Federal Court  Cour fédérale

Date: 20190619

Docket: IMM-6305-18

Citation: 2019 FC 832

Winnipeg, Manitoba, June 19, 2019

PRESENT: Madam Justice Heneghan

Docket: IMM-6305-18

BETWEEN:

PETROS GHEBRENGUS ASFAHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Petros Ghebrengus Asfaha (the "Applicant") seeks judicial review of the decision of an Immigration Officer (the "Officer") of the High Commission of Canada in Pretoria, South Africa. In that decision, dated October 19, 2018, the Officer determined that the Applicant is not eligible for a permanent resident visa as a member of the Convention refugee abroad class or as a member of the Humanitarian – Protected Persons Abroad designated class , pursuant to

paragraph 139 (1) (d) of the *Immigration and Refugee Protection* SOR/ 2002-227 (the "Regulations").

[2] The Applicant is a citizen of Eritrea. He has resided in South Africa since 2006 and holds "formal recognition of refugee status" in that country, with access to health care and access to social services. He is employed.

[3] The Officer referred to section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), that is the definition of "refugee" in Canadian law, as well as to sections 139 (1) (d), 145 and 147 of the Regulations. Paragraph 139 (1) (d) and section 145 of the Regulations are relevant and provide as follow:

139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	139 (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de 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;

[4] In the decision, the Officer said the following:

> After carefully assessing your application, I have determined that you do not meet these requirements. You currently reside in a country that is a signatory to the Geneva Convention on Refugees, South Africa. You have been able to benefit from the protection of South Africa and have been able to obtain asylum as a convention refugee as per the documents you submitted. You appear locally integrated, you have access to education and social services, you are employed, you can engage in economic activities and you have freedom of movement.

[5] The Applicant now argues that the decision is unreasonable, that the Officer erred by failing to assess his personal circumstances and mistakenly concluded that refugee status in South Africa "is much like a Canadian Permanent Resident Status".

[6] The Minister of Citizenship and Immigration (the "Respondent") submits that the Officer reasonably assessed the evidence submitted and reasonably concluded that the Applicant had failed to show that there was no reasonable prospect of a durable solution available to him in South Africa.

[7] The within application raises a question of mixed fact and law, that is the assessment of the evidence against statutory criteria. Such a question is reviewable on the standard of reasonableness; see the decision in *Raza v Canada (Citizenship and Immigration)* (2006), 58 Admin L.R. (4th) 283 (F.C.) at para 12, aff'd. (2007), 370 N.R. 344 F.C.A. at para 3.

[8] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[9] The decision of the Officer is reasonable. The Applicant failed to discharge his burden of showing that a “durable solution” was not available to him in South Africa.

[10] There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification arising.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed, no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6305-18
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APPEARANCES:

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