

Federal Court



Cour fédérale

Date: 20250619

Docket: IMM-12639-23

Citation: 2025 FC 1100

Ottawa, Ontario, June 19, 2025

PRESENT: Madam Associate Chief Justice St-Louis

BETWEEN:

E.M.

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

Respondents

JUDGMENT AND REASONS

[1] In her application for judicial review, the Applicant challenges the decision taken by the delegate of the minister of Public Safety and Emergency Preparedness, i.e., the Minister's Delegate, on September 19, 2023, to issue a Deportation Order against her and to carry out her removal to the United States of America [Decision].

[2] The Applicant raises several issues; one is sufficient to allow the application for judicial review. As the Applicant argued, the information in the Certified Tribunal Record does not allow the Applicant or the Court to verify if the Minister's Delegate had knowledge that the Applicant had presented new birth certificates when she presented herself at the Cornwall terrestrial port of entry. This is fatal to the Decision.

[3] As context, it is useful to note that on August 29, 2023, the Applicant, a citizen of Rwanda, sought entry into Canada from the United States, at the St-Bernard-de-Lacolle terrestrial port of entry, and sought to claim refugee protection. The Applicant then indicated to the Canada Border Service Agency officer that she met one of the exceptions of the Safe Third Country Agreement under subsection 159.5(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] as she has a nephew in Canada, holder of a study permit.

[4] The Applicant submitted birth certificates in support of her nexus to Canada, but they were found not to be genuine. The Applicant's refugee protection claim was thus found ineligible to be referred to the Refugee Protection Division under paragraph 101(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. On September 1, 2023, an Exclusion Order was issued against the Applicant and she returned to the United States. The Applicant challenged this Exclusion Order before the Court and on August 28, 2024, the Court denied her application for leave and judicial review.

[5] On September 18, 2023, the Applicant returned to Canada from the United States, this time at the Cornwall port of entry, and again sought to claim refugee protection. It is uncontested that she presented new birth certificates and an *Attestation Tenant Lieu de Parenté* [*Attestation*], documents she had not presented to the officers at the Lacolle port of entry, and again sought to establish that she had an eligible relative in Canada, thus qualifying for an exception to the application of the Safe Third Country Agreement.

[6] On September 18 and 19, 2023, Officer B. Markell, for the Canada Border Service Agency, prepared and signed two reports under subsection 44(1) of the Act. One report raised section 41 and subsection 52(1) of the Act, based on the fact that the Applicant was the subject of an Exclusion Order, but came back to Canada without first applying for and obtaining the required authorization. The other report raised section 41 and paragraph 20(1)(a) of the Act as well as section 6 of the Regulations based on the fact that the Applicant sought entry to Canada without having first obtained the proper document.

[7] Officer Markell registered notes of the Applicant's interview in the GCMS system, where it was indicated that only one new document had been submitted, hence the *Attestation*. Officer Markell also made notes in a separate document outlining that birth certificates had also been submitted; in this separate document, Officer Markell assessed the new documents, including the birth certificates, and found them not to be genuine, amongst other findings.

[8] The Minister's Delegate also registered notes in the GCMS system where he did not mention the new birth certificates and confirmed that the only new information was the

Attestation.. Following the enforcement of the Exclusion Order, he issued a Deportation Order against the Applicant for having returned to Canada without having first obtained an authorization to return, as required under subsection 52(1) of the Act.

[9] I am cognizant that a decision-maker is not obliged to refer explicitly to all the evidence, and that it is presumed that the decision-maker considered all the evidence in making the decision unless the contrary can be established (*Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 28 citing *Hassan v Canada (Minister of Employment & Immigration)*, [1992] FCJ No 946 at para 3; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FCJ No 1425 at para 16). However, in this case, the Minister's Delegate specifically confirmed having received only one new information, i.e., the *Attestation*, although it is clear from the record that two new birth certificates were submitted by the Applicant at the Cornwall port of entry. The Decision is thus unreasonable as it fails to account for evidence that was uncontestably in the record (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 126). The distinction between information and document, as raised by the Respondent during the hearing, is unconvincing.

[10] Moreover, I am satisfied these are not circumstances that warrant a directed verdict nor the award of costs.

JUDGMENT in IMM-12639-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The September 19, 2023, Deportation Order is quashed, and the matter is sent back for redetermination.
3. No costs are awarded.

“Martine St-Louis”
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12639-23

STYLE OF CAUSE: E.M. v THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS and THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 17, 2025

JUDGMENT AND REASONS: ST-LOUIS ACJ.

DATED: JUNE 19, 2025

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