

Federal Court



Cour fédérale

**Date: 20170302**

**Docket: IMM-2781-16**

**Citation: 2017 FC 255**

**Ottawa, Ontario, March 2, 2017**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**TOMIWA AKINBILE**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Tomiwa Akinbile seeks judicial review of the decision of a visa officer at the Canadian High Commission in Accra, Nigeria, refusing his application for permanent residence as a federal skilled worker, and declaring him inadmissible to Canada for five years due to misrepresentation.

[2] Mr. Akinbile asserts that the visa officer erred in misconstruing and ignoring evidence, and in not providing adequate reasons for the decision. According to Mr. Akinbile, the visa

officer also breached the duty of procedural fairness owed to him by failing to alert him to the officer's concern that another individual had provided an identical letter of employment from the GTBank. The officer also failed to advise Mr. Akinbile of the concern that he may not have performed the duties of a credit supervisor.

[3] For the reasons that follow, I have concluded that the visa officer did not err as alleged. Consequently, the application for judicial review will be dismissed.

### **I. Background**

[4] In October of 2014, Mr. Akinbile applied for permanent residence in Canada as a skilled worker under the Federal Skilled Worker program. He applied under the National Occupation Code NOC 1212, which refers to "Supervisors, finance and insurance office workers". In support of his application, Mr. Akinbile provided a letter dated October 9, 2014 from his employer, GTBank that confirmed his employment as a "Credit Supervisor" with the Bank.

[5] Mr. Akinbile was subsequently informed by Citizenship and Immigration Canada (CIC) that his application had received a positive determination of eligibility to be processed based on his work experience in an occupation specified by the Minister. His application was subsequently referred to a visa office in Accra, Ghana for review.

[6] Mr. Akinbile provided copies of two other letters from the Bank with his application. One was his letter of employment dated February 13, 2009, confirming his employment with the Bank as an "Executive Trainee". The other, dated June 1, 2012, notified Mr. Akinbile that he had been promoted to the position of "Assistant Banking Officer".

[7] The visa officer wrote to the GTBank on July 28, 2015, seeking confirmation of the genuineness of the October 9, 2014 employment letter. The GTBank responded that same day stating “[p]lease note that the letters were not signed in line with the Bank’s mandate and as such we are unable to confirm same”.

[8] The visa officer’s Global Case Management System (GCMS) notes indicate that the officer’s concern with respect to the authenticity of Mr. Akinbile’s October 9, 2014 employment letter was heightened when the officer observed that a second visa applicant (KA) had provided an identical GTBank introduction letter, also dated October 9, 2014, in support of his own federal skilled worker application. Mr. Akinbile and KA had also written identical emails to the visa officer on August 4, 2015, advising that they were aware that the officer had sent their employment letters to the Bank for verification. The officer observed that although Mr. Akinbile and KA were supposedly working in different branches of the Bank, they had nevertheless used the same email address and PO Box mailing address.

[9] Consequently, the visa officer sent Mr. Akinbile a procedural fairness letter dated March 15, 2016 which stated, in part, that the officer “ha[s] concerns that the employment letter from GT bank which you have provided in support of your application is fraudulent”. The letter further advised Mr. Akinbile of the consequences of misrepresentation by a foreign national, and provided him with 30 days to respond to the officer’s concerns.

[10] Mr. Akinbile responded to the procedural fairness letter, explaining that his October 9, 2014 employment letter had not been signed in accordance with the Bank’s procedure, as the Human Resources department of the Bank would not provide employment letters for Bank staff in the form required by CIC.

[11] Mr. Akinbile also provided the officer with additional documentation, including a letter signed by the Deputy General Manager and the Executive Director of GTBank dated March 16, 2016. This letter indicates that “Tomiwa Akinbile is an Assistant Banking Officer in our bank and has been in our employment since March 2009”. Mr. Akinbile stated that while his title was that of “Assistant Banking Officer”, his duties were those of a “Credit Supervisor”.

[12] Mr. Akinbile also provided additional documentation in response to the procedural fairness letter, including certificates for courses taken by him, some of which related to credit issues, and a sworn “Affidavit of Sincerity” in which he attested to the authenticity of his employment letter. Mr. Akinbile also provided an “Attestation of Job Function” in which a Nigerian lawyer described Mr. Akinbile’s job duties, although there is no explanation in the document as to how the lawyer came to know what Mr. Akinbile’s job duties were.

[13] After reviewing the additional documents provided by Mr. Akinbile, the visa officer was satisfied that he was indeed employed by the GTBank. However, none of the documents from the GTBank (other than the irregular October 9, 2014 letter) stated that Mr. Akinbile had ever been employed as a Credit Supervisor with the Bank. As a consequence, the officer was not satisfied that he had ever performed a substantial number of the main duties of that position.

[14] As Mr. Akinbile had failed to respond in a satisfactory manner to the officer’s concerns regarding his employment history, his visa application was refused. The officer was further satisfied that Mr. Akinbile had misrepresented a material fact relating to a relevant matter that could have induced an error in the administration of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, contrary to paragraph 40(1)(a) of the Act. Consequently Mr. Akinbile was determined to be inadmissible to Canada for a period of five years.

## **II. Did the Visa Officer Misconstrue or Ignore Evidence?**

[15] Mr. Akinbile's first argument is that the visa officer misconstrued or ignored evidence indicating that he had indeed performed a substantial number of the main duties of a Credit Supervisor. There is no merit to this submission.

[16] The jurisprudence has determined that the standard of review of an officer's assessment of evidence in support of an application for permanent residence under the FSW program is that of reasonableness: *Bazaid v. Canada (Citizenship and Immigration)*, 2013 FC 17, 425 F.T.R. 38; *Taleb v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 384 at paras. 19-20, 407 F.T.R. 185.

[17] In this case, the visa officer was clearly aware of the evidence that Mr. Akinbile had provided in response to the fairness letter. Indeed, the officer noted that while the original employment letter provided by Mr. Akinbile indicated that he was employed as a "Credit Supervisor", this letter conflicted with the letters Mr. Akinbile had provided in response to the fairness letter, which stated that he had been employed by the Bank as an "Executive Trainee" and as an "Assistant Banking Officer", but not as a "Credit Supervisor". The officer further noted that Mr. Akinbile had not provided any supporting documents indicating that he had been employed by the Bank as a Credit Supervisor.

[18] At the end of the day, what Mr. Akinbile takes issue with is the weight that the visa officer ascribed to his explanation for the discrepancy in his job description relative to the weight that was ascribed to the documents emanating from the GTBank. This does not provide a basis for judicial review.

**III. Did the Officer Provide Adequate Reasons for the Decision to Refuse the Visa Application?**

[19] Mr. Akinbile submits that the visa officer's decision letter indicates that the officer was not satisfied with his response to the fairness letter. He says that it is unclear, however, from this officer's decision why the officer was not satisfied by the documents submitted with his response to the fairness letter. According to Mr. Akinbile, the inadequacy of the officer's reasons raises a question of procedural fairness, and should be determined on the standard of correctness.

[20] The Supreme Court has affirmed that the adequacy of reasons is no longer a "stand-alone" ground for judicial review: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708. Where reasons have been provided for a decision, the question for the reviewing Court is whether the reasons are transparent and intelligible. This is determined on the standard of reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.

[21] The reasons of a visa officer include the officer's GCMS notes. These notes clearly explain how the officer's decision was reached. The officer explains that verification was sought with respect to Mr. Akinbile's October 9, 2014 employment letter after concerns arose as to the letter's authenticity. After the Bank indicated that Mr. Akinbile did not hold the position that he had indicated, namely that of "Credit Supervisor", he was provided with this information, and was given an opportunity to respond. Mr. Akinbile's response did not address the officer's concerns in a satisfactory manner. This was a finding one that was reasonably open to the officer on the record before him.

**IV. Was There a Breach of Procedural Fairness in this Case?**

[22] Mr. Akinbile’s final argument is that he was treated unfairly in this case, as he was never made aware of the officer’s concern that he had provided contradictory information regarding the nature of his position with the GTBank. Nor was Mr. Akinbile made aware that the officer was concerned that an identical reference letter had been provided by KA in support of his own visa application, and that while Mr. Akinbile and KA were supposed to be working in different branches of the Bank, they had nevertheless provided the same email and postal addresses for their applications.

[23] The level of procedural fairness owed to visa applicants is at the lower end of the spectrum, as there is no legal right to permanent residence: *Tahereh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 90 at para 12 , [2008] F.C.J. No. 133; *Chiau v. Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 FC 297 at para. 41, [2000] F.C.J. No. 2043, (F.C.A.).

[24] This Court has, moreover, repeatedly affirmed that visa officers have no obligation to notify applicants of inadequacies in their applications, or in material provided in support of applications: *Hamza v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at para 24, 429 F.T.R. 93. What the duty of fairness does require is that officers provide applicants with the opportunity to respond to concerns related to the “credibility, accuracy or genuine nature” of information submitted: *Obeta v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542 at paras. 20-26, 424 F.T.R. 191.

[25] The officer’s concern in this case was that the October 9, 2014 letter provided by in support of Mr. Akinbile’s claim to have worked as a Credit Supervisor at the GTBank was

fraudulent. The fairness letter sent to Mr. Akinbile advised him of that concern, and he was given a full and fair opportunity to respond to it. In my view, the duty of fairness owed to Mr. Akinbile was satisfied in this case. I would also note that this Court came to the same conclusion in KA's case, on similar facts: 2017 FC 103, at paras. 23-26.

[26] This leaves Mr. Akinbile's claim that the officer had a duty to tell him of the concerns arising out of the similarities between his application and that of KA. On this point, I would simply note that while the similarity in the letters provided by Mr. Akinbile and KA may have compounded the officer's concern as to the authenticity of Mr. Akinbile's October 9, 2014 employment letter, the officer had already sought to verify the letter with the Bank before the similarity in the two letters was observed.

[27] It will also be recalled that Mr. Akinbile and KA wrote identical emails to the visa officer on August 4, 2015, advising the officer that they were aware of the fact that the officer had sent their employment letters to the Bank for verification. It is clear from this that Mr. Akinbile was aware that the same visa officer was dealing with the two applications, and that the officer had concerns with respect to the authenticity of the employment letters provided by the two individuals. In these circumstances, there has been no breach of procedural fairness.

## **V. Conclusion**

[28] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case is fact-specific, and does not raise a question for certification.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Anne L. Mactavish"

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Judge

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

**DOCKET:** IMM-2781-16

**STYLE OF CAUSE:** TOMIWA AKINBILE v THE MINISTER OF  
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CANADA

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