Federal Court  Cour fédérale

Date: 20230307

Docket: IMM-3143-21

Citation: 2023 FC 310

Ottawa, Ontario, March 7, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

DELE JIMOH AKANBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The background to this matter is set out fully in *Akanbi v Canada (Citizenship and Immigration)*, 2023 FC 309, released concurrently with the present decision.

[2] Briefly, the applicant is a citizen of Nigeria. After entering the United States as a visitor in 2012, he took up residence in the Austin, Texas area.

[3] On June 12, 2015, shortly after being found in possession of evidence that appeared to implicate him in a large-scale stolen personal identification information fraud scheme, the applicant left the United States and entered Canada using a fraudulent United States passport. On June 26, 2015, the applicant made a claim for refugee protection in Canada under his true identity.

[4] In August 2016, the applicant married Adeola Morenikeji Dosunmu, a Canadian citizen. Under Ms. Dosunmu's sponsorship, the applicant submitted an application for permanent residence in Canada in May 2017.

[5] On March 19, 2021, a member of the Immigration Division ("ID") of the Immigration and Refugee Board of Canada found that the applicant is inadmissible under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") on the basis of his membership in a criminal organization. As a result of this determination, on April 16, 2021, the applicant's claim for refugee protection was terminated under paragraph 104(2)(a) of the *IRPA*. On April 23, 2021, the applicant's application for permanent residence was refused on the same basis.

[6] The applicant sought judicial review of the ID's inadmissibility determination (Court File No. IMM-2229-21). In the decision being released concurrently with the present one, I dismissed that application.

[7] In the present matter, the applicant seeks judicial review of the decision refusing his application for permanent residence. The applicant states his position in his Memorandum of Argument as follows: “The basis of the refusal here is premised entirely on the ID’s determination that the Applicant is inadmissible for s. 37(1)(a) [footnote omitted]. Therefore, if that decision is found to be in error and quashed by this Court in IMM-2229-21, then the officer’s decision to refuse the [spousal sponsorship] application is similarly in error, and should be quashed and reviewed.” In other words, the sole basis on which the applicant seeks to have the spousal sponsorship decision set aside is a conditional one: if the ID’s decision is unreasonable, then the decision refusing his application for permanent residence is also unreasonable because it is premised on an unreasonable decision.

[8] The respondent contends that, even if the inadmissibility determination were to be set aside as unreasonable, this does not give rise to a ground for review of the decision refusing the application for permanent residence. This is because the reasonableness of the latter decision must be determined in light of the record before the decision maker when the decision was made. If, subsequent to the decision now under review, the inadmissibility decision were to be set aside, this does not give rise to a basis on which to interfere with that decision. While it is true that the premise on which the refusal of permanent residence was based (the applicant is inadmissible) no longer obtains, this does not impugn the reasonableness of the decision at the time it was made. The respondent also notes that, in this circumstance, the applicant is not without a remedy. He can simply re-apply for permanent residence, citing the material change in circumstances since his first application was refused.

[9] There is considerable force to the respondent's argument given the well-defined and limited role of a reviewing court applying the reasonableness standard: see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 17-20; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28; and *Sharma v Canada (Attorney General)*, 2018 FCA 48 at paras 7-9. As the Federal Court of Appeal observed in *Henri v Canada (Attorney General)*, 2016 FCA 38 at para 41, "Consideration of facts that were not before the decision-maker would turn this Court's attention away from the decision under review and towards a *de novo* consideration of the merits. That is never the role of a judicial review, and would be entirely incoherent with review on a standard of reasonableness."

[10] Nevertheless, it is not necessary to resolve this issue here. This is because, as I have already stated, the application for judicial review of the inadmissibility decision has been dismissed. As a result, even assuming for the sake of argument that the applicant's approach is a sound one, there is no basis on which to interfere with the decision refusing his application for permanent residence. Consequently, this application for judicial review must also be dismissed.

[11] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-3143-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3143-21
STYLE OF CAUSE:	DELE JIMOH AKANBI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 26, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	MARCH 7, 2023

APPEARANCES:

Daniel Kingwell	FOR THE APPLICANT
Monmi Goswami	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell LLP Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT