

Federal Court



Cour fédérale

Date: 20221207

Docket: IMM-4982-21

Citation: 2022 FC 1688

Ottawa, Ontario, December 7, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ABIDEEN OLALEKAN OLADIPUPO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Abideen Olalekan Oladipupo (“Mr. Oladipupo”) is a 61 year old citizen of Nigeria. He has lived in Canada for over five years. He applied for permanent residence from within Canada based on humanitarian and compassionate grounds (“H & C Application”) in April 2021. Mr. Oladipupo’s medical conditions and inability to obtain adequate care in Nigeria were central factors raised in his H & C Application. On July 16, 2021, a Senior Immigration

Officer at Immigration, Refugees and Citizenship Canada [IRCC] refused the H & C Application. Mr. Oladipupo challenges this refusal on judicial review.

[2] Mr. Oladipupo raises a number of arguments on judicial review. The determinative issue relates to what medical evidence was before the Officer, and whether the Officer had an obligation to seek clarification based on the submissions before them.

[3] The parties disagree about what was filed in support of Mr. Oladipupo's H & C Application. The Applicant argues that there were at least 18 medical letters and reports dated from 2016 to 2020 which he submitted with the H & C Application but which are not in the Certified Tribunal Record ("CTR"). The Respondent's position is that these medical letters and reports are not in the CTR because the Applicant did not submit them as part of the H & C Application.

[4] It is unnecessary for me to decide who is at fault for the incomplete record before the Officer. Whether the medical letters and reports (all predating the submission of the H & C Application) were not before the Officer because of inadvertence on counsel's part or because of a mishandling of the file at IRCC, I find, regardless, there was a procedural fairness breach. Mr. Oladipupo's counsel specifically refers to the most recent medical letter from Mr. Oladipupo's family doctor in the submissions before the Officer, noting that the letter was "enclosed" with the H & C Application. Counsel cited extensively from this letter which noted Mr. Oladipupo's multiple diagnoses and the medications he was taking at the time. The Officer noted this submission, without referencing that Counsel indicated she was quoting from the enclosed

family doctor's letter, and found that there was little evidence provided to support that Mr. Oladipupo had been diagnosed with the illnesses or was taking the medications listed in the submissions. Based on this purported lack of evidence of the diagnoses and medications, the Officer gave "this consideration no weight."

[5] It is unfair for the Officer to give no weight to a key factor raised by Mr. Oladipupo because of lack of evidence without first seeking clarification about a medical letter which is referenced and which the Applicant says is enclosed. Given the centrality of this finding, the application needs to be redetermined.

[6] For the reasons below, I grant the judicial review.

II. Issues and Standard of Review

[7] As noted above, the determinative issue is whether the Officer breached procedural fairness by not seeking clarification about evidence that was referenced in the submissions but that was not before the Officer. The reasonableness standard of review does not apply to my evaluation of this issue (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77). The question I need to ask is whether the Officer's procedure was fair in all the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

III. Analysis

[8] There is no dispute that Mr. Oladipupo's medical condition and the availability of care in Nigeria were key factors raised in his H & C Application. The Officer gave these factors "no weight" because, in the Officer's view, counsel's statements as to Mr. Oladipupo's multiple medical conditions and medications were made with little supporting evidence. The Officer's reasons state:

Counsel states that the applicant has the following medical conditions: ...[lists seven medical conditions]. Further, counsel states that the applicant is taking several medications [lists eleven medications] to treat these conditions. I accept that many of these conditions may be harder to treat in Nigeria than in Canada. However, I note that counsel provided little evidence that the applicant has been diagnosed for the aforementioned conditions. Further, I note that counsel provided little evidence to demonstrate that the applicant is taking the aforesaid medication or is receiving treatment for these medical conditions. Therefore I give this consideration no weight.

[9] The Officer's finding on this issue is puzzling given counsel's submissions before the Officer. In counsel's submissions, Mr. Oladipupo's medical conditions and medications (that the Officer reproduced in their reasons) were not listed as counsel's own assertions but rather were set out as an excerpt from the September 2020 letter of Mr. Oladipupo's family doctor. The submissions state the following:

[The Applicant's] family doctor... MD writes in his enclosed letter of support:

Mr. Oladipupo has a number of medical issues that include the following [lists seven medical conditions in a bulleted list].

Current medications are: [lists eleven medications with detailed dosages setting the amounts and frequency required].

[10] The September 2020 letter of Mr. Oladipupo's family doctor that counsel quoted from in her submissions is not in the CTR. The Officer makes no reference to it. Given that counsel quoted from this letter that she stated was enclosed with her submissions, the Officer was required to inquire about this letter. This is particularly true here where the Officer gives this factor no weight on account of the little evidence provided to support counsel's assertions.

[11] This Court dealt with a similar procedural fairness issue in *Bizimana v Canada (Minister of Citizenship and Immigration)*, 2020 FC 288 [*Bizimana*]. Justice Walker found that an officer had an obligation to seek clarification from an applicant where it was apparent that the submissions before them were missing pages (*Bizimana* at para 28). The Respondent distinguishes this case by arguing the missing material in *Bizimana* was apparent on the record because it related to missing pages in counsel's submissions. I do not find this distinction compelling. The missing evidence was also apparent in Mr. Oladipupo's application given that counsel stated in her submissions that a letter was enclosed but that letter was not before the Officer.

[12] Not only does the Officer fail to seek clarification about the missing "enclosed letter" of Mr. Oladipupo's doctor, the Officer also distorts counsel's submissions on this point. The Officer characterizes an excerpt from Mr. Oladipupo's doctor's letter as his counsel's assertions about his medical conditions. This is an inaccurate characterization of the submissions. The unfairness of not seeking clarification about a missing, referenced key document is compounded by the

Officer's conclusion that because of the lack of evidence, no weight would be given to these medical issues raised by Mr. Oladipupo.

[13] Lastly, in my view, given the clear deficiencies in how Mr. Oladipupo's application was handled and assessed, it is unfortunate that the matter was not resolved prior to the judicial review hearing. Mr. Oladipupo should have the opportunity to have his H & C Application redetermined by an officer who has access to his relevant medical evidence.

[14] The application for judicial review is granted. Neither party proposed a question for certification and I agree that none arises.

JUDGMENT IN IMM-4982-21

THIS COURT'S JUDGMENT is that:

1. The decision of IRCC dated July 16, 2021 is set aside;
2. The matter is sent back to be redetermined by a different officer at IRCC;
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4982-21

STYLE OF CAUSE: ABIDEEN OLALEKAN OLADIPUPO v THE
MINISTER CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 6, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: DECEMBER 7, 2022

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