

Federal Court



Cour fédérale

Date: 20140326

Docket: IMM-295-13

Citation: 2014 FC 291

Toronto, Ontario, March 26, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MARY MORONSOLA ADEDEJI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review, challenging a negative decision on the Applicant's application for permanent residence from within Canada on humanitarian and compassionate grounds [H&C Application] under section 25 of the *Immigration and Refugee Protection Act, SC 2001, c 27* must be dismissed.

[2] The Applicant is a 66 year old citizen of Nigeria. She has lived in Canada since February 3, 2003. Her refugee protection claim was refused by the Refugee Protection Division of the

Immigration and Refugee Board on June 29, 2006. Her application for leave for judicial review was denied. She had a Pre-Removal Risk Assessment Application refused on July 27, 2009.

[3] Her counsel, in the H&C Application raised her establishment in Canada and her medical condition as the principle reasons for seeking the exemption.

The Applicant has developed very close emotional ties to other Canadians, as can be seen from the supporting letters, and she has become Canadianized since the Applicant has lived in Canada for 8 years. The hardship of having to apply for an immigrant visa from outside Canada would have a disproportionate impact on the Applicant, due to her personal circumstances of being extremely ill and unable to obtain proper medical care in Nigeria, andd [*sic*] in addition, she would be subject to physical and emotional harm should she be forced to return to Nigeria.

[4] The Immigration Officer acknowledged the Applicant's medical condition but found that she had not provided sufficient objective evidence confirming the appropriate care she would require, and the unavailability of that care in Nigeria. It was said that all she had provided was a generalized statement from her physician that Nigeria lacks the resources to treat her properly.

[5] The Immigration Officer also acknowledged the amount of time that has passed since the Applicant landed in Canada, as well as the general consequences of relocating and settling back in Nigeria, but gave little weight to these factors since they did not amount to unusual, underserved, or disproportionate hardship.

[6] The applicant initially raised an issue of whether all of the Applicant's supporting documentation was in front of the Officer. However, the Certified Tribunal Record contains all of the information that was suspected of having been omitted and this is no longer an issue.

[7] The real issue is whether, given the material in the record, the Officer properly weighed it and arrived at a reasonable decision. For the reasons that follow, I find that the Officer's decision was reasonable and ought not to be disturbed.

[8] I agree with the statement in the Inland Processing Manual 5 - *Immigrant Applications in Canada Made on Humanitarian or Compassionate Grounds* - that the onus is on an applicant to show what treatment is required for her medical conditions, that such treatment is vital for her physical or mental wellbeing, and that the treatment would not be available to her if returned to her country of citizenship.

[9] The only evidence submitted by the Applicant that she may not get the medical treatment she needs is a letter from Dr. O. Makinde dated September 22, 2009, stating that:

Her Parkinson's disease is progressing and getting worse. She is at a risk of rapid deterioration in her health if she is forced to return to Nigeria, where she will not be able to get proper medical attention.

[10] Another letter from Dr. O. Makinde dated August 5, 2010, reiterates that:

Ms. Adedeji's health will deteriorate if she returns to her home country Nigeria, where she will not be able to get proper medical care. Being a Nigerian, I know that the health care system in Nigeria is not well funded and is poorly managed. There is a shortage of resources. Medications are not readily available.

[11] There was also some discrepancy in the information submitted by the Applicant as to the medications she was receiving for her Parkinson's disease. In the same August 5, 2010 letter by Dr. O. Makinde he states that the Applicant "suffers from hypertension, parkinson's [*sic*] disease and generalized anxiety disorder. Her medications are Norvasc 10 mg daily and Lopressor 50 mg daily." Dr. O. Makinde does not refer to any medications being used to treat the Applicant's Parkinson's, and yet concludes that the Applicant would not receive "proper medical care".

[12] In contrast, in July 21, 2010 when Ms. Adedeji was discharged from hospital, the attending physician discharged her with the following medications: Norvasc, Coversyl, Sinemet, Plavix, Metoprolol, and Amoxicillin. Only Norvasc was continued by Dr. O. Makinde as of August 5, 2010, and yet by September 25, 2011, Dr. O. Makinde had started prescribing the Applicant Sinemet and Bromocriptive. Therefore, it is unclear exactly which medications were vital for the treatment of the Applicant's Parkinson's disease.

[13] The Immigration Officer made reference to the above statements and found that the Applicant "has not adduced any objective evidence confirming what [*sic*] the appropriate care that is required and the unavailability of this care in Nigeria. Her doctor has stated that Nigeria lacks the resources to treat her properly. However, I find this to be a broad statement that is generalized in nature. It lacks specifics as to what treatment is unavailable." The Immigration Officer also pointed to documentary evidence which shows that "drugs are available but may be expensive. There are many pharmacies throughout Nigeria. The National Agency for Food and Drug Administration and Control [NAFDAC] has worked hard to ensure that these pharmacies are regulated and sell genuine medicines to the Nigerian Public."

[14] The Applicant did not submit any evidence describing exactly what treatment would be necessary for her Parkinson's disease, and in fact, submitted inconsistent information about the medications she required. Further, she did not submit any evidence from the relevant health authorities in Nigeria or anyone else attesting to the fact that an acceptable treatment for Parkinson's is not available to her in Nigeria. She did not lead the evidence required to meet her burden.

[15] At the hearing, counsel raised a concern that the Officer stated in the decision that the Applicant has three children, when she has none. This issue was not identified in the written memorandum and is improperly raised at such a late date. Nevertheless, I have considered this error and am unable to conclude that the Officer's error impacts in any material respect the reasonableness of the decision in regards to her medical condition and the availability of medical care and treatment in Nigeria.

[16] In my view, based on the record before the Officer the conclusion that he or she was "not satisfied that the applicant suffers from any medical condition whose treatment would not be available in Nigeria" is a reasonable conclusion and cannot be upset.

[17] No question was posed for certification.

[18] The Respondent requested that pages 8 to 21 of the certified tribunal record be struck from the Record. Those pages are information that was exchanged or provided subsequent to the

decision under review. They were not before the decision-maker and are not properly part of the certified record and they will be struck.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed, no question is certified, and pages 8 to 21 of the certified tribunal record are struck.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-295-13

STYLE OF CAUSE: MARY MORONSOLA ADEDEJI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 24, 2014

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

DATED: MARCH 26, 2014

APPEARANCES:

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