Federal Court  Cour fédérale

Date: 20160427

Docket: IMM-4347-15

Citation: 2016 FC 472

Ottawa, Ontario, April 27, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

OLANREWAJU SOLOMON AKOMOLAFE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RS 1985 c F-7, in respect of a decision made by a visa officer (the Officer) at the Canadian High Commissioner's office in Accra, Ghana, on September 4, 2015, refusing the Applicant a student visa.

II. Background

[2] The Applicant is a citizen of Nigeria. He is married with two children and has unsuccessfully applied for a Canadian study permit three times since February 2015.

[3] The Applicant was 37 years old at the time he made the third request for a student visa with the intention of attending a two year program in global business management at Centennial College in Toronto.

[4] A standard form outlines the Officer's reasons for refusing the application:

> [x] You have not satisfied me that you would leave Canada at the end of your stay. In reaching this decision, I considered several factors, including:
>
> …
>
> [x] purpose of visit
>
> …
>
> [x] Other reasons:
>
> Source of funds is unclear.

[5] The Officer's Global Case Management System (GCMS) notes provide greater detail for the reasons for refusal:

> Sponsor is third party (employer). No evidence of funds provided, only a letter. Short term fixed deposit shown in the amount of 8M Naira (approx. $52K) but source of funds appears to be Molamus [sic] General Enterprises not Bolbod, his employer. Therefore source of funds unclear. Travel to England x 3 for 5-6 months at a time for holiday. Seems odd to go on holiday for that period of time without having to resort to work. PPT pages not provided to

> verify actual entry and exit dates. Based on the info/docs provided – PA has a gap in education for 14 years, explanation for why taking international studies at this juncture in his life is vague (e.g., specific benefits to be accrued for current position not sufficiently articulated) and source of funds for studies is not clear. I am not satisfied that intent is genuine and that PA is not primarily seeking to gain access to Canada.

[6] The Applicant argues that the Officer's decision regarding the source of funding is based on findings of fact unsupported by evidence, that the Officer's inferences are unreasonable and that the Officer ignored or failed to consider relevant evidence. The Applicant also contends that the Officer's reasons are inadequate since they do not explain how the Officer reached the conclusion that the Applicant's intent is not genuine nor how the Officer came to the finding that the Applicant is primarily seeking to gain access to Canada.

[7] The Applicant further argues that the Officer breached the duty of procedural fairness by failing to ask the Applicant to respond to the Officer's concerns regarding his trips to England.

III. Issue and Standard of Review

[8] The issue to be determined in this case is whether the Officer committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*.

[9] When reviewing an officer's factual assessment of an applicant's application for a student visa and belief that an applicant will not leave Canada at the end of his or her stay, the standard of review is reasonableness (*Li v Canada (Citizenship and Immigration)*, 2008 FC 1284, at para 14, 337 FTR 100 [*Li*]; *Bondoc v Canada (Citizenship and Immigration)*, 2008 FC 842, at para 6;

Obot v Canada (Citizenship and Immigration), 2012 FC 208, at para 12). The reasonableness standard also applies in the assessment of the adequacy of reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, at para 14, [2011] 3 SCR 708 [*Newfoundland and Labrador Nurses' Union*].

[10] Questions of procedural fairness are assessed on the correctness standard (*Li,* at para 17).

IV. Analysis

[11] Paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulation,* SOR/2002-227 (the Regulations), requires a study permit applicant to establish that he or she "will leave Canada by the end of the period authorized for their stay." Thus, it is quite clear that the applicant bears the burden of satisfying the visa officer that he or she will not remain in Canada once their visa has expired (*Zhang v Canada (Minister of Citizenship and Immigration*), 2003 FC 1493, at para 7, 244 FTR 299 [*Zhang*]; *Zuo v Canada (Citizenship and Immigration),* 2007 FC 88, at para 12 [*Zuo*]).

[12] Therefore, when considering the study permit application, the visa officer must determine whether the applicant is likely to return to his or her country of origin after their studies (*Zhang*, at para 8; *Zheng v Canada (Minister of Citizenship & Immigration*) (2001), FCJ No 110, at para 16, 103 ACWS (3d) 163; *Guo v Canada (Minister of Citizenship & Immigration*), 2001 FCT 1353, at para 11, 110 ACWS (3d) 724). This Court has taken the view that "[t]he visa officer has wide discretion in assessing the evidence and coming to a decision. However, the decision must be based on reasonable findings of fact" (*Zhang*, at para 7).

[13] Contrary to the Applicant's submissions, the Officer in this case did not ignore or misconstrue evidence that the Applicant is able to personally finance his studies. Further to a review of the record, I find that it was reasonably open for the Officer to find that the source of the Applicant's funds is unclear. A letter from the Applicant's employer indicates that it will financially support the Applicant's family and studies while the Applicant pursues the 2 year program. However, the letter is written in vague terms and does not indicate how much money it will contribute to the Applicant's studies or to his family- if at all. Moreover, a letter drafted by Applicant's counsel, which was submitted to the Officer along with the Applicant's application, states that the Applicant has amassed enough savings to fund his studies and that Molarms General Enterprises Ltd (Molarms) is one of the factors contributing to his savings as it generates a minimum of $300,000.00 Naira on a monthly basis. The letter, along with the affidavit of the Applicant's wife, indicates that the wife is involved in a cake making, pastry and decoration business that generates a monthly income of $70,000.00 Naira. During the hearing, counsel for the Applicant clarified that the income generated from the Applicant's wife's business is not part of the funds allocated to fund the Applicant's studies.

[14] In support of the Applicant's submissions to the effect that he has enough savings to fund his studies, the Applicant notably provided the Officer with a letter confirming that the Applicant has $8,000,000.00 Naira registered in a fixed deposit account maturing on August 14, 2015, personal bank account statements, a receipt in the amount of $700,000.00 Naira representing payment of two years rent, a bank statement for Molarms, a letter indicating that the Applicant has a pension fund in Nigeria, and a letter from a surveyor valuating a bungalow at a market value of $7,400 180.00 Naira.

[15] A closer examination of the documents provided to the Officer reveals the following:

(1) The statement of account for Molarms does not provide any indication that the company generates revenue;

(2) Other than deposits made from the Applicant's employer, the Applicant has made some cash deposits into his personal bank account. The source of these funds remains unclear as the Applicant provided no explanation or documents to support the source of the cash;

(3) The Applicant did not submit evidence supporting the allegations that his wife's business generates $70,000.00 Naira per month;

(4) There is no indication that the receipt for payment of rent was made out to the Applicant in connection with the bungalow he purportedly owns. The Applicant provided no evidence demonstrating that he owns a bungalow or that it is rented out on a regular basis. Moreover, the bank statements submitted to the Officer do not show any deposits made in relation to the rental of the property; and,

(5) The Applicant provided no evidence of contributions made to his pension fund or that the funds would be available to him during his studies in Canada.

[16] The evidence provided by the Applicant clearly leaves open the question as to whether the source of the funds is the Applicant's employer or the Applicant's personal savings. Moreover, the source of funds emanating from the Applicant's personal and corporate accounts remains unclear. The Court reminds that a student visa applicant bears the burden of providing a visa officer with all of the relevant information to satisfy the officer that he or she meets the statutory requirements of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the Act), and the Regulations (*Zuo*, at para 11). The present case is distinguishable from *Thiruguanasambandamurthy v Canada (Citizenship and Immigration)*, 2012 FC 1518, cited by

the Applicant, since in this case, there is ample evidence on the record supporting the Officer's finding regarding the ambiguity surrounding the source of the funds in question.

[17] It was also reasonably open for the Officer to question the Applicant's holidays to England. While the Applicant argues that there was no evidence before the Officer to the effect that the Applicant had travelled to England for the period of time stated by the Officer, a review of the record shows the opposite. The Applicant's affidavit indicates that he travelled to England on three occasions: November 12, 2008 to November 28, 2008, September 16, 2012 to September 23, 2012 and October 6, 2013 to November 7, 2013. The longest trip allegedly lasting approximately one month. However, these dates do not correspond with the dates disclosed by the Applicant in the schedule of his application for a study visa, which are October 2008 to April 2009, May 2012 to November 2012 and July 2013 to January 2014. The Respondent pointed out during the hearing that the Officer's concerns speak to the Applicant's credibility regarding his ability to gain revenue as the Officer's GCMS notes reveal the Officer's concerns regarding the Applicant's ability to support his family while vacationing for six months at a time without resorting to work. I agree.

[18] On a related note, I am of the view that, contrary to the Applicant's submissions, this is not a case where the applicant has a right to respond to the officer's concerns. This case is distinguishable from *Li*, relied on by the Applicant. In *Li*, the Court found that the officer had a duty to give the Applicant an opportunity to respond to his concerns since there was nothing in the Applicant's application, other than a reference to the higher salary in Canada, to suggest the Applicant intended to stay in Canada permanently (*Li*, at paras 37-38). In my view, in the case at

bar, the Applicant's travel history was not a major concern for the Officer, who denied the Applicant's application based on the ambiguity of the source of funds and on the lack of genuine intention.

[19] In my view, the Officer's reasons are adequate and the finding that the Applicant lacked a genuine intention to study in Canada is reasonable. As indicated in *Newfoundland and Labrador Nurses' Union*, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14). While a gap in education may not be a criteria under the Act, in my view, the gap is a relevant consideration for assessing the genuineness of the Applicant's intention to study in Canada.

[20] The Applicant explained in his "affidavit on purpose of visit" that he intends to studying at Centennial College to develop his "analytical, organizational and management skills" and that "studying in Canada will also help me to develop the skill needed to deal with ever-changing Business World." He also explained in his affidavit to "show ties to the home country" that his intention is to "achieve a long standing dream to studying abroad to gain international relationship and position myself to harness the numerous available potentials in Nigeria as related to my profession."

[21] These reasons are indeed vague and it was entirely open to the Officer to make a finding to that effect. The Applicant is a mature 37 year old adult who appears to be well-established at his place of work as a head business analyst and personal assistant to the Managing Director. He plans on returning to the same position following his studies with the view of eventually

establishing a consultancy firm to advise companies on business development. I would presume that the Applicant already possesses the requisite analytical, organization and management skills to carry out his functions in his current position. It was therefore entirely open for the Officer to find that the Applicant did not sufficiently articulate the specific benefits to be accrued for his current position, thereby putting into question the genuineness of the Applicant's intention.

[22] While the Applicant's own affidavit evidence is to the effect that he will leave Canada following the completion of his studies to return to his family and his activities as a member of his parish, the role of the Court is not to reweigh the evidence on record and substitute its own conclusions to those of visa officers (*Babu v Canada (Citizenship and Immigration)*, 2013 FC 690, at paras 20-21). As stated by Justice Zinn in *Babu*, "one cannot point to isolated facts or factors which favoured the applicant to argue that the officer's assessment was unreasonable; rather, the officer's determination under paragraph 216(1)(b) of the Regulations must be examined in light of the whole record" (at para 20). Moreover, as indicated above, visa officers have a wide discretion when rendering decisions pursuant to paragraph 216(1)(b) of the Regulations. So long as the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, the decision will not be overturned (*Dunsmuir*, at para 47). Ultimately, I am of the view that the Officer's decision falls within such a range.

[23] Therefore, the application for judicial review is dismissed. No question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed;

2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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