

Federal Court



Cour fédérale

Date: 20230907

Docket: IMM-6260-22

Citation: 2023 FC 1204

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 7, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

LEOCADIE NGARAMBE BIRAGOYE

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Léocadie Biragoye is seeking judicial review of the refusal of her application for permanent residence on humanitarian and compassionate grounds by a senior immigration officer, dated June 17, 2022.

[2] For the following reasons, the Court concludes that the refusal of her application is not reasonable. In particular, the Court concludes that the officer's analysis of Ms. Biragoye's establishment in Canada unreasonably emphasizes the lack of information about her relationship with her children living outside of Canada, rather than her establishment in Canada and the impact of the refusal of the application. This aspect of the analysis is central to the officer's decision, which must be set aside.

[3] The application for judicial review is therefore allowed.

II. Issue and standard of review

[4] The decision of an immigration officer on an application for permanent residence on humanitarian and compassionate grounds is reviewed on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44.

[5] Ms. Biragoye contends that the officer's decision is unreasonable because of an insufficient analysis focused on the difficulties she would face if she returned to Burundi and her establishment in Canada. The Court concludes that the issue of establishment is determinative and therefore limits its analysis to this issue.

III. Analysis

A. *Applicant's application*

[6] Ms. Biragoye is 74 years old. She came to Canada from Burundi in 2019 and claimed refugee protection. Her refugee protection claim was considered inadmissible on account of a prior refugee protection claim in the United States. In May 2021, Ms. Biragoye filed an application for permanent residence on humanitarian and compassionate grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[7] Ms. Biragoye's application is supported by a letter from her counsel, a copy of her refugee protection claim, several letters of support and information on the humanitarian situation in Burundi. Her application is based primarily on her establishment in Canada, including her community involvement and ties to Canada, as well as on the difficult conditions in Burundi.

B. *Refusal of application*

[8] The officer in charge of Ms. Biragoye's application first considered the adverse conditions in Burundi. He noted that the IRPA excludes consideration of factors used to determine whether a person is a refugee. He referred to the many difficulties in Burundi, a situation that led Canada to impose an administrative deferral of removals to this country. He stressed the lack of evidence as to the particular difficulties Ms. Biragoye might face if she returned. He concluded that [TRANSLATION] "the adverse conditions in Burundi work in her favour without justifying the exemption sought here".

[9] With respect to establishment and ties in Canada, the officer took note of Ms. Biragoye's submissions about her involvement in her Burundian community. However, he stated, without any further explanation, that Ms. Biragoye [TRANSLATION] "is almost silent about her establishment as such". He also noted that Ms. Biragoye wrote that she received benefits from the Ontario Disability Support Program, without saying anything about the nature of her disability or [TRANSLATION] "why she applied for and obtained a work permit if she is of the opinion that she could not have one because of a disability". The officer also stated on a number of occasions that Ms. Biragoye's application does not refer to her relationships with her adult children, who live outside Canada:

[TRANSLATION]

I see the same kind of incomplete disclosure for those who know nothing about her life, as I do, when she talks about the strength of her ties in Canada but is silent on what connects her primarily to the lives of her adult children and their families. I will not venture to think that it is only in Canada and over a three-year period that she has left marks on hearts and has been marked in return. This reflects an application that keeps hidden entire parts of the applicant's life. In fact, if she remains ambiguous, I do not see how I will know for myself her own context and what connects her comparatively to Canada. I will come back to that later.

...

As noted above, the applicant uses strong evidence to describe her involvement in her community. I do not dispute that at all. ... However, in my view, this aspect would have been complete if, above all, she described her connections with her four adult children, and their children, if any, to get an idea of the strongest connections for such an extroverted person. However, she did not do so. She says that her children live in Sweden, the United States, Rwanda, and England and that she no longer has anyone in Burundi. However, she does not prove it or provide any clarification. Although she seems to be a well of love for others, in my opinion, she is almost silent about her own children. She could have explained it. She did not do this either. Therefore, she does not help me understand the difficulties that she is supposed to reasonably describe.

[Emphasis added.]

[10] The officer is therefore of the view that Ms. Biragoye's establishment and ties in Canada do not justify the exemption sought.

C. *Establishment analysis not reasonable*

[11] An application for permanent residence on humanitarian and compassionate grounds raises the question of whether the facts "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another": *Kanhasamy* at para 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 351 at 364. This requires that officers consider and weigh all the relevant facts and factors before them: *Kanhasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74–75.

[12] Here, the relevant factors brought to the officer's attention primarily include Ms. Biragoye's involvement in her community in Canada and her ties in this country. It is clear from the officer's analysis that he focused on a factor or detail that is not raised and that does not relate to Ms. Biragoye's establishment in Canada: her relationship with her children and their families. Ms. Biragoye's application is not based on these relationships. Nevertheless, the officer seems to completely dismiss Ms. Biragoye's ties with her Canadian community when he notes that she did not add information about her children, who do not live in Canada or Burundi. Regardless of whether she stays in Canada or returns to Burundi, Ms. Biragoye will live in a different country from that of all her children. Therefore, regardless of whether she has a close or

tense relationship with her children, those relationships would remain long-distance relationships. The Court considers that the officer does not adequately explain why he focuses on this point. There is a failure of rationality internal to his reasoning process that makes his analysis unintelligible: *Vavilov* at para 99, 101.

[13] The Minister contends that the officer was simply looking for a [TRANSLATION] “complete picture” of Ms. Biragoye’s establishment in Canada. The Court accepts that it is important for an officer to look at the big picture to properly determine whether an applicant’s situation would cause a reasonable person to relieve their misfortunes. However, this does not mean that all aspects of an applicant’s life necessarily have the same relevance, or that the lack of information on a particular subject—here, relationships with the children abroad—undermine the evidence put forward in support of her establishment in Canada.

[14] The Court also notes that the officer’s discussion about Ms. Biragoye’s disability raises concerns about the establishment analysis. As noted, the officer stated that Ms. Biragoye wrote that she was receiving benefits but did not say anything about the nature of her disability or why she had obtained a work permit. Ms. Biragoye does not rely on her disability as a relevant or important factor in her application. In response to a question in the Immigration, Refugees and Citizenship Canada form, “How do you support yourself financially in Canada?” she wrote [TRANSLATION] “I am receiving benefits from the Ontario Disability Support Program”. Neither the benefits received by Ms. Biragoye nor her work permit is at issue in her application for permanent residence on humanitarian and compassionate grounds. However, the officer took

Ms. Biragoye's response as an [TRANSLATION] "incomplete disclosure" that undermines her application.

[15] The Court concludes that the officer's analysis of Ms. Biragoye's establishment in Canada is not reasonable. Given the importance of this factor in Ms. Biragoye's application, the decision cannot be upheld.

IV. Conclusion

[16] The application for judicial review is therefore allowed. The refusal of Ms. Biragoye's application is set aside, and her application is referred back to a different decision maker for redetermination.

[17] Neither party proposed a question to be certified, and the Court agrees that none arises here.

JUDGMENT in No. IMM-6260-22

THIS COURT ORDERS as follows:

1. The application for judicial review is allowed, and Léocadie Ngarambe Biragoye's application for permanent residence is referred back to a different decision maker for redetermination.

"Nicholas McHaffie"

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6260-22

STYLE OF CAUSE: LEOCADIE NGARAMBE BIRAGOYE v MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 9, 2023

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: SEPTEMBER 7, 2023

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