

Date: 20080403

Docket: IMM-6265-06

Citation: 2008 FC 429

Toronto, Ontario, April 3, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

CHARLES OBINNA OKPARA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant in the present Application applied for permanent residence as the dependant child of his Canadian mother. The Applicant's Application was rejected by Immigration Officer Bryan on the statement that:

You had not been continuously enrolled in the course of academic training on a full time basis since before the age of 22 years, as you graduated from your university course in June 2006.

(Applicant's Application Record, p. 9)

[2] It is agreed that this rejection is based on a statement in the CAIPS notes that, upon producing his document in support of his Application, the Applicant said that he “is now waiting to do national service”. The issue for determination is related to the truth of the statement appearing in the CAIPS notes; that is, did the Applicant make this statement at the time he produced his documentation?

[3] In his affidavit filed in support of the present Application, the Applicant denies that this statement was made:

7. At the time when I left Nigeria for Ghana at the beginning of July 2006, to take my documents in person to the High Commission, I had not yet received the acceptance letter from the computer school. However, I told the person to whom I spoke at the visa office, that I had applied to computer school and, once accepted, would be continuing as a full-time student in Nigeria. The person to whom I spoke, did not ask me to send a copy of the acceptance letter once I received from the school.
8. After attending at the High Commission in Accra, I returned to Nigeria and received the acceptance letter from the computer school in the mail. I confirmed my acceptance of the school’s offer by signing at the bottom of the acceptance letter, on July 3, 2006. I returned the signed acceptance letter to the school and duly registered there in July 2006. I have completed the one year course and am now undertaking further study in the computer school. I attach, as Exhibit “C” to my affidavit, a copy of the abovementioned acceptance letter from the Scroll Computer School of Computer Technology, dated June 5, 2006.
9. Since I applied for, was accepted for and took a computer course at Scroll, I could not possibly have told the person I spoke to at the High Commission, that I had stopped studying and was waiting to perform national service. I had no intention of performing my national service in Nigeria at that point and would not have told anyone that I did. I believe that the visa officer who spoke to me or who refused my application, may have assumed I was going to perform national service as it is

usual that someone who has completed their first or bachelor's degree, proceeds to national service. I am absolutely certain I did not tell him this because I had already applied to study further and I have since done so.

[Emphasis added]

(Applicant's Application Record, pp. 22-23)

[4] In support of the CAIPS notes as being evidence, the Respondent tendered the affidavit of the decision-maker Officer Bryan. During the course of the hearing of the present Application, Counsel for the Respondent confirmed that, indeed, Officer Bryan did not receive the Applicant's documentation, but rather it was received by another person who made the CAIPS notes. That is, according to procedure, the person who receives the documentation makes notations in the CAIPS notes and forwards the documentation to the decision-maker for final conclusion. During the course of the oral hearing, Counsel for the Applicant agreed that, based on Officer Bryan's affidavit evidence, the CAIPS notes can be considered as business records pursuant s.30 of the *Canada Evidence Act* R.S., 1985, c. C-5. Consequently, they can be accepted as proof of the truth of their contents.

[5] In the result, there exists a fundamental conflict in the evidence between the statement recounted in the CAIPS notes and the statement provided in the Applicant's affidavit. The Applicant was not cross-examined on his affidavit. In my opinion, the conflict cannot be resolved in order to find that the Applicant said that he intended to do his national service at the time of producing his document.

[6] As a result, as the Respondent has failed to prove that the Applicant made the statement upon which the Decision under review is based, I find the Decision is made in reviewable error.

ORDER

Accordingly, I set aside the Immigration Officer's decision and refer the matter back to a different immigration officer for re-determination.

There is no question to certify.

"Douglas R. Campbell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-6265-06

STYLE OF CAUSE: CHARLES OBINNA OKPARA v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 2, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: APRIL 3, 2008

APPEARANCES:

D. CLIFFORD LUYT FOR THE APPLICANT

DAVID KNAPP FOR THE RESPONDENT

SOLICITORS OF RECORD:

WALDMAN & ASSOCIATES
BARRISTERS AND SOLICITORS
TORONTO, ONTARIO FOR THE APPLICANT

JOHN H. SIMS, Q.C.
DEPUTY ATTORNEY GENERAL OF CANADA FOR THE RESPONDENT