

Federal Court



Cour fédérale

Date: 20110121

Docket: IMM-3645-10

Citation: 2011 FC 60

Ottawa, Ontario, January 21, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

EDWIN WISDOM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of an officer of Citizenship and Immigration Canada (the officer), dated April 30, 2010, refusing the applicant's request for an exemption from the requirement to obtain a permanent resident visa from outside Canada based on humanitarian and compassionate grounds (H&C) filed under subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA.)

[2] The application for judicial review will be allowed for the following reasons.

[3] The applicant's identity has not been established but he claims to have been born in 1987 in Sierra Leone.

[4] He came to Canada on May 3, 2004, when he was 17 and made a claim for refugee status. Before coming here, he had lived briefly in the Netherlands and Brazil, where he made refugee claims which were denied. He had left Sierra Leone in 1997 with his mother and spent time in Nigeria and Gabon before fleeing to Brazil. His mother died when they were in Gabon.

[5] The Immigration and Refugee Board (the IRB) rejected his refugee claim on August 1, 2006. Despite having determined that the applicant had not proved his identity or his nationality, the IRB found that he was inadmissible under article 1F (a) and (c) because of the tattoo on his arm. This tattoo is worn by a group of rebels responsible for serious crimes against humanity in Sierra Leone. The IRB found that the applicant's explanations on this subject were contradictory and that the applicant was not credible.

[6] Approximately six months after the IRB's decision, the applicant was hospitalized for five months in a psychiatric ward.

[7] The subject of this judicial review is the negative decision of the officer made in April.

[8] In refusing the request, the officer placed a great deal of importance on the fact that the RPD did not have proof of the applicant's identity. He found that the applicant had not made the efforts necessary to provide that proof, despite the fact that he had been here for six years.

[9] His integration to Canada had not been adequately demonstrated because the applicant had not submitted all of the necessary supporting documents.

[10] The officer did not give much weight to the letters of reference detailing the applicant's personal qualities as they did not establish that the applicant would experience unusual and undeserved or disproportionate hardship if his request was denied.

[11] The findings of the social worker and the psychiatric report with respect to the applicant's state of health were also given little weight.

[12] The standard for judicial review of a tribunal's evaluation and weighing of the evidence is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47.)

[13] The Court is of the opinion that the officer in this case placed far too much weight or emphasis on the question of the applicant's identity (tribunal record, page 4, paragraph 4) and that this was a deciding factor in the reasons given for disregarding the psychological report (tribunal record pages 271-272) and the findings of the social worker (tribunal record, pages 264-265.)

[14] While it is true that the evidence provided by the applicant with respect to his identity was not conclusive, the question before the officer was whether there were sufficient humanitarian and compassionate grounds to grant an exemption.

[15] From the first paragraphs of the IRB's analysis it is obvious that the Board member, with reason, questioned the behaviour, attitude and mental state of the applicant at the hearing (tribunal record, pages 40-41.)

[16] He reached the opinion that the applicant was a liar and manipulator. Was he right? We now know that the applicant was hospitalized and under psychiatric care for a very long period, barely six months after the IRB decision.

[17] The Court is of the opinion that the officer committed a reviewable error in largely disregarding the psychiatric report because no objective evidence had been filed corroborating the hospitalization dates.

[18] The Court is not claiming that the officer was bound by the psychiatrist's findings or by those of the social worker. Nevertheless, a more complete analysis is necessary.

[19] No question was submitted for certification. There is no question to be certified in this case.

JUDGMENT

THE COURT ORDERS that the application for judicial review be allowed. The matter is referred for redetermination by a different officer. There is no question to be certified.

“Michel Beaudry”

Judge

Certified true translation

Monica F. Chamberlain

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3645-10

STYLE OF CAUSE: EDWIN WISDOM v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 18, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** BEAUDRY J.

DATED: January 21, 2011

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