Federal Court Cour fédérale

Date: 20170213

Docket: IMM-2349-16

Citation: 2017 FC 161

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 13, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

SYLVIE MUKILANKOYI
ERIC MUKILANKOYI
PRINCE KALENGE
SELE MINZADI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA], of a decision by an immigration officer from the Visa Section of the Canadian Embassy in Dakar [the Visa Section] to refuse an

application for a permanent resident visa on humanitarian and compassionate grounds under subsection 25(1) of the IRPA. The Visa Section denied the application, concluding that the humanitarian and compassionate grounds cited did not justify an exemption from the criteria and obligations under the IRPA.

[2] For the following reasons, I am satisfied that this application must be allowed.

II. Facts

[3] The applicants are four brothers and sisters. They are citizens of the Democratic Republic of the Congo [DRC], and the adoptive children of Gutagenesa Rombaut Mukishi [Mr. Mukishi] and Dorothée Kimani Kuteka [Ms. Kuteka].

[4] Mr. Mukishi and Ms. Kuteka have been religiously married since 1998. Since they could not have children of their own, they became the adoptive parents of five children:

- Prince Kalenge, born on May 15, 1995, and adopted on February 8, 2000, at age 4;
- Sele Minzadi, born on February 17, 1993, and adopted on February 8, 2000, at age 6;
- Sylvie Mukilankoyi, born on June 5, 1994, and adopted on July 22, 2003, at age 9;
- Eric Mukilankoyi, born on February 2, 1990, and adopted on July 22, 2003, at age 13;
- Glody Mukilankoyi, born on September 21, 1998, and adopted on July 22, 2003, at age 5.

[5] Mr. Mukishi and Ms. Kuteka met their children's basic needs as best they could. They housed, dressed, fed, and loved them. Thanks to them, these adoptive children with difficult pasts say they regained a zest for life and hope for a better future. Below, I will summarize the lives of each of these children before they were adopted.

A. *Prince Kalenge*

[6] Prince's biological father is Ms. Kuteka's brother. When he was born, Prince and his biological parents lived with Mr. Mukishi and Ms. Kuteka. After being abandoned by his alcoholic father, Prince and his biological mother lived at his grandmother's home, where he was sometimes mistreated and suffered from malnutrition. Since Prince's biological mother was unable to meet his basic needs, Ms. Kuteka officially adopted her nephew on February 8, 2000.

B. *Sele Minzadi*

[7] Abandoned by her father when she was a baby, Sele and her biological mother lived in poverty. Ms. Kuteka testified that she had seen an undernourished and underweight Sele—not even a year old at the time—crying in her biological mother's arms. Saddened, Ms. Kuteka brought them clothes, money, and food over the years. When Sele was only about four years old, her biological mother went to live in her home city, leaving Sele at an aunt's home, where living conditions were also difficult. In early 2000, Mr. Mukishi and Ms. Kuteka officially adopted Sele. In 2003, Sele's biological mother passed away.

C. *Sylvie, Eric and Glody Mukilankoyi*

[8] Eric, Sylvie and Glody are siblings. In 1999, their biological father passed away. At the time, they were aged 8, 5, and under 1, respectively. That same year, the Mukilankoyi children also lost their grandmother and their maternal aunt. Afterward, they were accused by the community and their family—including their grandfather and their biological mother (Ms. Kuteka's sister)—of being witches who had caused the recent deaths of their family members. Some members of the family even forced the children to walk over 200 km to receive

treatments from an exorcist priest in a remote city. Mr. Mukishi and Ms. Kuteka took their nephews and niece—who had been thrown out onto the streets—under their wings. On June 28, 2003, the biological mother of the Mukilankoyi children passed away, once again feeding the suspicions that they had committed witchcraft. The next month, on July 22, 2003, Mr. Mukishi and Ms. Kuteka adopted Eric, Sylvie and Glody.

D. *Mr. Mukishi*

[9] In 2004, fearing for his life, Mr. Mukishi left his country for Canada and claimed refugee protection. After his claim was rejected, Mr. Mukishi resided in Canada for a period of 10 years and became a permanent resident in 2014 when he was granted permanent residence on humanitarian and compassionate grounds. Over this 10-year period, Mr. Mukishi maintained telephone contact with his family and provided them with financial assistance. Despite the sadness brought on by this separation, he maintained hope—as his wife and children did—of one day being reunited with his family.

[10] Mr. Mukishi then filed a sponsorship application for his wife and his five children on September 23, 2014. However, on August 1, 2014, the definition of dependent child had been modified, and sponsorship was limited thereafter to children under 19 years of age.

[11] Following a decision by the Canadian Embassy in Dakar dated September 9, 2015, the sponsorship application was partly granted for Ms. Kuteka and the youngest son, Glody Mukilankoyi (who was 16 years old at the time), but it was denied for the applicants Prince Kalenge, Sele Minzadi, Sylvie Mukilankoyi, and Eric Mukilankoyi because they were over 18 years of age.

[12] On December 1, 2015, an application to reopen and reconsider this decision on humanitarian and compassionate grounds was filed with the Canadian Embassy in Dakar. The application to reopen was accepted on February 11, 2016, and the applicants were summoned for an interview in Kinshasa, DRC.

III. Decision

[13] On April 4, 2016, the application on humanitarian and compassionate grounds was denied by an immigration officer. In a summary letter, the officer indicated the following:

> [TRANSLATION]
> After having reviewed your application and the information provided to support it, I have concluded that the humanitarian and compassionate grounds referred to in your case do not justify an exemption from any of the applicable criteria and obligations under the Act to include Sylvie Mukilankoyi, Eric Mukilankoyi, Prince Kalenge, and Sele Minzadi. I reached this conclusion following my interviews with you and them . . . I explained to you that the four adults had the means to continue their education and eventually work, despite their difficult—but not unusual—living conditions.

IV. Issues

[14] There are three issues:

A. Did the immigration officer correctly apply the analytical framework for an application for exemption under subsection 25(1) of the IRPA?

B. Did the immigration officer commit a breach of procedural fairness by ignoring a significant and determinative portion of the evidence?

C. Alternatively, was the immigration officer's decision unreasonable?

V. Relevant provisions

[15] The following sections of the IRPA are applicable:

Objectives – immigration	**Objet en matière d’immigration**
3 (1) The objectives of this Act with respect to immigration are	**3 (1)** En matière d’immigration, la présente loi a pour objet :
…	[…]
(d) to see that families are reunited in Canada;	**d)** de veiller à la réunification des familles au Canada;
…	[…]
Application before entering Canada	**Visa et documents**
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.	**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.
…	[…]
Humanitarian and compassionate considerations – request of foreign national	**Séjour pour motif d’ordre humanitaire à la demande de l’étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible – other than under section 34, 35 or 37 – or who does not meet the requirements of this Act, and may, on request of a foreign	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d’un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire – sauf si c’est en raison d’un cas visé aux articles 34, 35 ou 37 –, soit ne se conforme pas à la

national outside Canada – other than a foreign national who is inadmissible under section 34, 35 or 37 – who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada – sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 – qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[16] The following sections of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], are applicable:

Interpretation	**Définitions**
2 The definitions in this section apply in these Regulations.	**2** Les définitions qui suivent s'appliquent au présent règlement.
…	[…]
dependent child, in respect of a parent, means a child who	***enfant à charge*** L'enfant qui :
(a) has one of the following relationships with the parent, namely,	**a)** d'une part, par rapport à l'un de ses parents :
(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or	**(i)** soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
(ii) is the adopted child of the parent; and	**(ii)** soit en est l'enfant adoptif;

(b) is in one of the following situations of dependency, namely,	**b)** d’autre part, remplit l’une des conditions suivantes :
(i) is less than 19 years of age and is not a spouse or common-law partner, or	**(i)** il est âgé de moins de dix-neuf ans et n’est pas un époux ou conjoint de fait,
(ii) is 19 years of age or older and has depended substantially on the financial support of the parent since before the age of 19 and is unable to be financially self-supporting due to a physical or mental condition. (*enfant à charge*)	**(ii)** il est âgé de dix-neuf ans ou plus et n’a pas cessé de dépendre, pour l’essentiel, du soutien financier de l’un ou l’autre de ses parents depuis le moment où il a atteint l’âge de dix-neuf ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (*dependant child*)
…	[…]
Issuance	**Délivrance du visa**
70 (1) An officer shall issue a permanent resident visa to a foreign national if, following an examination, it is established that	**70 (1)** L’agent délivre un visa de résident permanent à l’étranger si, à l’issue d’un contrôle, les éléments suivants sont établis :
…	[…]
(c) the foreign national is a member of that class;	**c)** il appartient à la catégorie au titre de laquelle il a fait la demande;
…	[…]
Family class	**Catégorie**
116 For the purposes of subsection 12(1) of the Act, the family class is hereby prescribed as a class of persons who may become permanent residents on the basis of the requirements of this Division.	**116** Pour l’application du paragraphe 12(1) de la Loi, la catégorie du regroupement familial est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents sur le fondement des exigences prévues à la présente section.
Member	**Regroupement familial**
117 (1) A foreign national is a member of the family class if,	**117 (1)** Appartiennent à la catégorie du regroupement

with respect to a sponsor, the foreign national is	familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
…	[…]
(b) a dependent child of the sponsor;	**b)** ses enfants à charge;

VI. Submissions of the parties

[17] The applicants raise two arguments. First, they are claiming that the immigration officer erred in law by not applying the analytical framework established in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], and made an unreasonable analysis. In particular, the applicants claim that the officer's analysis was based on an assessment of the applicants' hardship, but that he did not examine the equitable treatment and the compassion raised in their application. According to them, their application raised [TRANSLATION] "exceptional, substantial, and compelling humanitarian and compassionate grounds, and . . . the highest degree of compassion and sympathy possible."

[18] Second, the applicants are claiming that the immigration officer breached their right to procedural fairness when he ignored a significant and determinative portion of the evidence and virtually all the humanitarian and compassionate grounds raised. Among other things, the applicants submit that the officer ignored the following factors despite the evidence submitted:

a) the children's socio-emotional scars;

b) the exacerbation of the family separation and its effect on Ms. Kuteka; and

c) the risk of retaliations against Sylvie and Eric Mukilankoyi due to the allegations of witchcraft made against them.

[19] The respondent argues that the immigration officer considered all the evidence and the relevant factors to reach a reasonable decision. It also claims that the immigration officer was under no obligation to reference all the documentary evidence in his reasons (*Dandachi v Canada (Citizenship and Immigration)*, 2016 FC 952 at paragraph 21). According to the respondent, the applicants' arguments merely reflect their disagreement with the immigration officer's conclusions based on the evidence, but the decision clearly "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*]).

[20] The respondent also claims that the breaches of procedural fairness alleged by the applicants are in fact merely an issue of the adequacy of the immigration officer's reasons. Thus, according to the respondent, it is a question of determining whether the decision is reasonable in light of all the evidence.

VII. Standard of review

[21] The standard of review applicable to the immigration officer's decision is that of reasonableness. The reasonableness standard of review pertains to the "justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47). It is not the Court's role to reassess the evidence and replace the administrative decision-maker's decision with its own.

[22] However, failing to consider relevant items of evidence represents an error of law reviewable on the standard of correctness (*Alahaiyah v Canada (Citizenship and Immigration)*,

2015 FC 726 at paragraph 17 [*Alahaiyah*], citing *Uluk v Canada (Citizenship and Immigration)*, 2009 FC 122 at paragraph 16; *Esmaili v Canada (Citizenship and Immigration)*, 2013 FC 1161 at paragraph 15).

[23] It is often said that a decision made in accordance with subsection 25(1) of the IRPA is highly discretionary and entitled to deference (*Kanthasamy* at paragraph 111, Justice Moldaver, dissenting; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 61 [*Baker*]).

[24] However, even though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principle of administrative law, the fundamental values of Canadian society, and the principles of the *Charter* (*Baker* at paragraph 56).

VIII. Analysis

[25] Subsection 70(1) of the IRPR provides that an immigration officer will issue a permanent resident visa if the foreign national meets the conditions set forth, including the condition that the foreign national be a member of the class under which he or she has made the application (paragraph 70(1)(c) of the IRPR). Subsection 70(2) of the IRPR sets out the three classes of permanent residents, including the family class at paragraph 70(2)(a). Sections 116 and 117 of the IRPR set out the family class. Under paragraph 117(1)(b), the foreign national's dependent children fall under the family class. Finally, subsection 2(1) of the IRPR defines and limits the term "dependent child" to biological or adopted children less than 19 years of age unless the child still depends on either one of the parents due to a physical or mental condition.

[26] There is no doubt that if it had not been for their ages, the applicants would have fallen under the family class and could have received, as their mother and their brother Glody did, a permanent resident visa.

A. *Did the immigration officer correctly apply the analytical framework for an application for exemption under subsection 25(1) of the IRPA?*

[27] Subsection 25(1) of the IRPA gives the Minister the discretionary power to grant permanent resident status or an exemption from any applicable criteria or obligations if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations. As per Justice Abella in *Kanthasamy*, the majority of the Supreme Court of Canada [SCC] endorses a flexible and discretionary approach. However, the applicants and the respondent do not interpret the SCC's decision in the same way.

[28] The applicants argue that the SCC rejected the rigid application of the "unusual and undeserved or disproportionate hardship" threshold test (which is included among the Guidelines set out by the Minister [Guidelines]) because it fetters the discretion given by Parliament pursuant to section 25 of the IRPA (*Kanthasamy* at paragraph 30). I agree. However, as Justice Richard Mosley explains, the SCC did not change the test or eliminate the Guideline of "unusual and undeserved or disproportionate hardship" (*Patel v Canada (Citizenship and Immigration)*, 2016 FC 1221 at paragraph 42; *Puna v Canada (Citizenship and Immigration)*, 2016 FC 1168 at paragraph 22). Indeed, the words "unusual and undeserved or disproportionate hardship" should be treated as descriptive, not as creating three new thresholds for relief separate and apart from the humanitarian purpose of subsection 25(1) (*Kanthasamy* at paragraph 33). The three adjectives should be seen as instructive but not determinative, allowing subsection 25(1) to

respond more flexibly to the equitable goals of the provision (*Kanthasamy* at paragraph 33). Thus, the Guidelines are useful to decide whether, given a particular applicant's circumstances, it is appropriate to grant an exemption, but they do not represent the only possible list of the humanitarian and compassionate considerations that justify the exercise of discretion set out in section 25 of the IRPA.

[29] The applicants are relying in part on the test set out in 1970 by the Immigration Appeal Division in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 [*Chirwa*] to support their allegation that the immigration officer erroneously applied the analysis from *Kanthasamy*. According to this test, humanitarian and compassionate considerations refer to "those facts, established by the evidence, which would excite in a reasonable man [sic] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the Immigration Act" (*Kanthasamy* at paragraph 13, citing *Chirwa*, page 350). The majority of the SCC recommends a less categorical approach regarding *Chirwa*, which uses the wording within it as if it coexisted with the wording found in the Guidelines. I agree with Justice Henry Brown, who—in his decision in *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at paragraph 26—accepts that the *Kanthasamy* judgment brought about a change in the law, re-establishing *Chirwa* as one of the governing principles, in combination with the Guidelines, to be applied to issues involving humanitarian and compassionate considerations.

[30] The immigration officer did not limit his decision to the "unusual, undeserved or disproportionate hardship" test. His reasons are brief, but the notes on record reveal that he

carried out an overall assessment of the application and weighed several factors. Since the approach established in *Kanthasamy* was followed, the officer did not err in law.

B. *Did the immigration officer commit a breach of procedural fairness by ignoring a significant and determinative portion of the evidence?*

[31] The applicants cite *Kanthasamy* at paragraph 25, where the majority of the SCC cite *Baker* at paragraphs 74–75 for the following proposal:

> What *does* warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them (*Baker*, at paragraphs 74–75).
>
> [Italics in original]

[32] It is true that failure to consider relevant evidence is an error of law reviewable on the standard of correctness (*Alahaiyah* at paragraph 17). However, though the decision-maker must consider all the relevant evidence, the reasons do not necessarily have to refer to it all, as explained by the SCC in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[Emphasis added.]

[33] This being said, when a panel fails to acknowledge relevant contradictory evidence that was submitted to it, the reviewing court may conclude that the panel overlooked this contradictory evidence when making its finding of fact (*Alahaiyah* at paragraph 35).

[34] The reasons for the immigration officer's decision do not reflect—at first glance—a consideration of all the relevant evidence on the record and all the reasons raised by the applicants.

[35] The immigration officer's notes in the Global Case Management System (GCMS) taken during the interview are relevant. For example, the officer considered that the children were originally street children and that they are now all attending school. Near the end of the interview, the officer shared his concerns with Ms. Kuteka and the applicants to give them a chance to respond to them:

> [TRANSLATION]
> I will share my concerns with you, and you will be able to respond to them. I listened to all your testimonies to make my decision. First of all, the best interests of the children cannot be considered because Sele, Éric, Sylvie and Prince are not under 18. Secondly, the explanations provided for a life of hardship do not show that there are exceptional circumstances. Their lives resemble those of many of your fellow citizens and compatriots. The difficulties (hardship) of a separation, as an adult, are not disproportionate or insurmountable. I am satisfied that you can continue your studies and one day work here.

[36] Ms. Kuteka responded as follows:

> Though they are adults, they are still children. I pity them. They will die here. They have no one to take care of them.

[37] In response, the officer told Ms. Kuteka that her children are adults ([TRANSLATION] "They are adults, ma'am"). Ms. Kuteka then explained that they are orphans and that nobody will take care of them. She also explained that her children were accused of being witches, but the immigration officer noted that there is no testimony from the four children in that respect and that this took place before they were adopted.

[38] The evidence that the applicants were accused of witchcraft includes the affidavits of applicants Sylvie and Eric Mukilankoyi. At paragraph 22 of her affidavit, applicant Sylvie Mukilankoyi states: [TRANSLATION] "My mother Dorothée has always acted as a shield against my enemies on all sides, namely <u>my father's brothers who still want to kill me</u>" (Emphasis added). On his part, applicant Eric Mukilankoyi states that [TRANSLATION] "when our mother Dorothée leaves … <u>our lives will once again be in danger</u>" (Emphasis added).

[39] These two statements clearly show the applicants' fears associated with the allegations of witchcraft made against them. In my opinion, these statements contradict the officer's findings (i) of a lack of testimony on this subject, and (ii) that this all took place before the Mukilankoyi children were adopted. It would appear that the officer did not consider these two important statements. Therefore, I am satisfied that the officer erred in his decision.

[40] The respondent argues that the evidence of the applicants in this respect is subjective and deserves little weight. I may have been more tempted to accept this argument had the officer at least acknowledged the existence of this relevant evidence.

C. *Alternatively, was the immigration officer's decision unreasonable?*

[41] Before assessing the reasonableness of the immigration officer's decision, the factual and jurisprudential context within which this decision was made must first be understood.

[42] In *Kanthasamy*, the Court attached much importance to the two legislative objectives of subsection 25(1) of the IRPA, namely to "ensure the availability of compassionate relief," and to "prevent its undue overbreadth" (at paragraphs 14, 19). In other words, subsection 25(1) concerns not only situations in which the regular application of provisions in the IRPA would be disproportionate with respect to "unusual and undeserved or disproportionate hardship" and given all the relevant and applicable humanitarian and compassionate factors, but also situations in which a person slips through the system's cracks due to an overly broad legislative provision.

[43] In this case, the definition of a dependent child at subsection 2(1) of the IRPR is limited to children less than 19 years of age unless the child still depends on either of his parents due to a physical or mental condition. A plain reading of the definition of a "dependent child" indicates that Parliament presumes that at the age of 19, unless a person is dependent due to a physical or mental condition, a person will generally be autonomous. The provision also indicates that Parliament wanted to exclude from the general application of the rule particularly vulnerable persons who are not autonomous due to a dependency related to a physical or mental condition. Any evidence proving that the applicant for a permanent residence visa is not independent even though he or she is over 19 years of age thus deserves special attention, though it is not determinative.

[44] The officer's reasons reflect his main concerns, that is to say that the children are adults and that their situation is no more difficult than those of other persons in the DRC. However, the reasons do not contain a detailed analysis of the applicants' independence or dependency. The officer did not stop to examine the only evidence that explained the reason why the applicants are not entirely autonomous even though they are over 18: the socio-emotional scars of their unstable childhood. However, there was evidence on record and testimony explaining why the applicants need their parents. This evidence deserved consideration.

[45] The Court does not simply disagree with the weight given to the various items of evidence weighed by the officer. Rather, the socio-emotional impact of the applicants' unstable childhood is—objectively—the only item of evidence raised that explains why the applicants believe they slipped through the cracks of the system. Though it was not determinative in itself, this item of evidence could not be ignored.

[46] In terms of the family separation that would be caused by the officer's negative decision, the GCMS notes indicate that the hardship the applicants would experience as adults is not disproportionate or insurmountable. According to the notes, Ms. Kuteka indicated—after the decision was transmitted orally—that she would possibly decide not to leave the DRC without the applicants. The officer invited Ms. Kuteka to take the time to make a decision, but did not otherwise seem to have considered her fear. Despite the hardship experienced by the applicants, their brother Glody and their adoptive parents due to the decision preventing the applicants from coming to Canada with the other members of their family, which was raised in their written submissions to the officer, the officer in question did not consider the extremely difficult decision Ms. Kuteka had to make or the fact that the family separation does not seem to be

rectifiable by other measures. In my opinion, this constitutes a failure to take into account paragraph 3(1)(b) of the IRPA and an error on the officer's part.

IX. Conclusions

[47] Given the errors discussed above, this application for judicial review must be allowed.

[48] Following the discussions with the parties' counsel during the hearing for this application, I believe that there is no serious question of general importance to be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed, and the matter is referred back to another officer for reconsideration;

2. No serious question of general importance is certified.

"George R. Locke"
Judge

Certified true translation
This 4th day of February 2020

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2349-16
STYLE OF CAUSE:	SYLVIE MUKILANKOYI, ERIC MUKILANKOYI, PRINCE KALENGE, SELE MINZADI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	JANUARY 25, 2017
JUDGMENT AND REASONS:	LOCKE J.
DATED:	FEBRUARY 13, 2017

APPEARANCES:

Guillaume Cliche-Rivard	FOR THE APPLICANTS
Pavol Janura	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Doyon, Nguyen, Tutunjian & Cliche-Rivard Barristers and Solicitors Montreal, Quebec	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT