

Federal Court



Cour fédérale

Date: 20170519

Docket: IMM-4320-16

Citation: 2017 FC 513

St. John's, Newfoundland and Labrador, May 19, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JOLOMI EMMANUEL EJEYE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Jolomi Emmanuel Ejeye (the “Applicant”) seeks judicial review of the decision, dated October 12, 2016, refusing his application for a study permit pursuant to the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant is a citizen of Nigeria. On February 16, 2015, he applied for a study permit and was refused on March 25, 2015.

[3] The Applicant reapplied on May 18, 2015 and was refused on February 29, 2016. He sought judicial review of that decision in cause number IMM-1580-16. The Minister of Citizenship and Immigration (the “Respondent”) agreed to re-determine the application for the study permit, upon discontinuance of the application for leave and judicial review.

[4] The Applicant’s application was reconsidered and again, a negative decision was rendered, on October 12, 2016. That decision is the subject of the within application for judicial review.

[5] The Applicant argues that the Officer breached the duty of procedural fairness by failing to advise him of concerns, including concerns about his credibility. He pleads that the Officer imported a subjective view of his qualifications and status as student. He also submits that the Officer misinterpreted the Regulations.

[6] The Respondent argues that the case raises no issue of procedural fairness or of statutory interpretation. Rather it is about the assessment of the evidence by the Office, particularly about the financial support available to the Applicant were he given permission to study in Canada.

[7] The standard of review applicable to issues of procedural fairness is correctness; see the decision in *Mission Institute v. Khela*, [2014] 1 S.C.R. 502 at paragraph 79. Credibility findings and questions of mixed fact and law are reviewable on the standard of reasonableness; see the decisions in *Imran v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 916 at paragraph 13 and *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 53.

[8] According to the decision in *Dunsmuir, supra* at paragraph 47, the standard of reasonableness requires that the decision be justifiable, intelligible and transparent, and fall within a range of acceptable outcomes.

[9] I agree with the Respondent that no breach of procedural fairness arises in this case. The Applicant has not clearly identified such an error. The Officer was not obliged to contact him about the contents of his application.

[10] However, I am not satisfied that the Officer reached a reasonable conclusion in denying the Applicant's application.

[11] There is no explanation for the Officer's focus on the Applicant's age nor why this is relevant to his current application. The Officer also unreasonably questioned the Applicant's previous educational achievements and in my opinion unreasonably expressed doubt about his work experience. In my opinion, this misplaced emphasis colours the Officer's assessment of the application and renders the decision unreasonable.

[12] In the result, the application for judicial review is allowed and the matter is remitted to another officer for re-determination. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is remitted to another officer for re-determination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4320-16

STYLE OF CAUSE: JOLOMI EMMANUEL EJEYE v. MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: MAY 4, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: MAY 19, 2017

APPEARANCES:

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FOR THE APPLICANT

A. Leena Jaakkimainen

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