

Federal Court



Cour fédérale

Date: 20150217

Docket: IMM-4655-13

Citation: 2015 FC 199

Toronto, Ontario, February 17, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

STEPHEN CHUKWUEMEKE MBULU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Immigration Appeal Division dated June 21, 2013, wherein the Applicant's appeal from the refusal of an application for a permanent resident visa for his wife in Nigeria, was dismissed.

[2] The Applicant is a Canadian citizen born in Nigeria. In 2003, he travelled from Canada to Nigeria to seek a wife. He met the woman who was to become his wife through arrangements

made by relatives. He left Nigeria in late 2003 and returned to Canada. He married his wife, through a proxy, in a customary marriage in August 2004, held in a village in Nigeria. A civil marriage was conducted in 2005 in Nigeria at which time both the Applicant and his wife were present. The Applicant returned to Canada. He provided money to his wife and communicated with her by mail and by telephone. The Applicant did not seek to sponsor his wife to come to Canada for three years. He says that it is because his hand was injured and he was unable to work. She says she does not know why he waited so long. On two occasions, one in 2010, the other in 2011, the Applicant returned to Nigeria where he lived and travelled with his wife.

[3] An Immigration Officer rejected the application for a permanent residence visa for the wife raising a number of concerns as to the purpose of the marriage. The Appeal Division expressed concerns as to many inconsistencies and implausibilities in the evidence and stated that the Applicant was not accurate, honest and reliably credible generally. The appeal was dismissed.

[4] Applicant's Counsel argues that the Panel of the Immigration Appeal Division made numerous errors in its findings of fact and conclusions which led it to the Panel's conclusions as to lack of credibility such that those errors cannot be excused or overlooked and that the conclusions must be set aside. I agree.

[5] I will not enumerate all the errors, they are many. They are set out in the Applicant's Memorandum Perhaps an excuse can be that the hearing took place one day in September 2012 and a second day in January 2013, but the decision did not come out until June 2013. It appears

that no transcript of the hearing was prepared until about one year later in 2014. It also appears that part of the hearing took place by telephone to Nigeria and employed an interpreter. Further, inexplicably, the Minister filed no submissions with the Panel. Such submissions would have been very helpful in focusing the issues. I have sympathy with the Panel who probably worked with notes and recollection.

[6] Nonetheless, the errors are so numerous, many of which were acknowledged by Respondent's Counsel, that I cannot let the decision stand. The matter must be reheard by a different Panel.

[7] No party requested a certified question.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The matter is returned for reconsideration by a different panel;
3. No question is certified;
4. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4655-13

STYLE OF CAUSE: STEPHEN CHUKWUEMEKE MBULU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 17, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: FEBRUARY 17, 2015

APPEARANCES:

Micheal Crane

FOR THE APPLICANT

Lorne McCleneghan

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Crane
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Ottawa, Ontario

FOR THE RESPONDENT