Federal Court  Cour fédérale

Date: 20111031

Docket: IMM-992-11

Citation: 2011 FC 1238

Ottawa, Ontario, October 31, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JOSEPH DUSABIMANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of a visa officer (Officer), dated 4 January 2011 (Decision), which refused the Applicant's application for a permanent resident visa under section 139(1) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 (Regulations).

BACKGROUND

[2] The Applicant, a Hutu citizen of Rwanda , currently resides in the Republic of South Africa, where he has lived since 2005. His application for a permanent resident visa was made through the Canadian High Commission in Pretoria, South Africa.

[3] The Applicant was born in 1987 in Rwanda. In 1994, he and his parents fled the genocide being perpetrated against Hutus in Rwanda by Tutsis. While he and his parents were staying in a refugee camp in the Democratic Republic of Congo, the Rwandan Patriotic Front attacked the camp. Although he and his parents fled in to the surrounding forest, the Applicant's parents were both killed and he was orphaned. Having been overcome during his flight from danger, the Applicant was found unconscious by Ntagahira, a Congolese. Ntagahira took the Applicant into his home and attempted to locate members of the Applicant's family.

[4] In 2003, Ntagahira made contact with Mr. Bahati, a man who the Applicant recognized from Rwanda. Mr. Bahati said he had met the Applicant's cousin, Pascasie, and that he knew she was living in Kenya. Mr. Bahati took the Applicant to Kenya, where the Applicant lived with him until 2005. During this period, the Applicant and Mr. Bahati looked for Pascasie in Kenya, but found out that she and her family had left Kenya for South Africa. In 2005, Mr. Bahati and his family, along with the Applicant, relocated to Zambia. The Applicant lived in Zambia for two months, but then decided to try and find Pascasie in South Africa.

[5] When the Applicant decided to search for his cousin in South Africa, Mr. Bahati took him to the South African border. The Applicant crossed over into South Africa and made his way to Cape Town where he asked people in the Rwandan community there if they knew his cousin. From these inquiries, the Applicant learned that his cousin had left South Africa for Canada. While in South Africa, the Applicant learned that his uncle had been murdered in a Rwandan prison and the rest of his family had left Rwanda for Europe or North America.

[6] In 2006, the Applicant was granted formal refugee status in South Africa.

[7] In 2007, Pascasie (now a citizen of Canada) and the Loretto Sisters – a charitable organization under the umbrella of the Roman Catholic Archdiocese of Toronto in Canada – submitted a sponsorship application to bring the Applicant to Canada. As a part of this application, the Applicant applied for a permanent resident visa in 2007. The Officer interviewed him in Cape Town on 18 November 2009. She reviewed his application on 4 January 2011, made her decision, and notified the Applicant of her Decision by letter dated 4 January 2011.

THE DECISION UNDER REVIEW

[8] In processing the application, there were two basic questions before the Officer. First, she had to determine if the Applicant was a member of either the Convention Refugee Abroad class (section 145 of the Regulations) or the Humanitarian-protected Persons Abroad class (section 146 of the Regulations). The Officer then had to consider whether the Applicant met the remaining

criteria under section 139 of the Regulations. Specifically, she considered whether the Applicant had a durable solution in South Africa.

[9] After interviewing the Applicant, the Officer determined that the Applicant is neither a Convention Refugee Abroad, nor is he a Humanitarian Protected Person abroad. This determination was fatal to his application for a permanent resident visa. The Officer also found that the Applicant had a durable solution in South Africa, which made him ineligible for a permanent resident visa under paragraph 139(1)(*d*) of the Regulations.

Convention Refugee Abroad

[10] The Officer determined that the Applicant was not a Convention Refugee Abroad based on her finding that he did not fear persecution related to any of the convention grounds. Although she noted that the Applicant feared persecution in Rwanda, this fear was "very general." She also noted that current country conditions in Rwanda indicate that the Applicant would not be at risk of persecution if he returned to Rwanda.

[11] In the Officer's CAIPS notes, she wrote that she asked the Applicant why he could not return to Rwanda. The Applicant said that there was no one in Rwanda to support him and that he could be killed if he returned. When asked why he would be killed, the Applicant said that his uncle was killed and that "they want to kill our family."

Humanitarian-Protected Person Abroad

[12] In the letter to the Applicant, dated 4 January 2011, the Officer notes the requirements for membership in the Country of Asylum class, a subset of Humanitarian Protected Persons Abroad. She also notes that, "based on all the evidence before me, I am not satisfied that there is a serious possibility that you have a well founded fear of persecution or that you have been and continue to be seriously and personally affected by civil war, armed conflict or massive violation of human rights." She wrote in the CAIPS notes that current country conditions in Rwanda are such that similarly situated individuals to the Applicant would not be persecuted on return. Based on these findings, the Officer determined that the Applicant was not a member of the Country of Asylum class and so was ineligible for a permanent resident visa under sections 146 and 147 of the Regulations.

Durable Solution

[13] The Officer also found that, because the Applicant had a durable solution in South Africa, he was ineligible for a visa under paragraph 139(1)(*d*) of the Regulations. As the Applicant had refugee status in South Africa, which included the right to work and study, and which could result in permanent residence in South Africa, this constituted a durable solution. The CAIPS notes also indicate that, although the Applicant was afraid of xenophobic attacks in South Africa, he had not personally been targeted. He did, however, stay home for two months while the attacks were happening.

[14] Since the Applicant was not a member of either of the classes at issue and, being ineligible for a permanent residence visa because he had a durable solution in South Africa, the Officer denied his application.

ISSUES

[15] The Applicant raises the following issues:

a. Whether the Officer provided adequate reasons;

b. Whether the Officer misapprehended or ignored the evidence that was before her;

c. Whether the Officer properly considered persecution;

d. Whether the Officer properly considered the Country of Asylum class;

e. Whether the Officer made findings which were speculative:

f. Whether the Officer properly considered “durable solution”;

g. Whether the Officer applied the correct test for “durable solution”.

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in these proceedings:

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	**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

examination, the Officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	n’est pas interdit de territoire et se conforme à la présente loi.
…	…
Convention refugee	**Definition de « réfugié »**
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,	**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 groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*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*) 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.	*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.

[17] The following provisions of the Regulations are also applicable in these proceedings:

General requirements	**Exigences générales**
139. (1) A permanent resident visa shall be issued to a foreign national in need of	**139.** (1) Un visa de résident permanent est délivré à l’étranger qui a besoin de

refugee protection, and their accompanying family members, if following an examination it is established that

protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis:

…

…

(*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

d) aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :

(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or

(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,

(ii) resettlement or an offer of resettlement in another country;

(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;

(*e*) the foreign national is a member of one of the classes prescribed by this Division;

e) il fait partie d'une catégorie établie dans la présente section;

…

…

Member of Convention refugees abroad class

Qualité

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.

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.

Humanitarian-protected persons abroad

146. (1) For the purposes of subsection 12(3) of the Act, a person in similar circumstances to those of a Convention refugee is a member of one of the following humanitarian-protected persons abroad classes:

(*a*) the country of asylum class;

Member of country of asylum class

147. A foreign national is a member of the country of asylum class if they have been determined by an Officer to be in need of resettlement because

(*a*) they are outside all of their countries of nationality and habitual residence; and

(*b*) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

Personnes protégées à titre humanitaire outre-frontières

146. (1) Pour l'application du paragraphe 12(3) de la Loi, la personne dans une situation semblable à celle d'un réfugié au sens de la Convention appartient à l'une des catégories de personnes protégées à titre humanitaire outre-frontières suivantes :

a) la catégorie de personnes de pays d'accueil;

Catégorie de personnes de pays d'accueil

147. Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause

STANDARD OF REVIEW

[18] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[19] In *Clifford v Ontario Municipal Employees Retirement System* 2009 ONCA 670, the Ontario Court of Appeal held that, where a tribunal is under a duty to give reasons, the adequacy of those reasons will be evaluated according to a standard of correctness. This approach was followed by Justice Judith Snider in *Ghirmatsion v Canada (Minister of Citizenship and Immigration)* 2011 FC 519. The standard of review with respect to the first issue is correctness. As the Supreme Court of Canada held in *Dunsmuir*, above, at paragraph 50, where the standard of review is correctness, the reviewing court will

> undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[20] In *Qurbani v Canada (Minister of Citizenship and Immigration)* 2009 FC 127, Justice Orville Frenette held that the standard of review applicable to a determination of whether a claimant is a member of either the Convention Refugee Abroad class or the Humanitarian Protected Persons

Abroad class is a factual determination to be evaluated on the standard of reasonableness. (See also *Kamara v Carada (Minister of Citizenship and Immigration)* 2008 FC 785 and *Nasir v Canada (Minister of Citizenship and Immigration)* 2008 FC 504). The standard of review with respect to issues 2 through 6 is reasonableness.

[21] Issues 7 relates to the Officer's interpretation of the Act. As the Supreme Court of Canada held in *Dunsmuir*, above, at paragraph 54, a tribunal's interpretation of its enabling statute will generally be granted deference. This approach was upheld by the Supreme Court of Canada in *Smith v Alliance Pipeline* 2011 SCC 7. The standard of review with respect to issues 5 is reasonableness.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa,* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

The Officer's Reasons are Inadequate

[23] The Applicant argues that the reasons provided by the Officer are inadequate.

[24] First, the Officer failed to provide adequate reasons with respect to the evidence of xenophobic attacks against immigrants in South Africa. The Applicant argues that, although the Officer mentions the xenophobic attacks in her CAIPS notes, this is not sufficient to show that she considered the evidence presented to her. The Applicant argues that the Officer had a duty to provide a detailed analysis based on this evidence but failed to do this.

[25] Second, the Applicant argues that the Officer's reasons are inadequate with respect to her finding that he had a durable solution in South Africa. In the letter to the Applicant, the Officer wrote that

> I also note that a durable solution exists for you in South Africa, where you have obtained formal recognition of refugee status. As South Africa is a signatory to the Geneva Convention on Refugees this affords you the benefit of the protection of South Africa, where you are legally allowed to study and work and have a reasonable possibility, within a reasonable period of time of obtaining permanent residence. (Decision, page 2)

[26] In the CAIPS notes the Officer wrote that she "[notes] taht [*sic*] he has formal recognition of refugee status in south africa [*sic*] which has allowed him to study up to matric level so fa [*sic*] and allows him to work and eventually obtain permanent resident status." The Applicant argues that these reasons are insufficient because they do not go beyond the Applicant's refugee status in South Africa.

[27] The Applicant also argues that the Officer's reasons are insufficient in that she fails to address the adequacy of the Rwandan government's protection of its citizens. In her reasons, the Officer found that the Applicant was not a member of the Convention Refugees Abroad class. In

order to make this finding, the Officer was required to apply the criteria for a convention refugee found in section 96 of the Act. As the availability of state protection is a factor under section 96(a), the Applicant argues that the Officer's failure to address this in her Decision means that the reasons are inadequate.

The Officer Failed to Consider the Country of Asylum Class

[28] The Applicant argues further that the Officer unreasonably narrowed the focus of her investigation and only examined the criteria for a convention refugee, rather than looking at the broader test for membership in the Country of Asylum class. The Applicant relies on *Saifee v Canada (Minister of Citizenship and Immigration* 2010 FC 589 for the proposition that the Country of Asylum class is broader than the Convention Refugee Abroad class. Justice Robert Mainville said in paragraph 39 of *Saifee* that "Members of the country of asylum class need not meet the definition of Convention refugee, and consequently need not demonstrate a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion."

[29] In the letter to the Applicant, the Officer writes:

> Based on all the evidence before me, I am not satisfied that there is a serious possibility that you have a well founded fear of persecution or that you have been and continue to be seriously and personally affected by civil war, armed conflict or massive violation of human rights.

[30] The Applicant says that this sentence shows that the Officer did not analyse whether he was a member of the Country of Asylum Class. He says that *Saifee*, above, at paragraph 43, teaches that a failure to consider the Country of Asylum Class is a reviewable error.

The Officer Failed to Address Persecution

[31] The Applicant also says that the Officer erred in failing to consider the Applicant's fear arising from the xenophobic attacks against immigrants in South Africa. He argues that, having heard the Applicant's testimony that there were attacks on immigrants, the Officer was under a duty to inquire further. Because she did not inquire further, the Decision was unreasonable.

The Officer's Finding the Applicant had a Durable Solution in South Africa was Unreasonable

[32] The Applicant also argues that the Officer's finding that he had a durable solution in South Africa was unreasonable because it was based solely on the fact that he had obtained refugee status in South Africa. In determining whether the Applicant had a durable solution in South Africa, the Officer should have had regard to the attacks against immigrants in South Africa. The Applicant argues that a durable solution goes beyond simple legal recognition of legal status and includes a measure of social integration. His testimony that there were attacks against immigrants in South Africa went to this aspect of a durable solution.

The Officer Ignored Evidence

[33] The Applicant also argues that, because she failed to consider the reasons why the Applicant had been granted refugee status in South Africa, the Officer's Decision was unreasonable. As noted above, the question before the Officer was whether the Applicant was a member of the Convention

Refugee Abroad class. This required him to be recognized as a convention refugee under section 96 by an officer outside of Canada. The Applicant argues that his refugee status in South Africa was evidence that he was in fact a Convention Refugee but the Officer ignored this evidence.

[34] The Applicant relies on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 for the proposition that, where a decision-maker does not discuss an important piece of evidence contrary to her findings, it can be inferred that she ignored that evidence. Because the reasons for the South African determination that the Applicant was a refugee provide strong evidence contrary to the Officer's finding that he was not a refugee, the Applicant argues that this Court can infer that she ignored that evidence.

The Respondent

[35] The Respondent says that the Applicant did not meet the requirements of either the Convention Refugee Abroad Class or the Country of Asylum class. The Officer based her conclusion on the evidence before her, which did not support a conclusion that the Applicant fell into either class. Even if he was a member of either class, the Officer's conclusion that the Applicant had a durable solution in South Africa means he does not meet the requirements of subsection 139(1).

The Applicant was not a Convention Refugee Abroad

[36] The Officer's conclusion the Applicant was not a Convention Refugee Abroad was reasonable, based on the evidence before her. Any fear of persecution he had was general and not related to a Convention ground. He had said that he had not personally suffered any Xenophobic attacks, nor had he been or continued to be affected by war or a massive violation of human rights in his country of nationality. The Applicant bore the onus of showing that he met the requirements under sections 139, 145 and 147.

[37] In making the determination that the Applicant was not a convention refugee, the Officer considered the current country conditions in Rwanda and the Applicant's family history and reasonably concluded that there was no objective basis for any fear of persecution the Applicant may have had. Although the Applicant had experienced persecution in the past during the genocide, there was no documentary evidence that would support future persecution. A determination of refugee status is necessarily forward-looking and the Applicant had not demonstrated that he faced a risk of future persecution. The fact that he was granted Refugee status by South Africa did not determine that he was a refugee under Canadian law. He bore the onus of showing that he was a convention refugee and failed to do so.

The Applicant was not a Member of the Country of Asylum Class

[38] Contrary to the Applicant's argument that the Officer narrowly focussed on the issues of persecution and did not consider whether the Applicant was a member of the Country of Asylum class, the Respondent says that the Officer did appropriately analyze this issue. He says the Applicant improperly relies on *Saifee*, above. In that case, the visa officer failed to consider at all whether the applicant was a member of the Country of Asylum class. In this case, the Officer

considered whether the Applicant was a member of the class based on the evidence before her and drew a conclusion from that evidence. She looked at current country conditions in Rwanda and found that the Applicant is no longer affected by a civil war, armed conflict, or massive violation of human rights as required by subsection 147(b) of the Regulations. There was no evidence linking the elements of section 147 to the Applicant's situation.

The Applicant Has a Durable Solution

[39] The Respondent says that the Officer's conclusion that the Applicant had a durable solution in South Africa was reasonable. The Applicant said he had not suffered a Xenophobic attack. He had not personally suffered harm, and a general risk of violence is not enough to negate a finding under subparagraph 139(1)(*d*)(ii) of the Regulations that he had a durable solution.

The Applicant's Further Memorandum

The Officer Ignored the South African Refugee Determination

[40] The Applicant argues that, although the Officer's analysis focused on the availability of a durable solution, the Officer failed to address the evidence before her in the form of the South African refugee determination. The Applicant quotes at length from paragraph 58 of *Ghirmatsion*, above, where Justice Snider wrote:

> The evidence of the UNHCR designation was so important to the Applicant's case that it can be inferred from the Officer's failure to mention it in her reasons that the decision was made without regard to it. This is a central element to the context of the decision. The Officer, faced with a UNHCR refugee, should have explained in her assessment why she did not concur with the decision of the UNHCR. The Officer was not under any obligation to blindly follow the UNHCR designation; however, she was obliged to have regard to it. Unless a visa officer explains why a UNHCR designation is not being followed, we have no way of knowing whether regard was had to this highly relevant evidence.

[41] The Applicant's argument is that South African Refugee status was a relevant fact, so it was an error for the Officer in this case to fail to consider that status. Because the Applicant's South African refugee status was relevant to the determination that he was a Convention Refugee Abroad, the Officer was under a duty to give reasons as to why her conclusions differed from the South African authorities.

The Officer Applied the Wrong Test for "Durable Solution"

Durable Solution Requires Local Integration

[42] The Applicant says that, in order to find a durable solution in a country other than Canada, an officer must find that there has been "local integration." Within local integration, an Officer must find that three elements are satisfied: legal, social, and economic. The Applicant relies on the United Nations High Commissioner for Refugees, *Resettlement Handbook*.

The "Durable Solution" Requires a Social Process

[43] The Applicant says that the Officer failed to consider the xenophobic attacks in South Africa as they impact his durable solution and, specifically, whether the "social" aspect of this proposed three-part test is fulfilled. The xenophobic attacks, he argues, are evidence that the social process of acceptance into the community has not occurred in his case. Since the Officer failed to consider the impact of the xenophobic attacks on his integration into the community, her conclusion that the Applicant has a durable solution in South Africa was in error.

The "Durable Solution" Conclusion was Speculative

[44] Finally, the Applicant argues that the Officer's conclusion that he has a durable solution in South Africa was unreasonable because it was based on speculation. In her letter to the Applicant, the Officer writes that the Applicant has a reasonable possibility of attaining permanent resident status in South Africa within a reasonable time. The Applicant says that there is some possibility that the he will not be granted permanent resident status, the South African permanent residence process being "an individualized process, dependent on the particular case." He says that the Officer provided no authority for her statement that he will be able to achieve permanent residence in a reasonable time. He says that this makes her conclusion speculative and, since local integration is an element of durable solution, her conclusion that he has a durable solution was unreasonable..

The Respondent's Further Memorandum

The Applicant's South African Status is Bar to his Claim

[45] In response to the Applicant's further arguments, the Respondent says that the Applicant's case stands or falls on the existence of a durable solution. If a durable solution is found to exist, the analyses as to whether the Applicant is a Convention Refugee Abroad or a member of the Country of Asylum class are moot. The requirements under section 139 of the Regulations for granting a permanent residence visa to refugees are cumulative. The requirement under paragraph139(1)(*d*) is that the Applicant not have a durable solution in a country other than Canada. Once the Officer found that he had a durable solution in South Africa based on his refugee status there, the Applicant was ineligible for a permanent resident visa. Whether or not he was a convention refugee and whether or not the Officer considered his South African status makes no difference to his application.

***Ghirmatsion* is Distinguishable**

[46] The Respondent argues that *Ghirmatsion*, above, is distinguishable on its facts. In that case, the subject of the decision had been found to be a refugee by the UNHCR; in the instant case, the Applicant has been found to be a refugee by South Africa, another country. The Respondent notes that Canadian authorities, in chapter OP5 of the Respondent's *Immigration Manual*, have recognized the importance of the UNHCR determination, while no such recognition has been given to the South African refugee determination process. As the basis and reasons for the South African refugee decision were not before the Officer in evidence, it was reasonable for her not to consider them. There was no obligation on the Officer to consider the South African determination.

The "Durable Solution" Conclusion was Reasonable

[47] Contrary to the Applicant's argument that the Officer failed to consider the xenophobic attacks in South Africa, the Respondent says that the xenophobic attacks are mentioned in both the Officer's Decision letter and in her CAIPS notes. She also noted that the Applicant had not personally suffered any xenophobic attacks. Neither the fact that illegal behavior might occur in the future or that the Applicant is of poor economic means is enough to make him a refugee. It was for the Applicant to demonstrate he had no durable solution. Although the Officer still concluded that the Applicant had a durable solution in South Africa, this conclusion was made after considering the evidence of the xenophobic attacks and so was reasonable.

[48] The Respondent also says that the Officer's conclusion regarding the Applicant's ability to gain permanent residence status in South Africa was not speculative. The fact that a person who has continuously lived in South Africa, as the Applicant has, can apply for permanent residence is "undeniable" and was before the Officer when she made her determination. Whether the Applicant has or has not applied for permanent residence is irrelevant to the determination of whether he has a durable solution. What matters is that the Applicant is currently resettled, with no indication that he will be subject to *refoulement*, and can live, work, and access social services. The standard is not perfect integration, but some integration. Having already been resettled, as the Applicant has been, the Applicant cannot then argue that there is no reasonable possibility within a reasonable time of becoming resettled so that the paragraph 139(1)(*d*) of the Regulations exclusion does not apply.

[49] Since there was evidence before the Officer that the Applicant has a durable solution in South Africa, her conclusion was reasonable and so should not be disturbed.

ANALYSIS

[50] The Officer found that, even if the Applicant could meet the criteria for Convention Refugee Abroad or Humanitarian Protected Person Abroad in relation to Rwanda, he still would not be able to meet the immigration requirements to come to Canada because

> a durable solution exists for you in South Africa, where you have obtained formal recognition of refugee status. As South Africa is a signatory to the General Convention on Refugees this affords you the benefit of the protection of South Africa, where you are legally allowed to study and work and have a reasonable possibility, within a reasonable period of time of obtaining permanent residence.

[51] The Applicant says that in determining that South Africa provided a durable solution the Officer only mentioned that the Applicant has formal recognition of refugee status in South Africa, and is able to study and work in South Africa. The Applicant complains that the

> officer does not address the social and cultural process that determine (*sic*) durable solution. In the CAIPS notes, when the Applicant was asked "Why can't you stay in RSA," the Applicant replies "have no support there - there are xenophobic attacks….Stayed home for two months when they were happening."

[52] The Applicant also says that this was "crucial information that was provided to the officer by the Applicant which should have been addressed in the officer's decision and reasons." Instead of addressing this information, the Applicant says that the Officer "erred by speculating that the Applicant could obtain permanent residence status (the legal process)."

[53] I do not believe that the Applicant's assertions on this point are borne out by the Decision read in the light of the evidence that was before the Officer.

[54] It has to be borne in mind that the onus was on the Applicant to establish that he had no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada. See *Salimi v Canada (Minister of Citizenship and Immigration)* 2007 FC 872 at paragraph 7, *Adan v Canada (Minister of Citizenship and Immigration)* 2011 FC 655 at paragraph 19, and *Mushimiyimana v Canada (Minister of Citizenship and Immigration)* 2010 FC 1124 at paragraph 20.

[55] The evidence before the Officer demonstrated that:

i. The Applicant had been in South Africa since 2005;

ii. The Applicant had achieved refugee status in South Africa;

iii. On the basis of his refugee status, the Applicant had access to social services, public health care, education and employment on a par with South African nationals;

iv. The Applicant is working in South Africa;

v. The Applicant is eligible to apply for permanent residence in South Africa.

[56] As the CAIPS notes show, the Officer brought up the social integration issue and asked the Applicant why he could not stay in South Africa; the Applicant said he had no support there and that there had been xenophobic attacks. The Applicant did not make clear what he meant by lack of support.

[57] It is obvious that the Applicant does have support in South Africa because he has lived there since 2005. The Officer points out that the Applicant only spoke in generalities when making his claim. There is nothing to support the Applicant's allegation that he has no support in South Africa or to explain why, if he has no support, he has been able to live there since 2005, gain on education and find a job. As regards the xenophobic attacks the Applicant claims to fear, the Officer points out that no such attacks have been made against the Applicant. Once again, the Applicant provided no evidence of on-going problems or how his fears of xenophobic attacks have prevented cultural and/or social integration. The Applicant did not provide any evidence that he is facing xenophobic attacks in the future or has no support in South Africa. What he has achieved is clearly indicative of social integration. He might prefer to come to Canada, but that does not mean that a durable solution does not exist for him in South Africa.

[58] The Officer does not engage in speculation. The Applicant's present situation is accurately described. Based upon the evidence of his present status and integration in South Africa, there is nothing to suggest that he cannot achieve permanent residence within a reasonable time if he seeks it. There is no reviewable error on this point.

[59] Counsel has suggested that the Applicant was unsophisticated and, even though the onus was upon him to demonstrate that he qualified to come to Canada, the Officer should have gone further. However, the Officer clearly asked the Applicant why he wanted to leave South Africa and gave him every opportunity to explain the situation. The Applicant gave his reasons. It is not the role of an officer to solicit answers that will support an applicant's case. The Applicant may be unsophisticated but he was able to tell the Officer why he wanted to leave South Africa and come to Canada. Bearing those answers in mind, the Officer made no reviewable error in concluding that the

Applicant did not qualify for protection under either of the refugee classes considered and that, in any event, the Applicant had a durable solution in South Africa.

[60] I have also reviewed the other issues raised by the Applicant. I can find no reviewable error, but, given that the durable solution issue effectively decides this matter, there is no need to provide further reasons on additional points.

[61] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-992-11
STYLE OF CAUSE:	JOSEPH DUSABIMANA - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 6, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	October 31, 2011

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