

Federal Court



Cour fédérale

**Date: 20121023**

**Docket: IMM-2021-12**

**Citation: 2012 FC 1213**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, October 23, 2012**

**PRESENT: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**BAH, Mariama Djelo**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision dated April 20, 2011, by a pre-removal risk assessment officer (PRRA officer) refusing an in-country application for permanent residence on humanitarian and compassionate grounds.

[2] The applicant, Mariama Djelo Bah, is a citizen of Guinea. She arrived in Canada in 1993 and gave birth to her first daughter here. She went back to Guinea and returned, in 1995 and 1998, to Canada, where she gave birth to two sons.

[3] The applicant returned to Guinea immediately after the births. Accompanied by her children, the applicant joined her spouse in China in 2001.

[4] Her three children born in Canada were enrolled for the school year here starting in September 2006.

[5] The applicant was admitted to Canada as a visitor on December 3, 2006, for a six-month period.

[6] On April 3, 2007, the applicant claimed refugee protection. At the same time, she submitted a request for visa exemption on humanitarian and compassionate grounds on April 17, 2007. The refugee protection claim was rejected by the Refugee Protection Division on April 20, 2009.

[7] The applicant filed a pre-removal risk assessment application (PRRA application) that was received by Citizenship and Immigration Canada on July 13, 2010.

[8] Her PRRA application and visa exemption request on humanitarian and compassionate grounds were refused on April 20, 2011.

\* \* \* \* \*

[9] In his decision refusing permanent resident status on humanitarian and compassionate grounds, the officer stated that he considered the three reasons submitted by the applicant in support of her application, that is, a personalized risk of return in Guinea, the child's best interests and the applicant's establishment in Canada.

[10] Regarding the personalized risk, the officer considered that the applicant alleged the same risk as she submitted as part of her refugee claim and PRRA application: that she fears returning to Guinea because of her sexual orientation and ethnicity. The Refugee Protection Division found that her risk was not credible.

[11] The officer reiterated his analysis carried out in the applicant's PRRA application because no new evidence was submitted. The officer found that the applicant did not discharge her burden of proving that she may face a risk if she were to return to Guinea and that her return to that country would cause unusual, undeserved or disproportionate hardship in the circumstances.

[12] Regarding the best interests of the applicant's Canadian children, the officer stated the following:

[TRANSLATION]

The children have been living in Canada for four (4) and a half years and they demonstrated good adaptability and a good ability to integrate. It is reasonable to think that they established relationships in Canada and that a possible departure would cause them a certain amount of stress. However, I also consider that they spent most of their lives abroad in various countries. Furthermore, they have

several family members in Guinea, including their father, who can provide them with a significant amount of assistance if they were to return. . . .

The claimant did not demonstrate why she would be unable to provide for her children's well being. To the contrary, the information in the record shows that the claimant has properly fulfilled her parental responsibilities.

The information in the record leads me to conclude that the children have adapted well despite their many relocations. It is reasonable to think that their adaptiveness will continue in Guinea. Even though I am sensitive to the children's situation, the claimant has not demonstrated that the children's best interests would be compromised.

[13] With respect to the applicant's degree of establishment, the officer stated that she made an effort to integrate, but that she did not submit information enabling him to find that she would suffer unusual, undeserved or disproportionate hardship by filing her permanent residence application from outside Canada.

\* \* \* \* \*

[14] This application for judicial review raises the following issues:

- a. Did the officer err in his analysis of the children's best interests?
- b. Did the officer err in his analysis of the applicant's degree of establishment?
- c. Does the officer's decision breach procedural fairness?

[15] The standard of review to be applied to a humanitarian and compassionate decision is reasonableness (*Kisana v Canada (The Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360 at paragraph 18 (*Kisana*)).

[16] The standard of review that applies to allegations of a breach of procedural fairness is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 43; *Donoghue v The Minister of National Defense*, 2010 FC 404 at paragraph 27).

\* \* \* \* \*

1. Did the officer err in his analysis of the children's best interests?

[17] It appears from the evidence that the decision-maker in this case was “alert, alive and sensitive” to the interests of the children (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 75).

[18] On that point, the applicant merely submitted school documents and photos, without explanation, of the sports teams her children belong to. Under the circumstances, I am of the opinion that the officer reasonably determined that the evidence that was submitted to him did not demonstrate that the children's best interests would be compromised in the event of a return to Guinea.

[19] It should be pointed out that it is up to the officer to determine what weight to assign to the children's interests in the circumstances (*Lalane v The Minister of Citizenship and Immigration*,

2009 FC 6 at paragraph 47). Furthermore, a child's best interests is but one factor that must be weighed together with all other relevant factors. Invoking it does not guarantee a favourable response to an application on humanitarian and compassionate grounds (*Kisana*, above, at paragraph 24).

2. Did the officer err in his analysis of the applicant's degree of establishment?

[20] The applicant contends that the officer did not weigh the true value of all of the relevant information and evidence concerning her. Thus, regarding her degree of establishment in Canada, the applicant claims that she has become established by making major investments, the estimated cost of which is more than \$890,000.

[21] It was open to the officer to find that the simple fact that the applicant has purchased three buildings in Canada and that she has worked here does not establish undeserved or disproportionate hardship with respect to a filing of an application for permanent residence from outside Canada (see *Jozsefne v The Minister of Public Safety and Emergency Preparedness*, 2008 FC 1411 at paragraph 23 and *Jakhu v The Minister of Citizenship and Immigration*, 2009 FC 159 at paragraph 29). I have no basis for concluding that this is unreasonable.

3. Does the officer's decision breach procedural fairness?

[22] The applicant complains of a lack of procedural fairness because Citizenship and Immigration Canada waited for the Refugee Protection Division decision to render the decision under review.

[23] On this point, the applicant was unable to support her argument with any specific section of the Act or with the case law. The guidelines in chapter 5.14 of Manual IP 5 by Citizenship and Immigration Canada, *Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds*, on which the applicant relies, are of no help to her, especially because she did not submit any evidence of serious harm that may have resulted from the long delay between the two decisions.

\* \* \* \* \*

[24] For all of these reasons, the application for judicial review is dismissed.

[25] I concur with counsel that there is no question for certification arising.

**JUDGMENT**

The application for judicial review of a decision dated April 20, 2011, by a pre-removal risk assessment officer of Citizenship and Immigration Canada, refusing an in-country application for permanent residence on humanitarian and compassionate grounds, is dismissed.

“Yvon Pinard”

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Judge

Certified true translation  
Janine Anderson, Translator



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

**DOCKET:** IMM-2021-12

**STYLE OF CAUSE:** BAH, Mariama Djelo v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 12, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Pinard J.

**DATED:** October 23, 2012

**APPEARANCES:**

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