

Federal Court



Cour fédérale

Date: 20161020

Docket: IMM-1005-16

Citation: 2016 FC 1164

Ottawa, Ontario, October 20, 2016

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

PATRICK AZIEGBE EGHEOMA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the February 1, 2016 decision of an Officer at Citizenship and Immigration, High Commission of Canada, Visa Section, in Ghana, denying Mr. Egheoma's application for a study permit.

[2] Mr. Egheoma is a citizen of Nigeria and applied in December 2015 for a temporary student permit to attend Bow Valley College, in Calgary, Alberta, after he was accepted into a two-year diploma program for “Justice Studies”.

[3] In his study permit application, Mr. Egheoma disclosed that he had obtained a “Higher National Diploma” from Federal Polytechnic Oko in 2002.

[4] The application was denied, as the Officer concluded that Mr. Egheoma did not provide a compelling reason for wanting to relocate to Canada to study at the same academic level as he had completed in Nigeria. Mr. Egheoma alleges this decision was unreasonable and unfair. I agree. For the reasons that follow, this judicial review application is granted.

I. Preliminary Issue

[5] As a preliminary issue, the Respondent objects to some evidence which Mr. Egheoma sought to introduce which was not before the decision maker. In particular, the Respondent objects to paragraphs 5, 6, 9, 10, and 11, and Exhibit B to Mr. Egheoma’s affidavit.

[6] As this evidence was not before the decision maker, I agree that this evidence should not be considered on this judicial review.

II. Issue

[7] This issue of procedural fairness is dispositive of this application. The parties agree that allegations of procedural unfairness are reviewed on the standard of correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43.

III. Analysis

[8] Mr. Egheoma argues that the Officer's key concern was a question of credibility. Accordingly, it is argued that this concern ought to have been brought to his attention in order to allow him an opportunity to respond (see: *Li v Canada (Citizenship and Immigration)*, 2008 FC 1284 at para 35, *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 [*Hassani*]; *Gu v Canada (Citizenship and Immigration)*, 2010 FC 522; *Hernandez Bonilla v Canada (Minister of Citizenship and Immigration)*, 2007 FC 20).

[9] The GCMS notes dated February 1, 2016 the same day as the decision, disclose the following reasons for the decision:

Applicant has not provided compelling reason for study in Canada. Unclear why applicant would incur cost of relocating to Canada in order to undertake course of study at same academic level to that completed in country of residence. Concerns applicant is using study permit as a means to facilitate entry to Canada rather than educational advancement. Based on available information, I am not satisfied that Canada will leave Canada end of authorized stay [*sic*].

[10] An earlier entry on January 20, 2016, by a different visa Officer, provides further information:

Declared no to all statutory questions, except 4 a/b 21st June 1995 – 1st of April 2009: served in Nigeria. – Married Nigerian male to attend Bow Valley College, Justice Studies Diploma, LOA verified, 360 hours of community-based non-paid work experience included. \$7,720 tuition paid. States Higher National Diploma at Federal Polytechnic OKO in Nigeria 2001/01-2002/12 – States Security Advisor at Neconda Energy limited in Warri, Nigeria since 2012/12. August payslip NGN 1,170,357 mth. (C 8,616). – Spouse/children in Nigeria not accompany. Limited European/US travel, US visa until 2017/09/09. – Join BS NGN 6,990,372 (C 51,465) and NGN 99,282 (C 731) 2015/12.

[11] The duty of fairness owed to applicants by visa Officers was summarized in *Hassani* at para 24:

Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa Officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa Officer's concern.

[12] Here, the Officer's concern was rooted in the credibility of the Applicant rather than the sufficiency of the evidence submitted. While leaving Canada at the end of the period of stay is a requirement of the legislation, this is a forward-looking requirement whereas at the permit application stage, satisfying a visa Officer of this requirement turns on an applicant's credibility and motivations for seeking the permit.

[13] The Officer's decision therefore rested on a negative credibility finding. Since the Officer assumed the Applicant had a similar educational credential in Nigeria, the Officer did not believe that the Applicant would leave Canada at the end of his authorized stay.

[14] This concern should have been raised with the Applicant and he should have had an opportunity to provide further information about this prior diploma and why he was seeking another one in Canada.

[15] Mr. Egheoma's procedural fairness rights in the application process were not respected. This judicial review is therefore allowed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this judicial review application is allowed and the application shall be reconsidered by another Officer. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1005-16

STYLE OF CAUSE: PATRICK AZIEGBE EGHEOMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: AUGUST 17, 2016

JUDGMENT AND REASONS: MCDONALD J.

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