

Federal Court



Cour fédérale

Date: 20250410

Docket: IMM-11362-23

Citation: 2025 FC 658

Toronto, Ontario, April 10, 2025

PRESENT: Mr. Justice Diner

BETWEEN:

ALAIN UWIMANA

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Alain Uwimana [Applicant], seeks judicial review of the decision to refuse his application for permanent residency as a member of the Convention Refugees Abroad and Humanitarian-Protected Persons Abroad Class [Decision]. For the reasons that follow, his application for judicial review is granted.

I. Background

[2] The Applicant is a citizen of Burundi. He left Burundi for Rwanda in 2015. He registered with the United Nations High Commissioner for Refugees [UNHCR] and received a document stating he had status in Rwanda as a refugee. The document did not have an expiration date. He stayed for a few months before travelling back to Burundi in October 2015. In February 2016, he returned to Rwanda, and remained there for four years.

[3] In February 2020, the Applicant returned to Burundi and stayed until 2021. The Applicant claims the land border crossings were closed due to the COVID-19 pandemic, so he stayed in hiding, ultimately fleeing once again due to perceived danger in 2021.

[4] After re-entering Rwanda in 2021, the Applicant learned that as part of entry requirements, he needed to be vaccinated against COVID-19. In order to receive the vaccine, he had to obtain a new refugee card as the Rwandan government had changed the documentation from the previous paper document he had received in 2015. The Applicant contacted UNHCR, which had issued his previous documentation, but was informed that they no longer issue status documents in Rwanda. The UNHCR applied on behalf of the Applicant with the Rwandan government in order to re-instate his status and obtain a card.

[5] The Applicant does not know the content of the application to re-instate his status. He was advised by UNHCR that he would be contacted for an interview as part of his application, but he never was.

[6] In 2021, the Applicant submitted an application through the Private Refugee Sponsorship program in Canada along with his five sponsors. In his application, the Applicant set out the events that caused him to flee Burundi and detailed his two returns to Burundi. He also included a copy of his refugee status documentation from 2015 and indicated that he was awaiting the outcome of the renewal process for such.

[7] In March 2022, the Applicant received a notice from the Rwandan government that his refugee status was not being re-granted because he did not meet the eligibility requirements, without specifying what requirements they were, and that his responses given in an interview were not pertinent. The Applicant maintains that he never had an interview, and he sought to appeal the Rwandan decision, but his appeal was dismissed in May 2022.

[8] In March 2023, the Applicant had an interview with a visa officer [Officer] regarding his Canadian application for permanent resident sponsorship, which he had requested take place in French without an interpreter. His interview was, however, conducted in English, with an interpreter.

[9] When asked about his status in Rwanda during the interview, the Applicant provided a document from the Rwandan authorities indicating his prior refugee status had not been re-granted.

[10] The Applicant provided further written submissions to the Officer after the interview, on April 4, 2022. In those submissions, the Applicant provided further explanations for his two

returns to Burundi. He also raised concerns regarding the language of the interview and the interpretation.

[11] The Officer refused the Applicant's application, and in the Decision concluded he did not meet the Convention refugee definition, finding that he lost his status in Rwanda due to his returns to Burundi.

[12] The Officer was not satisfied that the Applicant was unable to avail himself to the protection of Burundi, his need for protection having been negated by the extensive time spent in Burundi, and the fact that there was no supporting evidence for the Applicant's stated fear of being kidnapped.

[13] Ultimately, the Officer found that the documentation from the Rwandan authorities indicating his status had not been re-granted rendered him ineligible for resettlement in Canada under the overseas refugee classes.

[14] The Applicant, via his sponsor, submitted a request for reconsideration but no response was recorded in the record.

[15] The Applicant argues that the Officer breached his procedural fairness by failing to put his credibility concerns to him. Further, the Applicant argues that the Decision is unreasonable on several grounds relating to the interpretation of provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], and the Applicant's risk allegations.

[16] The Respondent retorts that the credibility finding was expressly tied to the loss of status, rather than to the alleged kidnapping. The Respondent further argues that the Officer properly voiced concerns related to the loss of status and the returns to Burundi, and allowed the Applicant to address them during the interview.

[17] The Respondent contends that, in any event, the dispositive issue was the Applicant's loss of refugee status in Rwanda, that the credibility concerns were expressly tied to the loss of status, and that the Decision was otherwise reasonable.

II. Analysis

[18] The issue of procedural fairness is subject to review on a standard equivalent to correctness (*Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2020 FCA 196 at para 35).

[19] The Officer's relevant finding is as follows:

In relation to the supposed kidnapping in 2021, the applicant did not have any supporting evidence; I have weighed his declaration with diminished credibility given his revoked status in Rwanda and his immigration and movement history.

[20] During the interview, the Officer raised these specific concerns with the Applicant:

PROCEDURAL FAIRNESS

At this point in the interview, I would like to tell you my concerns and give you an opportunity to respond. I would like to remind you that you are obligated to tell the truth.

I am not satisfied that you meet the definition of a refugee under Canadian law. I have concerned [sic] that you have reavailed yourself of the protection of Burundi by returning on not one but two occasions, in 2016 and 2020, and lost recognition by Rwanda. Your time spent in Burundi negates your need for protection from Canada. You did not mention until just now that you list recognition as a refugee in Rwanda, likely for the same reason as I am telling you today. In fact, you presented an invalidated document to me earlier when I asked for proof of your refugee recognition document. You no longer meet the requirement to be sponsored to Canada because you do not have a formal recognition from Rwanda.

[21] While I agree with the Respondent that the Officer properly put concerns relating to the Applicant's loss of status and his time spent in Burundi to him, I disagree with the Respondent's argument that the credibility finding is only tied to the determinative issue of status. The Officer made a negative finding of credibility in relation to the Applicant's alleged kidnapping and did not properly put that concern to him. Furthermore, although it is unclear from the Officer's notes to what extent, this finding certainly weighed against the Applicant.

[22] It is trite law that where a decision maker has concerns regarding the credibility of an applicant's narrative regarding their claim for refugee protection, the officer has a duty to raise the concern to the applicant and allow them an opportunity to respond (see for instance *Mohammed v Canada (Citizenship and Immigration)*, 2019 FC 326 at paras 25–26; *Chawla v Canada (MCI)*, 2014 FC 434 at para 14).

[23] Decisions pertaining to overseas refugee applicants have significant, permanent impacts. They “carry more serious consequences than decisions concerning applications for a study or work permit” as they determine whether applicants are able to find safety from alleged harm or

continue to live their lives in fear (*Iqbal v Canada (Citizenship and Immigration)*, 2023 FC 622 at para 25).

[24] Where decisions have a particularly harsh consequences, the degree of procedural fairness owed to applicants is heightened (see for instance *Hussein v Canada (Citizenship and Immigration)*, 2024 FC 1629 at para 25 [*Hussein*]; *Gill v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1441 at para 7).

[25] I cannot accept the Respondent's argument that the credibility finding of the Officer is distinct from the finding relating to the alleged kidnapping. The Officer's computer notes, which form part of the Decision, clearly link the Officer's concerns with the alleged kidnapping to the finding of inadmissibility. The Officer opines that the Rwandan authorities "likely" did not renew the Applicant's status because of his returns to Burundi that, according to the Officer, negate his need for protection.

[26] It is no coincidence the Officer placed the statements regarding his return to Burundi and his loss of status in Rwanda in one sentence, as reproduced above (at para 19 of these Reasons): they are intrinsically linked to one another in the Officer's final determination of reavilment. The Officer's concerns regarding the Applicant's lost status in Rwanda are further exacerbated by the concerns regarding the Applicant's fear of persecution, and therefore, his alleged kidnapping.

[27] During the hearing, counsel for Respondent went through interview notes of the Officer, pointing out to the Court where the officer questioned the Applicant regarding the kidnapping incident. Counsel also noted that credibility is always at issue.

[28] I disagree that the passage in the interview notes referred to by Respondent's counsel sufficed to meet the procedural fairness requirements. The Officer's queries in that interview were simply part of a chronological line of questioning that went through the applicant's history, and were merely contextual in nature. In the particular section of the interview notes referred to by Respondent's counsel, the Officer raised no particular concerns regarding credibility to the Applicant. Again, given the heightened significance of this application and the harsh consequences of the result (*Hussein* at para 25), the Officer had the obligation to put his concerns of a kidnapping to the Applicant. Failing to do so constituted a breach of procedural fairness.

[29] In addition to the procedural fairness breach, there are other reviewable errors that fail to meet the *Vavilov* reasonableness requirements. First, the Officer's fails to mention the Applicant's explanation as to why he remained in Burundi. It is clear from the Officer's notes that they assumed the Applicant's return to Burundi resulted in the loss of status in Rwanda. While that may or may not have been the case (because there is no evidence on why he lost his Rwandan refugee status), the Officer unreasonably failed to properly grapple with the evidence that the Applicant did not voluntarily stay in Burundi. Rather, he had no ability to leave the country due to COVID travel restrictions. He remained in hiding during these restrictions. Overlooking the explanation that directly contradicts the finding of reavilment constitutes a reviewable error.

[30] This Court has previously found that officers must properly examine the evidence provided by applicants even in the case of lengthy returns to their country of origin, and even if they partake in schooling or work (*Ward v Canada (Citizenship and Immigration)*, 2019 FC 863 at paras 39–51, 58; see also *Amani v Canada (Citizenship and Immigration)*, 2016 FC 1215 at para 10).

[31] Second, and on a related point, the Officer unreasonably speculated that the Applicant lost his status in Rwanda because he returned to Burundi. The Respondent contends that the law in Rwanda bears some similarity to that in Canada, and that the Applicant would have thus had an opportunity to contest his loss of status in Rwanda.

[32] Once again, there simply is no evidence that (a) the Applicant lost his status due to reavilment, or (b) what process, if any, the Applicant had access to, in responding to his loss of status. Decisions of foreign states or the UNHCR are not binding on officers (*Amanuel v Canada (Citizenship and Immigration)*, 2021 FC 662 at paras 51–55; *Grebewldi v Canada (Citizenship and Immigration)*, 2017 FC 621 at para 28). Furthermore, in *Arshad v Canada (Citizenship and Immigration)*, 2022 FC 949 at paras 11–13, Justice Southcott found that it is unreasonable for a Canadian visa officer relying on a foreign refugee refusal to draw negative credibility findings and refuse an application, particularly where the reasons for the foreign refugee assessment do not “capture the entirety” of that application procedure.

[33] Finally, I note that the Applicant proposed that the following question be certified:

Is it reasonable to interpret paragraph 153(1)(b) of the IRPR as requiring that the document held by the foreign national certifying

their status as a refugee remain valid until a decision is made granting their application for permanent residence in Canada?

[34] The Respondent opposes the certification of any question stating that the issue is neither dispositive to the application nor a matter of general importance, also noting that a related question was recently litigated in *Pepa v Canada (Citizenship and Immigration)*, 2023 FCA 102, leave to appeal granted 2024 CanLII 10157 (SCC)), which is pending.

[35] Given that the Decision under review here was tainted both by procedural and substantive defects, the question will not be certified at this time. Rather, this application is granted and will be returned for redetermination by another officer.

JUDGMENT in IMM-11362-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is granted and the Decision is set aside.
2. The matter is returned for redetermination by a different officer.
3. There is no question for certification.
4. No costs will issue.

“Alan S. Diner”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11362-23

STYLE OF CAUSE: ALAIN UWIMANA v MCI

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

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JUDGMENT AND REASONS: DINER J.

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APPEARANCES:

Jonathan Porter	FOR THE APPLICANT
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Landings LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT