

Federal Court



Cour fédérale

Date: 20190107

Docket: IMM-1459-18

Citation: 2019 FC 10

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 7, 2019

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

N'GORAN GASTON YAO

Respondent

JUDGMENT AND REASONS

[1] The respondent, N'Goran Gaston Yao, is seeking to sponsor the permanent residence application of Konan Emile F.A. Stéphane Yao (Stéphane) as a member of the family class. The immigration officer at the Canadian Embassy in Senegal (the Officer) rejected Stéphane's application. The Officer did not believe that the respondent was Stéphane's biological father due to a lack of evidence and the respondent's refusal to submit to a DNA test in order to establish

his paternity. On appeal, the Immigration Appeal Division (IAD) set aside the Officer's decision and determined that Stéphane is eligible for permanent residence in the family class, as the respondent's dependent child, under section 2 and paragraph 117(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The Minister is seeking judicial review of the IAD's decision.

[2] In this case, the IRPR requires Stéphane to be the respondent's biological child. The Officer's doubts in this regard were based on the following facts:

- i. The age difference between the respondent and Stéphane is less than 14 years (the respondent was born on November 3, 1976, and Stéphane was born on April 12, 1990);
- ii. Stéphane's birth certificate was only issued in 1996, six years after his birth;
- iii. The limited documentary evidence to support the declaration of parentage establishing the relationship between the respondent and Stéphane (apart from his birth certificate, Stéphane and the respondent relied on Stéphane's passport, a certificate of school attendance, a certificate of child maintenance for Stéphane, proof of a number of cash transfers from the respondent to his spouse during the period that Stéphane lived with her, and two judicial records concerning the late issuance of the birth certificate); and
- iv. Some photographs submitted in support of the sponsorship application appear to have been altered.

[3] With respect to the age difference between the respondent and Stéphane, and the delay in obtaining the birth certificate, the respondent provided the following explanation. In the summer of 1989 (when the respondent was 12 years old), he had sexual relations with a girl in his village who was a few years older than he was, and the girl became pregnant. The girl identified the

respondent as the father of the child (Stéphane), and the respondent's parents took responsibility for raising him. The respondent's parents were angry with the respondent because of this situation and therefore did not obtain a birth certificate for Stéphane during the prescribed period. The birth certificate was only obtained later, when he started school. The arrangement involving the respondent's parents continued until 1998, when the respondent found a job and moved in with his current spouse, thus placing him in a position to assume responsibility for supporting Stéphane.

[4] The Officer was not convinced that the evidence was sufficient to establish the parent-child relationship between the respondent and Stéphane. In the absence of other documentary evidence, the Officer indicated that the results of a DNA analysis would be acceptable to establish the parent-child relationship.

[5] After the respondent refused to submit to a DNA analysis (for cultural reasons), following a number of requests for him to do so, the Officer rejected his sponsorship application.

[6] The respondent appealed the Officer's decision to the IAD. The IAD concluded that the Officer had erred in requiring the results of a DNA analysis and in rejecting the sponsorship application. In the IAD's opinion, the documentary evidence submitted to the Officer and the respondent's explanations were sufficient to establish that Stéphane was the respondent's biological child, and the Officer should not have required a DNA test. The IAD did not see any reason why the respondent would have recognized Stéphane as his son in 1996 if Stéphane was not his child. The IAD also noted that the respondent had named Stéphane as one of his children

in his application for residence in 2007, and that the testimony of the respondent's current wife was credible.

[7] With respect to the photographs submitted to the Officer, the IAD agreed that they appeared to have been altered. However, the IAD concluded that this fact was not relevant because even authentic photographs would not have been sufficient to establish a biological relationship.

[8] The parties agree, and I concur, that a decision rendered by the IAD is reviewed on the standard of reasonableness: *Canada (Public Safety and Emergency Preparedness) v Martinez-Brito*, 2012 FC 438 at para 16. In this same paragraph, the Court stated the following:

This standard requires this Court to determine whether the IAD's conclusion falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47) and as long as this outcome fits comfortably with the principles of justification, transparency, and intelligibility, it is not open to this Court to substitute its own view for a more preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339).

[9] Since the IAD acknowledged that the photographs submitted to the Officer appear to have been altered, it would follow that the respondent's credibility was called into question. The IAD did not address this issue. However, the IAD relied on the explanations provided by the respondent to conclude that he is Stéphane's biological father. In the impugned decision, I cannot find any reason why the IAD would have accepted the respondent's explanations as being credible when it had recognized that some of the documents that he had submitted lacked credibility. This holds true even if the photographs in question were not required as evidence. The issue here is not really the sufficiency of the evidence, but rather the credibility of this evidence.

[10] It is possible that the IAD had acceptable reasons to accept the respondent's explanations as being credible, despite the altered photographs, but the IAD's failure to communicate these reasons in its decision demonstrates a lack of justification, transparency, and intelligibility. I therefore conclude that the IAD's decision was not reasonable.

[11] The parties agree that there is no serious question of general importance to certify.

JUDGMENT in docket IMM-1459-18

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The impugned decision of the Immigration Appeal Division is set aside.
3. The matter is referred back to the Immigration Appeal Division for redetermination by another officer.
4. No serious question of general importance is certified.

“George R. Locke”

Judge

Certified true translation
This 11th day of January, 2019.

Michael Palles, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1459-18
STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v N'GORAN GASTON YAO
PLACE OF HEARING: MONTRÉAL, QUEBEC
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