

Federal Court



Cour fédérale

Date: 20120320

Docket: IMM-4595-11

Citation: 2012 FC 330

Ottawa, Ontario, March 20, 2012

**PRESENT:** The Honourable Mr. Justice O'Reilly

**BETWEEN:**

[AB]; [CD]; [EF]; [GH]

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] AB, his wife, CD, their 17-year-old daughter, EF, and their 12-year-old son, GH, are citizens of Burundi. Both parents are HIV positive. So is GH.

[2] The family arrived in Canada in 2006 and sought refugee protection. Their claim was denied. They then applied for relief on humanitarian and compassionate grounds (H&C), but an immigration officer turned them down.

[3] The applicants argue that the officer erred by failing to consider the best interests of the children, the risk of discrimination on their return to Burundi because of their HIV status, and the difficulty they will have in obtaining the medication they need in Burundi. They ask me to overturn the decision and order another officer to reconsider their application.

[4] I am satisfied that the officer erred in relation to the best interests of the children and that the decision should be overturned on that basis. It is unnecessary to consider the other grounds.

## II. The Officer's Decision

[5] The officer noted that the applicants claimed they would face undeserved, undue and disproportionate hardship if forced to return to Burundi, because of the lack of basic medical care for persons living with HIV. The documents submitted by the applicants indicated that 13 years of ethnic warfare had ravaged the country's health system.

[6] However, documentary evidence also showed that the fight against HIV/AIDS is a national priority in Burundi. Burundi has been working hard to ensure universal access to HIV/AIDS prevention services, care and support. Furthermore, it has trained hundreds of doctors, nurses and

“health mediators” on the prescription of antiretroviral drugs. The officer found that treatment for people with HIV/AIDS was available in Burundi, and that the applicants would have access to it.

[7] In terms of their establishment in Canada, AB and his wife had been working for a school board as substitute teachers and lunchtime supervisors since 2008. However, they relied on social assistance.

[8] The officer acknowledged that the children excelled in school in Canada. He also noted that AB was enrolled in university and taking English classes, and that he was an active member of his church. CD was also taking training courses and volunteered in the community. Still, the officer did not consider their degree of establishment to be exceptional.

[9] The applicants do not have any family in Canada. However, they have a number of relatives in Burundi. AB and his wife are both university graduates who held good jobs in Burundi. The officer found they would be capable of finding work in Burundi with the help of their relatives.

[10] The officer concluded that the applicants would not suffer undue, undeserved or disproportionate hardship if they returned to Burundi and filed their applications for permanent residence from there. Consequently, he denied their H&C application.

III. Did the officer consider the best interests of the children?

[11] The applicants submitted to the officer that their children would be stigmatized and discriminated against in Burundi, particularly in school. Their submissions were supported by objective documentary evidence.

[12] However, the officer's only mention of the children was in relation to their academic success in Canada. In my view, the officer was not alert, alive or sensitive to the best interests of the children in his analysis of the impact on the family of their removal to Burundi. He did not address the impact that removal from Canada would have on the children or consider the evidence that was relevant to that issue. This failure requires me to allow this application for judicial review.

IV. Conclusion and Disposition

[13] The officer's failure to consider the best interests of the children requires me to overturn his decision, and order another officer to reconsider the applicants' H&C application. In the circumstances, no question of general importance arises.

**JUDGMENT**

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

1. The application for judicial review is allowed;
2. The matter is referred back to another officer for reconsideration;
3. No questions of general importance are stated;
4. On request of the applicants and the consent of the respondent, the style of cause is amended as to protect the identity of the applicants, to read AB, CD, EF & GH.

“James W. O’Reilly”

---

Judge

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

**DOCKET:** IMM-4595-11

**STYLE OF CAUSE:** AB; CD; EF; GH  
v  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 14, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** March 20, 2012

**APPEARANCES:**

John Norquay

FOR THE APPLICANTS

Jamie Todd

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

HIV & AIDS Legal Clinic  
Toronto, Ontario

FOR THE APPLICANTS

Myles J. Kirvan  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT