

Federal Court



Cour fédérale

Date: 20170207

Docket: IMM-2542-16

Citation: 2017 FC 137

Ottawa, Ontario, February 7, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

OLUBUSAYO EBENEZER ILESANMI

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an Immigration Officer (“Officer”), dated May 24, 2016, refusing the Applicant’s application for permanent residence, made pursuant to the Federal Skilled Worker program, as the Applicant failed to meet the financial requirements of s 76(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“IRP Regulations”).

[2] For the reasons that follow, this application for judicial review is dismissed.

Background

[3] The Applicant is a citizen of Nigeria. He applied for permanent residence under the Federal Skilled Worker program on or about November 2014. On August 6, 2015, the Applicant received a procedural fairness letter notifying him that, upon assessment of his application for permanent residency, it was determined that he may not meet the criteria for immigration to Canada under the skilled worker category by virtue of the fact that he did not meet the financial requirements necessary for a family of two (\$14,853) as required by the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) and the IRP Regulations. The Applicant was given 30 days to submit additional information. The Applicant became aware of this letter after the required 30 day deadline but was given an extension of time to respond. The Applicant presented additional information on October 14, 2015, however, his application was denied on May 24, 2016. This is a review of that decision.

Decision Under Review

[4] The Officer stated that the Applicant was ineligible by virtue of the fact that he did not meet the financial requirements for a family of two persons as outlined in s 76(1)(b) of the IRP Regulations, which were noted in the decision.

[5] Based on the information and documentation provided as part of the Applicant’s initial submission and in response to the procedural fairness letter, the Officer was not satisfied that the

funds presented were available for the purpose of settling in Canada. As the Applicant did not meet the requirements of s 11(1) of the IRPA, his application was refused.

[6] In response to a request made pursuant to Rule 15 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the Global Case Management System notes (“GCMS Notes”) were provided. These form a part of the reasons (*De Hoedt Daniel v Canada (Citizenship and Immigration)*, 2012 FC 1391 at para 51; *Afridi v Canada (Citizenship and Immigration)*, 2014 FC 193 at para 20; *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 3 (“*Muthui*”). The relevant entries are as follows:

May 24, 2016:

...PA initially provided bank statement with FirstBank from Apr 2014 to Oct 2014; low overall balances. Statement opened at Naira 360K and large unexplained deposit on last day of Naira 1.5M; closed at N2M. Source of the large deposit at end of statement unclear and not consistent with overall banking history. PFL was sent and response received. PA provided same FirstBank statement starting in July 2015. It was noted that the large deposit of funds made on 22Oct14 [*sic*] no longer in statement; opened at less than Naira 2K (approx. 13\$). Low overall funds again with two large deposits on last day totalling N2.5M to close at 2.5M Naira (02Oct15). PA stated that fund is from income (which is paid cash), commission earned and personal savings. Unclear why deposits are always done on last day before statement printed: unclear where deposit made in previously submitted statement went. PA earns 1.9M/yr as per letter of employment with undisclosed bonuses. Deposits do not appear consistent with income. Spouse also provided bank statement – limited funds overall. Based on the info/docs provided, not satisfied that the funds presented are available for the purpose of settling in Canada. Not satisfied that PA has sufficient funds for requirement of SW1 class. Application is therefore refused.

...

October 15, 2015:

In response to PFL re funds, Pa has submitted the same First Bank account statement from July 2015 onwards. The opening balance is 1,900 naira and the closing balance is 2.5m naira after 2 deposits at the end of the statement totalling 2.5m naira. No sign of the money which was deposited at the end of the initial bank statement received and no indication of where the 2.5m naira originated. Another account with salary deposits has a total of 175,000 naira only. Saved as e-doc.

Issues and Standard of Review

[7] In my view, this application raises two issues. The first issue is whether the Officer breached the duty of procedural fairness. The second issue is whether the Officer's decision is reasonable.

[8] Whether a visa officer erred by failing to bring his or her concerns to the attention of an applicant and offering the applicant an opportunity to address them is a question of procedural fairness which is reviewable on the correctness standard (*Muthui* at para 12; *Ramezanpour v Canada (Citizenship and Immigration)*, 2016 FC 751 at para 15).

[9] The standard of review that applies to an officer's assessment of an application for permanent residence under the Federal Skilled Worker program, including the officer's assessment of the evidence submitted in support of that application, is reasonableness (*Roberts v Canada (Citizenship and Immigration)*, 2009 FC 518 at para 15; *Bazaid v Canada (Citizenship and Immigration)*, 2013 FC 17 at para 36; *Khowaja v Canada (Citizenship and Immigration)*, 2013 FC 823 at para 7; *Muthui* at para 10). An officer's assessment in that regard is entitled to a high degree of deference (*Pathirannahelage v Canada (Citizenship and Immigration)*, 2015 FC 811 at para 25 ("*Pathirannahelage*").

Did the Officer breach the duty of procedural fairness?

Applicant's Position

[10] The Applicant asserts that the Officer based his or her final finding of financial ineligibility on doubt as to the existence of funds but did not state categorically that the funds did not exist. The Officer erred by failing to seek clarification from the Applicant. The Applicant acknowledges that jurisprudence confirms that an applicant bears the burden of putting before an officer all material necessary for a favorable decision and that an officer is under no obligation to seek clarification or additional information. However, the Applicant submits that this general rule is somewhat qualified (*Olorunshola v Canada (Citizenship and Immigration)*, 2007 FC 1056 at para 30; *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 22; *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Huyen v Canada (Minister of Citizenship and Immigration)*, [2001] FCT 904 (FCTD) at paras 2 and 5; *Kojouri v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1389 at paras 18 and 19; *Salman v Canada (Citizenship and Immigration)*, 2007 FC 877 at paras 12-18), and that in this case the Officer was under a positive duty to make further inquiries to seek clarification of his or her concerns, including the scheduling of an interview for that purpose.

[11] The Applicant submits that in support of his application, he provided a letter from his Chief Executive Officer confirming how his company pays workers' salaries. He also presented a sworn affidavit in support of his claim to ownership of the funds. The Applicant's main point is that the Officer's failure to make further inquiries in these circumstances is a breach of procedural fairness and raises a reviewable error.

Respondent's Position

[12] The Respondent submits that the Applicant had the burden of establishing that the requirements of the legislation had been met regarding the availability of funds. These requirements are publicly accessible and the Applicant was sent a procedural fairness letter about the Officer's concerns to which the Applicant responded. The Officer was not required to give the Applicant a further opportunity to respond to the Officer's concerns about deficient documentary evidence and there was no breach of procedural fairness in this regard (*Muthui* at para 52).

[13] The jurisprudence concerning the duty of procedural fairness owed in circumstances such as these was set out by Justice Gascon in *Pathirannahelage*:

28 I agree that the duty of procedural fairness includes the duty to properly inform an applicant of the case against him or her and to give the applicant an opportunity to respond and to know about the visa officer's concerns. It requires that an applicant be provided with a meaningful opportunity to present the various types of evidence relevant to his or her case and to have it fully considered (*Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.), at para 28). However, in the context of a visa application, this duty of fairness does not require a visa officer to inform an applicant of concerns arising directly from the requirements of the legislation or regulations and to give the applicant an opportunity to disabuse himself or herself of those concerns (*Prasad v. Canada (Minister of Citizenship & Immigration)*, [1996] F.C.J. No. 453 (Fed. T.D.), at para 7, (1996), 34 Imm. L.R. (2d) 91 (Fed. T.D.)).

29 The jurisprudence in this Court has developed to specify that this duty of procedural fairness applies to concerns about credibility, veracity or authenticity of the documents rather than to the sufficiency of the evidence. **There is no obligation on a visa officer to provide an applicant with an opportunity to address concerns of the officer when the supporting documents are incomplete, unclear or insufficient to satisfy the officer that the**

applicant meets all the requirements that stem from the Regulations (*Hamza v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 (F.C.) at paras 24-25 [*Hamza*]; *Gharialia* at paras 16-17; *Sharma* at para 8; *Veryamani v. Canada (Minister of Citizenship & Immigration)*, 2010 FC 1268 (F.C.) at paras 34-36 [*Veryamani*]).

30 The onus thus remained on Ms. Pathirannahelage to demonstrate that she met the requirements of the Regulations by providing sufficient evidence in support of her application (*Hamza* at para 22; *Uddin* at para 38). Furthermore, as I have already noted, the duty of procedural fairness owed by a visa officer is at the low end of the spectrum (*Hamza* at para 23).

[emphasis added]

(Also see *Rezvani v Canada (Citizenship and Immigration)*, 2015 FC 951 at paras 19-20).

[14] In this matter, having conducted an assessment of the Applicant's submissions made with his application for permanent residence, the Officer had concerns about whether the Applicant met the financial requirements of the IRP Regulations. The Officer therefore sent the Applicant a procedural fairness letter which gave the Applicant an opportunity to submit additional information. The letter stated that the Applicant must show that he had enough money to support himself and his family after arrival in Canada, that the money cannot be borrowed from another person, that he must be able to use this money to pay for the cost of living of his family, and significantly, that "[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 also asked for the Applicant's bank statements where his salary is deposited and gave the Applicant 30 days from the date of the letter to submit this information.

[15] As is seen from the GCMS Notes, the Applicant had provided bank statements for the period April 14 to October 2014 which had overall low balances. There was also an unexplained deposit of Naira 1.5M on the last day of the statement period, which amount was also inconsistent with the Applicant's overall banking history. In response to the procedural fairness letter, the Applicant provided the same bank statement but starting in July 2015 and ending on October 2, 2015. The funds from the prior large unexplained deposit were no longer in the account. It had an opening balance of Naira 2K (approximately \$13) and two large deposits were made on the last day of that statement, in the amounts of Naira 1.5M and 1.0M creating a closing balance of Naira 2.5M. The Officer noted the Applicant's submission, with his response to the procedural fairness letter, that the balance was a combination of his income, which he stated was paid in cash, commissions earned and personal savings. The Officer stated that it remained unclear why the large deposits were made on the last day before the statement was printed and what had happened to the previous large deposit. Further, that the Applicant's letter of employment stated that he earned Naira 1.9M annually, with undisclosed bonuses, and that the deposits in question did not appear to be consistent with his declared income. The Officer was not satisfied that the funds presented were available for the purpose of settling in Canada.

[16] In a factually similar matter, *Odunsi v Canada (Citizenship and Immigration)*, 2016 FC 208 ("*Odunsi*"), Justice Manson found that no breach of procedural fairness arose where the applicant was given a procedural fairness letter but failed to explain the source of a large deposit on his bank statement:

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.

...

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] In my view, there was similarly no breach of procedural fairness in this matter. The Applicant was given an opportunity to respond to the Officer’s concerns, which he did. The

Officer acknowledged both the content of his submissions and his employer's letter. What was at issue was whether his evidence, including his response, was sufficient to satisfy the Officer that the Applicant was able to meet the specified financial requirements of the IRP Regulations, no issue of credibility or the authenticity of his documents arose. Accordingly, nothing further was required of the Officer in these circumstances.

Was the Officer's decision reasonable?

Applicant's Position

[18] The Applicant submits that the Officer's contention that the Applicant does not have settlement funds for a family of two is speculative and without regard to the evidence properly before him or her. In particular, the Applicant disclosed an employment letter confirming his employment and his salary and, his spouse's statement of account showing Naira 175,115.31. The Applicant submits that the Officer made no reference to the employment letter nor did the Officer consider accumulated wages and the Applicant's past efforts at increasing his income by contributing to his mother's CocaCola trading business.

Respondent's Position

[19] The Respondent submits that the Officer's decision is reasonable. Pursuant to s 76(1)(b) of the IRP Regulations, the Applicant was required to not only have a certain amount of income at the time of his application, but also to establish that those funds were transferable and available and unencumbered by debts or other obligations. The Officer's reasons are cogent and, based on the information and documents provided, the Officer was not satisfied that the funds

presented in the bank statements were available for the purpose of settling in Canada or that the Applicant had sufficient funds as required by the legislation for the skilled worker class. It was open to the Officer to reach the conclusion that the Applicant had not met the legislative requirements (*Muthui* at para 52).

[20] The onus was on the Applicant to explain in his response to the procedural fairness letter what happened to the large deposit of October 2014, given that he was being asked to prove that he had the funds required by the legislation and the large deposit was no longer in his account, however, he failed to do so. The Applicant also demonstrated no error in the Officer's findings regarding the large unexplained deposits, the inconsistency of the deposits with the Applicant's income, the limited funds of his spouse or the Applicant's possession of the funds as required by the legislation. And, contrary to the Applicant's arguments, the Officer specifically mentioned the Applicant's employment letter, noting that "PA earns 1.9M/yr as per letter of employment, with undisclosed bonuses. Deposits do not appear consistent with income". Nor is there anything unreasonable about an officer's concern over the origin of a large, unexplained and uncharacteristic deposit into an applicant's account (*Odunsi* at para 27).

Analysis

[21] In my view, the Officer's decision was reasonable. I agree with the Respondent that the Officer considered all of the evidence and reached a reasonable conclusion based on that evidence. The Applicant's arguments amount only to a disagreement with the decision.

[22] The Officer's reasons demonstrate that he or she did consider all of the evidence that was presented in response to the procedural fairness letter in reaching his or her decision. In that regard the Applicant provided the Officer with statements from his FirstBank savings account, statements from his wife's account, an affidavit, and a letter from his employer. In the GCMS Notes, the Officer explicitly references and considers all of this evidence.

[23] Further, as described above, the Officer explained how this evidence led to his or her conclusion that the Applicant had not satisfied the requirements of the IRPA and the IRP Regulations. In particular, it is evident that the Officer was concerned with the large unexplained deposit at the end of the period covered by the April 2014 bank statement provided in the original application which he or she found inconsistent with the Applicant's overall banking history. Further, that the July 2015 bank statement provided in response to the procedural fairness letter indicated that the large deposit of funds in the first statement was no longer in the account. As well, that the account also contained two large deposits at the end of the July 2015 statement period, totaling Naira 2.5M. In response to the procedural fairness letter, the Applicant did not explain either the source of the initial large deposit or what happened to it. And, as noted by the Officer, the Applicant stated that his current balance was a combination of his income, commissions earned and personal savings. While he also stated that it was not borrowed funds, I would note that this was the total extent of the relevant information provided. The Officer pointed out that in both statements the large deposits were made on the last day of the statement, which was not explained. And, given the Applicant's income of Naira 1.9M per year, as set out in the letter from his employer, that the large deposits did not appear to be consistent with his income. The Officer's finding that, based on the information that had been

provided, he or she was not satisfied that the funds presented were available for the purpose of settling in Canada, was entirely reasonable.

[24] As to the Applicant's submission that the Officer failed to consider the Applicant's evidence that he makes contributions to his mother's Coca-Cola trading business, this information was not in the record before the Officer. Rather, it appears that the Applicant's explanation is found in his affidavit made in support of his application for judicial review. Evidence not before an officer is not admissible on judicial review, except for very limited circumstances which have no application in this matter. Accordingly, it is afforded no weight (*Odunsi* at para 18; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

[25] The Officer's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. Accordingly, this Court will not interfere and the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There shall be no order as to costs.
3. No question of general importance for certification was proposed or arises.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2542-16

STYLE OF CAUSE: OLUBUSAYO EBENEZER ILESANMI v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 30, 2017

JUDGMENT AND REASONS: STRICKLAND J.

DATED: FEBRUARY 7, 2017

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