

CANADA / JUDGMENT

Uyanze v. Canada (Citizenship and Immigration)

2024 FC 554

COURT

Federal Court

DECIDED

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Uyanze v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2024-04-09 Neutral citation 2024 FC 554 File numbers IMM-6210-23 Decision Content Date: 20240409 Docket: IMM-6210-23 Citation: 2024 FC 554 [ENGLISH TRANSLATION] Ottawa, Ontario, April 9, 2024 PRESENT: The Honourable Justice Roy BETWEEN: GANEA UYANZE Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] Mr. Ganea Uyanze, the applicant, was granted leave to apply for judicial review of a decision of the Immigration Appeal Division [IAD]. Leave was obtained under section 72 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The applicant does not have counsel. Mr. Uyanze argues, among other things, that the decision does not meet the requirements of a reasonable decision.
- [2] For the reasons that follow, this matter must be referred back to the IAD for a different panel to render a transparent and intelligible decision. The decision under judicial review does not meet the threshold criteria for a justified decision. Respectfully, I disagree with the respondent's submission that the [translation] "reasons for the decision clearly and properly explain how the IAD reached these conclusions" (memorandum of fact and law at para 26).
- [3] An administrative decision that has a major impact on the litigant must be accompanied by reasons explaining the decision-making process and the rationale behind a given decision. In its landmark decision in Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65, [2019] 4 SCR 653 [Vavilov], the Supreme Court of Canada stated that reasons "help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power" (Vavilov at para 79). The absence of adequate reasoning renders the decision unreasonable.

- [4] The reviewing court adheres to the principle of judicial restraint and shows respect for the administrative decision by not seeking to substitute its own view for that of the administrative decision maker. But in *Vavilov*, the Supreme Court insisted that administrative decision makers adopt a culture of justification in which the exercise of public power is justified to the litigant who seeks rationality and fairness. However, in this case, the reasons are lacking (*Vavilov* at para 14).
- [5] Because the reviewing court is not concerned only with the outcome of the decision under review but also with its underlying reasons, it must strive to understand the reasoning that led to the decision in order to establish whether it is coherent and rational in relation to the legal and factual constraints. It must seek out the justification for the decision. The decision must be justified:
- [86] Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir*, at paras. 47–49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with “the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes”: para. 47. Reasonableness, according to *Dunsmuir*, “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process”, as well as “with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *ibid.* In short, it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis. [Emphasis added.]
- [6] Thus, an attempt by counsel to enhance the reasons for an administrative decision cannot succeed because it is up to the decision maker to provide justification. Anything else would effectively see the justification required of the administrative decision maker replaced by retroactive justification provided by the litigant. The same is true of the reviewing court (*Vavilov* at para 96); it cannot strive to fill the gaps identified in a decision for which judicial review is sought.
- [7] Moreover, reasons must go beyond the abstract and provide justification for the decision rendered. I. Immigration officer's decision [8] The matter before us is not particularly complex. Mr. Uyanze seeks to sponsor a girl who he claims is his daughter. If she is his daughter, then she could fall under the family class. Section 12 of the IRPA clearly establishes that family reunification takes place on the basis of the relationship between a Canadian citizen or permanent resident and a foreign national as a child or parent. The application for permanent residence of the person claiming to be the applicant's daughter was refused by a Canadian immigration officer in Dakar, Senegal.

- [9] Section 117 of the Immigration and Refugee Protection Regulations, SOR/2002-227 [Regulations], further defines who is a member of the family class. Thus, a “dependent child” would qualify (paragraph 117(1)(b)). Still, the child must be dependent. The term is defined in section 2 of the Regulations: 2 The definitions in this section apply in these Regulations. ... 2 Les définitions qui suivent s’appliquent au présent règlement. [...] dependent child, in respect of a parent, means a child who enfant à charge L’enfant qui :
- (a) has one of the following relationships with the parent, namely,
 - a) d’une part, par rapport à l’un de ses parents :
 - (i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or
 - (i) soit en est l’enfant biologique et n’a pas été adopté par une personne autre que son époux ou conjoint de fait, (ii) is the adopted child of the parent; and (ii) soit en est l’enfant adoptif;
 - (b) is in one of the following situations of dependency, namely,
 - b) d’autre part, remplit l’une des conditions suivantes :
 - (i) is less than 22 years of age and is not a spouse or common-law partner, or
 - (i) il est âgé de moins de vingt-deux ans et n’est pas un époux ou conjoint de fait, (ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition. (enfant à charge) (ii) il est âgé de vingt-deux ans ou plus et n’a pas cessé de dépendre, pour l’essentiel, du soutien financier de l’un ou l’autre de ses parents depuis le moment où il a atteint l’âge de vingt-deux ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (dependent child)
- [10] The immigration officer’s decision letter indicates that in March 2022, a DNA test revealed that there was zero probability that Mr. Uyanze is the girl’s father. In fact, a previous application for sponsorship had been refused because a DNA test had not been completed as requested. When confronted with the negative DNA test, Mr. Uyanze allegedly replied that he was [translation] “the official and acknowledged father”. He reportedly stated that he believed that there had been a mistake with the DNA test.
- [11] Regarding the girl, the officer also noted that [translation] “you were not declared and examined as part of your sponsor’s application for permanent residence. You are therefore excluded under R117(9)(d) of the Regulations explained above”. Paragraph 117(9)(d) reads as follows:
- (9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if

- (9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes : ... [...]
- (d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.
- d) sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.
- [12] Finally, the officer said of the girl that he [translation] “considers that there has been a misrepresentation that may have led to an error in the application of the Act”. Having thus been found guilty of making a false statement regarding her status as a dependent child, the girl claiming to be the applicant’s daughter became inadmissible. II. Decision subject to the application for judicial review [13] As I explained at the hearing, the officer’s decision is not the decision that is before this court on judicial review. The only application for judicial review relates to the IAD’s decision. This renders part of the applicant’s memorandum of fact and law unnecessary. The analysis must focus solely on the IAD’s decision, even if the immigration officer’s decision forms, to some extent, part of the backdrop against which the decision for which judicial review is sought was made.
- [14] In my view, it is this decision that is not reasonable due to the quality of the reasons. This is because “reasoned decision-making is the lynchpin of institutional legitimacy” (as reproduced in Vavilov at para 74: from the factum of the amici curiae in that case, at para 12).
- [15] In my view, respectfully, the IAD’s decision lacks transparency and intelligibility, two requisite hallmarks of a reasonable decision. Essentially, a litigant must know why he or she is denied the remedy sought. That is why we look for an internally coherent and rational decision that is intelligible and transparent, not in the abstract, but to the individuals subject to it. III. Analysis [16] A decision not to issue a permanent resident visa in the context of a family class sponsorship application may be appealed to the IAD (section 63 of the IRPA). But the IAD’s decision, which is barely two pages long, does not explain: it declares.
- [17] From the outset, and for some unknown reason, the IAD “assumes that the applicant is the appellant’s dependent child” (decision at para 5), even though the DNA test revealed a zero probability of father-daughter parentage.
- [18] Naturally, it follows that the IAD must have relied on other reasons. It is understood that it is because the applicant failed to declare his “daughter” when he obtained permanent residence that the visa was refused; however, the applicant fiercely disputes this assertion, saying that he declared the possibility of being the father of a child, which possibility should appear in the immigration officer’s notes. Yet, there is no record of any discussion in this

regard. Nor is it clear in what way the foreign national was not “examined” (“contrôle” in the French). In fact, we do not know what this notion entails. This notion of being “examined”, which arises in paragraph 7 of the decision, can only be referring to paragraph 117(9)(d) of the Regulations, which excludes from the family class a family member of the sponsor (Mr. Uyanze) who was not examined. The decision declares, it does not explain. There is no internally coherent reasoning to help understand what led to the decision.

- [19] But there is more. The applicant alluded to the existence of a public policy that would suspend the application of paragraph 117(9)(d) of the Regulations. However, the IAD stated that it does not have “the legislative jurisdiction to examine the application of public policy” (decision at para 9). It is not clear what “legislative jurisdiction” the administrative decision maker allegedly needs. Nor is it known what this public policy is, when and to whom it applies, or why it would not be binding on the administrative decision maker, as the applicant claims. In fact, the IAD asserts jurisdiction to decide an appeal on the basis of the applicable legislation, not public policy, as the latter does not fall under the IAD’s jurisdiction. It is unclear why, since—according to the IAD—the section of the IRPA allows for the adoption of such a policy (section 25.2). If the policy does not apply to the IAD, then that would have to be stated, along with the reasons why it applies to other actors but not to the IAD.
- [20] The point is not to opine on the reasonableness of the outcome. That is not possible from reading the decision. Whether the decision maker is right or wrong is irrelevant. It is the absence of reasons to help understand the reasoning, beyond the abstract, that makes the decision neither transparent nor intelligible. The administrative decision maker may not be wrong. But that is not the issue.
- [21] The same is true of the IAD’s rejection of the applicant’s invocation of humanitarian and compassionate considerations. The IAD declared that it does not have jurisdiction to hear such applications. The only explanation appears in a footnote, footnote 11, which refers to footnote 1, which in turn is merely a reference to the IAD’s appellate jurisdiction on decisions not to issue a permanent resident visa in the context of a family class sponsorship application. That cannot be adequate. Indeed, earlier on in this short decision, the IAD indicated that it did not have “jurisdiction” [“compétence juridictionnelle” in the French] to decide the case on humanitarian and compassionate considerations” (decision at para 3). The footnote referred to section 65 of the IRPA. This confusion obviously does not make it easier to understand why humanitarian and compassionate considerations could not factor in the analysis, since an explanation should have been given as to why section 65 did not apply in this case. What constitutes a lack of “compétence juridictionnelle” was also not explained.
- IV. Conclusion [22] The Court therefore concludes that the IAD’s decision lacks the hallmarks of reasonableness in that it is neither justified, transparent nor intelligible. Authors R. A. Macdonald and D. Lametti wrote that reasons that “simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion” do not provide what is needed to understand the reasoning (“Reasons for Decision in

Administrative Law” (1990), 3 CJALP 123 at 139, cited in Vavilov at para 102). In this case, we do not even have the wording of the legislation or the arguments made. Of course, the issue is not that a response to each argument raised is required. But the law does require that key issues or core arguments be addressed. This was not done. As the Supreme Court stated in Vavilov, “[w]here the impact of a decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes” (para 133). The Court wrote at paragraph 135:

- [135] Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.
- [23] Therefore, the application for judicial review must be allowed. The matter must be referred back to the IAD for redetermination by a different panel.
- [24] The new panel should make sure that it has a complete certified tribunal record before proceeding to dispose of the appeal. Indeed, the applicant claimed that there were notes from the immigration officer in the record (see memorandum of the applicant at paras 24 and 25). In cases where an immigration officer’s decision not to issue a permanent resident visa is under appeal, steps should be taken to ensure that the officer’s notes are included in the record before the administrative tribunal. Indeed, these notes, if there are any, form part of the decision that was made (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 44) and from which an appeal is permitted under section 63 of the IRPA. If the notes were in the IAD’s record, they should have been included in the certified tribunal record. They were not there. It would be appropriate to ensure that a complete record is submitted to the IAD for it to proceed with the redetermination of the appeal.
- JUDGMENT in IMM-6210-23 THIS COURT’S JUDGMENT is as follows: The application for judicial review is allowed. The matter is referred back to the Immigration Appeal Division. A new panel will make a redetermination. There is no question for certification under section 74 of the Immigration and Refugee Protection Act. No question is certified. “Yvan Roy” Judge
- Certified true translation Melissa Paquette, Senior Jurilinguist FEDERAL COURT
- SOLICITORS OF RECORD DOCKET: IMM-6210-23 STYLE OF CAUSE: GANEA UYANZE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: OTTAWA, ONTARIO DATE OF HEARING: APRIL 3, 2024 JUDGMENT AND REASONS: ROY J. DATED: April 9, 2024 APPEARANCES: Ganea Uyanze FOR THE APPLICANT (ON HIS OWN BEHALF) Janan Arafa For the respondent SOLICITORS OF RECORD: Attorney General of Canada Ottawa, Ontario For the respondent

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