Federal Court  Cour fédérale

Date: 20210208

Docket: IMM-5101-19

Citation: 2021 FC 125

Ottawa, Ontario, February 8, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

KOSSI MAWUDEM ANKU
GODSOON JOSEPH ANKU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Kossi Mawudem Anku and his ten-year-old son Godsoon Joseph Anku, are citizens of Togo living in Accra, Ghana. They seek judicial review of the decision of a senior immigration officer (Officer) refusing their application for permanent residence as members of the Convention refugee abroad class or the country of asylum class under sections 139(1), 145, and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] Mr. Anku is of Ewe ethnicity, from the south of Togo. In 1993, Mr. Anku's father had been working as a school inspector in northern Togo when the Togolese government issued a decree that all southerners in the north be killed, forcing the family to flee to Ghana. Godsoon Joseph Anku was born and raised in Ghana.

[3] Although she was named as an applicant in the style of cause, Sara Aloegninou, Mr. Anku's spouse and Godsoon Joseph's mother, died shortly after her son was born in 2010, and long before the applicants applied for permanent residence. The parties have agreed that the style of cause should be amended to remove Ms. Aloegninou's name and it has been amended accordingly.

[4] The applicants have been recognized as Convention refugees by the United Nations High Commission for Refugees (UNHCR) and the government of Ghana. They were identified for resettlement by the Office for Refugees – Archdiocese of Toronto (ORAT) and submitted an application seeking permanent residence in Canada as privately sponsored refugees. As such, they were required to establish that: (i) they are in need of refugee protection as members of the Convention refugee abroad class or the country of asylum class; and (ii) they do not have a reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely, voluntary repatriation or resettlement in their country of nationality or habitual residence, or resettlement or an offer of resettlement in another country: section 139 of the *IRPR*.

[5] The Officer found that the applicants are not Convention refugees and stated that the applicants were considered under the country of asylum class. However, the Officer found the

applicants do not meet the requirements of the *IRPR*, as they appeared to have a "local, durable solution" that was not pursued. The Officer pointed out that Mr. Anku had previously been granted refugee status in Ghana, but he had failed to follow up and renew his refugee status, which was likely to be granted should he so choose to renew. The Officer found it would be possible for Mr. Anku to obtain Ghanaian citizenship with assistance from the Ghana Refugee Board.

[6] The applicants submit the Officer's decision is unreasonable, and the reasons for denying their application are not transparent, intelligible, or justified. They assert the Officer made no clear finding on whether they are members of the country of asylum class, and further assert the Officer's finding that the applicants are not members of the Convention refugee abroad class was not justified. Also, the applicants submit that the Officer misapprehended or disregarded their evidence in concluding that they have a durable solution in Ghana. According to the applicants, the key basis underlying the Officer's conclusion was an unjustified finding that the applicants could access benefits by applying for Ghanaian citizenship. They argue the Officer relied on broad generalizations and theoretical benefits, and failed to engage with the applicants' evidence regarding their personal circumstances and the specific barriers to local integration that they face.

[7] For the reasons below, I find that the Officer's decision is unreasonable. The decision to refuse the application for permanent residence turned on an unreasonable finding that the applicants have a durable solution in Ghana. In addition, the Officer's finding that the applicants are not Convention refugees is unreasonable. This application for judicial review is allowed.

II. **Standard of Review and Issues**

[8] Reasonableness is the applicable standard of review, according to the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (see also *Qasim v Canada (Citizenship and Immigration)*, 2020 FC 465 at para 17). Similarly, prior to *Vavilov*, an immigration officer's decision on whether a foreign national meets the requirements for permanent residence under section 139 of the *IRPR* was reviewable according to the deferential standard of reasonableness: *Mushimiyimana v Canada (Citizenship and Immigration)*, 2010 FC 1124 [*Mushimiyimana*] at para 21.

[9] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov* at para 100.

[10] The two issues concerning the reasonableness of the Officer's decision are:

A. Did the Officer err in the analysis of whether the applicants are members of one of the prescribed classes?

B. Did the Officer err in finding that the applicants have a durable solution in Ghana?

III. **Analysis**

[11] As noted above, the Officer's decision turned on the finding that the applicants have a durable solution in Ghana. The applicants' written and oral submissions focused on this key finding, and the respondent's submissions were almost exclusively directed to it. Before addressing the issue of durable solution, I will address the applicants' allegation that the Officer's analysis of s. 139(e) of the *IRPR*, i.e. whether the applicants are members of one of the prescribed classes, is unreasonable.

A. *Did the Officer err in the analysis of whether the applicants are members of one of the prescribed classes?*

[12] The applicants submit the Officer relied on irrelevant and unsupported considerations in concluding that they are not members of the Convention refugee abroad class under section 145 of the *IRPR*. The allegedly irrelevant considerations were: (1) the availability of "local integration" in Ghana; (2) the fact that Mr. Anku had not returned to Togo; and (3) Mr. Anku's "negligible" ties to Togo. The allegedly unsupported considerations were that "circumstances [had] changed" in Togo since Mr. Anku's departure, and "while there was a short-lived civil unrest in Togo two years ago, this did not continue for long and has ended". The applicants submit the Officer provided no explanation of which circumstances had changed in Togo, particularly in view of the fact that the same political regime was still in power, and that the applicants alleged a continued fear of persecution from this ruling party.

[13] According to the applicants, where a decision maker relies on irrelevant considerations in coming to its decision, this will provide a basis for the Court's intervention: *De Coito v Canada*

(Citizenship and Immigration), 2013 FC 482 [*De Coito*] at para 6, citing *Maple Lodge Farms Ltd v Canada*, 1982 CanLII 24 (SCC), [1982] 2 SCR 2, 137 DLR (3d) 558. Furthermore, they argue the Officer provided insufficient reasons to support what amounted to a finding that Togo is "safe", as the Officer did not refer to any supporting evidence or explain the basis for the finding. The applicants acknowledge that an officer is entitled to rely on knowledge of the country conditions: *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 32. In their case, however, the applicants submit the Officer did not refer to any country condition evidence in support of the decision, and failed to make actual findings to support the generic conclusion. The applicants contend the Officer's reasons do not explain which circumstances had purportedly changed (particularly since there was no change in ruling party and the government agents of persecution remained in power) or how the purported change applied to the applicants. As a result, the applicants argue the Officer's decision lacks transparency, intelligibility and justification.

[14] The applicants submit that the Officer's approach was inconsistent with a forward-looking test for a well-founded fear of persecution, as enshrined by the *IRPR* and the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[15] The applicants also submit that the Officer failed to address or analyze whether they are members of the country of asylum class under section 147 of the *IRPR*. They argue the Officer blended separate legal questions—whether the applicants are members of the country of asylum class, and whether they have a durable solution in Ghana—and in doing so, it is unclear if the Officer made a negative finding that the applicants do not meet the requirements of the class.

They argue the Officer's unsupported assertions that circumstances have changed and that "civil unrest" has ended in Togo cannot justify a negative finding and furthermore, the Officer failed to address the second part of the test under section 147: whether the applicants are personally and seriously affected by massive human rights violations in Togo.

[16] The respondent submits it was reasonable for the Officer to find that the applicants failed to meet the requirements for the Convention refugee abroad class, relying on *Hayatullah v Canada (Citizenship and Immigration)*, 2020 FC 466 at paragraphs 17 to 22. The respondent submits the Officer reasonably found that the circumstances had changed since Mr. Anku left Togo 26 years earlier, and that the more recent civil unrest had ended.

[17] I agree with the applicants that the Officer failed to justify the conclusion that Mr. Anku does not meet the definition of a Convention refugee. The Officer's decision letter states that Mr. Anku was unable, at the interview, to describe a credible fear of persecution in Togo based on a s. 96 Convention ground of race, religion, nationality, membership in a particular social group or political opinion. In the Global Case Management System (GCMS) Notes, the Officer stated that Mr. Anku had not made a claim of persecution on any of the s. 96 grounds. To the contrary, in his application for permanent residence, Mr. Anku had alleged that he feared persecution by the same ruling party that had prompted his family to flee in 1993, that "the initial insecurity condition prevailing has worsen[ed] over the years," and that there was "no peace at all in Togo since the same regime that led to our fleeing is still in place." Thus, it appears that the Officer overlooked, or failed to fully consider, the claim of persecution in Mr. Anku's application.

[18] There is no indication in the decision letter or notes that the Officer considered the identity of the ruling party in power before concluding that "circumstances [had] changed" in Togo. The Officer did not refer to evidence or provide an explanation to support the finding that circumstances had changed or that the "short-lived civil unrest in Togo two years ago" had ended. An officer is required to consider all grounds for refugee status, even grounds not explicitly raised: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 (See also *Pastrana Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at para 6; *Adan v Canada (Citizenship and Immigration)*, 2011 FC 655 at para 39).

[19] Furthermore, I note that the applicants had been recognized as Convention refugees by the UNHCR and by the government of Ghana. While this recognition was not determinative of the question before the Officer, the Officer's findings present contradictory conclusions. In the analysis of a durable solution, the Officer found Mr. Anku is likely to obtain a renewal of refugee status in Ghana should he choose to renew this lapsed status; however, this appears to be inconsistent with the finding that Mr. Anku is not a Convention refugee under Canadian law because circumstances have changed in Togo, and by implication, Togo is safe. It is unclear what evidence led the Officer to conclude that Mr. Anku would continue to be protected as a refugee in Ghana, if Togo presented safe country conditions.

[20] In summary, by failing to refer to evidence or make factual findings to support the conclusion that country conditions in Togo had changed, I am not satisfied that the Officer's determination that the applicants are not members of the Convention refugee abroad class is

based on an internally coherent and rational chain of analysis, or that the decision is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[21] Mr. Anku also submits that it is unclear whether the Officer relied on irrelevant considerations—the availability of local integration in Ghana, the fact that Mr. Anku has not returned to Togo, or Mr. Anku's "negligible ties" to Togo—to support a finding that Mr. Anku is not a Convention refugee. If the Officer did rely on these considerations to support the finding, then I agree that they provide insufficient justification to support the Officer's conclusion. Their relevance to the question of whether the applicants are Convention refugees is not explained in the reasons or otherwise apparent from the record: *De Coito* at para 6; *Vavilov* at paras 79 and 94.

[22] Finally, while I agree with Mr. Anku that there was no explicit finding as to whether the applicants are members of the country of asylum class, it appears that the Officer did not fully address the question because the Officer assumed the applicants met the requirements of the country of asylum class, and thus established that they are in need of refugee protection as members of at least one of the prescribed classes in the *IRPR*. The decision letter states:

> Your country of nationality is Togo and you accompanied relatives to Ghana 26 years ago at a time of civil disturbance in Togo so you were considered under the country of asylum class.

[23] It would have been helpful for the Officer to explain why it was unnecessary to analyze how the applicants met the requirements under section 147 of the *IRPR*; however, since I am of the view that the Officer did not make a negative finding on the applicants' membership in the class, there is no issue and thus no reviewable error. In the alternative, if the Officer had implied

a negative finding, then I agree with the applicants that the negative finding would be unjustified and unreasonable. Based on my review of the Officer's decision letter and GCMS Notes, the only considerations relevant to the requirements under section 147 of the *IRPR* were the Officer's unsupported assertions that circumstances had changed in Togo, and that civil unrest had ended. For the same reasons provided above, these unsupported assertions do not justify a negative finding.

B. *Did the Officer err in finding that the applicants have a durable solution in Ghana?*

[24] As the respondent correctly notes, a finding of a durable solution provides a sufficient basis to refuse an application for permanent residence, even where an applicant meets the requirements of a prescribed class of protected persons abroad: *Mushimiyimana* at para 20. An applicant bears the onus of establishing that he or she has no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada: s. 139(1)(d) of the *IRPR*; *Karimzada v Canada (Citizenship and Immigration)*, 2012 FC 152 at para 25, citing *Salimi v Canada (Citizenship and Immigration)*, 2007 FC 872 at para 7.

[25] The Officer determined that the applicants have a durable solution in Ghana. Mr. Anku had lived in Ghana for 26 years since arriving at the age of 8. The Officer found that Mr. Anku's employment was not ideal, but that he nevertheless had employment and housing for his family and was able to support himself and his son financially. Although Mr. Anku failed to renew his health card upon expiry, the Officer found he had obtained access to health care previously, as well as access to education. The Officer noted that Mr. Anku's son had access to both health care and education. The GCMS Notes indicate that Mr. Anku appeared "not to have pursued

renewal" of his refugee card and had not followed up on any efforts to obtain his refugee ID or to seek citizenship in Ghana. In the decision letter, the Officer stated Mr. Anku could seek assistance from the Ghana Refugee Board to obtain citizenship.

[26] The applicants submit the Officer's conclusion that they have a durable solution is unreasonable, as it was based on theoretical benefits. The Officer found that the applicants had access to Ghanaian government offices, access to education, and the ability to find employment—indicators that the applicants were locally integrated in Ghana. While the Officer's analysis of the indicia of local integration suggested that Ghanaian authorities were willing to assist, the applicants contend the evidence demonstrated the contrary and the Officer erred in failing to properly consider the evidence. Mr. Anku submitted letters evidencing his unsuccessful attempts at local integration, and during the interview, he testified that the Ghanaian authorities had previously provided no assistance. The applicants provided evidence of the Ghanaian government's refusal to issue a work permit to Mr. Anku, and of Mr. Anku's involuntary withdrawal from his studies because the promised education funds did not materialize. The applicants argue these challenges were not addressed by the Officer, who unreasonably relied on theoretical access to employment and education.

[27] The applicants submit that the Officer's finding that Mr. Anku would have access to Ghanaian citizenship ignored the specific barriers that Mr. Anku faced: *Al-Anbagi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 273 at para 17; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) [*Cepeda-Gutierrez*]. They argue the Officer did not acknowledge Mr. Anku's evidence that he had made multiple,

unsuccessful attempts to obtain citizenship, and that the Officer misapprehended key documentary evidence and oral testimony: *Martinez Paneque v Canada (Citizenship and Immigration)*, 2011 FC 194 at paras 40-41.

[28] The respondent submits the term "durable solution" has no precise definition, and the analysis involves a largely factual exercise that depends on the applicant's circumstances: *Barud v Canada (Citizenship and Immigration)*, 2013 FC 1152 at para 12; *Ha v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49, [2004] 3 FCR 195 at para 79. The respondent submits the GCMS Notes clearly demonstrate that the Officer's findings were based on an assessment of all of the evidence. The respondent submits the evidence showed Mr. Anku was able to find employment and support his family, and that he had expended minimal energy following up on the renewal of his refugee and health cards, and the pursuit of citizenship. The Officer noted that while Ghana's Refugee Law of 1992 allows the Ghana Refugee Board to assist refugees to obtain Ghanaian citizenship, Mr. Anku had not followed up with the Ghana Refugee Board about his refugee ID or applying for citizenship since 2016. The Officer also noted that Ghana's Refugee Law of 1992 specifically prohibits *refoulement* of refugees and the applicants were not at risk of *refoulement* to Togo. The respondent submits that the Officer fully considered the applicants' allegations, and the applicants simply failed to meet their onus with sufficient factual evidence to support their claims: *Kore v Canada (Citizenship and Immigration)*, 2019 FC 1120 at para 20; *Hafamo v Canada (Citizenship and Immigration)*, 2019 FC 995 at paras 24-25; *Shahbazian v Canada (Citizenship and Immigration)*, 2020 FC 680 at paras 33-37.

[29] At the hearing before this Court, there was a debate about the extent to which the Officer's GCMS Notes can be considered as a part of the Officer's reasons for decision. The applicants argue that the reasons should be read in light of the Officer's interview notes, but that the Officer's unreasonable decision cannot be salvaged by interview notes that simply recorded Mr. Anku's evidence. Following the hearing, the applicants submitted a letter clarifying their submission on this point, stating that the mere act of recording an applicant's statements in an interview does not absolve an officer from the duty to justify the decision by engaging with the evidence—particularly when the evidence runs contrary to the officer's ultimate conclusion. The respondent submits that the Officer in this case clearly indicated which part of the GCMS Notes constitutes the assessment because the section is labelled as such, and appears after the section constituting the Officer's interview notes. In the assessment part of the GCMS Notes, the Officer made findings, including that Mr. Anku was issued a refugee ID jointly by the UNHCR and Ghana Refugee Board that expired in 2016, and that Mr. Anku "appear[ed] not to have pursued renewal". The Officer also stated:

> According to a UNHCR report on Togolese refugees in Ghana, there is an active local integration project and Togolese refugees were given access to national and social services including education and health in 2014. The last main contact [Mr. Anku] had with the Refugee Board was in 2012, and perhaps, in 2016 but he has not followed up on getting his refugee i.d. nor on the possibility of citizenship with the Refugee Board.

[30] I agree with the respondent that an analysis of whether there is a durable solution is a highly contextual exercise, driven by the facts: *Barud* at para 12. It is an officer's role to assess and evaluate the evidence, and absent exceptional circumstances, a reviewing court should not interfere with factual findings: *Vavilov* at para 125. However, an officer must take into account the evidentiary record and general factual matrix that bears on the decision, and the decision

must be reasonable in light of them: *Vavilov* at para 126. Thus, the reasonableness of a decision may be jeopardized where an officer has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at para 126. In the present case, the Officer appears to have disregarded relevant evidence, and instead relied on generalizations regarding the applicants' ability to access certain services and the authorities' willingness to assist them. As such, in my view, the Officer's reasons are unreasonable.

[31] Reasons for the decision should be read in light of the record and with due sensitivity to the administrative setting in which they were given: *Vavilov* at paras 91-98. Therefore, in my view, the interview notes should be read together with the assessment in the GCMS Notes and the decision letter. However, the mere documentation of an applicant's interview statements in the GCMS Notes will not necessarily justify a decision that otherwise fails to address or engage with key evidence.

[32] Based on my review of the decision letter and the GCMS Notes in light of the record, the Officer's decision was made without adequately addressing relevant, contradictory evidence in the record. As a result, I find the Officer's decision on the availability of a durable solution in Ghana is unreasonable.

[33] The Officer found that the applicants appeared to have a local, durable solution that was not pursued, including the possibility of obtaining Ghanaian citizenship with assistance from the Ghana Refugee Board; however, the Officer did not address the applicants' evidence of the barriers they faced. During the interview, Mr. Anku testified that he had applied for citizenship

in Ghana in 2012, through the assistance of a human rights organization. He was notified by the organization that the application could not "go through", and that he would have to pay $40,000 to pursue the matter further. Mr. Anku told the Officer that this sum of money was beyond his means. Mr. Anku also contacted the Ghana Refugee Board in 2012 and again in 2016, to no avail. He was told that they would be in touch with him, but never received any follow-up. Furthermore, Mr. Anku explained that he had contacted Amnesty International and ORAT, but that no one had been able to assist with obtaining Ghanaian citizenship. Mr. Anku submitted multiple letters to demonstrate his efforts to seek assistance from the UNHCR and other human rights organizations.

[34] Similarly, the Officer failed to address relevant evidence in finding the applicants had access to government offices, access to education and health care, and the ability to find employment. In Mr. Anku's letter to the UNHCR, he noted that he had been confronted with difficulties pertaining to accessing employment, education, and the services of financial institutions, even with the refugee ID card. While he had initially enrolled in the Ghana Institute of Languages with a scholarship as a part of the UNHCR strategy of integration, he could not complete the program due to a lack of funding. Mr. Anku noted in his application that schooling in Ghana is expensive for foreigners and that he is still considered a foreigner, even after more than two decades in Ghana. Mr. Anku also explained that he does not have a work permit and is unable to obtain any legally authorized work, unless he "disguises" himself as a Ghanaian.

[35] None of this evidence was assessed or analyzed in the decision letter or in the GCMS Notes, although it would appear to be very relevant to the question before the Officer—certainly,

the Officer did not give reasons to explain why the evidence would not be relevant or probative to the analysis. In my view, it was incumbent upon the Officer to explain how the relevant, contradictory evidence was assessed in their decision-making process, and thus, the Officer erred by remaining silent on evidence pointing to an opposite conclusion: *Cepeda-Gutierrez* at para 17.

IV. **Conclusion**

[36] For the reasons above, I find that the Officer's decision is unreasonable.

[37] The parties did not propose a question for certification. No question for certification arises in this case.

JUDGMENT in IMM-5101-19

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to remove Sara Aloegninou as a named applicant in this proceeding.

2. The Officer's decision is set aside and the matter shall be referred back to a different decision-maker for redetermination.

3. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Samuel Plett	FOR THE APPLICANTS
Nimanthika Kaneira	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Plett Law Professional Corporation Toronto, Ontario	FOR THE APPLICANTS
Mitchell Perlmutter Desloges Law Group Professional Corporation Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT