

Federal Court



Cour fédérale

Date: 20220926

Docket: IMM-6163-20

Citation: 2022 FC 1318

St. John's, Newfoundland and Labrador, September 26, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

X.Y. AND Y.Z.

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

PUBLIC REASONS AND JUDGMENT
(Identical to the Confidential Reasons and Judgment
Issued on September 22, 2022)

[1] X.Y. and Y.Z. (the “Applicants”) seek judicial review of the decision of a Senior Immigration Officer (the “Officer”), dated November 6, 2020, by which their request for reconsideration of a decision made on October 22, 2020, was refused. The Officer exercised the discretion to engage in reconsideration but in so doing, said that the original decision was “sound” and maintained that decision.

[2] The Applicants applied for protection in Canada as Convention refugees, pursuant to section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). Their claim was referred to the Officer to determine their eligibility to make such a claim, following the disclosure of information advising that the Applicants hold Convention refugee status in another country, that is Uganda.

[3] The Officer sent a procedural fairness letter, dated August 25, 2020, to the Applicants, giving them the opportunity to respond to this information. Counsel for the Applicants replied on September 16, 2020, asking for full disclosure of the evidence relied upon by the Respondent. An officer sent material to the Applicants on September 17, 2020. By letter dated October 15, 2020, the Applicants responded.

[4] In the decision dated October 22, 2020, the Officer advised that, pursuant to paragraph 101(1)(d) of the Act, the Applicants are ineligible to claim refugee protection in Canada.

[5] On November 3, 2020, the Applicants sought reconsideration of the ineligibility decision. Among other things, they submitted a letter from the Office of the Prime Minister of Uganda, confirming that their refugee status in Uganda had been “de-registered”. The reconsideration request was submitted by Counsel for the Applicants. Counsel alleged a number of factual and legal errors that purportedly undermined the initial decision.

[6] The Officer, by the decision dated November 6, 2020, refused the reconsideration request and noted that “submissions provided do not alter the original decision of ineligibility”.

[7] Under review is the decision made on November 6, 2020, that is the decision upon the request for reconsideration of the decision made on October 22, 2020.

[8] The Applicants submit that the decision is unreasonable on the grounds that the Officer failed to consider the evidence and failed to provide intelligible reasons. They also contend that the Officer breached their rights to procedural fairness.

[9] The Minister of Citizenship and Immigration (the “Respondent”) argues that the Officer reasonably exercised her discretion in finding that redetermination of the ineligibility decision was not warranted.

[10] The Respondent also submits that the content of procedural fairness upon a reconsideration request is minimal, relying on the decision in *Canada (Minister of Citizenship and Immigration) v. Kurukkal*, 2010 FCA 230. Otherwise, he submits that the decision meets the applicable standard of review for a discretionary decision, that is reasonableness.

[11] The Officer’s decision is reviewable on the standard of reasonableness, pursuant to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.). Any issue of procedural fairness is reviewable upon the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[12] I agree that the duty of procedural fairness is low, upon an application for reconsideration and that an officer can refuse to reconsider a decision. I refer to the decision in *Kurukkal, supra* where the Federal Court of Appeal said that an officer has the discretion to reconsider and equally, the discretion to refuse to reconsider a prior decision.

[13] In my opinion, the Officer, while not obliged to reconsider the original decision, in fact did so. I base my opinion in that regard upon paragraphs 1 and 2 of the decision of November 6, 2020, which provide as follows:

This is in response to your counsel's request dated November 3, 2020 for reconsideration of the ineligibility decision under A104 (1)(a) rendered on October 22, 2020.

The submissions provided do not alter the original decision of ineligibility pursuant to paragraph 104 (1)(a) for [sic] 101(1)(d) of the *Immigration and Refugee Protection Act* (IRPA), [sic]

[14] I note that the Respondent relies upon the decision in *Borovic v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 939. In that decision, the Court at paragraph 17 observed that an officer is under no duty to consider new evidence as long as the officer decides whether to reopen a decision or not. Reference is made in *Borovic, supra* to the earlier decision in *Noor v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 308.

[15] I also note that the decisions in *Borovic, supra* and *Noor, supra*, although applying the standard of reasonableness, pre-date the decision in *Vavilov, supra*. In that decision, the Supreme Court of Canada specifically spelled out the need for transparency and intelligibility in the reasons provided by administrative decision makers; see paragraphs 83 to 86.

[16] Upon reviewing the materials contained in the Certified Tribunal Record, the application records, the written and oral submissions of the parties, I accept the arguments of the Applicants, that the decision of November 6, 2020, does not meet the applicable standard of review.

[17] In the first place, the Officer accepted the request to reconsider. According to the following paragraphs in the decision of November 6, 2020, the Officer purported to look at the further submissions provided by the Applicants:

I am under the opinion that upon considering all the information before me at the time the decision was made, the decision was sound.

The new evidence may support that you are no longer registered in Uganda but this resulted only from a formal request to withdraw initiated back in March 2020 from your mother. The fact that at the time you would not be considered refugees is not corroborated by any actions taken by any of the officials at the Office of the Prime Minister of Uganda referred to in previous submissions.

[18] There is evidence in the record that could contradict the Officer's finding that the Applicants are caught by the exclusionary circumstances described in paragraph 101(1)(d) of the Act. That paragraph provides as follows:

Ineligibility

101 (1) A claim is ineligible to be referred to the Refugee Protection Division if

(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;

Irrecevabilité

101 (1) La demande est irrecevable dans les cas suivants :

d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé

[19] The Applicants provided evidence that puts their status as refugees in issue, relative to Uganda. In my opinion, the Officer failed to “grapple” with that evidence. This failure makes the decision unreasonable.

[20] It is not necessary for me to address the procedural fairness arguments advanced by the Applicants since the decision, upon the merits, is unreasonable.

[21] In the result, the application for judicial review will be allowed and the matter will be remitted to another officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-6163-20

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6163-20

STYLE OF CAUSE: X.Y. AND Y.Z v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: MARCH 23, 2022

REASONS AND JUDGMENT: HENEGHAN J.

**CONFIDENTIAL REASONS
AND JUDGMENT:** SEPTEMBER 22, 2022

**PUBLIC REASONS AND
JUDGMENT:** SEPTEMBER 26, 2022

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