

CANADA / JUDGMENT

Brice Tembo v. Canada (Citizenship and Immigration)

2025 FC 406

COURT

Federal Court

DECIDED

4 March 2025

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Brice Tembo v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions
Date 2025-03-04 Neutral citation 2025 FC 406 File numbers IMM-9449-23 Decision Content Date:
20250304 Docket: IMM-9449-23 Citation: 2025 FC 406 Ottawa, Ontario, March 4, 2025 PRESENT:
Mr. Justice Pentney BETWEEN: ROLL HILARION BRICE TEMBO HILARY MARTINE TEMBO
CASILLAS ROLLY LEONEL TEMBO CASILLAS JUAN DAVID HERNANDEZ CASILLAS GEMA
NATHALIE CASILLAS NACAR Applicants and THE MINISTER OF CITIZENSHIP AND
IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] The Applicants are Roll Hilarion Brice Tembo (the PA), Gema Nathalie Casillas Nacar (the PA's spouse) and their three children, Hilary Martine Tembo Casillas, Rolly Leonel Tembo Casillas, and Juan David Hernandez Casillas (the PA's stepson).
- [2] The PA, Hilary and Rolly are dual citizens of Congo-Brazzaville and Mexico. The PA's spouse and Juan David are citizens of Mexico. The Applicants claim to fear persecution in Mexico associated with their race. The PA claims that in 2016 he was beaten by fans of a rival soccer club because he had scored against their team. The PA also claims to fear political persecution if he returns to Congo-Brazzaville. The Applicants left Mexico in 2018 and came to Canada, where they claimed asylum.
- [3] The Refugee Protection Division (RPD) dismissed their claim on the basis that they had a viable Internal Flight Alternative (IFA) in Mexico. The RPD found that the racial discrimination experienced by the Applicants in Mexico did not amount to persecution. The Refugee Appeal Division (RAD) dismissed the Applicants' appeal, agreeing with the RPD on the two principal findings: that the Applicants had a viable IFA in Mexico, and that the discrimination they experienced did not amount to persecution. The RAD considered the legal test for an IFA and examined the evidence that had been presented before the RPD, leading it to dismiss the Applicants' appeal.
- [4] The Applicants seek judicial review of the RAD's decision. Their written submissions are very brief. They allege that the RAD made one determinative error by failing to appropriately weigh the evidence they had submitted with respect to the racially motivated

discrimination they had faced in Mexico. In oral submissions, the Applicants raised a question regarding the RAD's treatment of the evidence of the discrimination faced by the children, arguing that the RAD failed to properly analyze the second prong of the IFA test. There is no mention of this second argument in the Applicants' written submissions.

- [5] I indicated at the hearing that I was dismissing the application for judicial review, with reasons to follow. These are my reasons.
- [6] Absent exceptional circumstances, which are not present in this case, it is not for a reviewing court to reweigh the evidence (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125). In this case, the RAD acknowledged that the Applicants had experienced some instances of racial discrimination in Mexico, but it concluded (as had the RPD) that these experiences did not amount to persecution. That finding is amply supported by the evidence and consistent with the binding jurisprudence: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689. There is no basis to find it unreasonable.
- [7] As for the Applicants' argument about the RAD's treatment of the second prong of the IFA test, as I noted at the hearing, this cannot succeed because the Applicants did not raise it in their appeal submissions to the RAD. The RAD cannot be faulted for failing to consider an argument that the Applicants could have – but did not – present before it.
- [8] For these reasons, the application for judicial review is dismissed. There is no question of general importance for certification. JUDGMENT in IMM-9449-23 THIS COURT'S JUDGMENT is that: The application for judicial review is dismissed. There is no question of general importance for certification. "William F. Pentney" Judge FEDERAL COURT SOLICITORS OF RECORD Docket: IMM-9449-23 STYLE OF CAUSE: ROLL HILARION BRICE TEMBO, HILARY MARTINE TEMBO CASILLAS, ROLLY LEONEL TEMBO CASILLAS, JUAN DAVID HERNANDEZ CASILLAS, GEMA NATHALIE CASILLAS NACAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: hybrid (Toronto, ontario and by videoconference) DATE OF HEARING: march 3, 2025 JUDGMENT AND REASONS: pentney j. DATED: march 4, 2025 APPEARANCES: Kareem Ibrahim For The Applicant Rishma Bhimji For The Respondent SOLICITORS OF RECORD: Barrister & Solicitor Toronto, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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