Federal Court Cour fédérale

Date: 20240827

Docket: IMM-8598-23

Citation: 2024 FC 1322

Ottawa, Ontario, August 27, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

YVONNE ULUNWA OJJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Yvonne Ulunwa Ojji, applied for a permit to study a two-year Master of Business Administration program at University Canada West. An officer at Immigration, Refugees and Citizenship Canada [IRCC] refused her application. The Officer found that Ms. Ojji had not demonstrated that she had sufficient or available funds as required by section 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] Ms. Ojji raises a number of issues on judicial review. I agree with her that there was a procedural fairness breach. She should have been provided an opportunity to respond to the Officer's credibility concerns about the nature of her relationship with her financial sponsor. Doubts about the legitimacy of this support was determinative to the Officer finding she did not have sufficient or available funds to study. This procedural fairness breach is a sufficient basis on which to set aside the decision.

[3] Ms. Ojji is a citizen of Nigeria. She submitted to the Officer that her second cousin would be financing her studies in Canada. In support of this, Ms. Ojji provided an affidavit from her second cousin, his bank statements and employment records. The Officer found:

> …there is insufficient info on file to establish relationship between client and third party, specifically how exactly client holds a legitimate relationship with their financial sponsor. Lack of evidentiary information to corroborate the relationship between client and their third party diminishes the overall credibility of the application.

[4] Both parties agree that procedural fairness requirements are at the low end of the spectrum in the context of a visa decision, but that where credibility concern is raised, veiled or otherwise, an applicant must be given an opportunity to respond (*Hassani v Canada (Minister of Citizenship and Immigration) (FC)*, 2006 FC 1283 at para 24; *Obasi v Canada (Citizenship and Immigration)*, 2024 FC 746 [*Obasi*] at para 17). The dispute is as to whether the Officer was making a credibility finding.

[5] The Respondent argues that the Officer was raising a sufficiency of evidence concern and not making any credibility determination. I cannot agree. The Officer expressly states their

concern about the “legitimacy” of the relationship with the financial sponsor and further that this concern “diminishes the overall credibility of the application”. This Court has commented that it can sometimes be challenging to draw the line between a sufficiency of evidence finding and one based on a credibility assessment (*Ahmed v. Canada (Citizenship and Immigration)*, 2018 FC 1207 at para 32). This is not one of those circumstances. The Officer was questioning the legitimacy of the Applicant’s relationship to her financial sponsor as attested to in the sponsor’s affidavit.

[6] This is very similar to the procedural fairness breach discussed in *Obasi* where Justice Régimbald found that “the Officer made a veiled credibility finding, by concluding that the relationship may not be real and that the funds may not be available, to which the Applicant should have been given an opportunity to respond” (*Obasi* at para 16; see also *Opakunbi v Canada (Citizenship and Immigration)*, 2021 FC 943 at paras 7-13).

[7] The Respondent also argues that the evidence in the affidavit is inconsistent because though in the Applicant’s submissions, the sponsor’s letter, and counsel’s submissions, the relationship is described as a “second cousin” or the “daughter of the sponsor’s cousin”, the term “niece” is also used in the sponsor’s affidavit. I am not persuaded by this argument. This concern was not raised by the Officer in their reasons, nor was the Applicant ever afforded an opportunity to explain the discrepancy.

[8] Lastly, and not on the procedural fairness issue, but the reasonableness of the Officer’s findings, I find the Officer’s reasoning in support of the determination that Ms. Ojji would not be

likely to leave Canada at the end of her authorized stay to be unintelligible. The Officer comments that the Applicant has a "strong demotivation" to depart Canada after their studies where a third party will be fully financing their studies because this "diminishes the overall socio-economic ties and establishment of client to their COR [Country of Residence]." I do not follow the Officer's reasoning here. There is no further explanation. It is not intelligible why having one's studies funded by a third party, instead by oneself, would diminish one's socio-economic ties to their home country.

[9] The parties did not have a question to certify and I agree that none arises here.

JUDGMENT in IMM-8598-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The May 8, 2023 decision is set aside and sent back to a different decision-maker to be redetermined; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8598-23
STYLE OF CAUSE:	YVONNE ULUNWA OJJI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 24, 2024
JUDGMENT AND REASONS:	SADREHASHEMI J.
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APPEARANCES:

Dotun Davies-Akinribide	FOR THE APPLICANT
Asha Gafar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Davies Legal Barrister and Solicitor Mississauga, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT