Federal Court  Cour fédérale

Date: 20240326

Docket: IMM-8168-22

Citation: 2024 FC 468

Toronto, Ontario, March 26, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ADEBIMPE IBUKUN OBADINA-OKORO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a visa officer [Officer], dated August 4, 2022 [the Decision], in which the Officer refused the Applicant's study permit application.

[2] As explained in more detail below, this application is allowed, because the Decision's treatment of the Applicant's family ties outside Canada is unintelligible and therefore unreasonable.

I. Background

[3] The Applicant is a citizen of Nigeria. She currently lives in Abuja, Nigeria with her two children. Her parents and other extended family members also reside in Nigeria.

[4] The Applicant was called to the Nigerian bar in 2005 and practiced law briefly afterwards. She has subsequently held various corporate positions and is now a Territory Development Manager for a bottling company in Nigeria.

[5] The Applicant was accepted into a post-graduate certificate program in Global Business Management at Georgian College in Barrie, Ontario and prepaid $2,500 as a tuition deposit. She then applied for a study permit.

II. Decision under Review

[6] In a letter dated August 4, 2022, conveying the Decision to the Applicant, the Officer refused the Applicant's application for a study permit. The letter states that the Officer was not satisfied that the Applicant would leave Canada at the end of her stay, as required by paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Officer reached this conclusion based on two factors: (a) the Applicant not having significant family ties

outside Canada; and (b) the purpose of the Applicant's visit to Canada not being consistent with a temporary stay given the detail she had provided in her application.

[7] The accompanying Global Case Management System [GCMS] notes, which form part of the reasons for the Decision, further state as follows:

> I have reviewed the application. I have considered the following factors in my decision. Applicant is single and mobile with no clear ties to home country. The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. 42 year old divorced female, no tuition fees paid. PA has previous university degree in law and has an MBA in General marketing as well as a post grad diploma in business management. PA has been working as a sales officer since 2011 and is now pursuing global business management. Given client's age, previous studies and career path, study plan does not appear reasonable. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

III. Issues

[8] The Applicant has raised the following two issues for the Court's determination:

A. Whether the Decision is reasonable; and

B. Whether the Officer breached the Applicant's procedural fairness rights.

[9] As suggested by the articulation of the first issue, the parties agree (and I concur) that the standard of review applicable to the merits of the Decision is reasonableness.

[10] The standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard to all the circumstances (see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. Analysis

[11] My decision to allow this application for judicial review turns on the first issue raised by the Applicant, the reasonableness of the Decision. Specifically, the Officer states in the GCMS notes that the Applicant is single and mobile, with no clear ties to her home country. This appears to be the finding underlying the Officer's concern, as expressed in the letter conveying the Decision, that the Applicant does not have significant family ties outside Canada. However, as the Applicant argues, the Family Information form in the Certified Tribunal Record (which was before the Officer) demonstrates that the Applicant is the mother of two minor children who reside with her at her address in Nigeria.

[12] It is not clear from the Officer's letter or the GCMS notes how or whether the Officer took the Applicant's children into account in arriving at the conclusion that the Applicant had no clear ties to Nigeria and no significant family ties outside Canada. The Respondent argues that this conclusion was available to the Officer, given that the Applicant had made the decision to leave her children behind when applying to study in Canada. I struggle with the logic of this argument but, in any event, find no basis in the GCMS notes to support a conclusion that this

was the reasoning of the Officer underlying the Decision. It may be that the Officer overlooked the evidence of the Applicant's children. Regardless, in the context of this evidence, this aspect of the Decision is unintelligible.

[13] The Respondent also argues that the crux of the Decision is the Officer's finding that the Applicant had not provided a reasonable study plan that demonstrated the purpose of her visit to Canada to be consistent with a temporary stay. I agree that this analysis forms a significant component of the reasoning underlying the Decision. However, in the GCMS notes, the Officer states that, weighing the factors in the application, the Officer is not satisfied the Applicant will depart Canada at the end of the period authorized for her stay. As such, and consistent with the letter conveying the Decision, it was based on both factors the Officer considered (family ties and purpose of visit), and it is not possible to conclude that the Officer would have arrived at the same Decision in the absence of the finding that the Applicant had no clear ties to her home country.

[14] As I therefore find that the Decision lacks intelligibility and is unreasonable, this application for judicial review will be allowed and the matter return to another visa officer for re-determination. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-8168-22

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is returned to another visa officer for re-determination. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8168-22
STYLE OF CAUSE:	ADEBIMPE IBUKUN OBADINA-OKORO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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