

Federal Court



Cour fédérale

**Date: 20250408**

**Docket: IMM-10136-24**

**Citation: 2025 FC 641**

**Ottawa, Ontario, April 8, 2025**

**PRESENT: Madam Associate Chief Justice St-Louis**

**BETWEEN:**

**JOMES ROSEMBERT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Mr. Jomes Rosembert, the applicant, is a citizen of Haiti. Mr. Rosembert also held the status of Canadian permanent resident, but in 2013, the Immigration Section found him inadmissible to Canada for serious criminality under section 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], and issued a deportation order against him.

Mr. Rosembert has been convicted of 22 criminal offences, including theft, possession of a weapon, and possession of narcotics.

[2] In August 2023, Mr. Rosembert applied for a Pre-Removal Risk Assessment [PRRA]. His initial application was rejected, but his file was subsequently re opened, and Mr. Rosembert filed updated submissions. Mr. Rosembert then submitted that his claim for protection should be accepted (1) for being at risk under section 96 of the Act, based on his particular social group as a person with a mental illness, as a returnee with a criminal record, and based on his imputed political opinion; (2) for being at risk under section 97 of the Act, based on his profile as a returnee with a criminal record and mental illness; (3) because the state would be unable and unwilling to protect him; and (4) because there would be no internal flight alternative.

[3] On May 23, 2024, a Senior Immigration Officer [the Officer] rejected Mr. Rosembert's PRRA application [Decision]. The Officer confirmed Mr. Rosembert's situation was captured by subsection 112(3)(b) and 113(e)(i) of the Act, and that Mr. Rosembert's PRRA application was examined under sections 96 and 97 of the Act. The Officer set out the applicable tests from the onset of their analysis, stating that Mr. Rosembert had to demonstrate that he faced "*plus qu'une simple possibilité*" [translation] "more than a mere possibility" of persecution in Haiti under section 96 of the Act, and on a balance of probabilities, that he would be subject to torture, cruel and unusual treatment or punishment, or a risk to his life under section 97 of the Act.

[4] In their assessment of the section 96 allegations, the Officer concluded twice that Mr. Rosembert 's circumstances did not show that he faced “*plus qu'un simple risque de persécution*” [translation] “more than a simple risk of persecution”.

[5] Mr. Rosembert seeks judicial review of this negative PRRA decision. Among other arguments, he submits that the Decision should be set aside because, *inter alia*, the Officer misapplied the test in assessing Mr. Rosembert's risks of persecution under section 96 of the Act. More specifically, Mr. Rosembert argues that in reading three passages found at pages 5 and 7 of the Decision, it is apparent that the Officer required Mr. Rosembert to establish a level of persecution in Haiti that was “more than simple” persecution or a “higher level” of persecution.

[6] The Minister of Citizenship and Immigration [the Minister] responds that the Officer did not import a higher threshold under section 96 of the Act. Without precisely addressing the argument raised, the Minister asserts, essentially, that where the legal test of “serious possibility” or “reasonable chance” has been applied, decision makers cannot be criticized for making their findings of fact on a balance of probabilities. The Minister adds that Mr. Rosembert's submissions amount to nothing more than a “line-by-line treasure hunt for error” (citing *Minister of Citizenship and Immigration*) v *Vavilov*, 2019 SCC 65 at para 100 [*Vavilov*]), which is not allowed on reasonableness review, and that the Decision, read holistically, shows the Officer applied the correct test and was alive to Mr. Rosembert's submissions.

[7] As detailed below, I am satisfied that Mr. Rosembert has shown that the Decision is unreasonable per the applicable standard of review (*Vavilov*); in fact, and given the language

used, I cannot determine if the Officer did or did not apply the proper section 96 legal test in their assessment. This conclusion suffices to set the decision aside and send it back for a new determination.

## II. Analysis

[8] In *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (CA) [Adjei], the Federal Court of Appeal confirmed the applicable legal test in the context of a claim under section 96 of the Act. The Federal Court of Appeal cited the unreported 1983 decision of *Seifu v Immigration Appeal Board* (A-277-82) and adopted the same language. The Federal Court of Appeal thus stated that, in order to support a finding that an applicant is a Convention refugee, the evidence must show that the applicant has good grounds for fearing persecution for reasons specified in section 96. It went on to indicate, *inter alia*, that this means there must be more than a minimal possibility, which it wrote, can also be expressed as a “reasonable” or even a “serious possibility”, as opposed to a mere possibility. The French version refers to a “possibilité raisonnable”, or “davantage qu’une possibilité minime” in contrast to a “simple possibilité”.

[9] The Court has since acknowledged that, in a section 96 assessment, the central fact that must be proven is that there is “more than a mere possibility of persecution” (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 34 citing *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 120; see also *Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 at para 8).

[10] In this case, as mentioned above, the Officer did note the proper legal test at the very beginning of his analysis, i.e., “plus qu’une simple possibilité de persécution” [translation] “more than a mere possibility of persecution”. However, the Officer subsequently assessed the allegations by referring twice to “plus qu’un simple risque de persécution” [translation] “simple risk of persecution” rather than a possibility, and found it insufficient. However, I cannot decipher what that means without conducting my own analysis of the application and the evidence and without having to buttress the Officer’s reasons; I find this language casts a doubt on the test the Officer effectively applied in their analysis. In my view, reference to a simple risk of persecution seemingly categorizes the level of persecution as insufficient rather than examining whether there exists more than a mere possibility of persecution, as required by the Federal Court of Appeal in *Adjei*.

[11] As discussed at the hearing, there is scarce reference in the case law to this precise language; I am preoccupied by the fact that in *Herman v Canada (citizenship and immigration)*, 2008 FC 1077, at paragraph 19, this precise language was deemed sufficient for the applicant to meet the threshold under section 96 of the Act while here, the Officer used it to conclude the applicant did not meet the test.

[12] In short, I cannot connect the dots between the Officer’s stated legal test and the legal test actually used in their analysis. The Court’s role on judicial review is not to provide reasons that were not given, nor to guess what findings might have been made or to speculate as to what the Officer might have been thinking (*Vavilov* at para 97 citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11).

[13] Accordingly, the Decision is fatally flawed and unreasonable. This conclusion suffices to decide on the matter, and I do not need to address the other arguments raised.

**JUDGMENT in IMM-10136-24**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The Decision is set aside.
3. The mater is sent to a different officer for a new determination.
4. No question is certified.
5. No costs are awarded.

---

“Martine St-Louis”  
Associate Chief Justice

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-10136-24

**STYLE OF CAUSE:** JOMES ROSEMBERT v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ON

**DATE OF HEARING:** APRIL 2, 2025

**JUDGMENT AND REASONS:** ST-LOUIS ACJ.

**DATED:** APRIL 8, 2025

**APPEARANCES:**

|                     |                    |
|---------------------|--------------------|
| Laila Demirdache    | FOR THE APPLICANT  |
| Valeriya Sharypkina | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

|                                                     |                    |
|-----------------------------------------------------|--------------------|
| Community Legal Services of<br>Ottawa<br>Ottawa, ON | FOR THE APPLICANT  |
| Attorney General of Canada<br>Ottawa, ON            | FOR THE RESPONDENT |