Federal Court  Cour fédérale

Date: 20250403

Docket: IMM-5516-23

Citation: 2025 FC 619

Ottawa, Ontario, April 3, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

CHRISTOPHER LUCAS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Christopher Lucas [Applicant] was issued a deportation order for serious criminality on July 30, 2021 by the Immigration Division [ID]. The Applicant appealed the deportation order to the Immigration Appeal Division [IAD], and on March 23, 2023, the IAD upheld the deportation order finding the Applicant had not established that humanitarian and compassionate [H&C] considerations warranted special relief.

[2] While many of the Applicant's arguments represent a request to reweigh evidence, I am persuaded that the IAD unreasonably assessed hardship. The application for judicial review is allowed.

II. Background

[3] The Applicant is a 25-year-old man from the Democratic Republic of Congo [DRC]. The Applicant entered Canada with his mother when he was 8 years old. His mother did not apply for citizenship on the Applicant's behalf. The Applicant has two minor daughters in Canada.

[4] In April 2018, while incarcerated at the Toronto South Detention Centre, the Applicant assaulted a corrections officer. On May 16, 2019, the Applicant was convicted of assaulting a peace officer causing bodily harm contrary to section 270.01(1)(b) of the *Criminal Code*, RSC 1985, c C-46 [Deportable Offence].

[5] In addition to the Deportable Offence, the Applicant has both prior and subsequent criminal history. As a youth, the Applicant was convicted of assault with a weapon and firearms offences. On July 15, 2019, the Applicant was involved in another incident at the Toronto South Detention Centre, in which an inmate was stabbed and beaten by other inmates. The Applicant pled guilty to this offence. The Applicant also has outstanding charges, including first degree murder and firearms possession.

[6] On March 8, 2021, the CBSA referred a subsection 44(2) admissibility report to the ID, alleging the Applicant was inadmissible for serious criminality (*IRPA* s. 36(1)(a)). On July 30, 2021, the ID issued the deportation order. The Applicant appealed this decision to the IAD.

[7] In the IAD appeal, the Applicant provided a medical report for his common-law partner showing that she cannot work. He also provided several support letters from family and friends.

III. The Decision

[8] The IAD dismissed the Applicant's appeal of the deportation order. The Applicant did not challenge the order's legal validity but argued that sufficient H&C considerations warranted special relief. The Decision referred to the following non-exhaustive factors: the seriousness of the offences; remorse; possibility of rehabilitation and the risk of reoffending; length of time in Canada; establishment; family support in Canada and the impact of removal upon the family; community support; and hardship.

[9] The IAD found the Deportable Offence was serious and violent, weighing against H&C relief.

[10] The IAD also found the Applicant was not remorseful, has a low possibility for rehabilitation, and poses a high risk of reoffending. The IAD reviewed the previous convictions for assault occurring in a jail, one of which was against a peace officer, and the youth offences. The Applicant and his mother testified that the neighbourhood in which he grew up contributed to his criminality.

[11] The Applicant testified that he has matured spiritually and wants to be present for his children. He attended an anger management program in jail and intends to complete high school but did not provide supporting documentation.

[12] The IAD found the Applicant did not articulate an understanding of the consequences of his behaviour, and did not establish efforts to address his behaviour, despite being incarcerated since 2021. The Applicant did not establish that he has made a robust attempt to further his education while incarcerated. While systemic discrimination in policing exists, the Applicant did not explain how this contributed to his criminal activity.

[13] While the Applicant positively spent time in Canada, the IAD found he is not established, having failed to complete high school or work past age 16. However, the IAD noted family and community support in Canada, and the emotional hardship they would suffer upon the Applicant's removal, if not financial hardship.

[14] Regarding hardship, the IAD found the Applicant would experience some hardship if he returned to the DRC, due to his unfamiliarity with the country and the conflict there. However, this hardship did not warrant special relief. In addition, the Applicant has a grandmother in the DRC who helped raise him when he was a child. The Applicant is young, understands some French, and can re-establish himself. Other stated issues are inherent in relocation.

[15] Regarding the best interests of the children [BIOC], the IAD found that it would be in the children's best interests for the Applicant to remain. However, this did not warrant special relief. The Applicant has never lived with his oldest child but speaks with her approximately five times a week. He co-parents well with the oldest child's mother, who testified that, despite the lack of a custody agreement or child support, it would be difficult to raise their child without the Applicant.

[16] Regarding his youngest child, he is in a common-law relationship with her mother, speaking with both mother and child everyday. This mother is not working, having been in a car accident. She testified that the Applicant's family is her only support system, and the Applicant taught her about religion.

[17] The IAD concluded that the Applicant is involved in his children's lives and provides emotional support, but he does not provide financial assistance. The children will be cared for by each mother and their grandparents. The Applicant did not establish that both mothers and their children could not communicate with him in the DRC, nor visit. As for his younger siblings, the IAD found that the Applicant did not play an active role in their lives, weighing this as a neutral factor.

[18] The IAD concluded the BIOC was a significant positive factor and family reunification is an objective of the *IRPA*. However, these factors were outweighed by the Applicant's serious criminality, low possibility for rehabilitation, risk of reoffending, and lack of establishment.

IV. Issues and Standard of Review

[19] The only issue for determination is whether the Decision is reasonable. The sub-issues related to whether:

1) The IAD reasonably assessed establishment?
2) The IAD reasonably assessed the BIOC?
3) The IAD reasonably assessed hardship?
4) The IAD reasonably assessed anti-Black systemic racism?

[20] The presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). A reasonable decision must be "based on an internally coherent and rational chain of analysis" and must be justified in relation to the factual and legal constraints applicable in the circumstances (*Vavilov*, at para 85). Courts should intervene only where necessary.

[21] To avoid judicial intervention, the decision also must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov*, at para 99). The Court must avoid reassessing and reweighing the evidence before the decision maker. A decision may be unreasonable, however, if the decision maker "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov*, at paras 125-126). The party challenging the decision has the onus of demonstrating that the decision is unreasonable (*Vavilov*, at para 100).

[22] As the determinative issue on this application is the IAD's assessment of hardship on return to DRC, it is unnecessary to address the remaining issues.

[23] In the Application for Leave and Judicial Review, the Applicant alleges a breach of natural justice. However, these allegations are not pursued in his written submissions, and thus the only applicable review standard is reasonableness.

V. Analysis - Hardship

(1) The Applicant

[24] IAD's hardship analysis unreasonably failed to engage with or misconstrued the evidence. The sworn uncontested evidence indicated that the Applicant did not have any contacts

in the DRC, including his grandmother. The IAD found it implausible that neither the Applicant, nor his mother, had contact with his grandmother, determining the Applicant would be able to live with his grandmother on return to the DRC. The IAD cannot reject sworn evidence without a reliable evidentiary base (*Yousuf v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1302 at para 13; *YZ v Canada (Citizenship and Immigration)*, 2021 FC 232 at para 12 [*YZ*]).

[25] Further, the IAD unreasonably minimized the hardship associated with returning to the DRC, where there presently is: an active humanitarian crisis; hunger issues; a lack of housing; declining human rights; and, harsh conditions facing returnees. The IAD accepted evidence demonstrating these conditions, yet unreasonably found that these conditions are no worse than expected when a person relocates to their birth country. The IAD dismissed the hardship determining the Applicant could stay with his grandmother and would not be compelled to live in the east of the DRC. The evidence demonstrates that returnees are regularly detained and mistreated, regardless if the returnee actually engaged in political or criminal activity. Despite this evidence, the IAD found it was speculation to assume the Applicant would be detained.

(2) The Respondent

[26] The IAD reasonably found it implausible that the Applicant does not have contact with his grandmother and does not know where she is. The IAD explained this implausibility finding, noting the Applicant was raised by his grandmother for seven years. There must have been communications between the Applicant's mother and grandmother in order for the grandmother to send the Applicant to his mother in Canada as an 8year-old child. Additionally, the Applicant's mother testified that the grandmother is still living in the DRC in a village.

[27] Further, the IAD did not minimize hardship by finding it speculative that the Applicant would be detained due to suspected political activity. The Applicant mischaracterizes the IAD's conclusion. The IAD concluded the Applicant's particular circumstances (i.e. lack of refugee claim and political activity) do not point to a risk of detention. While some risks exist for any individuals returning to the DRC, the remaining risks are inherent in removal (*Canada (Citizenship and Immigration) v Tefera*, 2017 FC 204 at para 46).

[28] In addition, the IAD reasonably noted the unfavourable country condition evidence was focused on urban regions in the east. The Applicant did not suggest he would be compelled to return to the east.

(3) Conclusion

[29] I agree with the Applicant. The IAD's decision was predicated on the finding that the Applicant, despite testimony to the contrary, can communicate with his grandmother, and live with her in the DRC. The IAD found at para 55: "I find it implausible that neither he nor his mother have no contact with her." This is a clear plausibility finding.

[30] In *YZ*, above, the Honourable Justice Fuhrer stated at paragraph 12:

> Plausibility findings should be made in the **clearest of cases**, such as where the alleged facts are "outside the realm of what reasonably could be expected or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant." Implausibility determinations demand a more rigorous review than credibility findings which are accorded considerable deference. Absent a reliable and verifiable evidentiary base against which to assess alleged facts, implausibility determinations may amount to little more than impermissible unfounded speculation.
>
> [Citations omitted; emphasis added.]

[31] The IAD does not explain this plausibility finding and concludes the Applicant's grandmother could house him. However, it has been 17 years since the Applicant left the DRC. This is undoubtedly a significant period of time. There is no evidence showing the grandmother, from her village in the DRC, communicates with the Applicant, or his mother. There is likewise no evidence that the Applicant could find his grandmother. In my view, this is not the "clearest of cases" in which these plausibility findings could be made. The IAD did not engage in a rigorous review with an evidentiary base.

[32] Even if the Respondent is correct regarding the Applicant's prospect of detention, the grandmother's availability, and willingness to house the Applicant, was a factor of central importance in the IAD's hardship analysis, including as it relates to the general conditions in the DRC. Accordingly, the hardship analysis is unreasonable.

VI. Conclusion

[33] The IAD erred in its assessment of hardship to the Applicant if he was removed to the DRC.

[34] There is no question for certification.

JUDGMENT in IMM-5516-23

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is allowed. The matter is remitted for redetermination before a different officer in accordance with these reasons.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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