

Federal Court



Cour fédérale

Date: 20250429

Docket: IMM-6354-24

Citation: 2025 FC 767

Ottawa, Ontario, April 29, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

**ARCADE ARAKAZA
JEAN DE DIEU NTAKIYIRUTA
CHRISTOPHE JEAN MARIE NGANJI
FABRICE GAKIZA**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are four brothers from Burundi who are seeking a judicial review of the rejection of their permanent residence application as privately sponsored refugees under the Convention Refugee Abroad Class. A Migration Officer [Officer] at the High Commission of Canada in Tanzania interviewed each of them separately for 45 minutes and ultimately denied their application on March 13, 2024.

[2] The Applicants claim that their problems began on April 26, 2015, when protests were held against former-President Pierre Nkurunziza, who was seeking a third mandate. At that time, one of the brothers, Arcade, was the leader of a local scout group whose members were mainly Tutsi youth. The youth in his neighbourhood participated in the protests. Members of the youth league of the ruling party (Imbonerakure) approached Arcade, looking to obtain his support and that of the youth in his group. He refused and was met with threats and harassment which ultimately forced him to flee to Uganda. The other three brothers, Jean, Fabrice and Christophe claim that they also faced threats and harassment from the Imbonerakure because of Arcade's actions. They left Burundi to join Arcade in Uganda. All four brothers obtained refugee status in that country.

[3] The Applicants submitted a sponsorship application in the Convention Refugees Abroad class through the Community Sponsor Program in 2021. The sponsorship was organized by Friends of Refuge, First Unitarian Universalist Church of Winnipeg, a Community Sponsor based in Winnipeg, Manitoba. This same group had previously sponsored the Applicants' family members, namely sisters, when they came to Canada in July 2018.

[4] On October 10, 2023, the four brothers were interviewed in person by the Officer in Kampala with the aid of an interpreter who spoke Kirundi. The Officer interviewed each of the brothers separately and allowed them each an opportunity to address concerns regarding the credibility of the underlying events that led them to leave Burundi, as well as their prospective risk in case of returning to the country. Ultimately, the Officer was not satisfied that they were

credible or that they would face a prospective risk of persecution or a personal risk of harm on their return to Burundi on the ground that they were of Tutsi ethnicity.

[5] Even though each Applicant initially applied for leave and judicial review of their rejection, this Court ordered them to be consolidated and heard together.

II. Decision

[6] I dismiss the Applicants' judicial review application because I find that the Officer's decision was reasonable. I provide a rationale for each separately.

III. The Issues and Standard of Review

[7] The Applicants have raised several issues that can be summarized as follows:

- i) Was the Officer's decision reasonable?
- ii) Did the Officer reach the decision in a procedurally fair manner?

[8] The parties submit, and I agree, that the standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and

transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision-maker (*Vavilov* at para 127).

[9] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*] at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28 (*Canadian Pacific Railway Company* at para 54).

[10] Regarding questions of procedural fairness, as Mr. Justice Régimbald recently wrote in *Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para 11:

the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to “shoehorn the question of procedural fairness into a standard of review analysis is... an unprofitable exercise” (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that “[p]rocedural fairness is not sacrificed on the altar of deference” (*Canadian Pacific Railway* at para 56).

IV. Legislative Framework:

[11] Section 139 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] sets out the conditions under which foreign nationals who are sponsored for permanent residency under the “Refugee Classes” can be issued a visa. The two classes under which the Applicants were examined are set out in sections 145 and 147 of the IRPR respectively:

Immigration and Refugee Protection Regulations, SOR/2002-227

Member of Convention refugees abroad class

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.

Qualité

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.

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]

Requirements

Application before entering Canada

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 may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

Formalités

Visa et documents

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

Convention refugee

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,

Définition de réfugié

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

(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.

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.

V. Analysis

A. *Issue 1: Was the Officer's decision reasonable?*

[12] The Applicants argue that the Officer's decision was unreasonable because of the erroneous assessment of each Applicant's credibility, as well as their failure to consider the risk they face on their return to Burundi as Tutsis. For the reasons that follow for each brother, I disagree.

[13] I note that the entire GCMS notes are on the record. They include the interview notes of the Officer as well as their decision, and I considered them all to constitute the reasons.

[14] I also note that the Applicants are not arguing that their evidence was ignored or misinterpreted. They are arguing that because they were self-represented at the interview and nervous, that their evidence has deficiencies. I find this argument to not have a legal foundation, and I reject it. The Officer's notes are clear that they clearly explained the process and the Applicants' rights and obligations.

(1) Arcade Arakaza (Arcade)'s claim

[15] The four brothers claimed to be persecuted by the Imbonerakure in Burundi because of Arcade's refusal in 2015 to encourage the youth in his scout group to support the ruling party. The GCMS notes indicate that the Officer asked questions about Arcade's political activities, and Arcade stated that he had never been politically active, and nor had not joined the protests that were flourishing across the country against the president's third mandate. Nevertheless, he was attacked by the Imbonerakure with machetes.

[16] Through questioning, the Officer established that Arcade was never politically active in Burundi or since he had left the country eight years prior to the interview. He claimed to be a youth leader in Burundi, which was the reason the Imbonerakure had targeted him, even though he had not mentioned this on his application. He did not provide a reasonable explanation for this material omission, and that he was already out of his country for eight years. The Officer then summarized all of their concerns and specifically stated that they were doing this to give Arcade an opportunity to respond. When asked to comment, Arcade only stated that "these are the reasons I left my country".

[17] The Officer ultimately decided that even though Arcade was found to be a refugee in Uganda, in the Officer's independent assessment, he did not meet his onus under section 11(1) of IRPA:

As outlined in the interview notes,

I have concerns about the PA's credibility as it relates to his stated fear of return to Burundi. PA claims to have fled to Uganda in after being attacked by youth with machetes. PAs account of the events was not very detailed and he provided two different explanations

for the attack – first because he was suspected of supporting opposition protests which he said he did not participate in. He later said he was attacked by individuals who wanted him to use his position in the church to promote the ruling party. He also said some of the attackers were members of the same church but could not explain why they tried to kill PA rather than simply try to influence group members themselves. Overall, I find PA’s account of these events to be contradictory and lacking credibility.

The onus is on the applicant to explain his forward looking fear of persecution. I am not satisfied that he has adequately done so. He has not provided a credible explanation as to why he would be at risk today in Burundi. By his own admission, he is not politically active and never has been. Eight years has passed since the alleged incident. When asked to explain what exactly is the source of the risk today, PA offers only “the system is still the same” and made a vague reference to hearing of people who had returned facing problems. He did not describe these problems or how they could relate to him personally.

[18] Even though the Officer unreasonably invited Arcade to speculate on the state of mind of his persecutors for the attack, the Officer reasonably found that the determinative issue was the forward-looking risk of persecution. Considering the totality of the evidence, including what the Officer had articulated in the interview as his concerns, I find that the Officer provided a clear chain of reasoning as to why Arcade had not established a forward-looking risk that he would face a serious possibility of persecution on his return to Burundi.

(2) Jean De Dieu Ntakiyiruta (Jean)’s Claim

[19] Jean alleged that he had left Burundi for Uganda in 2015 because of Arcade’s refusal to work with the Imbonerakure. Not only did Jean not possess any documentation from the Ugandan authorities to establish his residence there prior to 2019, he also had a picture in a workshop in Burundi posted on his Facebook in 2016. When asked about it, he confirmed that

the photo was taken in Bujumbura, Burundi but explained that he had posted the photo taken in 2014 on Facebook in 2016. The Officer did not find this explanation to be reasonable.

[20] The Officer also found that the 2019 document was probably not genuine because it remained in mint condition after four years of use, it was expired, and that it was never renewed as required. The Officer then relied on his specialized knowledge of seeing other valid refugee documents because the Ugandan authorities renewed them and that they had caught up after the delays caused by COVID-19. The Officer concluded that Jean probably did not live in Uganda and that he continued to live in Burundi.

[21] The Officer found the fact that Jean could probably live in Burundi was also relevant to the credibility of the whole case as it undermined each brother's interconnected story.

[22] In answer to why Jean could not live in Burundi, Jean said that it was also because of his Tutsi ethnicity and that he hears in the news that the Tutsi are at risk. When asked what he heard on the news, Jean stated "they target village by village, especially these days they are focused on people who returned from abroad." The Officer then asked whether this was something that he too could read about somewhere to which Jean answered "sure, you can read." I find that it was reasonable for the Officer to find that the Applicant's Tutsi ethnicity was insufficient to establish a serious possibility of persecution. At the Judicial Review hearing, I invited counsel to take me to any documents before the Officer on the conditions of the Tutsi that the Officer may have ignored, and counsel confirmed that there was none in the record. I therefore find that the Officer's conclusion that the Tutsi ethnicity was insufficient in the circumstances to be

reasonable. I find this conclusion to be relevant and reasonable for the entire case of all four brothers.

[23] I find that the Officer focused on a material fact to find that Jean lacked credibility and explained it in a transparent, intelligible and justifiable fashion. I, therefore, find that the reasons to refuse Jean's claim, and its negative impact on the entire case, were reasonable.

(3) Christophe Jean Marie Nganji (Christophe)'s Claim

[24] Christophe had claimed that he fled Burundi in 2018. Christophe's Facebook page had also posted pictures of him in Burundi in 2019 and 2020, and when confronted with them, he confirmed that he was there. He then said that he was living in Kampala (Uganda) at the time, and that he had taken the pictures a long time ago but posted them later. The Officer asked him to explain why the photo posted in 2019 also had a banner that listed its location in Burundi and a date in May 2019, to which, Jean responded that "I have been here. For a time I was selling charcoal."

[25] The Officer then focused his question on the prospective risk and asked whether Jean could return to Burundi. Jean answered that he could not because he could be questioned about his relatives and where they were living. Since the ruling party was still in power and was aware that the family had fled the country, it could be dangerous.

[26] The Officer then summarized their concerns about not believing the account of why and when Jean had left the country and gave him an opportunity to explain, after which the Officer has noted “A: no response”.

[27] I find that the Officer’s reasons for refusing Jean’s claim was based on a material contradiction about when and why he left the country. The Officer then concluded that he would not face a serious possibility of persecution on his return, which was reasonable in the context of the evidence and the Officer’s analysis. It was also reasonable for the Officer to see that this impacted the credibility of the whole case.

(4) Fabrice Gakiza (Fabrice) ’s Claim

[28] Fabrice had claimed to have left Burundi in 2015 following threats against Arcade. However, the Officer noted that his account of the relevant events was very vague, he had never been politically active, never threatened or arrested. The Officer also noted that Fabrice was also particularly vague about his life in Uganda, even though he claimed to be living there for the past 8 years.

[29] The Officer’s conclusions were based on the Officer’s interview notes when Fabrice confirmed that he had never been politically active, he had never been involved in demonstrations, and that he was never threatened or arrested.

[30] When the Officer asked Fabrice why he needed protection from Canada, he responded that it was because he was a Tutsi. The Officer then stated that thousands of Tutsis lived in

Burundi, and why he thought this was a problem. Fabrice then stated that it was because his mother had passed away when he was young and that he could not finish his studies because of insecurity, and that “just want to reunite with my sisters [in Canada], so we can get peace, no mental trauma, I just want to reunite with my sisters”.

[31] Considering the totality of the evidence, including the interview notes that constitute part of the record and reasons, I find that it was reasonable for the Officer to find that Fabrice had not demonstrated that he faced a serious possibility of persecution, either for his perceived political opinion, membership in his family, or Tutsi ethnicity on his return to Burundi. I find that the Officer asked relevant questions and provided reasons that were rationally connected to the legal test that he had to consider. The chain of reasoning is clear.

[32] I find that with respect to each Applicant, the Officer engaged with the material facts, confronted them with material contradictions and explained his reasons in a rational chain of reasoning. In effect, the Applicants expect this Court to weigh the evidence differently, which is not the Court’s function on judicial review.

B. Did the Officer reach the decision in a procedurally fair manner

[33] There are two grounds for which the Applicants allege that the Officer reached their decision in a procedurally unfair manner. First, that the interpreter used Kirundi from the Congo and not Burundi, and second, that the Officer demonstrated a reasonable apprehension of bias.

(1) Interpretation

[34] The Applicants specifically referred to the parts of the Officer's notes when he told the Applicants to tell them if there are any problems with interpretation. They also confirmed that none of the Applicants ever alerted the Officer of any potential problems.

[35] At the judicial review hearing, I asked counsel to take me to the parts of the record where she felt it would demonstrate that there might have been an interpretation issue and that it would be reasonable for the Officer to proactively interfere. There were no such entries on the record.

[36] I also find that the record shows that each Applicant was interviewed for approximately 45 minutes and provided answers to the questions asked. I, therefore, find it to be reasonable that the Officer had no reason to believe that interpretation might have been an issue. I therefore find that the Officer acted fairly.

(2) Reasonable Apprehension of Bias

[37] The Applicants state that Officer demonstrated a reasonable apprehension of bias when he made a negative inference from the fact that the Applicants' sisters live in Canada. I disagree. The Officer based his decision on relevant considerations, including relevant credibility concerns. In answer to the question on why he could not return to Burundi, it was Fabrice who stated that it was because he wanted to be reunited with his sisters, a consideration not consistent with the legal test in a refugee claim. The context in which the Officer made certain statements is a pertinent factor to consider.

[38] The GCMS notes also show that, after interviewing each of the Applicants, the Officer confronted them with his concerns regarding the credibility of their claims and gave them an opportunity to respond. The Officer indicated at the end of his interview with Fabrice that “I suspect that you are here because your relatives in Canada want to help you. That makes sense to me.” This was not based on bias; it was a reasonable interpretation of the evidence.

[39] I find that the Applicants have not established that an informed person, viewing the matter realistically and practically and having thought the matter through, would think that it is more likely than not that the Officer, would not decide fairly (*Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 394). The threshold is high and there is a strong presumption of impartiality by the decision maker.

[40] I, therefore, find that the Officer reached his decision in a fair manner.

VI. Conclusion

[41] For the reasons above, I find that the Officer’s decision was reasonable with respect to each of the Applicants. The Officer also made each decision in a procedurally fair manner. I, therefore, dismiss the application for judicial review of each Applicant.

[42] The parties did not propose a certified question, and I agree that none arise in this case.

JUDGMENT IN IMM-6354-24

THIS COURT’S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Negar Azmudeh”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6354-24

STYLE OF CAUSE: ARCADE ARAKAZA ET AL. v. MCI

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 15, 2025

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: APRIL 29, 2025

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