

Federal Court



Cour fédérale

Date: 20130729

Docket: IMM-5955-12

Citation: 2013 FC 822

Ottawa, Ontario, July 29, 2013

PRESENT: THE HONOURABLE MR. JUSTICE PHELAN

BETWEEN:

ELVIS PACIFIQUE BIZIMA

Applicant

and

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

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review of a Humanitarian and Compassionate [H&C] application is related to IMM-5952-12, the judicial review of a Pre-Removal Risk Assessment [PRRA] decision. The two judicial reviews were argued together with the H&C file being the central factual and legal basis. The two decisions were rendered by the same Immigration Officer [Officer].

II. BACKGROUND

[2] The Applicant is a male citizen of Burundi in his 30s who arrived in Canada on October 21, 2000 and claimed refugee status. His claim was denied in September 2002 (leave was denied). However, the Applicant was not deported because the Canadian government had established a moratorium on removals to Burundi until July 2009. Burundi suffered from the Hutu Tutsi conflict as manifested in other countries such as Rwanda.

[3] The Applicant has been employed at Citi Financial Canada Inc. since August 5, 2003. He has a good job, sound pay, is bilingual and resident in Canada for 12 years.

[4] After arrival in Canada, the Applicant joined the Mouvement pour la Solidarité et la Démocratie [MSD]. This fact was not a factor in his refugee claim.

[5] The Officer found that the level of establishment was normal but not so high that applying for permanent residence from outside Canada would not consent to “unusual, undeserved or disproportionate hardship”.

[6] The Officer then refers to the PRRA application and finds that the evidence does not support the Applicant’s fear that upon return to Burundi, he would be tortured and killed by the government because he is a member of the opposition party.

[7] While the Officer recognizes that there have been human rights violations and that members of the opposition party are in self-imposed exile, these and other factors are insufficient for an H&C

application – the Officer found these factors are not sufficient to meet the test of unusual, undeserved or disproportionate hardship.

III. ANALYSIS

[8] The applicable standard of review is reasonableness (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360).

[9] The difficulty with the decision under review is that while the Officer professed to distinguish between the tests for an H&C and that of a PRRA, he did not carry out the different analytical framework the two different tests require.

[10] In the Officer's analysis of risk, he carried out his own research which was not put to the Applicant. That matter alone raises issues of procedural fairness.

[11] Also, in dealing with risk, the Officer did not examine the most recent evidence from US DOS reports. The Officer relied on the suggestion that the 2010 election was reasonably fair, examined the 2010 US Department of State [DOS] Report which showed violence against political opponents escalating, but did not refer to the 2011 US DOS Report showing an even greater risk.

[12] The Officer erred in focusing so extensively on risk in the H&C analysis and failing to consider the most pertinent evidence.

[13] The Officer failed to carry out a fulsome consideration of the issue of “establishment” and of “separation”. There was simply no real analysis of the impact of separation on the Applicant, its economic impact, and the consequences of removal to Burundi outside of risk (i.e. living under an oppressive regime, limitation on free speech).

[14] The Officer’s error is perhaps understandable and due to systemic factors where the same person is required to perform separate tests on similar facts. Nevertheless this Court has held repeatedly that each application must be dealt with on their own merits.

[15] Therefore, the decision under review is unreasonable.

IV. CONCLUSION

[16] This judicial review will be granted, the decision quashed and the matter remitted back for a new determination by a different official.

[17] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is to be remitted back for a new determination by a different official.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5955-12

STYLE OF CAUSE: ELVIS PACIFIQUE BIZIMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION AND THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 3, 2013

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

DATED: JULY 29, 2013

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