

Federal Court



Cour fédérale

Date: 20110526

Docket: IMM-3233-11

Citation: 2011 FC 623

Ottawa, Ontario, May 26, 2011

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

PETER IBE OGBUKA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND
THE MINISTER FOR PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR ORDER AND ORDER

[1] The Applicant has brought this motion for a stay of removal of the Applicant to Nigeria until final determination of the application for leave and judicial review of a decision of an immigration officer (Officer) dated April 29, 2011, in which decision the Officer determined that there were insufficient humanitarian and compassionate (H&C) grounds for the processing of the Applicant's application for permanent residence in Canada.

[2] I have read the written submissions and heard the oral submissions of the parties.

[3] I have directed myself to the conjunctive tri-partite test in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.) and determined that this motion should be dismissed, for the following reasons.

[4] A review of the detailed H&C decision demonstrates that there is no serious issue. The Officer had regard to all of the evidence before her. In particular, the Officer carefully considered all evidence put forward by the Applicant with respect to the child affected by the decision and determined that the child's best interests did not outweigh the other factors. The Officer also explicitly refers to and deals with every document submitted in support of the Applicant's allegations of risk.

[5] I am also not persuaded that the Officer erred by failing to "convert" this application into an in-Canada spousal application. The Applicant provided insufficient evidence to the Court in this motion to demonstrate that he complied with the applicable CIC Policy or that he was eligible for such consideration.

[6] Even if there is a serious issue, the Applicant has failed to demonstrate irreparable harm. The separation of the Applicant from his wife and young child does not extend beyond the usual – albeit difficult – consequences of deportation. The personal risk to the Applicant has been assessed by the Refugee Protection Division of the Immigration and Refugee Board (the RPD), where the Applicant was found to be not credible. He has received a negative pre-removal risk assessment

(PRRA) where an immigration officer concluded that he was not at risk of torture or cruel and unusual punishment if returned to Nigeria.

[7] With respect to the balance of convenience, I note that the Applicant has been less than truthful in his dealings with immigration authorities. His refugee claim was dismissed on the basis that he “definitively has no credibility”. The RPD noted unexplained contradictions and misrepresentations in his testimony, some of which he has continued to rely on for purposes of this motion. A claimant cannot lie to or mislead immigration authorities and this Court and expect to receive the exceptional remedy of a stay. On these facts, the balance of convenience favours the Respondent.

[8] Finally, I observe the conduct of the Applicant’s counsel in this matter. Mr. Istvanffy failed to include a copy of the underlying H&C decision in the motion record, only producing the decision when his motion was initially dismissed for the failure to file a complete motion record. A lengthy list of authorities was provided to the Court and the Respondent only one hour prior to the hearing, thereby prejudicing the Respondent. In addition to omitting the underlying decision, the motion record also did not contain other relevant materials, such as the negative RPD and PRRA decisions. Mr. Istvanffy has had numerous warnings from other judges of the Federal Court about his practices which show a blatant disregard for the Court and the code of professional ethics by which he is bound. The behaviour of the counsel is serious enough that this Court could have refused to hear the motion on its merits. Such behaviour by counsel will not be tolerated in the future.

ORDER

THIS COURT ORDERS that:

1. The style of cause is amended to add the Minister of Public Safety and Emergency Preparedness as a Respondent; and
2. The motion is dismissed.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3233-11

STYLE OF CAUSE: OGBUKA v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION and THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

**MOTION HELD VIA TELECONFERENCE ON MAY 25, 2011 FROM OTTAWA,
ONTARIO AND MONTRÉAL, QUEBEC**

**REASONS FOR ORDER
AND ORDER:** SNIDER J.

DATED: MAY 26, 2011

APPEARANCES:

Stewart Istvanffy FOR THE APPLICANT

Patricia Nobl FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada