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Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada

Deputy Minister | Sous-ministre

Ottawa K1A 1L1

F-1143865

PROTECTED B

MEMORANDUM TO THE MINISTER

EXEMPTION BASED ON HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS UNDER SUBSECTION 25(1) OF THE IMMIGRATION AND REFUGEE PROTECTION ACT

s.19(1)

FOR DECISION

SUMMARY

- The purpose of this memorandum is to seek your decision on whether there are sufficient humanitarian and compassionate considerations to exempt from his inadmissibility under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act* (the Act) for his membership in the *Alliance des forces démocratiques pour la libération du Congo-Zaïre;* an organization engaging in or instigating in the subversion by force of any government.
- *Alliance des forces démocratiques pour la liberation du Congo-Zaïre*, a political organization founded by Mr. Laurent-Désiré Kabila, a staunch opponent of the Mobutu Sese Seko's regime.
- Between as a member of the *Alliance des forces démocratiques pour la liberation du Congo-Zaïre*,
- On March 26, 2010, the Immigration Refugee Board decided that the applicant was inadmissible under paragraphs 34(1)(f) of the Act, by virtue of his membership in an organization that has engaged in or instigated subversion by force of a government, in this case the *Alliance des forces démocratiques pour la liberation*.
- On December 14, 2012, submitted an application for permanent residence, requesting an exemption from his inadmissibility on the basis of humanitarian and compassionate considerations.
- The authority to exempt a foreign national from an inadmissibility under paragraph 34(1)(f) of the Act, for applications filed before June 19, 2013, rests with you and is non-delegated.
- We recommend that you indicate your decision (see F-1153195) on whether or not to exempt from his inadmissibility by checking the corresponding box and signing this memorandum as soon as possible.

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BACKGROUND:

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- *Union pour la démocratie et le progrès social*, an organization opposed to the authoritarian regime of Mobutu Sese Seko.
- took part in demonstrations against the detention and assassination of students by the Mobutu government. As a result of his involvement in these demonstrations,
- *Alliance des forces démocratiques pour la liberation du Congo-Zaïre*, a political organization founded by Mr. Laurent-Désiré Kabila, a staunch opponent of the Mobutu regime.
- On May 17, 1997, Mr. Laurent-Désiré Kabila became the third President of Zaire, which was renamed the Democratic Republic of the Congo.
-
- At the start of the Second Congo War in August 1998, rebels from the *Rassemblement congolais pour la démocratie* who were supported by Rwanda and were now opposed to President Kabila's policy attacked and persecuted members of the *Alliance des forces démocratiques pour la liberation*,
- Under the leadership of Mr. Joseph Kabila (the son of Mr. Laurent-Désiré Kabila), the authorities began targeting former *Alliance des forces démocratiques pour la liberation* members.
- to Canada to claim refugee protection. He arrived in Canada on
- were granted protected person status by the Immigration and Refugee Board on . 2010. Shortly after his claim for refugee protection was filed, case was further investigated by the Immigration and Refugee Board for possible inadmissibility.

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- the Immigration and Refugee Board decided that the applicant was inadmissible under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act* (the Act), by virtue of his membership in an organization that has engaged in or instigated subversion by force of a government, in this case the *Alliance des forces démocratiques pour la liberation.* However, they concluded that no evidence had been presented to establish a direct link *Alliance des forces démocratiques pour la liberation* and the perpetration or complicity of crimes against humanity.

Inadmissibility

- *Alliance des forces démocratiques pour la liberation*
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- , the Immigration and Refugee Board determined that there were reasonable grounds to believe that was a member of the *Alliance des forces démocratiques pour la liberation* which had engaged in or instigated subversion by force of Mobutu Sese Seko's government in Congo-Zaire, making him inadmissible for security reasons, as per paragraph 34(1)(f) of the Act.
- In its decision regarding the claimant's inadmissibility, the Immigration and Refugee Board stated the following:

  While there was undoubtedly a groundswell of popular support to remove the repressive Mobutu government through the Alliance des forces démocratiques pour la liberation*, the materials confirm that the objective would be pursued with as much force as was required.*
- The military wing of the *Alliance des forces démocratiques pour la liberation* is responsible for the vast majority of the reprehensible criminal acts that may be attributed to the *Alliance des forces démocratiques pour la liberation*, as a whole.
- However, the political wing of the *Alliance des forces démocratiques pour la liberation du Congo-Zaïre*, of which the claimant was a member, is not an organization with a limited, brutal purpose. In its decision, the Immigration and Refugee Board concluded that it was the military wing that was responsible for the majority of the acts of brutality. As such, the claimant was not necessarily complicit merely by virtue of his membership in the organization, particularly since he was a member of the political wing. The Immigration and Refugee Board also determined that there was no credible evidence to suggest that had any real knowledge of the atrocities committed. The evidence suggests that condemned the crimes when he became aware of them after distancing himself from the *Alliance des forces démocratiques pour la liberation.*

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- The Immigration and Refugee Board panel determined that the claimant was not inadmissible for war crimes or crimes against humanity, through either his direct actions or his complicity.

- In its analysis of the evidence, the Canada Border Services Agency considers that the nature and the severity of the acts committed by as a member of the political wing of the *Alliance des forces démocratiques pour la liberation* are not of a serious degree.

- The Canada Border Services Agency finds that is not a danger to the security of Canada.

- The assessment of the senior decision-maker currently in charge of the file, which is based on the criteria developed by the Supreme Court of Canada in *Ezokola v. Canada (Citizenship and Immigration),* also demonstrates that there are no serious reasons for considering that the claimant voluntarily made a significant and knowing contribution to the organization's crime or criminal purpose.

CURRENT STATUS:

- has been found inadmissible to Canada under paragraphs 34(1)(f) of the Act, by virtue of his membership in an organization that has engaged in or instigated subversion by force of a government. He currently has no legal status in Canada.

- submitted an application for permanent residence, requesting an exemption from his inadmissibility on the basis of humanitarian and compassionate considerations.

Legislative authority

- The legislative provision that applies to this application was amended on June 19, 2013, and individuals inadmissible under sections 34, 35, or 37 of the Act are no longer eligible to request exemptions under humanitarian and compassionate considerations.

- However, due to the transitional provisions, and as application was submitted prior to this amendment coming into force, an exemption may be considered and granted in his case. The applicable legislative provision is found in the former subsection 25(1) of the Act:

  25. *(1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations*.

Authority to exempt from an inadmissibility under sections 34, 35 or 37 of the Act

- The authority to exempt a foreign national from such an inadmissibility rests with you and is non-delegated.

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s.19(1)

Humanitarian and compassionate considerations

- has lived in Canada since with his wife and their children.
- works full-time and supports himself and his family. They are active participants in their community,
- wife and their children were granted refugee status in Canada on
- The refugee protection claims of wife and children were based on the political involvement and opinions of
- Separating from his children would be detrimental to their best interests, particularly in terms of emotional and financial support.
- Numerous members of the community have expressed their support for permanent residency application,
- of the crimes and atrocities committed during the armed conflict in the Democratic Republic of the Congo while he was living in the country are publicly known.
- in Canada is also publicly known. The subject is the

  Additionally, he has participated in several political demonstrations for Congolese human rights causes organized by Congolese people living in Canada.
- As a former member of the *Alliance des forces démocratiques pour la liberation du Congo-Zaïre* and the *l'Union pour la démocratie et le progrès social* and as a human rights defender in Canada, It is reasonable to expect that if he was forced to return to the Democratic Republic of the Congo, he would be perceived as a human rights defender.
- The documentation consulted indicates that human rights defenders face threats to their safety at the hands of state authorities in the Democratic Republic of the Congo, including arbitrary arrest, detention, torture, and death threats.

COMMUNICATIONS IMPLICATIONS

- To date there has been no media coverage of this case. is exempted from his inadmissibility on humanitarian and compassionate grounds, he and his family are unlikely to publicize their situation.

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- If he is not exempted, his case could draw media attention with a focus on the family he would be forced to leave, particularly as he is their primary provider of emotional and financial support.

- A responsive communications approach is recommended. Communications Branch has existing lines on the issues of inadmissibility, and the provision of humanitarian and compassionate exemptions, which would be used to respond to media inquiries.

RECOMMENDATION:

- We recommend that you indicate your decision (see F-1153195) on whether or not to exempt from his inadmissibility by checking the corresponding box and signing this memorandum as soon as possible.

NEXT STEPS:

- Should you approve application for permanent residence and grant an exemption from the inadmissibility under paragraphs 34(1)f) of the Act for this application, his application for permanent residence would be processed and, provided he is not inadmissible for any other reason, he should be granted permanent resident status.

- Should you refuse request for an exemption, the application for permanent residence will be refused. Reasons justifying your decision will be required. could file an application to the Federal Court for leave and judicial review of your negative decision. The Department will work with you in preparation for a potential court challenge.

e-approved by DM Tapley on January 11th, 2021

Caroline Xavier
Associate Deputy Minister

Catrina Tapley
Deputy Minister

Annex: Previous memo to Minister (F-1098179)

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OVERVIEW OF MINISTER DECISION-READY CASES

EXEMPTIONS BASED ON HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS

Overall 14 cases are Minister decision-ready

There are approximately 70 cases in progress within the IRCC processing networks. Of these, only the non-refused cases will be routed to the Minister

Case Management Branch, July 2020

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Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada

Deputy Minister | Sous-ministre

Ottawa K1A 1L1

F-1098179
SECRET

MEMORANDUM TO THE MINISTER

APPLICATIONS FOR PERMANENT RESIDENCE REQUESTING AN EXEMPTION OF SERIOUS INADMISSIBILITIES CITING HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS

FOR INFORMATION

SUMMARY

- The purpose of this memorandum is to inform you that 14 applications for permanent residence where individuals are requesting an exemption from their inadmissibility under sections 34 (security), 35 (human and international rights violations), or 37 (organized criminality) of the *Immigration and Refugee Protection Act* (IRPA) will be routed to you for decision.

- These applications all pre-date a June 2013 legislative change when the *Faster Removal of Foreign Criminals Act* was enacted and amended IRPA. As a result of that change, individuals inadmissible under sections 34, 35, or 37 of IRPA can no longer request an exemption of their serious inadmissibility on humanitarian and compassionate grounds. However, the transitional provisions stipulate that applications for permanent residence on humanitarian and compassionate grounds submitted prior to June 20, 2013 must be processed.

- The authority to approve an exemption of these inadmissibilities is not delegated and rests with you.

- These cases have incurred significant delays for a number of reasons. Some have been to subject of ongoing litigation, others were the subject of administrative delay, and some have required extensive consultation with partner agencies.

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BACKGROUND:

- The applicable legislative provision for applications submitted before June 20, 2013, is found in the former subsection 25(1) of IRPA:

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25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

- This legislative provision was amended on June 19, 2013, and individuals inadmissible under sections 34, 35, or 37 of IRPA are no longer eligible to request exemptions under humanitarian and compassionate considerations. However, the transitional provisions stipulate that an exemption may be considered and granted where applications were submitted prior to this amendment coming into force.

- Immigration Officers have the delegated authority to refuse applications where they are not satisfied, on balance, that sufficient humanitarian and compassionate considerations exist to warrant an exemption of the inadmissibility.

- Immigration Officers do not have the delegated authority to approve these applications. As such, for applications where an officer is satisfied that the humanitarian and compassionate considerations may be sufficiently compelling to warrant an exemption of the inadmissibility, these applications must be routed to you for decision as the delegated authority rests with you.

- The majority of these applications were filed more than 10 years ago. All fees have been paid and the applicants have a legal right to a decision, whether it is positive or negative, as soon as practicably possible. These cases have incurred significant delays for a number of reasons. Some have been the subject of ongoing litigation, others were the subject of administrative delay, and some have required extensive consultation with partner agencies.

- Delay in cases where a positive decision may be warranted, prevents the individuals from regularizing their immigration status. This delay may also impact their ability to obtain a travel document, to send their dependent children, included in the application, to post-secondary institutions, since international fees apply and to access Old Age Security, if they are 65 years or older.

- Your decision to exempt the inadmissibility does not eliminate the inadmissibility. It is a matter of considering all of the factors of the case and deciding if there are compelling humanitarian and compassionate grounds that warrant an exemption from the inadmissibility of the applicant.

- This type of decision is different from the authority to grant the exception of Ministerial Relief, under section 42.1 of IRPA which falls within the authority of the Minister of Public Safety. When relief is granted, the Minister of Public Safety declares that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in Canada with respect to the applicant.

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CURRENT STATUS:

- Case Management Branch has a current inventory of approximately 70 applications for permanent residence requesting an exemption of their inadmissibility on humanitarian and compassionate grounds. Of these, 14 cases are ready to be routed to you for your decision. It is not yet known how many of the remaining cases will require referral to you as these files are still being assessed and Immigration Officers could still refuse them.

- A number of these 14 applications were routed to previous ministers for decision, but no decisions were made prior to the writ dropping.

- Due to the passage of time for most of these applications, updated submissions have been requested on multiple occasions. Without the reasonable prospect of a decision, these applicants will not be contacted to request that they provide further submissions.

- Many applicants have sought to obtain updates on their applications by filing Access to Information requests and making enquiries through their Member of Parliament. It is anticipated that the Department will continue to receive such requests until a decision is rendered on their applications. Responding to such requests are resource intensive for the Department.

LITIGATION IMPLICATIONS:

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COMMUNICATIONS IMPLICATIONS:

- Humanitarian and compassionate consideration cases often receive media attention.

- If made public, the inventory of approximately 70 unresolved cases and perceived inaction of the Department on these cases is likely to generate negative media coverage.

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- Communications Branch has general lines on humanitarian and compassionate consideration cases and would prepare further reactive key messages as needed.

NEXT STEP:

- Fourteen applications, where an exemption may be warranted, will be routed to you for decision in the coming weeks.

e-approved by DMA Xavier on July 20, 2020

Caroline Xavier
Associate Deputy Minister

Catrina Tapley
Deputy Minister

Annex: Overview of Minister Decision-Ready Cases