

Federal Court



Cour fédérale

Date: 20200114

Docket: IMM-4106-18

Citation: 2020 FC 51

Ottawa, Ontario, January 14, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OLAYIDE OLOTUAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Nigeria, seeks judicial review of the decision of a visa officer (the “Officer”) from the Canadian High Commission in Accra, Ghana, rejecting her application for permanent residence under the Manitoba provincial nominee program (“PNP”).

[2] The Applicant submitted her application for permanent residence under the PNP on the basis of her work experience from 2013 to 2015 as a poultry inspector. The Officer convened an interview to determine whether the Applicant would meet the work experience requirements for the PNP. At the interview, the Officer informed the Applicant of the purpose for the interview and asked a series of questions about the duties of a poultry inspector. The Applicant was unable to answer the questions. After the Officer expressed a concern that the Applicant may have misrepresented her experience, the Applicant became upset, and the Officer called security to escort the Applicant out of the interview area. This resulted in a much shorter interview than was typical.

[3] The Officer noted after the interview that she was not satisfied the Applicant's claimed experience as a poultry inspector was genuine because the Applicant could not answer the interview questions. The Officer accordingly found the Applicant was inadmissible under section 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

[4] In my view, the Officer breached the duty of procedural fairness by not providing an adequate opportunity for the Applicant to respond to the concerns. For the reasons below, this application for judicial review is allowed.

II. **Facts**

[5] Ms. Olayide Olotuah (the "Applicant") is a 29-year-old citizen of Nigeria. She completed an undergraduate degree in agricultural economics before working as a product inspector at Dorctaff General Enterprises ("Dorctaff") from January 2013 to June 2015. On the

letter from Dorctaff that the Applicant submitted as part of her application to the PNP, her listed responsibilities included inspecting finished products against specifications, and preparing reports.

[6] After leaving Dorctaff in good standing, the Applicant completed a postgraduate program in finance at a university in China. The Applicant then applied for the PNP in Manitoba as an agricultural and fish products inspector, under the National Occupational Classification (“NOC”) Code 2222. In November 2015, the Province of Manitoba accepted the Applicant’s application and invited her to apply for permanent residence. The Applicant’s husband, Abiodun Amure, applied for permanent residence at the same time as the Applicant, and the Applicant’s brother had already been living in Winnipeg.

[7] By letter dated June 29, 2018, the High Commission in Accra emailed the Applicant with an invitation for an interview. On July 5, 2018, the Applicant attended the interview in Accra. The Officer’s notes from the Global Case Management System (“GCMS”) state that the Officer informed the Applicant of the interview’s purpose, which was to determine whether the Applicant met the requirements of the PNP. During the interview, the Officer asked a series of questions on inspecting and grading raw poultry, which the Applicant could not answer to the Officer’s satisfaction. According to the Officer’s GCMS notes, all questions on the Applicant’s job responsibilities were focused on the grading and verifying the safety of raw poultry.

[8] When the Applicant could not answer the questions, the Officer expressed a concern that the Applicant may have misrepresented her employment. The Applicant responded emotionally,

appealing to the Officer to help her. The Officer tried to resume the interview, but the Applicant could not remain composed. Ultimately, the Officer ended the interview and asked security to escort the Applicant out of the interview area. Although the exact duration of the interview is difficult to ascertain, the Applicant stated the interview lasted five minutes, and the abrupt ending and short notes by the Officer suggest it was indeed brief.

[9] After the interview, the Officer noted entries on GCMS, and found the Applicant was inadmissible to Canada for misrepresentation, pursuant to section 40(1)(a) of the *IRPA*. The Officer found the Applicant was unable to “provide basic information that someone working with poultry would know in the course of their employment”. The Officer stated that the Applicant withheld a material fact that could have induced an error in the administration of the *IRPA*. By letter dated July 5, 2018, the refusal letter was sent to the Applicant. The decision also informed the Applicant that she would remain inadmissible to Canada for five years pursuant to section 40(2)(a) of the *IRPA*.

III. **Issue and Standard of Review**

[10] The issue on this application for judicial review is whether the Officer breached the duty of procedural fairness, and in particular, whether the Applicant had an adequate opportunity to respond in view of the Officer’s concerns.

[11] The applicable standard of review must be determined in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII)

[*Vavilov*]. In my view, the correctness standard continues to apply to issues of procedural fairness. In *Vavilov* at paragraph 23, the Supreme Court writes:

Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

[12] I see no reason to deviate from the established jurisprudence in the context of this case, and as such, the procedural fairness issue is reviewable on a correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 (CanLII) at para 43; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 (CanLII) at para 53.

IV. Analysis

[13] The Applicant submits that she was not provided with an adequate opportunity to respond to the Officer's concerns on misrepresentation. The Officer asked her questions about grading unprocessed raw poultry, a duty that she had not performed at her previous employment and did not claim to have performed in her application for permanent residence, which inevitably led to the Officer's concerns and the Applicant's emotional response. The application record supports the Applicant's assertions that the Applicant was never required to grade or inspect raw meat in her previous position.

[14] Although it may have been open to the Officer to consider the Applicant's work-related knowledge and experience, the Applicant was denied an adequate opportunity to respond to the Officer's concerns, and to clarify that her previous work experience did not involve the grading of raw poultry.

[15] The interview notes show little opportunity for the Applicant to provide explanations, especially given the fact that the interview came to a halt after the Applicant's emotional response. This is certainly not to say that the Applicant's behaviour of shouting loudly and protesting was appropriate. Although I accept that applicants for permanent residence are entitled to a low level of procedural fairness by a visa officer, given the brevity of the interview, the series of questions that left little room for clarification by the Applicant, and the Officer's decision to prematurely end the interview without providing the Applicant a chance to collect herself and respond to the concerns, the Applicant was denied an adequate opportunity to respond.

V. **Certified Question**

[16] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VI. **Conclusion**

[17] The Officer did not provide the Applicant with an adequate opportunity to respond to concerns of misrepresentation, and as a result, the Applicant was not afforded due procedural fairness. This application for judicial review is allowed.

JUDGMENT IN IMM-4106-18

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and referred back for redetermination by a different officer.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4106-18

STYLE OF CAUSE: OLAYIDE OLOTUAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: AUGUST 28, 2019

JUDGMENT AND REASONS: AHMED J.

DATED: JANUARY 14, 2020

APPEARANCES:

David Matas FOR THE APPLICANT

Darren Grunau FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas FOR THE APPLICANT
Barristers and Solicitors
Winnipeg, Manitoba

Attorney General of Canada FOR THE RESPONDENT
Winnipeg, Manitoba