Federal Court Cour fédérale

Date: 20250822

Docket: IMM-7474-24

Citation: 2025 FC 1405

Ottawa, Ontario, August 22, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

CONSTANTIN HAKIZIMANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, his wife, and his seven children were refused permanent residency in Canada as Convention refugees abroad and members of the humanitarian-protected persons abroad classes. On judicial review, he challenges the Immigration Officer's decision and requests an Order from this Court granting him status as a refugee.

[2] The Respondent, the Minister of Citizenship and Immigration, concedes that the decision under review is unreasonable. However, they disagree with the Applicant as to the appropriate remedy. On their submission, the Court cannot step into the shoes of the merits decider and rule on the underlying application; the reviewing court must recognize that the legislature has entrusted this power to the administrative decision maker and thus remit the matter to a different Officer.

[3] For the reasons that follow, I will grant this application for judicial review and remit the matter to a different Officer.

II. Context

[4] The Applicant is Burundian national and member of the Hutu ethnic group, which constitutes the majority group in the country. He is married to a Tutsi woman, part of the minority ethnic group in the country. A colonial legacy of ethnic division in sub-Saharan Africa has led to decades of tension and violence between the two groups, a tension that still colours perceptions of inter-ethnic relationships in Burundi and its neighbouring states.

[5] In 2015, the Applicant and his family had their lives threatened by political turmoil and mass ethnic killings in Burundi. His family fled to Rwanda in 2016, with him following in 2019, where they were then sponsored for a permanent residency application as Convention refugees abroad and members of the humanitarian-protected persons abroad classes.

[6] The sponsorship application was approved, and the Applicant and his family were set to travel to Canada on July 17, 2023. However, upon departure, they were prevented from leaving the country on the basis that the Applicant's spouse was also a Rwandan citizen—a fact that she failed to disclose to Canadian immigration officials. Rwanda is a neighbouring country to Burundi.

[7] The Officer considered this new evidence and found that the Applicant was not eligible for refugee protection because there was a "durable solution" in Rwanda, pursuant to paragraph 139(1)(d) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [IRPR]. According to the Officer, the Applicant's spouse could regain her Rwandan citizenship, sponsor her husband, and the entire family could seek protection in Rwanda.

III. Issue and Standard of Review

[8] The core issue on judicial review is whether the Officer's decision is reasonable. In this respect, the role of a reviewing court is to examine the decision maker's reasoning and determine whether the decision is based on an "internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (C*anada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 64). Although the party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100), the reviewing court must ask "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99).

[9] In this case, there is the further issue of determining the appropriate remedy. On this point, the Supreme Court of Canada instructs that "the choice of remedy must be guided by the rationale for applying [the reasonableness] standard to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide" (*Vavilov* at para 140). Where a decision is unreasonable, "it will most often be appropriate to remit the matter to the decision maker" for redetermination, with guidance that arises from the court's reasonableness analysis (*Vavilov* at para 141). However, there are limited circumstances where a reviewing court may nevertheless decline to remit a matter to the decision maker, namely where "becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose" (*Vavilov* at para 142). These circumstances are exceedingly rare.

IV. Analysis

[10] Under section 139 of the IRPR, a permanent resident visa shall be granted to a foreign national outside of Canada in need of refugee protection unless, *inter alia*, there is a possibility that they might seek relief by way of repatriation or resettlement in their country of nationality, habitual residence, or another country.

[11] In this case, it was unreasonable for the Officer to conclude that the Applicant and his family could re-settle in Rwanda based on the fact that the Applicant's wife could obtain her Rwandan citizenship and assist them in resettling in Rwanda. In doing so, the Officer failed to consider the fact that the Applicant is a Hutu married to a Tutsi. This fact entails two separate risks of persecution. On the one hand, the Applicant claims to face persecution in Burundi, where

he is viewed as a traitor for having married a Tutsi woman. On the other hand, the Applicant claims to face persecution in the Rwandan refugee camps where his family lives, because the Tutsi living there believe that he is spying on behalf of the Hutu ruling party in Burundi. The Applicant also claims a risk of persecution everywhere in Rwanda because of the continuous ethnic hatred and threat. Those claims of risks in Rwanda were never assessed. The Officer's conclusion that there was a "durable solution" is therefore unreasonable.

[12] On judicial review, the Applicant seeks an Order from this Court granting him his status as a refugee. Absent special circumstances that do not arise here, this is not something the Court can do.

[13] The Applicant's request is essentially in the nature of a *certiorari* and *mandamus*, which could only be granted when the Court is of the view that a particular outcome is inevitable and remitting the case would serve no purpose (*Vavilov* at paras 140–142; *Sharif v Canada (Attorney General)*, 2018 FCA 205 at paras 53–56; *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at para 72). However, that is not the case here.

[14] The Applicant's spouse is a citizen of Rwanda, and the granting of their refugee status was predicated on them being citizens of Burundi only. Had the Applicant's spouse declared her Rwandan citizenship, the provisional granting of the Applicant's application for refugee status could have been decided differently. Indeed, the Applicant and his family fled to Rwanda due to its geographical proximity and the immediate safety that it provided.

[15] However, in his basis of claim, the Applicant alleged that he was not able to join his family in the refugee camp because he was suspected, as a Hutu, to be a spy on behalf of the ruling party in Burundi—the party responsible for the anti-Tutsi violence that resulted in them fleeing to Rwanda. He also claimed a risk of persecution in Rwanda generally as a result of ethnic hatred. Those allegations of risks were not conclusively assessed in relation to Rwanda.

[16] On the basis of these allegations, it is not a foregone conclusion that another Immigration Officer will come to the inevitable conclusion that the alleged risks are substantiated. Indeed, the Applicant's allegations of risks in Rwanda must be assessed objectively, with proper evidence on country conditions.

[17] Consequently, the Court cannot come to the conclusion that a particular outcome is inevitable and therefore, the proper remedy is to quash the Officer's decision and remit it to a different decision maker for redetermination.

V. Conclusion

[18] The application for judicial review is granted, and the matter is remitted for reconsideration before a different Immigration Officer.

[19] There is no question of general importance for certification.

JUDGMENT in IMM-7474-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted for reconsideration before a different Immigration Officer.

3. There is no question of general importance for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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