Federal Court Cour fédérale

Date: 20240510

Docket: IMM-2952-23

Citation: 2024 FC 723

Ottawa, Ontario, May 10, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

AKINWUNMI KAYODE AKINREMI
OLUWATOYIN TEMILADE AKINREMI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON application for judicial review to review and set aside the decision by a visa officer with Immigration, Refugees and Citizenship Canada [IRCC] dated February 22, 2023 refusing the temporary resident visa (visitor visa) applications of Mr. Akinwunmi Kayode Akinremi [Principal Applicant] and Ms. Oluwatoyin Temilade Akinremi [Associate Applicant, collectively the Applicants] to temporarily visit Canada [Decision];

AND UPON the Applicants, nationals of Nigeria who are married, having submitted visitor visa applications for the stated purpose of visiting their daughter, a permanent resident in Canada, whom they have not seen in 5 years, their two grandchildren whom they have never met before, and their daughter's fiancé and father of the children whom they have never met before;

AND UPON the Officer having reviewed the Applicants' visa applications and supporting documentation and having determined that their applications did not meet the statutory requirements of the *Immigration and Refugee Protection Act* [IRPA] and the *Immigration and Refugee Protection Regulations* [IRPR], and concluding in their Decision that they are not satisfied that the Applicants would leave Canada at the end of their stay, based on the following factors:

- Their assets and financial situation are insufficient to support the stated purpose of travel;
- The Applicants have significant family ties in Canada;
- The Applicants do not have significant family ties outside Canada.

AND UPON the Officer refusing the visa applications because they were not satisfied that the Applicants would leave Canada at the end of their authorized stay, based on their finances and family ties, noting in the Global Case Management System [GCMS] notes the following:

> I have reviewed the application. I have considered the following factors in my decision. PA has not demonstrated sufficient proof of adequate funds to support oneself while in Canada, or a sufficient means of support during their proposed visit. The applicant has significant family ties in Canada. Daug[ht]er AKINREMI, TOBILOBA RHODA (PR/ REF-CDA) UCI: 1 108428146. The

> applicant does not have significant family ties outside Canada. PA is married but insufficiently established in COR. 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.

AND UPON reading the written submissions and hearing the oral submissions of the parties;

AND UPON considering the issues outlined by the parties are whether a) the Officer's Decision was reasonable and b) the Officer's Decision was procedurally fair;

AND UPON acknowledging that the Respondent argues that the finances findings were the central findings of the Officer's Decision;

AND UPON considering the Officer refusing the Applicants' visa permit on the basis of the family ties is the determinative issue as it is one of the factors in the requirement for the visa permit (paragraph 179(b) of the IRPR and *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 4) and because it was mentioned in two of the three above-referenced factors mentioned by the Officer in its Decision;

AND UPON reviewing the Certified Tribunal Record and the Applicants' Record;

AND UPON determining that this application should be granted for the following reasons:

A. *The Decision was unreasonable in light of the evidence before the Officer*

(1) Significant family ties in Canada / Lack of significant family ties outside Canada

[1] In my view, the Decision is unreasonable as the Officer failed to justify its conclusions that the Applicants do not have significant family ties outside Canada and have significant family ties inside Canada in light of the record before them. The record clearly indicates in the Family Information forms submitted that both the Applicants have four children in Nigeria who all live with them in Lagos, two of which children are minors. The Principal Applicant indicated in his application that his 92-year old mother-in-law resides with them in Lagos and requires daily care and attention.

[2] In its Decision to refuse the Applicants' applications, the Officer was not satisfied that the Applicants would depart Canada at the end of their stay because they have significant ties in Canada, noting their daughter Tobiloba Rhoda Akinremi is in Canada, and that the Applicants do not have significant ties outside Canada.

[3] The Court agrees with the Applicants that the Officer made a reviewable error when they noted that the Principal Applicant did not have significant family ties outside Canada given that the record before them clearly indicated otherwise. Indeed, the Applicants have four children in Nigeria and a senior parent to care for.

[4] While the Court agrees with the Respondent that it may have been open and reasonable for the Officer to weigh the Principal Applicant's ties to their daughter who is in Canada as

likely to influence the Principal Applicant to stay in Canada, in my view, the Officer must also weigh this against the evidence in the record indicating four children (two of which are minors) in Nigeria, which tend to demonstrate that the Applicants have at least equally significant family ties back in Nigeria. As the Honourable Justice Zinn made the following comment in *Groohi v Canada (Citizenship and Immigration)*, 2009 FC 837 at paragraph 17 in finding that the decision under judicial review was unreasonable:

> [17] The officer finds that both applicants have "limited family ties to Iran" (emphasis added). Both applicants have two parents, two brothers, and a sister living in Iran. One sister has a husband living in Iran, the other sister lives with her parents. Their only immediate family member not living in Iran is the one brother in Canada who is hoping to have his sisters arrive in Winnipeg for a visit. The visa officer provides no reasoning to show the Court how she arrived at a conclusion, based on these facts, that they had "limited" family ties to Iran. If anything, on those facts, they had limited family ties to Canada.

[5] Similarly here, the Officer makes no mention of the Principal Applicant's more numerous immediate family (4 children and parent) in Nigeria, or their lack of family ties in Canada other than their one daughter.

[6] Given that the Principal Applicant indicated that their four children in Nigeria and their elderly mother-in-law reside outside Canada, the record does indicate that the Principal Applicant has significant family ties outside Canada. This contradicts the Officer's finding that the Principal Applicant "does not have significant family ties outside Canada." As such, the Decision is not justified in light of the factual record and is therefore unreasonable.

[7] Given that the purported lack of significant family ties outside Canada was one of three reasons why the Officer found that the Principal Applicant would not leave Canada, the Officer was required to justify this conclusion. Similarly, the Officer failed to balance their one significant family tie in Canada (being another of the three reasons for the Decision) with their numerous significant family ties outside of Canada. In my view, this error is sufficiently central to the Decision to render it unreasonable (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100).

(2) Insufficient Assets and Financial Situation

[8] Given the above error is sufficiently central to the Decision to render it unreasonable in my view and that the above analysis is determinative of the matter at hand, the Court has not considered whether the Officer erred in concluding that the Applicants' assets and financial situation are insufficient to support the stated purpose of their travel.

B. *No breach of procedural fairness occurred*

[9] On a related note, the Applicants argue that the Officer did not comply with the procedural fairness requirements by not giving the Applicants an opportunity to provide further evidence if the Officer was not satisfied with the available evidence.

[10] I cannot agree with the Applicants for the same reasons as previously held by this Court in *Mahmoudzadeh v Canada (Citizenship and Immigration)*, 2022 FC 453 at paragraphs 14-15:

> [14] In a nutshell, the jurisprudence clearly establishes that the onus is on an applicant to establish that they meet the requirements

> of the IRP Regulations by providing sufficient evidence in support of their application. That is, to submit a convincing application and to anticipate adverse inferences contained in the evidence and address them. The duty of procedural fairness owed by visa officers to an applicant is on the low end of the spectrum. Visa officer are not obliged: to notify an applicant of inadequacies in their applications nor in the materials provided in support of the application; to seek clarification or additional documentation; or, to provide an applicant with an opportunity to address the officer's concerns when the material provided in support of an application is unclear, incomplete or insufficient to convince the visa officer that the applicant meets all the requirements that stem from the IRP Regulations. The duty of procedural fairness will not be breached when a visa officer's concerns could reasonably have been anticipated by the applicant.
>
> [15] Further, when a concern arises directly from the requirements of the legislation or related regulations, a visa officer is not under a duty to provide an opportunity for an applicant to address their concerns. However, when the issue is not one that arises in this context, such a duty may arise. That is, if the visa officer was concerned with the credibility, the veracity, or the authenticity of the documentation provided by an applicant, as opposed to the sufficiency of the evidence provided, an obligation to provide the applicant with an opportunity to address those concerns may arise (see also *Hanza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 22-25; *Tollerene v Canada (Citizenship and Immigration)*, 2015 FC 538 at para 15 [*Tollerene*]; *Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 [*Gur*] at paras 13-17; *Mohammadzadeh v. Canada (Citizenship and Immigration)*, 2022 FC 75 [*Mohammadzadeh*] at paras 20-29; *Rezaei v Canada (Citizenship and Immigration)*, 2020 FC 444 [*Rezaei*] at para 12).

[11] Having determined that the findings arose from evidence (or lack thereof) placed before the Officer and that the Officer's concern arose directly from the statutory requirements, the Officer did not have a duty to provide an opportunity to the Applicants to address their concern. Such a duty arises only where credibility is impugned, which did not occur here (*Hajiyena v Canada (Citizenship and Immigration)*, 2020 FC 71 [*Hajiyena*] at para 8, citing *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24). The Officer is not required to

inform the Applicants of concerns regarding the sufficiency of materials in support of the application (*Hajiyena* at para 9, citing *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20).

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The matter is remitted back to the Immigration, Refugees and Citizenship Canada for reconsideration by a differently constituted panel; and
3. No question of general importance is certified.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2952-23
STYLE OF CAUSE:	AKINWUNMI KAYODE AKINREMI, OLUWATOYIN TEMILADE AKINREMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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