Federal Court  Cour fédérale

Date: 20180129

Docket: IMM-2177-17

Citation: 2018 FC 90

Ottawa, Ontario, January 29, 2018

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

OLUDEWA DEBORAH EMESIOBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Rendered from the Bench at Ottawa, Ontario, on January 25, 2018)

I. Overview

[1] The Federal Court of Appeal in *Wong (Litigation guardian) v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1049 (QL) at para 13 [*Wong*], held that a visa officer must examine "the totality of the circumstances" and that includes "the long term goal of the applicant" (*Wong*, above, at para 13). Before determining that an applicant is not a genuine

student due to the fact that a program of study does not accord with the professional and educational background of an individual, an Officer should consider the evidence in its entirety, as well as in depth, in order to address in reasons an applicant's intentions and motivations to study in Canada in an area of desired study.

[2] The Officer must reach a reasonable decision and a reasonable decision must not be speculative. The jurisprudence does not allow for speculation; an acceptable decision must be reasonable.

> [12] It may be that the Officer was aware of underlying issues in the application. However, the only explanation regarding the reason for refusal – that the Applicant would not leave Canada at the end of his authorized stay because of his "educational and employment history" – is entirely unhelpful since the Officer does not state what it is about either [her] education or employment that is actually problematic.
>
> (*Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 [*Ogbuchi*].)

II. Nature of the Matter

[3] This is an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] of a decision dated May 10, 2017, by a visa officer [Officer] at the High Commission of Canada in Accra, Ghana, refusing the Applicant's study permit application.

III. Facts

[4] The Applicant, aged 41, is a citizen of Nigeria.

[5] She is married to her husband since 2004 and is the mother of four children. The family currently resides in Nigeria.

[6] The Applicant applied for a study permit on September 16, 2016. The application was refused by a visa officer on December 9, 2016, due to the officer's conclusion that the information provided by the Applicant in her study plan/statement of purpose was insufficient.

[7] On February 3, 2017, the Applicant submitted a second study permit application. The Applicant was accepted in a full-time Post-Graduate program in Human Resources Management, along with a Co-op (internship) program at Conestoga College in Kitchener, Ontario, from May 8, 2017 to December 16, 2017. The Applicant has a Law Degree from Nigeria and works at Sweetcrude Limited, as a contract analyst for the company's oil and gas industry labour contract since May 2014.

IV. Decision

[8] On May 10, 2017, the Officer refused the Applicant's study permit application because it was determined that the application does not meet the requirements of the IRPA and its Regulations. Under subsection 11(1) of the IRPA, the Officer was not satisfied that the Applicant would leave Canada at the end of her authorized stay because of the purpose of her visit.

[9] In the Global Case Management System [GCMS] notes accompanying the refusal letter, the Officer provided the following reasons for the decision:

> Previous refusal noted. After careful review of the application and supporting documents provided, program of study in Canada does not appear to be consistent with previous education and employment history. Applicant has not provided compelling reason for study in Canada. Unclear why applicant would incur cost of study in country of residence. Concerns applicant is using study permit as means to facilitate entry to Canada rather than educational advancement. Based on the evidence provided I am not satisfied app is a genuine student who intends to complete course of study in Canada and would depart at end of authorized stay. Refused.

V. Issues

[10] The matter raises the following issues:

1. Did the visa officer err in refusing to grant the Applicant a study visa?
2. Did the Officer breach the duty of fairness by failing to offer the Applicant an opportunity to respond to the concerns raised?

[11] The Court finds that "[t]he officer's decision is discretionary and his findings as to the seriousness of the applicant's study plans and his intention to leave Canada after his studies are questions of fact" (*Mered v Canada (Citizenship and Immigration)*, 2006 FC 454 at para 12). The applicable standard of review on findings of fact reached by a visa officer in order to issue a study permit is that of reasonableness (*Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 19 [*Dhillon*]; *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 9).

[12] As a matter of procedural fairness, the issue regarding whether the Applicant was denied an opportunity to respond will be reviewed under the standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

VI. Relevant Provisions

[13] The following provisions of the IRPA and of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] are relevant to the Officer's determination:

Subsection 11(1) of the IRPA:

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

Paragraph 216(1)(b):

Issuance of Study Permits	**Délivrance du permis d'études**
Study permits	**Permis d'études**
216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign	**216** (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants

national	sont établis :
…	[…]
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

VII. Submissions of the Parties

A. *Submissions of the Applicant*

[14] According to the Applicant, the Officer's decision is unreasonable in respect of the guidelines and the IRPA. It is submitted that the Officer ignored evidence, as noted in the GCMS notes, by concluding that the Applicant is not a *bona fide* student. The Officer did not provide any reason to explain why he was not convinced that the Applicant would leave Canada at the end of her authorized stay and this application for judicial review should therefore be allowed (*Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 34 [*Patel*]). "What we do not know from [the Officer's] reasons is why [she] came to that conclusion" (*Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at para 20). The Applicant argues that there was evidence before the Officer, among others, showing that she has previously been to Canada on vacation without staying beyond the authorized period of stay. She has also demonstrated strong ties to her country of residence (i.e. husband and four minor children in Nigeria). Since the Officer failed to take this factor into consideration, the decision should be quashed (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 18 [*Zhang*]; *Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 at para 31 [*Zuo*]).

[15] In order to assess the *bona fide* of a student, the policy manual "OP 12 Students" [OP 12], section 5.15, provided by Citizenship and Immigration Canada indicates:

> *Bona fides* of all students must be assessed on an individual basis; […] If officers wish to take into account outside information, particularly where that information leads to concerns/doubts about the applicant's bona fides, the applicant must be made aware of the information taken into account and given an opportunity to address those concerns. […] The onus, as always, remains on the applicant to establish that they are a bona fide temporary resident who will leave Canada following the completion of their studies pursuant to section R216(1)(b). […] In assessing an application, an officer should consider:
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> • the length of time that they will be spending in Canada;
>
> • the means of support;
>
> • obligations and ties in home country;
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> • the likelihood of leaving Canada should an application for permanent residence be refused;
>
> • compliance with requirements of the Act and Regulations.
>
> [Emphasis added.]

[16] The Applicant also argues that the Officer failed to provide any explanations as to why he found the Applicant's intended program of study in Canada to be inconsistent with his previous education and employment history (*Ogbuchi*, above, at para 12). It is submitted in the evidence that the Applicant was employed as a contract analyst at Sweetcrude Limited in Nigeria. There was also a letter from her employer explaining that the Applicant would be more valuable to the company upon the completion of her study program in Canada. The Applicant also stated in her statement of purpose that she works in collaboration with the Human Resources team and is motivated to pursue an alternative career to become a certified human resources consultant in Nigeria.

> My experience working closely with the HR team within the last 2 years motivated my keen interest in Human Resource Management as an alternative career path. In Nigeria and globally, strategic and human resource management is one of the key indices in measuring organizational performance, growth and sustainability of most successful businesses. The need for well trained and qualified HR professionals is on the increase in Nigeria and the pay scale is very impressive. This has further strengthened my resolve to strengthen to enhance my educational qualification and upgrade my professional skill for this in-demand field.
>
> (Certified Tribunal Record [CTR], Applicant's statement of purpose dated January 23, 2017, p 13.)

[17] The Applicant further argues that it is not unusual for a person to seek career in a new profession or field due to the constant change of economic climate of the world. It is therefore unreasonable for the Officer to conclude that the Applicant is not a genuine student based on the fact that she wishes to gain knowledge in a new field or profession for which she has a passion and motivation. "[T]he visa officer is entitled, even at the moment of the first application for such visa, to examine the totality of the circumstances, including the long term goal of the applicant" (*Wong*, above, at para 13). The Officer ignored the Applicant's study plan, her overall educational goals, the reasons for her choice of the program and how her choice would improve her professional/employment opportunities.

[18] Finally, the Applicant argues that she was denied natural justice because she was not given an opportunity to address the Officer's concerns, as outlined in the OP 12 Guideline. The Officer never informed the Applicant about his concerns regarding i.e. the link between her employment in Nigeria and her intended course of study in Canada (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 25).

B. *Submissions of the Respondent*

[19] The Respondent, on the other hand, argues that the Officer's decision is reasonable. It is submitted that in *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 [*Solopova*], the Court upheld that it was reasonable for the visa officer to find the intended course of study "did not accord" with the applicant's previous academic history (*Solopova*, above, at para 25).

[20] The Respondent argues that this Court has also upheld that it was reasonable for the visa officer to raise concerns about the applicant's change of career path (*Noor v Canada (Citizenship and Immigration)*, 2017 FC 442 at paras 9-10). The onus is on the applicant who applies for a study permit to convince the visa officer that he or she will leave Canada at the end of the authorized stay (*Patel*, above, at para 12). Despite the Applicant's explanations in her statement of purpose, it was reasonable for the Officer to conclude that the Applicant's intended course of study is inconsistent with her previous education and employment history.

[21] Finally, the Respondent argues that there was no obligation on the Officer to inform the Applicant of his concerns before rendering a decision (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52 [*Singh*]). Officers are presumed to have considered all the evidence and are not required to refer to each of them in their reasons (*Solopova*, above, at para 28). According to the Respondent, "the evidence provided did not satisfy the fundamental duty to prove that the applicant would leave the country at the end of his authorized stay" (*De La Cruz Garcia v Canada (Citizenship and Immigration)*, 2016 FC 784 at para 12 [*De La Cruz Garcia*]).

C. *Reply*

[22] The Applicant argues that the Respondent's arguments merely echo the decision of the Officer and its reasons stated in the GCMS notes.

[23] According to the Applicant, the Respondent's reliance on *Solopova* and *De La Cruz Garcia*, above, is misplaced.

[24] Unlike what the Respondent argues, the Applicant states that the documentation in support of her application was clear and straightforward; therefore, it was never the Applicant's intention to provide an alternative explanation for the evidence in order to interpret it differently.

VIII. Analysis

[25] For the following reasons, the application for judicial review is granted.

A. *Did the visa officer err in refusing to grant the Applicant a student visa?*

[26] Based on the evidence submitted by the Applicant, the Court finds that the Officer erred in one singular aspect which was crucial to the decision and which made it unreasonable upon refusal in granting the Applicant a student visa for the following reason:

> The Officer failed to explain how the Applicant's program of study in Canada is inconsistent with her previous education and employment history;

[27] The onus is on the Applicant to establish, on the balance of probabilities, that she will leave Canada at the end of the authorized stay (*Dhillon*, above, at para 41). "Although the burden rests with the applicant, the Officer's determination that the applicant was not a genuine visitor must be based on some evidence, otherwise it will be patently unreasonable" (*Zuo*, above, at para 12). In the case at bar, the Applicant has done her best to discharge this duty by providing evidence, as well as reasons, to the Officer as to why she would go back to her country of residence in Nigeria (*Zhang*, above, at para 22). More specifically, the Applicant submitted evidence that (i) she is married, has four minor children in Nigeria; (ii) she works for an employer who expects her to return at the end of her studies; (iii) she is financially stable to fund her education with the help of her husband and brother-in-law; (iv) she also has obligations to her home country because she and her husband own tracts of lands (property) in Nigeria.

[28] The Court concludes that the Officer's decision lacked justification. In fact, the Applicant submitted her statement of purpose in which she clearly explains why she chose to study in Canada in the Human Resources Management program at Conestoga College, based on her education and employment history:

> I work in collaboration with the Human Resources team structuring and evaluating contracts relating to recruitment, remuneration, compensation, training and development of indigenous service providers. […] My undergraduate degree has equipped me with good interpersonal relationship, analytical and organizational skills and I believe it is an excellent spring board to propel me in my new chosen career. [Emphasis added.]
>
> […] My decision to pursue a Post Graduate Certificate in Human Resources Management in Canada is because the educational system is excellent and ranks among the best in the world. Undergoing this program in Canada will also fast-track my acquiring a formal educational qualification in Human Resource Management within a year, unlike many schools in Nigeria where

> the program takes a longer duration to complete mostly due to prevalent strike actions in the educational sector.
>
> (CTR, Applicant's statement of purpose dated January 23, 2017, p 13.)

[29] This evidence contradicts the Officer's finding stating that the "program of study in Canada does not appear to be consistent with previous education and employment history" and that the "Applicant has not provided compelling reason for study in Canada".

[30] The Federal Court of Appeal in *Wong*, above, held that a visa officer must examine "the totality of the circumstances" and that includes "the long term goal of the applicant" (*Wong*, above, at para 13). Before determining that an applicant is not a genuine student due to the fact that a program of study does not accord with the professional and educational background of an individual, an Officer should consider the evidence in its entirety, as well as in depth, in order to address in reasons an applicant's intentions and motivations to study in Canada in an area of desired study.

[31] The Officer must reach a reasonable decision and a reasonable decision must not be speculative. The jurisprudence does not allow for speculation; an acceptable decision must be reasonable.

> [12] It may be that the Officer was aware of underlying issues in the application. However, the only explanation regarding the reason for refusal – that the Applicant would not leave Canada at the end of his authorized stay because of his "educational and employment history" – is entirely unhelpful since the Officer does not state what it is about either [her] education or employment that is actually problematic.
>
> (*Ogbuchi*, above.)

B. *Did the Officer breach the duty of fairness by failing to offer the Applicant an opportunity to respond to the concerns raised?*

[32] Finally, the Court agrees with the Respondent that there was no obligation on the Officer to inform the Applicant of his concerns before rendering a decision (*Singh*, above, at para 52). There was no breach of procedural fairness from the Officer; however, the decision lacked justification, transparency and intelligibility within the decision-making process (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[33] In *Fakharian v Canada (Citizenship and Immigration)*, 2009 FC 440 at para 13, the Court also found the officer's decision to be unreasonable for the reasons stated below:

> Mr. Fakharian had explained that even though he had already obtained a university degree in his field, "hands-on", applied training was available at Canadian colleges that differed from the academic studies that he had pursued in Iran. Mr. Fakharian's employer also explained the company's need for foreign-trained professionals to assist with the proposed expansion of the company. While we know that the officer did not find this explanation to be compelling, we do not know why, and the decision therefore lacks the justification, transparency and intelligibility required of a reasonable decision in this regard.

[34] In *Ogbuchi*, above, the Court granted the application for judicial review and concluded the following:

> [12] It may be that the Officer was aware of underlying issues in the application. However, the only explanation regarding the reason for refusal – that the Applicant would not leave Canada at the end of his authorized stay because of his "educational and employment history" – is entirely unhelpful since the Officer does not state what it is about either his education or employment that is actually problematic.

> [13] In other words, the Officer may have had perfectly justifiable reasons for basing a refusal on any of the grounds, but needed to state, with a modicum of clarity, what they were. A visa officer's reasons need not be perfect but they must "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 16). Where, as in this case, the reasons are so inadequate as to render the decision itself unjustified and unintelligible, and the conclusion thus falls, as a result, outside of the range of acceptable outcomes, then the decision should be reviewed and sent back for reconsideration.

[35] Given the Officer's reasons, the Court cannot conclude that the decision rendered "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

IX. Conclusion

[36] The application for judicial review is granted.

JUDGMENT in IMM-2177-17

THIS COURT'S JUDGMENT is that the application for judicial review be granted and the matter be returned to another officer for decision anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Florence Thomas	FOR THE APPLICANT
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Florence Thomas Law Firm Waterloo, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT