondent's submission that the issue the Applicant raises surrounding the GCMS notes is simply a matter of the notes of the interview being split into two separate entries, with the latter portion of the notes being positioned before the former portion. I find no basis to conclude that the notes of the interview are incomplete or otherwise deficient.

B. *Did the Officer breach the Applicant's right to procedural fairness by failing to provide them with the opportunity to respond to the ground of refusal?*

[15] The Applicant observes that the Decision is based on the Officer's conclusion that she has a durable solution in South Africa. She argues that she was deprived of procedural fairness, because the Officer failed to alert her to this central issue underlying the Decision and afford her an opportunity to address that issue.

[16] Again, I find no merit to the Applicant's position. The legal principle on which the Applicant relies is sound. That is, in some circumstances, the principles of procedural fairness require administrative decision-makers to give affected parties notice of determinative issues (see, e.g., *Sarker v Canada (Citizenship and Immigration)*, 2014 FC 1168 at para 14). However, as the Respondent submits, there is no obligation on the part of an immigration officer to advise an applicant of concerns that arise directly from the requirements of the IRPR (*Nassima v Canada (Citizenship and Immigration)*, 2008 FC 688 at para 18). The requirement for an applicant (for a visa in the classes that are the subject of this application) to establish that there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, is expressly provided in paragraph 139(1)(d).

[17] Moreover, it is clear from the GCMS notes of the interview that the Officer expressly advised the Applicant of the need to assess whether she had a durable solution in South Africa. Indeed, the Officer provided an explanation of that requirement, identifying why she appeared to have a durable solution on paper and, referencing potential concerns about crime, affording her an opportunity to explain why she believed that the reality was different.

[18] The Applicant's arguments do not support a conclusion that she was deprived of an opportunity to know the case she had to meet before the Officer. I therefore find no breach of procedural fairness.

C. *Is the Officer's decision unreasonable, in light of the evidence presented, by overlooking the white paper published by the South African government and systemic barriers, discrimination, and xenophobic attacks experienced by the Applicant in South Africa?*

[19] The Applicant argues that, in finding that the Applicant had a durable solution in South Africa, the Officer ignored the available evidence and relied exclusively on the fact that the South African government had conferred refugee status upon her and her spouse. The Applicant submits that the Officer failed to consider her and her family's personal circumstances, including xenophobic attacks, abduction, demolition of their shop, robbery, and discrimination that they faced in South Africa. She also submits that the Officer disregarded the available country condition evidence [CCE], which corroborated her claims of xenophobic views and discrimination and targeted violence against foreigners. The Applicant further argues that the Officer erred in assessing the impact of a white paper released in November 2023 by the South Africa Department of Home Affairs, proposing an overhaul of South Africa's migration system [the White Paper].

[20] I disagree with the Applicant's characterization of the Decision as based solely on South Africa having recognized her and her spouse as refugees. I acknowledge that the May 8, 2024 entry in the GCMS notes, which sets out the Officer's analysis, begins by referencing South Africa's recognition of the Applicant's refugee status, as well as the access to healthcare, the right to work and study, and a path to permanent residence that accompanies recognition. However, the GCMS notes then proceed to canvass the Applicant's concerns about her experiences with criminality and xenophobia, the reliability of the permit she has been issued as a result of her refugee status, the demolition of the Applicant's spouse's employment premises, the effect of the White Paper, and CCE related to criminality and xenophobia in South Africa.

[21] While the Officer nevertheless concludes that the Applicant has a durable solution in South Africa, the Decision provides reasons for this conclusion, including the ability of the Applicant and her family to obtain employment, medical care, and private schooling. I find that the Officer did not fail to consider the family's personal circumstances as the Applicant asserts.

[22] The Officer also considers the Applicant's arguments surrounding the White Paper, i.e., that it proposed South Africa withdrawing from key refugee conventions, resulting in refugees having limited access to healthcare, education and birth registration. The Officer notes that the White Paper had been approved by the South African cabinet, published in the government gazette on April 17, 2024, and (while not yet law) was expected to be presented to Parliament to be passed into law in the coming months. However, the Officer finds that the White Paper does not propose loss of status for current permit-holders.

[23] The Applicant takes issue with this finding, noting paragraphs of the White Paper that reflect concerns about people who arrive and seek asylum in South Africa after having passed through other countries where they could claim asylum, where their claims for asylum were already being processed, or where they were already recognized as refugees. The Applicant argues that the policy proposal in the White Paper would be to empower South African authorities to declare asylum claims from individuals in those circumstances to be invalid. The Applicant also emphasizes the fact that South Africa has not permanently recognized her refugee status but rather requires her to see periodic renewal of her status.

[24] I agree with the Respondent's position that the Applicant is asking the Court to reweigh the evidence that was before the Officer, which is not the Court's role in judicial review. The

GCMS notes reflect the Officer's awareness of the Applicant's concerns about renewing the permit she has been issued and about the White Paper leaving her and her family in a precarious position. The Officer considered the Applicant's submissions but was not satisfied that the initiatives reflected in the White Paper would adversely affect current permit-holders. The Applicant has not advanced compelling submissions, based on the text of the White Paper or otherwise, that it was unreasonable for the Officer to have arrived at this conclusion.

D. *Did the Officer err in finding the Applicant's face no risk of refoulement to Ethiopia due to the temporary nature of the Applicant's status in South Africa and their unique personal circumstances?*

[25] The Applicant's arguments surrounding the risk of refoulement are based on the effect of the White Paper in the context of the need for the Applicant and her family to renew their refugee status. As explained in the analysis immediately above, these arguments do not raise a basis for the Court to find the Decision unreasonable.

VI. **Conclusion**

[26] As I have found that the Decision is reasonable and was reached in a procedurally fair manner, this application for judicial review will be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-11168-24

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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