Federal Court  Cour fédérale

Date: 20250417

Docket: IMM-5414-24

Citation: 2025 FC 704

Ottawa, Ontario, April 17, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ABEYMEH GOLA DESALGN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by an officer at Immigration Refugees and Citizenship Canada (the "Officer"). The Decision denied the Applicant permanent residence in Canada under the Convention Refugee Abroad and Humanitarian-Protected Persons Abroad class pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act").

[2] For the reasons explained below, I find the Decision reasonable.

II. Background

[3] The Applicant is a citizen of Ethiopia. In 2009, he fled Ethiopia to South Africa because he faced persecution from the Ethiopian government. He currently lives in South Africa while his wife and their 16-year-old son remain in Ethiopia.

[4] The Applicant was granted refugee status in South Africa and a has a UNHCR designation as a refugee. The Applicant works as a hawker in South Africa, but says he was forced to close his shop due to xenophobic attacks and crime.

[5] In 2018, the Applicant applied for resettlement to Canada and was refused. He applied again in 2021 for permanent residence under the Convention Refugee Abroad or Humanitarian-Protected Persons Abroad class. The Applicant was interviewed on February 27, 2024, in Pretoria, South Africa.

[6] The Officer began the interview outlining the following requirements that the Applicant needed to meet for his application to be approved. Specifically, the Officer stated:

> First, I have to be satisfied that you are credible and that you have been truthful during the interview and in your application forms. Next, I have to be satisfied that you meet the definition of a Convention refugee or that you are a member of the country of asylum class. I have to be satisfied that you have a well-founded fear of persecution in your country of citizenship for one of the five Convention grounds. Then, I have to analyse whether you have a durable solution here in South Africa. If you have a durable solution in South Africa, you may not be eligible for resettlement

> in Canada. Finally, I have to assess your admissibility to Canada. Your application would only be approved if I am satisfied as to each of these items. Is that clear?

[7] After the Applicant responded "yes", the Officer proceeded to ask the Applicant questions relating to these requirements.

III. The Decision

[8] By letter dated March 7, 2024, the Officer informed the Applicant that his application for a permanent resident visa was denied as he did not meet the requirements for immigration to Canada.

[9] Specifically, the Officer found the Applicant, a foreign national and Convention refugee abroad under section 145 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"), did not meet the requirements of paragraph 139(d) of the Regulations, which states:

> **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
>
> **(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
>
> **(i)** voluntary repatriation or resettlement in their country of nationality or habitual residence, or
>
> **(ii)** resettlement or an offer of resettlement in another country;

[10] The Officer provided the following reasons for why he did not meet these requirements:

> You currently reside in a country that is a signatory to the Geneva Convention on Refugees, South Africa. You have been able to benefit from the protection of South Africa and have been able to obtain formal recognition of refugee status.

IV. Issues

[11] The two issues raised are:

A. Was there a breach of procedural fairness?

B. Is the Decision reasonable?

V. Analysis

[12] The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

A. *There was no breach of procedural fairness*

[13] The Applicant asserts the Officer breached the Applicant's procedural fairness rights by not providing the Applicant with a meaningful opportunity to respond to the Officer's concern about a durable solution in South Africa. The Applicant argues that the Officer failed to raise this

determinative issue by asking questions or seeking clarification before denying the Applicant's application.

[14] I am satisfied that the Applicant was given the opportunity to know his case and respond to it. Contrary to the Applicant's assertions, the Officer informed the Applicant of the impact of a finding of a durable solution on the Applicant's application, multiple times, including at the beginning of the interview, as excerpted above, and when turning to their assessment of the Applicant's durable solution. The Officer informed the Applicant of the following:

> I have to assess whether you have a durable solution here in South Africa. You have formal recognition of refugee status in South Africa. This means that South Africa has assessed your application and is satisfied that you meet the definition of a Convention refugee. Under Canadian law (R139(1)(d)(ii)), a person is not eligible for refugee resettlement in Canada if they have resettlement or an offer of resettlement in another country. I am satisfied that on paper, you have a durable solution in South Africa.
>
> [emphasis added]

[15] The Officer then provided the Applicant the opportunity to explain why he did not believe he had a durable solution in South Africa. This included directing the Applicant to explain, if he is raising issues of crime, how his situation is different than that of a South African living in similar circumstances.

[16] The Global Case Management System ("GCMS") notes suggest that after the Applicant was asked to address why he does not have a durable solution, he provided very little information. The Officer wrote: "[n]ot a lot of details. Just a general sense and similar comments that all the refugees makes and that is discrimination and xenophobia."

[17] This is unlike the case of *Mazzek v Canada (Citizenship and Immigration)*, 2022 FC 653 [*Mazzek*], relied upon by the Applicant. In *Mazzek*, the Court found that an officer breached procedural fairness where the officer failed to clearly raise the possibility of a durable solution during the interview. Unlike in *Mazzek*, here the Officer clearly stated that they were satisfied that the Applicant had a durable solution in South Africa. Additionally, in *Mazzek* the Court noted that the officer concluded in the interview that they were accepting the application pending medical assessment and security screening, without any indication that a durable solution was an issue (*Mazzek* at para 23). In the present case, the Officer was clear that the durable solution was an issue of concern.

[18] I also disagree with the Applicant's assertion that the Officer's reference to other applicants' behaviour and choice not to file complaints to the police about xenophobia and discrimination in South Africa constitutes reliance on extrinsic evidence. Extrinsic evidence is evidence that the applicant is unaware of because it comes from an outside source (*Cheburashkina v Canada (Citizenship and Immigration)*, 2014 FC 847 at para 29). The Applicant adduced evidence of the xenophobia and discrimination faced in South Africa and submitted that State response to such issues have been imperfect. The Officer's acknowledgement that not all xenophobia and discrimination is reported to the police is not evidence the Officer relied upon for a basis for refusal. Rather, it was an observation made in response to the Applicant's submission, in which they concluded "taken together, I am satisfied that this may hamper the efficacy of State protections." This is not inconsistent with the Applicant's assertion that State protection has been imperfect.

B. *The Decision is reasonable*

[19] The Applicant submits that the Officer's Decision is unreasonable as it was made without consideration of the Applicant's circumstances and the country condition documents and disregarded the various caveats under the CIC OP-5 Manual.

[20] Determining whether a durable solution exists is a forward-looking assessment that depends on the applicant's legal status and personal circumstances, as well as the country conditions (*Uwamahoro v Canada (Citizenship and Immigration)*, 2016 FC 271 [*Uwamahoro*] at para 11). For a solution to be durable, it does not need to be perfect (*Uwamahoro* at para 15). Additionally, as stated in *Uwamahoro*, this Court has already, in a number of cases, determined that a person with refugee status in South Africa has a reasonable prospect of a durable solution there, within the meaning of subsection 139(1) of the Regulations, even if the person has been a victim of crime in the past (*Uwamahoro* at para 15 citing *Barud v Canada (Citizenship and Immigration)*, 2013 FC 1152 at para 15).

[21] The onus is on the Applicant to establish that he has "no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada" (*Issa v Canada (Citizenship and Immigration)*, 2019 FC 1365).

[22] As noted above, the Court has, in a number of cases, upheld decisions by officers finding that refugees in South Africa have a durable solution, even where they have been victims of crime and xenophobia themselves. While it does not pre-determine any particular application for

permanent residence, it does add on the need to focus on evidence of a durable solution as a forward-looking assessment, which is determinative. There is no such evidence to show that past violence and xenophobia are linked to any future risk of a lack of a durable solution for the Applicant (*Woldemariam v Canada (Citizenship and Immigration)*, 2023 FC 891 [*Woldemariam*] at para 23).

[23] I also find that the Officer's Decision on country conditions and risk of refoulment were reasonable. There is no evidence to the contrary (*Woldemariam* at paras 23 and 26).

VI. Conclusion

[24] The application for judicial review is dismissed.

[25] There is no question for certification.

JUDGMENT in IMM-5414-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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