

Federal Court



Cour fédérale

**Date: 20211027**

**Docket: IMM-5102-19**

**Citation: 2021 FC 1146**

**Ottawa, Ontario, October 27, 2021**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**KOMLA MAWULI EZOU  
FLORENCE PYNE  
AYABA SOPHIA EZOU  
KOSSI GABRIEL EZOU  
TERRY KOKUVI EZOU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The applicants, Komla Mawuli Ezou, his wife Florence Pyne, and their three children seek judicial review of the decision of a migration 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)(e), 145, and 147 of the *Immigration and Refugee Protection*

*Regulations*, SOR/2002-227 [IRPR]. The applicants allege the Officer's determination that they do not meet the requirements of either class is unreasonable.

[2] The applicants allege the Officer's determination is premised on bald assertions, and is not supported by reasoning or by reference to any concrete evidence. Furthermore, the Officer failed to provide any reason for departing from the finding of the United Nations High Commissioner for Refugees (UNHCR) that the applicants are Convention refugees. As a result, they submit the Officer's decision is not transparent, intelligible or justified.

[3] I find the applicants have established that the Officer's decision is unreasonable, and this application for judicial review is allowed.

## II. Issues and Standard of Review

[4] The parties agree that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[5] Reasonableness is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, and consider the outcome of the decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov* at paras 15 and 83.

[6] Where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision: *Vavilov* at para 84. In this regard, it is not enough for the outcome of a decision to be *justifiable*; the decision must be *justified* by the decision maker, by way of the reasons: *Vavilov* at para 86. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[7] The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

### III. **Background**

[8] Mr. Ezou is a citizen of Togo, of Ewe ethnicity. His father was a member of a political party that opposed the ruling government party, and was targeted as a result. Military soldiers violently attacked Mr. Ezou's family in their home, forcing them to flee Togo in 1993.

[9] Ms. Pyne is a citizen of Sierra Leone. Her entire family was killed by rebels who set fire to the house and tortured anyone who was not inside. Ms. Pyne was rescued by her now adoptive mother, who was also the victim of a vicious attack but managed to flee the country with Ms. Pyne in 1992. They tried to return to Sierra Leone in 1998. In 2000, Ms. Pyne was forced to flee the country for a second time with her adoptive family.

[10] Mr. Ezou and Ms. Pyne met in Ghana and live at the Krisan refugee camp with their children. They have not returned to their respective home countries, and they have no family

there. Some family members are refugees in Ghana and others are living in Australia or Canada as a result of resettlement. Ms. Pyne's adoptive family resettled to Canada. While Ms. Pyne was included on her adoptive family's application for permanent residence, her name was removed after she married Mr. Ezou and became ineligible to be included.

[11] The applicants were identified as candidates for resettlement by the Office for Refugees, Archdiocese of Toronto (ORAT) and sought permanent residence in Canada as privately sponsored refugees. They allege that Togo and Sierra Leone are not safe for them, and they fear persecution if returned there. The applicants have been recognized as Convention refugees by the UNHCR and by the government of Ghana.

#### IV. Analysis

[12] The applicants argue that the Officer's reasons, set out in the Global Case Management System (GCMS) notes, amount to a bare assertion that country conditions have changed in Togo and Sierra Leone and these countries are now safe—the same reviewable error that was identified in *Anku v Canada (Minister of Citizenship and Immigration)*, 2021 FC 125 [*Anku*]. According to the applicants, the Officer's GCMS notes baldly state that “objective documentation” does not support a finding of risk to the applicants upon return to Sierra Leone or Togo. The GCMS notes do not identify the objective documentation relied on or explain how it supports the generic conclusion that the applicants are not at risk, and the GCMS notes provide no reasoning to support the conclusion that the applicants are not “seriously and personally affected by civil war, armed conflict or massive violation of human rights in Sierra Leone and/or Togo”. In reaching these conclusions, the Officer does not differentiate between the two

countries. While it may have been reasonable for the Officer to rely on knowledge of the country conditions in Sierra Leone and/or Togo, the applicants contend that the Officer failed to provide actual, concrete findings to justify their conclusion.

[13] The applicants submit that the *Vavilov* framework is intended to develop and strengthen a culture of justification, and act as a shield against arbitrariness. Reasons that simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion will rarely assist a reviewing Court in understanding the rationale underlying the decision: *Vavilov* at para 102.

[14] Furthermore, the applicants submit that the fact they are recognized as Convention refugees by the UNHCR and the government of Ghana are relevant considerations. The GCMS notes do not mention any refugee documentation from the UNHCR, and while the notes mention the applicants' refugee status in Ghana, there is no further explanation. The applicants assert there is no way of knowing whether the Officer had regard to this highly relevant evidence in reaching the conclusion that they do not meet the requirements of the Convention refugee abroad or country of asylum classes under Canadian law.

[15] I find the applicants have established that the Officer's decision is unreasonable. The refusal letter and the Officer's GCMS notes do not provide an intelligible and transparent line of reasoning explaining why the Officer was not satisfied that the applicants meet the requirements of the Convention refugee abroad class or the country of asylum class.

[16] The Officer's refusal letter sets out the relevant statutory provisions under the *IRPR* followed by a peremptory conclusion; as such it does little to assist the Court in understanding the rationale underlying the decision: *Vavilov* at para 102. The Officer's GCMS notes include a section that sets out the Officer's conclusions, but the notes fail to justify those conclusions. While the notes indicate the Officer considered objective documentation about the situation in Sierra Leone and Togo, they do not identify the documentation, explain what it says or describe how it relates to the applicants' situation.

[17] Furthermore, the fact the applicants are recognized as Convention refugees by the UNHCR and the government of Ghana are relevant considerations, and it is unclear whether the Officer took the applicants' status into account. While not determinative of whether they meet the test under Canadian law, the applicants' status as UNHCR and Ghanaian refugees was a personal and relevant consideration and the Officer should have addressed it: *Ghirmatsion v Canada (Minister of Citizenship & Immigration)*, 2011 FC 519 at paras 57-58.

[18] The respondent submits the reasons make it clear that the applicants simply failed to discharge their burden of establishing that they meet the requirements of the Convention refugee abroad or country of asylum class. Refugee claimants must demonstrate they face persecution on a Convention ground of race, religion, nationality, membership in a particular social group, or political opinion. The respondent contends the applicants failed to articulate a fear of persecution that would link them to any of the Convention grounds, and instead presented vague and bald assertions of risk: *Hungbeke v Canada (Minister of Citizenship and Immigration)*, 2020 FC 955 at para 41 [*Hungbeke*]. The applicants indicated a desire to come to Canada to be with

Ms. Pyne's family and for a better life, and the Officer noted that the desire for a better life is not a Convention ground.

[19] I do not agree that the Officer's decision turned on vague assertions of risk. The Officer did not state that the applicants' allegations were vague, nor did the Officer question the events that drove Mr. Ezou and Ms. Pyne from their respective countries. Instead, the Officer's decision was based on findings that country conditions have changed since the applicants fled their countries many years ago, and they could safely return to Togo or Sierra Leone now. However, as noted above, the Officer failed to justify the conclusion that the applicants could safely return. Indeed, the Officer's finding that the applicants are recognized as refugees in Ghana and they are authorized to stay in Ghana seems to present a contradictory finding, in that it suggests the applicants have protection outside of Togo or Sierra Leone, and they would not be forced to return there.

[20] Also, I disagree with the respondent that the Officer refused the application based on the applicants' failure to articulate a fear of persecution that was linked to a Convention ground. While the Officer referred to the applicants' desire for a better life in Canada and to be reunited with Ms. Pyne's adoptive family, and noted that this is not a Convention ground, the Officer did not make a finding that the applicants failed to articulate any fear that was linked to a Convention ground of persecution. In any event, if the Officer had made such a finding it would constitute a reviewable error, as the reasons do not provide adequate justification. In their application, and in response to interview questions from the Officer asking why they feared returning to Togo and Sierra Leone, the applicants articulated the same fears of persecution that

led to their recognition as Convention refugees by both the UNHCR and the Ghanaian government.

[21] In addition to asking why the applicants feared returning to Togo and Sierra Leone, the Officer asked the applicants why they were seeking protection from Canada. The applicants' expressed desire for a better life must be understood in that context. In their application and during the interview, the applicants described a difficult life in Ghana, including discrimination, a lack of jobs, no good schools for the children, and no skills training for the parents. They explained that they are recognized as refugees in Ghana but do not have resident permits, and their papers expire every six months. The applicants stated they do not have enough food and they have to beg the villagers for food but it is not easy to get, "[e]ven the Ghanaians themselves [a]re struggling in their own country, how much a refugee" and "[t]he authorities can not pay attention to our situation and problems". In my view, the applicants' statements about a desire for a better life and to be reunited with Ms. Pyne's adoptive family relate to why they wish to resettle in Canada, rather than why they cannot return to Togo or Sierra Leone.

[22] The respondent relies on *Hungbeke* at paragraphs 51-52 for the proposition that the full GCMS notes form part of the Officer's reasons, which include the Officer's interview notes as well as the notes setting out the Officer's conclusions. According to the respondent, the interview notes articulate the basis for the Officer's conclusions. The interview notes explain why the Officer believed the situation had changed in Sierra Leone: the UNHCR was collaborating with the government; people were returning; the war was over and there is peace now. The interview notes also explain why the Officer was not satisfied of a risk in Togo: while



Mr. Ezou alleged a fear of persecution in Togo because the same ruling party is in power, members of the opposition party (of which Mr. Ezou's father was a member) had been elected to the government. The respondent argues that the applicants did not rebut the Officer's findings when they were given the opportunity to comment at the interview, and they still have not pointed to any evidence demonstrating that the Officer erred. The respondent argues that the Officer, who is stationed in Ghana and familiar with the region, was entitled to rely on local knowledge of the country conditions in Togo and Sierra Leone: *Saifee v Canada (Minister of Citizenship and Immigration)*, 2010 FC 589 at paras 30-31.

[23] As the Supreme Court of Canada noted in *Vavilov* (at paragraphs 91-98), reasons for a decision should be read in light of the record and with due sensitivity to the administrative setting in which they were given. The Officer's interview notes are part of the record and in my view, the Officer's decision must be read in light of them. 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: *Anku* at para 31. In this case, I am not satisfied that the interview notes justify the Officer's decision.

[24] With respect to Sierra Leone, the interview notes state:

Spouse [Ms. Pyne] fear to go back. Concern: Situation change a lot in your country. UNHCR is collaborating with govt. A lot of people return. Actual situation in Sierra Leone is calm country. The war is over and country look for the future...there is peace now and people from Sierra Leone do not qualify as refugee considering the situation now.

As noted above, the notes do not identify the source of the Officer's information or explain how it relates to the applicants' situation. While an officer stationed in Ghana may have local knowledge of the conditions in Sierra Leone, I agree with the applicants that the Officer's decision must be justified, and the principles of transparency and justification require more than general assertions that there is peace in Sierra Leone and people from the country do not qualify as refugees—particularly since the government of Ghana has recognized Ms. Pyne as a refugee. In my view, and in light of the facts of this case, the Officer's general assertions above fail to provide the necessary justification for concluding that Ms. Pyne could safely return to Sierra Leone.

[25] With respect to Togo, the interview notes state:

I explain to him [Mr. Ezou], that the actual situation in Togo was not perfect, but to my point of view, the party of which his father was a member has member elected at the government.

The Officer does not explain who the elected member(s) is/are, what position they hold in government, or how having members from the opposition party in government impacts the applicants' risk of persecution in Togo. Mr. Ezou alleged that the situation has not changed in Togo, and that he remains at risk. He alleged that those who were persecuting him remain in power, there is no change in government after the death of the president because his son took over, the Togolese government has kidnapped Togolese refugees living in Ghana, people are being beaten, and he met a Togolese man who went back to Togo and returned to Ghana a few days later with bruises. In my view, the Officer's reasons were not responsive to the applicants' allegations, and failed to justify the Officer's determination.

[26] In *Vavilov*, the Supreme Court of Canada confirmed its earlier guidance from *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 that a reviewing court may “connect the dots on the page where the lines, and the direction they are headed, may be readily drawn”, but it must not speculate as to what the decision maker was thinking, supply the reasons that might have been given or make findings of fact that were not made: *Vavilov* at para 97. Reading the GCMS notes holistically and contextually in light of the record, I am unable to connect the dots without speculating as to what the Officer was thinking, or supplying reasons that were not given. In my view, GCMS notes do not articulate a transparent, intelligible basis justifying the Officer’s decision.

V. **Conclusion**

[27] For the reasons above, the applicants have established that the Officer’s decision is unreasonable. The Officer’s decision is set aside and the matter shall be referred to another officer for redetermination.

[28] Neither party proposes a question for certification, and in my view, there is no question to certify.

**JUDGMENT in IMM-5102-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed and the matter shall be referred to another officer for redetermination.
2. There is no question for certification.

"Christine M. Pallotta"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5102-19

**STYLE OF CAUSE:** KOMLA MAWULI EZOU, FLORENCE PYNE,  
AYABA SOPHIA EZOU, KOSSI GABRIEL EZOU,  
TERRY KOKUVI EZOU v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEO CONFERENCE

**DATE OF HEARING:** AUGUST 9, 2021

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** OCTOBER 27, 2021

**APPEARANCES:**

Samuel Plett FOR THE APPLICANTS

Meva Motwani FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Desloges Law Group FOR THE APPLICANTS

Barristers and Solicitors

Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT

Toronto, Ontario