

Date: 20080623

Docket: IMM-4401-07

Citation: 2008 FC 785

Ottawa, Ontario, June 23, 2008

PRESENT: The Honourable Madam Justice Layden-Stevenson

BETWEEN:

**MAYELLI KAMARA and MICHAELLA FINOH
and ALIMAMY KAMARA and FUDIA KAMARA
(by their litigation guardian, MAYELLI KAMARA)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mayelli Kamara and her children are citizens of Sierra Leone. They fled the civil war in Sierra Leone in 1999 and ultimately arrived in Guinea. They applied for permanent residence in Canada pursuant to the Convention refugees abroad class and the humanitarian-protected persons abroad class. As required, their application was submitted in conjunction with an undertaking to

sponsor by a sponsorship agreement holder. Following an interview, a visa officer refused the applications.

[2] The applicants assert, for a variety of reasons, that the decision was unreasonable. The primary ground is that the visa officer failed to properly consider the applicable definitions. Although I am sympathetic to the applicants' plight, I can detect no error on the part of the visa officer. Consequently, the application for judicial review must be dismissed.

Background

[3] The factual background is not in dispute and can be briefly stated. Ms. Kamara was born in 1974 in Sierra Leone. Her son Alimamy was born there in 1998. Her daughter Fudia was born in Guinea in 2005. Her alleged adopted daughter (Michaela), born in 1994 in Sierra Leone, is the daughter of a cousin who was killed in the war.

[4] In 1999, rebels entered Tombo Town where the applicants were living. Ms. Kamara's husband was out of town at the time. Fighting erupted. Ms. Kamara and her children fled and walked approximately 20-25 miles through the bush to Waterloo. Their home and belongings were lost. After staying two days in an aunt's home in Waterloo, fighting broke out there between the rebels and soldiers. Ms. Kamara's aunt's husband was killed when a shell hit the house. Again, Ms. Kamara managed to escape with her children.

[5] When they arrived in Freetown, they found the Junta forces everywhere - looting, killing, and destroying properties. The family boarded a boat to Rokupr, hoping to find other family

members there. Because of bombings, the boat could not dock and it proceeded to Conakry, Guinea. There, UNHCR officials assisted and took them to a refugee camp nearby in Famorihah. After a short time, because of the deplorable conditions in Famorihah, they moved on to Conakry.

[6] During this time Ms. Kamara learned, through word of mouth, that her husband was dead. According to one report, while returning to Tombo Town, his canoe had capsized leaving no survivors. Another report indicated that the canoe had been attacked by rebels. Irrespective of cause, she believes that her husband is dead.

[7] Ms. Kamara maintains that she has nothing to go back to in Sierra Leone because she lost her husband, her home, and other members of her family during the war. She does not believe Sierra Leone can protect her or her children. In Guinea, she experiences abusive conduct and harassment which she attributes to her family's political affiliations. Specifically, she states in her Personal Information Form (PIF) that her father was killed in 1982 by members of the Sierra Leone People's Party (SLPP) because he was a supporter of the All People's Congress. She claims that as a refugee in Guinea she has no government protection and has been arrested several times for not having a proper Guinean identity card.

[8] Seven of Ms. Kamara's ten siblings have been granted refugee status and are living in Edmonton, Alberta. Because she does not see any durable solution for her or her children in Guinea, she wishes to be reunited with her family members and begin a new life in Canada. Accordingly, on August 11, 2004, she submitted an application for permanent residence in Canada.

[9] On October 13, 2006, a visa officer interviewed Ms. Kamara in Conakry with the assistance of an interpreter. In addition to the above-stated facts, Ms. Kamara claimed that she could not return to Sierra Leone because she feared being attacked by the same individuals who sought to kill her husband after he refused to sell a plot of land. Since her husband was not present when the rebels came, she fears that she would be killed in his stead. In broad terms, Ms. Kamara indicated that, having fled the fighting in the civil war in 1999, she does not feel that she could return. Nor does she feel that she is in a secure situation in Guinea.

The Decision

[10] The visa officer concluded that Ms. Kamara did not have a well-founded fear of persecution based on her husband's ownership of land or on any of the Convention grounds. He determined that the events, as described, were generalized attacks that occurred in the context of widespread civil conflict in Sierra Leone rather than targeted persecution. Consequently, he was not satisfied that she was a member of the Convention refugees abroad class.

[11] Further, the visa officer determined that Ms. Kamara was not a member of the country of asylum class because her narrative did not demonstrate that she continues to be seriously and personally affected by armed conflict and civil war in her country. In the officer's view, Ms. Kamara could repatriate to Sierra Leone, without fear of consequences, because the circumstances that led to her departure no longer exist. The armed conflict ended in 2002 and disarmament and rehabilitation operations were completed in 2004. Ms. Kamara provided no information to demonstrate that she would be treated differently than other Sierra Leoneans whose families and homes were destroyed as a result of the war. The visa officer concluded that Ms. Kamara's

unwillingness to return to Sierra Leone was because of a “lack of economic prospects” rather than a fear of persecution or the continuing effects of civil war.

[12] In examining the country conditions documents, the visa officer noted several factors:

- free and multiparty elections were held in 2002 and 2004 in a peaceful context;
- a reconciliation commission and a war crimes tribunal are in place;
- NGOs and Human Rights Watch groups on the ground have not reported secret disappearances or retaliatory assassinations;
- people who supported different sides are now cohabitating peacefully;
- large numbers of people repatriated during the last few years (according to documents such as the U.S. DOS Report and other sources);

[13] Because the officer found that the conditions of subsection 139(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”) were not met, he could not issue a visa to the applicants under section 11 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

The Relevant Statutory Provisions

[14] The text of the applicable statutory provisions is attached to these reasons as Schedule “A”. In general terms, pursuant to subsection 139(1) of the Regulations, a permanent resident visa shall be issued to a foreign national in need of protection if it is established, among other things, that the foreign national is a member of a class under Part 8, Division 1 of the Regulations and there is no

reasonable prospect, within a reasonable period, of a durable solution for the foreign national in a country other than Canada.

[15] The classes prescribed by the Division include “Convention refugees abroad” (sections 144, 145) and “humanitarian-protected persons abroad” (section 146). By virtue of paragraph 146(1)(a), the “country of asylum class” is a humanitarian-protected persons abroad designated class. Foreign nationals will be members of the country of asylum class if they are in need of resettlement because they are outside their country of nationality and “have been and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights” (section 147).

[16] Therefore, in order to succeed in their applications, the applicants had to establish that they are members of the Convention refugees abroad class or the country of asylum class and that they have no durable solution in a country other than Canada. The “durable solutions” contemplated by the Regulations are (i) voluntary repatriation or resettlement in their country of nationality, or (ii) resettlement in another country (s. 139(1)(d)).

Allegations of Error

[17] In their written submissions, the applicants allege a variety of errors with respect to the visa officer’s decision. During oral argument, these allegations were consolidated and subsumed under the following question: “whether the officer properly considered the relevant definitions within subsection 139(1) namely, Convention refugees abroad class, country of asylum class, and durable solution”.

[18] In advancing her argument with respect to the allegations of error, Ms. Kamara asserts that the visa officer erred in law in failing to address significant elements of the applicants' claim. The written submissions also claim that portions of the Immigration Manual OP-5 "Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-protected Persons Abroad Classes" (the OP-5 Manual) gave rise to the legitimate expectation that a process would be followed to reunite the applicants with their family members in Canada. This alleged breach of procedural fairness, premised on legitimate expectation, was not pursued at the hearing.

Standard of Review

[19] Where the applicable standard of review can be ascertained from existing jurisprudence, there is no need to engage in a standard of review analysis: *Dunsmuir v. New Brunswick*, 2008 SCC 9. Whether an applicant comes within the Convention refugees abroad class or country of asylum class is a question of mixed fact and law and is reviewable for reasonableness: *Nasir v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 504; *Krishnapillai v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 244. A breach of procedural fairness generally, but not always, vitiates a decision.

[20] Before turning to the merits, a preliminary comment is in order. At the outset of the hearing, the applicants' counsel suggested that visa officers, when dealing with self-represented litigants, bear a higher onus to ensure that proper procedures are followed and that all relevant circumstances are taken into account. This standpoint is troubling for a number of reasons.

[21] First, this “submission” was not contained in the memorandum of fact and law. Therefore, it is not open to the applicants to advance it for the first time during the oral argument. Second, I consider it beyond doubt that visa officers must, in all cases, consider the relevant circumstances of the applicants before them and make their determinations only after thorough and thoughtful assessment of those circumstances. Third, the duty in relation to such considerations is not heightened in the case of self-represented litigants. Mr. Justice Harrington commented in *Jacobs v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 646, at para. 7, that immigration claimants before the Refugee Division have the right to represent themselves and they “can be in no better position because they did not have a lawyer”. I am in general agreement with that observation. Further, I am of the opinion that a visa officer’s task is to be approached with care and attention in all cases, irrespective of whether a claimant is self-represented or represented by counsel.

Specific Grounds

Convention refugees abroad class

[22] A person will be a member of the Convention refugees abroad class upon being determined by a visa officer to be a Convention refugee as defined by section 96 of the IRPA. The applicants allege that the officer “made no assessment” as to whether they met this definition and, more specifically, whether they met the Convention grounds of political opinion, membership in a particular social group, and/or gender-related persecution.

[23] With respect to membership in a particular group, Ms. Kamara claims that she will be targeted because of her former husband’s ownership of a specific plot of land. The visa officer’s

CAIPS notes, where they delineate Ms. Kamara's reasons for not wanting to return to Sierra Leone, expressly acknowledge this evidence: "her husband is missing, her house destroyed and because her husband owned land that members of the local society wanted." After considering this evidence, the visa officer concluded that the applicants had not suffered any targeted persecution. Rather, the evidence reflected "generalized attacks which occurred in the context of widespread civil conflict in Sierra Leone."

[24] Based on this finding, it was reasonable to reject Ms. Kamara's claim of persecution premised on her husband's ownership of land. I am satisfied that the applicants' specific circumstances were taken into account by the visa officer in arriving at this determination. The decisions in *Velautham v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1113 and *Puventhirarasa v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 947 do not assist the applicants' position. The decision-maker's reasons in *Velautham* were comprised of a single sentence. Not surprisingly, Mr. Justice O'Reilly concluded that the reasons did not address the particular circumstances. In *Puventhirarasa*, because the applicant was found to be not credible, risk was not assessed. Neither of these authorities are analogous to this matter.

[25] Regarding the visa officer's alleged failure to consider other Convention grounds, apart from a statement in Ms. Kamara's PIF that her father's death (in 1982) was politically motivated, there was no evidence indicating that the applicants fled Sierra Leone due to political affiliations. Moreover, Ms. Kamara did not advance a gender-related claim nor was there any evidence which ought to have triggered consideration of such a claim. The fact that the country documentation with respect to Sierra Leone identifies violence against women as a serious problem is not a sufficient

basis, on its own, to grant refugee protection. The visa officer is not obliged to address issues that were not raised and which are not grounded in the evidence. The same reasoning applies with respect to mistreatment suffered in Guinea, although Guinea is not the country at issue.

[26] Finally, there is no basis upon which to find that the officer failed to apply the proper test in assessing the applicants' alleged fear of persecution. Ms. Kamara broadly asserts, without more, that the wrong test was applied. The visa officer's decision, when taken as a whole, clearly demonstrates that this is not the case.

Country of asylum class

[27] As previously noted, section 147 of the Regulations defines members of the country of asylum class as individuals who are outside their countries of nationality and habitual residence and who 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.

[28] Ms. Kamara's submission that the officer failed to conduct a determination as to whether the applicants met the requirements of section 147 is not sustainable. The officer determined that the applicants were victims of "widespread civil conflict" and that such conflict ended in 2002. Although I agree that the end of the civil war (and armed conflict) in Sierra Leone is not determinative of membership in this class, I am satisfied that the officer also considered whether the applicants continue to be affected by a massive violation of human rights.

[29] In determining whether a claimant will be affected by a “massive” violation of human rights, section 13.4 of the OP-5 Manual instructs officers to look to human rights reports including those prepared by DFAIT, the UNHCR, and Amnesty International. It is evident from the visa officer’s analysis of the country documentation that he turned his mind to the question of the human rights situation in Sierra Leone in the manner contemplated by section 147. The reasons specify that disarmament and rehabilitation operations have been completed and that free and multiparty elections were held in 2002 and 2004 in a tolerant and peaceful context. Additionally, the visa officer notes that NGO and human rights watch groups on the ground have not reported any cases of secret killings or disappearances, or retaliatory assassinations.

[30] Unquestionably, problems continue to exist in Sierra Leone. Yet, in view of the evidence provided to him, the visa officer did not err in failing to mention these portions of the documentary evidence. The problems cited in the country conditions documentation (excessive force with detainees, restrictions on freedom of the press, poor conditions in jails, etc.) are not related to the applicants’ claims. The visa officer was entitled to review and weigh the documentary evidence. Indeed, it was his obligation to do so. It was, on the evidence, reasonably open to him to come to the conclusion that the elements of section 147 had not been met.

[31] It bears noting that the OP-5 Manual enumerates the steps to follow in determining whether an applicant falls within the Convention refugees abroad class or the country of asylum class. Ms. Kamara faults the officer for failing to reference the Manual in his reasons and for not following the required steps in making his determinations. Although the visa officer does not expressly cite the Manual, in my view, he need not have done so. The substance of his decision demonstrates that the

identified steps were generally followed in the course of his determinations with respect to both the Convention refugees abroad class and the country of asylum class.

Durable Solution

[32] According to Ms. Kamara, the visa officer's finding that the applicants could repatriate to Sierra Leone is a "general statement about repatriation that did not consider the particular circumstances." I disagree. The officer expressly acknowledged the applicants' reasons for not wanting to go back to Sierra Leone and he related his opinion regarding the applicants' ability to repatriate directly to the specific circumstances that caused them to leave initially.

[33] Ms. Kamara also contends that the visa officer failed to consider the OP-5 Manual's statement that there will be circumstances where some refugees can safely repatriate while others cannot. Regrettably for the applicants, the evidence before the visa officer did not invite the applicability of the statement because he found that they were victims of generalized conflict and that they would not be treated differently than other Sierra Leoneans who fled during the war. The visa officer also noted that "large numbers of people successfully repatriated to Sierra Leone during the last few years." This information emanated from the UNHCR (specifically noted by the OP-5 Manual to be an excellent source with respect to the validity of repatriation as a durable solution). The applicants failed to differentiate their situation from others who have repatriated. Consequently, the conclusion regarding the existence of a durable solution was reasonable.

Legitimate Expectation

[34] As stated at the outset, the applicants' written submissions state that the officer failed to provide them with the requisite procedural fairness. Specifically, they assert that portions of the OP-5 Manual give rise to a legitimate expectation that certain "procedures" with respect to family reunification will be followed. Given that this argument was not pursued at the hearing, I will address it only briefly.

[35] The fact that Ms. Kamara has seven of ten siblings living in Canada is relevant to the applicants' claim for refugee protection generally, and to their ability to resettle in Canada specifically. However, the presence of family members in Canada is by no means determinative of the applicants' eligibility as refugees.

[36] As I understand it, Ms. Kamara maintains that the fact her family members were previously granted refugee protection "generally applies to other family members, even if indirectly." The excerpts from the Manual relied upon in support of this proposition, when read in context, indicate that the statements are directed at situations where related applicants make claims for refugee protection at the same time. The Manual, in this respect, focuses on concurrent processing of related family members' claims and cautions that, to the greatest extent possible, officers should avoid splitting or separating refugee families at the time of selection. In other words, it would contravene the family unity objectives set out in the Manual to conclude that the principal applicant is a refugee, but her son, who claimed protection simultaneously, is not. There can be no expectation that a claim will be accepted merely because an applicant has family members living in Canada.

[37] In the reply submission, Ms. Kamara claims that the visa officer should have considered any “compelling reasons” that warranted the granting of protection, including the fact that there were family members in Canada.

[38] Subsection 108(4) of the IRPA provides that, notwithstanding the fact that the reasons for which the person sought refugee protection have ceased to exist, a claim for refugee protection shall not be rejected if the person establishes that “there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left”.

[39] The Minister submits, and I agree, that the threshold for applying subsection 108(4) has not been met in this case. The visa officer made no finding of past persecution. Moreover, he directed his mind to the current situation in the country and determined that the conflict had ended. In this regard, see *Decka v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 822.

[40] In *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 343, Mr. Justice Noël noted that a compelling reasons assessment need not be undertaken in every case. At paragraph 19, he stated: “It is only when para. 108(1)(e) is invoked by the RPD that a “compelling reasons” assessment should be made, i.e. when the refugee claimant was found to be a refugee but nevertheless had been denied refugee status given the change of circumstances in the country of origin.” Here, the applicants were found not to be Convention refugees. Therefore, no “compelling reasons” assessment was necessary.

[41] Finally, Ms. Kamara points to the delay between the interview (October 2006) and the communication of the reasons (August 2007). The delay is undeniable. However, as the respondent correctly notes, the applicants have not alleged that the circumstances were different at the time the reasons were released. The delay does not give rise to an “error”. As for the visa officer's statement that Ms. Kamara's unwillingness to return to Sierra Leone was due to a “lack of economic prospects”, in my view, it was open to the visa officer to draw that inference from the evidence that was before him. Even if that is not so, the comment can fairly be characterized as gratuitous. I am satisfied that it has no impact on the visa officer's analysis of the grounds for the applicants' claims.

[42] Counsel did not suggest a question for certification and none arises.

[43] A request was made to amend the style of cause to accurately reflect the names of all individuals included in the application. The request is granted and the style of cause has been so amended.

JUDGMENT

The application for judicial review is dismissed.

“Carolyn Layden-Stevenson”

Judge

SCHEDULE "A"
to the
Reasons for Judgment dated June 23, 2008
in
MAYELLI KAMARA ET AL.
and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

IMM-4401-07

Immigration and Refugee Protection Act,
S.C. 2001, c. 27

Loi sur l'immigration et la protection des
réfugiés, LC. 2001, ch. 27

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi.

(2) The officer may not issue a visa or other document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act.

(2) Ils ne peuvent être délivrés à l'étranger dont le répondant ne se conforme pas aux exigences applicables au parrainage.

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention

108. (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de

refugee or a person in need of protection, in any of the following circumstances:

- a) the person has voluntarily reacquired themselves of the protection of their country of nationality;
- (b) the person has voluntarily reacquired their nationality;
- (c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;
- (d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or
- (e) the reasons for which the person sought refugee protection have ceased to exist.

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Effect of decision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

Immigration and Refugee Protection Regulations, SOR/2002-227

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

personne à protéger dans tel des cas suivants :

- a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
- b) il recouvre volontairement sa nationalité;
- c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
- d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;
- e) les raisons qui lui ont fait demander l'asile n'existent plus

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

Effet de la décision

(3) Le constat est assimilé au rejet de la demande d'asile.

(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

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 :

- | | |
|--|--|
| <p>(a) the foreign national is outside Canada;</p> | <p>a) l'étranger se trouve hors du Canada;</p> |
| <p>(b) the foreign national has submitted an application in accordance with section 150;</p> | <p>b) il a présenté une demande conformément à l'article 150;</p> |
| <p>(c) the foreign national is seeking to come to Canada to establish permanent residence;</p> | <p>c) il cherche à entrer au Canada pour s'y établir en permanence;</p> |
| <p>(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</p> <p>(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or</p> <p>(ii) resettlement or an offer of resettlement in another country;</p> | <p>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 :</p> <p>(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,</p> <p>(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;</p> |
| <p>(e) the foreign national is a member of one of the classes prescribed by this Division;</p> | <p>e) il fait partie d'une catégorie établie dans la présente section;</p> |
| <p>(f) one of the following is the case, namely</p> <p>(i) the sponsor's sponsorship application for the foreign national and their family members included in the application for protection has been approved under these Regulations,</p> <p>(ii) in the case of a member of the Convention refugee abroad or source country class, financial assistance in the form of funds from a governmental resettlement assistance program is available in Canada for the foreign national and their family members included in the application for protection, or</p> <p>(iii) the foreign national has sufficient financial resources to provide for the lodging, care and maintenance, and for the resettlement in Canada, of themselves and their family members included in the application for protection;</p> | <p>f) selon le cas :</p> <p>(i) la demande de parrainage du répondant à l'égard de l'étranger et des membres de sa famille visés par la demande de protection a été accueillie au titre du présent règlement,</p> <p>(ii) s'agissant de l'étranger qui appartient à la catégorie des réfugiés au sens de la Convention outre-frontières ou à la catégorie de personnes de pays source, une aide financière publique est disponible au Canada, au titre d'un programme d'aide, pour la réinstallation de l'étranger et des membres de sa famille visés par la demande de protection,</p> <p>(iii) il possède les ressources financières nécessaires pour subvenir à ses besoins et à ceux des membres de sa famille visés par la demande de protection, y compris leur logement et leur réinstallation au Canada;</p> |

144. The Convention refugees abroad class is prescribed as a class of persons who may be issued a permanent resident visa on the basis of the requirements of this Division.

144. La catégorie des réfugiés au sens de la Convention outre-frontières est une catégorie réglementaire de personnes qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

145. 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.

145. Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.

146. (1) For the purposes of subsection 12(3) of the Act, a person in similar circumstances to those of a Convention refugee is a member of one of the following humanitarian-protected persons abroad classes:

146. (1) Pour l'application du paragraphe 12(3) de la Loi, la personne dans une situation semblable à celle d'un réfugié au sens de la Convention appartient à l'une des catégories de personnes protégées à titre humanitaire outre-frontières suivantes :

(a) the country of asylum class; or

a) la catégorie de personnes de pays d'accueil;

(b) the source country class.

b) la catégorie de personnes de pays source.

(2) The country of asylum class and the source country class are prescribed as classes of persons who may be issued permanent resident visas on the basis of the requirements of this Division

(2) Les catégories de personnes de pays d'accueil et de personnes de pays source sont des catégories réglementaires de personnes qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

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.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4401-07

STYLE OF CAUSE: **MAYELLI KAMARA and MICHAELLA FINOH
and ALIMAMY KAMARA and FUDIA KAMARA
(by their litigation guardian, MAYELLI KAMARA)
v.
MCI**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 11, 2008

**REASONS FOR JUDGMENT:
AND JUDGMENT** Layden-Stevenson J.

DATED: June 23, 2008

APPEARANCES:

Mr. Timothy Wichert

FOR THE APPLICANTS

Mr. David Joseph

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jackman and Associates
Barristers and Solicitors
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FOR THE APPLICANTS

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT