

Federal Court



Cour fédérale

Date: 20180125

Docket: IMM-3248-17

Citation: 2018 FC 75

Ottawa, Ontario, January 25, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

PASCAL UGOCHUKWU MADUEKWE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW AND BACKGROUND

[1] There is a single issue under review in this application. It is the same issue as that which was posed for certification by Mr. Justice Fothergill in *Bousaleh v Canada (Citizenship and Immigration)*, 2017 FC 716, 281 ACWS (3d) 376 [*Bousaleh*] under s 117(1)(h):

Does determination of a person's eligibility to sponsor a relative under s 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 require consideration of whether an application to sponsor a person enumerated in s 117(1)(h) has a reasonable prospect of success?

[2] The facts are similar to those in *Bousaleh*. Mr. Maduekwe applied to sponsor his nephew in Nigeria for a permanent resident visa under paragraph 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Mr. Maduekwe's mother is alive but, in his opinion, she is medically inadmissible to Canada.

[3] An officer in the Case Processing Centre in Mississauga determined on August 25, 2016 that Mr. Maduekwe was ineligible to sponsor his nephew because his mother was still living. Mr. Maduekwe had indicated that he wished to have his application processed regardless of his eligibility. It was therefore sent to the visa post in Accra, Ghana so that humanitarian and compassionate factors could be considered.

[4] By letters dated November 15 and 16, 2016 to the nephew and Mr. Maduekwe, respectively, each were advised that the application for a permanent resident visa was refused. The nephew was advised he was not a member of the family class since Mr. Maduekwe's mother was alive. Similarly, Mr. Maduekwe was told he was not eligible to sponsor his nephew because his mother was alive.

[5] There is no issue of Mr. Maduekwe's financial eligibility to be a sponsor, as was present in *Sendwa v Canada (Citizenship and Immigration)*, 2016 FC 216, 39 Imm LR (4th) 328 [Sendwa].

[6] The day after the refusal letter was received Mr. Maduekwe filed an appeal with the IAD.

[7] Mr. Maduekwe stated in his written submissions to the IAD that he did not try to sponsor his mother because she would be refused based on medical inadmissibility. He said that she could not travel from her home town in order to go to a city where there are designated panel

physicians for a Canadian immigration medical examination. Mr. Maduekwe tendered instead a letter from his mother's local doctor and photographs showing she needed physical support in 2008. He also submitted that his mother's health would cause excessive demand on social services in Canada. He calculated that she would need 8 hours per day of home care and personal support while he was at work which would cost \$41,600.

[8] The Minister argued that while Mr. Maduekwe could have sponsored his mother, he chose not to because of his own analysis of her condition. No documentary evidence was submitted to substantiate the position put forward by Mr. Maduekwe in his affidavit that his mother was unable to travel and medically inadmissible nor was she examined by a panel physician and a conclusion reached as to medical admissibility by an immigration officer. Had his mother been found to be medically inadmissible, Mr. Maduekwe would have been able to seek humanitarian and compassionate relief as part of an appeal of any such decision.

II. ANALYSIS

[9] Mr. Maduekwe is self-represented. Although he had spoken with an officer of the Court about the hearing date, he did not attend in person prior to the hearing's conclusion at 10:04 am (the matter had also been stood down from 9:30am to 9:50am to see if Mr. Maduekwe would arrive) nor did he seek an adjournment prior to the hearing. The hearing was conducted in his absence but relying upon the written materials he had filed with his application. No new issues were raised at the hearing. I am satisfied the written materials put forward by Mr. Maduekwe sufficiently outlined his position and his absence at the hearing did not affect the determination of this application.

[10] The standard of review in this matter is reasonableness; the IAD interpreted its own statute and the standard of review has been determined in previous jurisprudence: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 53-54, [2008] 1 SCR 190 [*Dunsmuir*]; *Bousaleh* at para 16; *Sendwa* at para 13.

[11] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir* at para 47. If the reasons 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, the *Dunsmuir* criteria are met. For that purpose the Court may, when necessary, examine the record to assess the reasonableness of the decision: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15 and 16, [2011] 3 SCR 708.

[12] Was it unreasonable for the IAD to conclude that Mr. Maduekwe's mother could be sponsored because she was alive? As stated in the certified question posed in *Bousaleh*, did the IAD's determination that Mr. Maduekwe could sponsor his mother, a person enumerated in s 117(1)(h) which thereby rendered him unable to sponsor another relative under s 117(1)(h), require a consideration by the IAD of whether the application to sponsor the enumerated person had a reasonable prospect of success?

[13] At this moment the weight of the jurisprudence in this Court supports the IAD decision in this case that to sponsor another relative under s 117(1)(h) there must be no possibility of otherwise sponsoring one of the relatives enumerated under that paragraph: *Jordano v Canada*

(*Citizenship and Immigration*), 2013 FC 1143 at paras 4, 9, 442 FTR 221; *Sendwa* at paras 3, 18-19; and *Bousaleh* at paras 27-28.

[14] Given this existing jurisprudence it was reasonable for the IAD to find that as Mr. Maduekwe was eligible to sponsor his alive mother he was not permitted to sponsor his nephew under s 117(1)(h).

[15] In the event, however, the Federal Court of Appeal was to determine in *Bousaleh* that the IAD is required to consider whether a sponsorship by Mr. Maduekwe of his mother has a reasonable prospect of success the IAD's decision in the present case would still be reasonable.

[16] The only evidence provided by Mr. Maduekwe as to his mother's inadmissibility, and her inability to travel for examination by a panel physician, is his own statements, the photographs of his mother, and a letter from her doctor that simply states:

I write to confirm that Mrs Geraldine Maduekwe is our patient.
Mrs Maduekwe has hypertension and a past history of
cerebrovascular accident (CVA).

Mrs Maduekwe's stamina and movement were affected, therefore,
she requires assistance in her daily living.

[17] Under the current jurisprudence the IAD was reasonable in concluding that this evidence was insufficient proof that the Applicant's sponsorship of his mother would fail. Should the Federal Court of Appeal answer the certified question in *Bousaleh* in the affirmative, the IAD's finding of insufficient evidence would likewise remain reasonable on the facts of this case. It is within the range of possible acceptable outcomes, and therefore reasonable, for the IAD to find the photographs and the statements of Mr. Maduekwe and his mother's doctor, alone, are

insufficient proof that the Applicant's sponsorship of his mother had no reasonable prospect of success.

[18] For the foregoing reasons, the application is dismissed.

[19] There is no question for certification on these facts nor was one suggested.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

“E. Susan Elliott”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3248-17

STYLE OF CAUSE: PASCAL UGOCHUKWU MADUEKWE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: JANUARY 15, 2018

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JANUARY 25, 2018

APPEARANCES:

No one appearing

FOR THE APPLICANT
(ON HIS OWN BEHALF)

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FOR THE RESPONDENT

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