

Federal Court



Cour fédérale

**Date: 20160217**

**Docket: IMM-2624-15**

**Citation: 2016 FC 208**

**Ottawa, Ontario, February 17, 2016**

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

**BETWEEN:**

**AYODEJI OLUWOLE ODUNSI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of the decision of an Immigration officer [the Officer] dated June 3, 2015, refusing the Applicant's application for a permanent residence as a Federal Skilled Worker due to the Applicant's failure to establish the source of his available funds.

## II. Background

[2] Ayodeji Oluwole Odunsi [the Applicant] is a citizen of Nigeria who applied for permanent residence in Canada as a member of the Federal Skilled Worker [FSW] class. The Applicant met the eligibility criteria for his intended occupation in Canada, as Inspector in Public and Environmental Health and Occupational Health and Safety (NOC 2263).

[3] In assessing the Applicant's financial eligibility, the Officer noted that the evidence submitted regarding available funds showed a very low account balance with one large deposit in June 2014, at the end of the bank statement. The source of the deposit was not explained.

[4] A procedural fairness letter dated April 28, 2015, was sent to the Applicant requesting that he provide evidence he had sufficient funds to immigrate to Canada. The letter stated "[y]ou cannot borrow this money from another person", and requested that the Applicant send updated bank statements and fixed deposit certificates. It explicitly stated "[i]f you have made large deposits into your accounts or fixed term investments, you must provide evidence of where the funds originated". The letter clearly conveyed that the Applicant had 30 days to submit the additional information, without which the Officer would make the decision based on information already submitted.

[5] In response, the Applicant submitted bank statements, one from a pension account, another from a savings account, and a third showing transaction history for two days (May 11 and 12, 2015) from an account at Guarantee Trust Bank containing the large deposit [the GT

Account]. The Global Case Management System [GCMS] notes indicate the Officer's concern that "[i]t appears PA has borrowed funds in order to satisfy us he meets the requirements of R76(1)b i" and that "there is a possibility PA is withholding some information", as submitting a statement with only two days history was "very unusual". The notes state:

No history was given for the amount in the GT account, and the statement only shows 2 days of history, from 2 weeks after the PFL [procedural fairness letter] was sent. Previously that same account had a very low balance except for the 2,2m naira deposit at the end of the statement.

[6] A refusal letter was issued June 3, 2015.

[7] The refusal letter begins by setting out subsection 16(1) of the Act, which requires that an applicant answer truthfully all questions put to them for the purpose of their application and produce all relevant documentation requested.

[8] The refusal letter describes that the Applicant had been asked in the procedural fairness letter to provide evidence he had available funds to immigrate to Canada. In that letter, the Applicant was informed he could respond to the Officer's concerns regarding the provenance of unexplained funds.

[9] The Officer received the requested proof of funds and determined that the Applicant was not eligible for immigration, as he did not meet the necessary financial requirements for a family of two (\$14,853) as outlined in subsection 76(1)(b) of the *Immigration and Refugee Protection*

*Regulations*, SOR/2002-227 [the Regulations]. This provision requires that the skilled worker without arranged employment must:

- (i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to one half of the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members.

[10] The refusal letter describes that the Applicant's bank statement indicates a large and unexplained deposit in June 2014 by Exclusive Rendez-vous Limited that does not reflect the Applicant or his spouse's regular income. The bank statement submitted in response to the procedural fairness letter only displays transactions over a period of three days, which is insufficient to illustrate whether the Applicant had carried the same balance over a reasonable period of time.

[11] While the Applicant met other eligibility requirements under the FSW category, the Officer was not satisfied he met the requisite financial requirements for immigration. Under subsection 11(1) of the Act, a foreign national must apply to an officer for a visa or other documentation before entering Canada, which will only be issued once the officer is satisfied that the foreign national is not inadmissible and meets the requirements of the Act. The Officer was not satisfied the Applicant met all requirements under the FSW class, and thereby refused the application.

III. Issues

[12] The issues are:

- A. Was there a breach of procedural fairness?
- B. Was the Officer's decision reasonable?

IV. Standard of Review

[13] The parties agree that a visa officer's assessment of an application for permanent residence under the FSW class is a discretionary decision involving questions of mixed fact and law, and that the applicable standard of review is reasonableness, with a high degree of deference (*Kaur v Canada (Citizenship and Immigration)*, 2014 FC 678 at paras 9, 10).

[14] Issues of procedural fairness and natural justice are reviewed on a standard of correctness.

V. Analysis

A. *Was there a breach of procedural fairness?*

[15] The Applicant claims he was not given an opportunity to explain the source of the large deposit or how he obtained it before the Officer refused his application – amounting to a breach of procedural fairness. He claims the Officer should have alerted him of concerns over the provenance of the funds and provided an opportunity to explain. The Applicant states he was

under the impression he only had to provide evidence of the fact he had enough money readily transferable and unencumbered by debts or liabilities.

[16] I find that the Officer complied with the duty of fairness owed in the circumstances. The procedural fairness letter, which the Applicant does not deny he received and to which he responded, conveyed the Officer's concerns with respect to the provenance of the large deposit, and warned it may influence a determination of the Applicant's ability to meet the financial requirements under the Act and Regulations. The letter provided the Applicant with an opportunity to respond, explain from where the funds originated, and provide evidence the funds were transferable and unencumbered by debts – namely, that they belonged to him, but were not as the Officer was concerned, borrowed. Indeed, the Applicant responded to the procedural fairness letter, and there is no merit to his argument procedural fairness was breached in these circumstances.

[17] The Applicant has submitted and relies on evidence that was not before the Officer, including affidavits sworn subsequent to the Officer's refusal explaining the provenance of the large deposit, and a bank statement demonstrating that the deposit has remained in his account for over a year – a period he submits is reasonable.

[18] I agree with the Respondent that such evidence is irrelevant and of no weight with respect to the Court's review of the Officer's decision. The Court does not have a fact-finding role with regards to new evidence going to the merits of the case upon judicial review, and the Officer cannot be faulted for failing to consider evidence not before him. Evidence not before the Officer

relating to the merits of the matter is not admissible in an application for judicial review, except in very limited circumstances, which do not apply in the instant case.

[19] The Applicant bears the burden of establishing entitlement to a visa by producing all relevant information which may assist the application. Visa officers need not engage in a form of dialogue as to the completeness or adequacy of materials filed (*Thandal v Canada (Minister of Citizenship and Immigration)*, 2008 FC 489 at para 9). There is nothing unfair in the Officer deciding the case on the evidence provided by the Applicant, particularly after sending and receiving response to a procedural fairness letter outlining concerns with the application.

B. *Was the Officer's decision reasonable?*

[20] The Applicant argues that the Officer erred in fact and law by determining he did not meet the financial eligibility requirements for a skilled worker under Regulation 76(1)(b). The Applicant asserts he provided the Officer with all relevant evidence, including bank statements detailing the funds and their source, which demonstrate his financial circumstances exceeded the threshold for two people immigrating to Canada. No evidence suggests the Applicant did not meet the financial eligibility criteria. Therefore, the Officer's conclusion that the large deposit was questionable and did not reflect the Applicant or his spouse's regular income, and that accordingly the funds do not belong to him, was unreasonable.

[21] He explains that the funds in the GT Account included a contribution from his wife and funds from an investment portfolio, commenced in 2007, with a company called "Stretchout

Exclusive Rendezvous Limited”. Thus, the Officer’s decision is erroneous because the source of the money was explained in filed affidavits from himself, his spouse, and Mr. Stanley Acho.

[22] Finally, the Applicant argues that the decision and reasons in the letter are not adequate. They do not set out the Officer’s findings of fact and the principal evidence upon which the findings were based.

[23] I do not agree with the Applicant that the Officer’s decision was unreasonable. The Applicant is obligated to submit documents that demonstrate he meets the criteria of a skilled worker; he did not do so, even after having been made aware of the Officer’s concerns and being afforded an opportunity to provide further explanation and documentation.

[24] As above explained, the Officer cannot be faulted for failing to consider evidence that was never before him. The affidavits which purportedly prove the source of the funds were sworn and filed subsequent to the Officer’s refusal. The Applicant was given the opportunity to provide this evidence before the Officer made a determination, which he did not do.

[25] I also agree with Respondent’s counsel that this case is distinguishable in its facts from the decision of Justice Boswell in *Courage Oiseoghae Amujede v The Minister of Citizenship and Immigration*, IMM-1452-15, dated December 2, 2015. The officer’s decision in that case was found to be unintelligible and insufficiently transparent to determine how or why he reached the conclusion he did. That is not the case here.



[26] Moreover, I disagree with the Applicant's submission that the decision and reasons are inadequate. The Officer explained the Regulations upon which the decision was based, the procedural fairness letter, and the fact that evidence of transactions over a period of two days was insufficient in the Officer's opinion to prove the Applicant had carried the balance over a reasonable period of time. The refusal letter explains that the Applicant was given the opportunity to explain the source of the funds, but did not do so. Such reasoning is intelligible, transparent and justified: it communicates the Officer's line of reasoning and the evidence upon which the Officer's conclusion was based.

[27] Visa officers are afforded the task of reviewing applications and determining if the Applicant meets the requirements of the Act and Regulations. For this, they are owed a high level of deference. There is nothing unreasonable about the Officer's concern over the origin of a large, unexplained and uncharacteristic deposit into the Applicant's account. The Officer's decision that the Applicant did not submit convincing evidence explaining the history and source of the funds, and thus that he was not financially eligible as a skilled worker, falls well within the range of acceptable outcomes and reasonable decision-making.

**JUDGMENT**

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

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-2624-15

**STYLE OF CAUSE:** AYODEJI OLUWOLE ODUNSI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 10, 2016

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** FEBRUARY 17, 2016

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