Federal Court  Cour fédérale

Date: 20180129

Docket: IMM-2289-17

Citation: 2018 FC 91

Ottawa, Ontario, January 29, 2018

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

OLATUNDE TAIYE TAIWO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Rendered from the Bench at Ottawa, Ontario, on January 25, 2018)

I. Overview

[1] It is acknowledged and understood that young people, at the outset of their careers, often take a different direction away from a practical, financially lucrative orientation to one that encompasses furthering the cause of the disadvantaged in society. If that were not the case, who would take up the cause of the disadvantaged, if not also those, with expertise in finances and

thus combine an interdisciplinary set of studies to better the lot of the disadvantaged in society. For illustrious examples of this, why would Bill Gates and the small Bill Gates' society, as well as the small Warren Buffetts in society, give of themselves to the cause of the disadvantaged? The evidence is very clear as to the intentions of the Applicant based on the images he had seen, the voices he had heard and the call that he specified and reached him, for him to give of himself for such purpose. Otherwise, in the case of the Applicant, he would, himself, not have taken that direction; if not now, when and if not he, who? Who could do such? If not someone, who clearly demonstrated in the evidence, as the Applicant had, what the intentions for the said purpose of the intended study was, that demonstrated the direction which the Applicant wanted to take, to further a set purpose to better the lot of the disadvantaged.

[2] The Court concludes that the Officer ignored evidence submitted by the Applicant based on the intentions and reasons that the Applicant had given. That does not mean that the Applicant will not be involved in the financial aspects of his work; however, he would also like to get fully involved in creating a new entity for the betterment of the lives of the disabled.

II. Nature of the Matter

[3] This is an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] of a decision dated May 9, 2017, by a visa officer [Officer] at the High Commission of Canada in Accra, Ghana, refusing the Applicant's study permit application.

III. Facts

[4] The Applicant, aged 40, is a citizen of Nigeria.

[5] The Applicant has been accepted into the University of Manitoba in Winnipeg to study for a Masters in Disability Studies for the duration of two years, starting January 2018. The Applicant has a degree in Sociology in Nigeria and works as a Financial Director since 2012 in his own family business.

[6] The Applicant submitted an application for a study permit in September 2016. The application was refused by a visa officer mainly due to the insufficient information provided by the Applicant in his study plan/statement of purpose.

[7] In March 2017, the Applicant submitted a second study permit application.

IV. Decision

[8] On May 9, 2017, the Officer refused the Applicant's study permit application because it was determined that the application does not meet the requirements of the IRPA and its Regulations. Under subsection 11(1) of the IRPA, the Officer was not satisfied that the Applicant would leave Canada at the end of his authorized stay because of the purpose of his visit.

[9] In the Global Case Management System [GCMS] notes accompanying the refusal letter, the Officer provided the following reasons for the decision:

> Applicant has not provided compelling reason for study in Canada, in particular there appears to be no logical study/career progression. Concerns applicant is using study permit as means to facilitate entry to Canada rather than educational advancement. Based on available information, I am not satisfied that applicant will leave Canada end of authorized stay. Application refused.

V. Issues

[10] The matter raises the following issues:

1. Did the Officer err in refusing to grant the Applicant a student visa?
2. Did the Officer breach the duty of fairness by failing to offer the Applicant an opportunity to respond to the concerns raised?

[11] The Court finds that the applicable standard of review on findings of fact reached by a visa officer as to whether to grant a study permit is that of reasonableness (*Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 19 [*Dhillon*]; *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 9). "Where the reasonableness standard applies, it requires deference" and therefore, this Court may only intervene if the decision rendered does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[12] As a matter of procedural fairness, the issue regarding whether the Applicant was denied an opportunity to respond will be reviewed under the standard of correctness (*Khosa*, above, at para 43).

VI. Relevant Provisions

[13] The following provisions of the IRPA and of the Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR] are relevant to the Officer's determination.

Subsection 11(1) of the IRPA:

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

Paragraphs 179(b) and 216(1)(b) of the IRPR:

Temporary Resident Visa	**Visa de résident temporaire**
Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
…	[…]
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
…	[…]

Issuance of Study Permits	**Délivrance du permis d'études**
Study permits	**Permis d'études**
216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national	**216** (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
…	[…]
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

VII. Submissions of the Parties

A. *Submissions of the Applicant*

[14] According to the Applicant, the Officer's decision is unreasonable in respect to the guidelines and the IRPA. It is submitted that the Officer ignored evidence by refusing the student's visa application. There was no basis to conclude that the Applicant would not leave Canada at the end of the authorized stay, and the Officer did not provide any reason for his/her conclusion. In order to assess the *bona fide* of a student, the policy manual "OP 12 Students" [OP 12], section 5.15, provided by Citizenship and Immigration Canada indicates:

> *Bona fides* of all students must be assessed on an individual basis; […] If officers wish to take into account outside information, particularly where that information leads to concerns/doubts about the applicant's bona fides, the applicant must be made aware of the information taken into account and given an opportunity to address those concerns. […] The onus, as always, remains on the applicant to establish that they are a bona fide temporary resident who will leave Canada following the completion of their studies pursuant to

> section R216(1)(b). […] In assessing an application, an officer should consider:
>
> • the length of time that they will be spending in Canada;
>
> • the means of support;
>
> • obligations and ties in home country;
>
> • the likelihood of leaving Canada should an application for permanent residence be refused;
>
> • compliance with requirements of the Act and Regulations.

[15] Moreover, the Applicant argues that there was evidence before the Officer that the Applicant and his family vacationed in Canada without staying beyond the authorized period of stay. The Applicant visited the United Kingdom and the United States without overstaying and without having any complications with the immigration authorities. The Applicant submitted evidence (i.e. proof of funds) before the Officer that he is financially able to support himself in Canada and pay his tuition fees. He also had an obligation to return to his country to run his flourishing company upon the completion of his two-year program in Canada. He had also demonstrated strong ties to his country of residence (i.e. wife and three children in Nigeria). Since the Officer failed to take this factor into consideration, the decision should be quashed (*Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 at para 31; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 18).

[16] According to the Applicant, the Officer did not provide sufficient explanation as to why he was not convinced that the Applicant would leave Canada at the end of the authorized stay and why the Officer was not convinced that the Applicant is not a genuine student. This

application for judicial review should therefore be allowed (*Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 34).

[17] The Applicant also argues that the Officer erred by concluding that the "Applicant has not provided compelling reason for study in Canada. In particular there appears to be no logical study/career progression". In fact, it is submitted that the Applicant has a degree in Sociology, as explained in his Affidavit of Purpose as well as in his Statement of Purpose. The Applicant also explained how he has developed interest in Disability Studies and why he wants to study in Canada. For these reasons, the Officer failed to explain why he found the Applicant's intended program of study in Canada not to be compelling (*Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at para 12).

[18] The Applicant argues that it is unreasonable for the Officer to conclude that the Applicant is not a genuine student based on the fact that he wishes to seek knowledge in a field for which he has passion. "[T]he visa officer is entitled, even at the moment of the first application for such visa, to examine the totality of the circumstances, including the long term goal of the applicant" (*Wong (Litigation guardian) v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1049 (QL) at para 13) [Emphasis added by the Applicant.].

[19] Finally, the Applicant argues that he was denied natural justice because he was not given an opportunity to address the Officer's concerns, as outlined in the OP 12 Guideline. The Officer never informed the Applicant of his concerns regarding the purpose of his study in Canada, as

well as the link between the Applicant's program of study and his study or career progression (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 25).

B. *Submissions of the Respondent*

[20] The Respondent, on the other hand, argues that the Officer's decision is reasonable. The Applicant graduated from a Nigerian university with a degree in sociology, and became the director and major shareholder of a family business in Nigeria. Unlike what the Applicant argues, the Respondent submits that the Officer did not take issue with the veracity of the Applicant's financial documents, with the fact that he had previously visited Canada, or that he had ties to Nigeria. The Officer determined that the Applicant did not provide compelling reason for studying in Canada, particularly because there appeared to be no logical study progression with his career. The Respondent agrees with the Officer's findings, as the Applicant did not sufficiently demonstrate that there were compelling reasons for him to study in Canada in a field in which he had neither previously studied nor been employed.

[21] It is submitted that in *Solopova*, the Court upheld that it was reasonable for the visa officer to find the intended course of study "did not accord" with the applicant's previous academic history (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 25 [*Solopova*]). This Court has also upheld that it was reasonable for the visa officer to raise concerns about the applicant's change of career path (*Noor v Canada (Citizenship and Immigration)*, 2017 FC 442 at paras 9-10). According to the Respondent, it was thus reasonable for the Officer to find that the Applicant's intended field of study was inconsistent with his employment history in business, despite his explanations. The onus is on the applicant who

applies for a study permit to convince the visa officer that he or she will leave Canada at the end of the authorized stay (*Patel v Canada (Citizenship and Immigration)*, 2017 FC 570 at para 12).

[22] Finally, the Respondent argues that there was no obligation on the Officer to inform the Applicant of his concerns before rendering a decision (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52 [*Singh*]). The Applicant explained why he chose to study in Disability Studies considering his degree in Sociology and his employment in business. The Officer was not satisfied, however, that he was a genuine student who would return to his country of residence at the end of the authorized stay. The onus is on the applicant to provide the visa officer with all the relevant information and complete documentation and the Officer is not required to seek clarification, or to reach out to make the applicant's case when it is lacking (*Solopova*, above, at paras 38, 41). Officers are presumed to have considered all the evidence and are not required to refer to each of them in their reasons (*Solopova*, above, at para 28). According to the Respondent, "the evidence provided did not satisfy the fundamental duty to prove that the applicant would leave the country at the end of his authorized stay" (*De La Cruz Garcia v Canada (Citizenship and Immigration)*, 2016 FC 784 at para 12 [*De La Cruz Garcia*]).

C. *Reply*

[23] The Applicant argues that the Respondent's arguments merely echo the decision of the Officer and its reasons stated in the GCMS notes.

[24] According to the Applicant, the Respondent's reliance on *Solopova* and *De La Cruz Garcia* is misplaced.

[25] It is clear from the Applicant's supporting documents in respect of the Application for study permit and his Memorandum before this Court that the Officer erred in his decision. The Applicant finds that he has done everything to discharge the onus on him.

VIII. Analysis

[26] For the following reasons, the application for judicial review is granted.

A. *Did the Officer err in refusing to grant the Applicant a student visa?*

[27] Based on the evidence submitted by the Applicant and before the Officer, the Court finds that the Officer did err in refusing to grant the Applicant a student visa by concluding that:

> There appears to be no logical study/career progression.

[28] Even if the Officer's reasons are brief, it is clear that his findings contradict the material evidence before him. Visa officers have the expertise to grant study permit applications and they are presumed to have considered all the evidence before them.

> Indeed, the Court owes great deference to the officer's assessment of the evidence. Although brief, his reasons are sufficient to show that he carefully weighed the evidence submitted, and allow the Court to understand how his decision falls within the range of possible outcomes. The Court's role is not to reassess the officer's findings of fact, but rather to see whether his reasons generally support his conclusions. The onus was on the applicant to satisfy the officer that he will leave at the end of the period. The officer's findings should not be read microscopically. It was not necessary for the officer to refer to every specific aspect of the application in his decision.
>
> (*Alaje v Canada (Minister of Citizenship and Immigration)*, 2017 FC 949 at para 14.)

[29] Nevertheless, the Officer had clearly before him that the Applicant studied Sociology for five years (from 1995-2000) and that during his work as a Financial Officer, he recognized the plight of the disabled in his society and wanted to assist that segment of the population by returning to his educational roots in Sociology. The Applicant therefore decided that he wanted to give of himself to a segment of society by furthering his knowledge in an area that would bring assistance to the disabled as per the evidence.

[30] It is acknowledged and understood that young people, at the outset of their careers, often take a different direction away from a practical orientation, financially lucrative, to one that encompasses furthering the cause of the disadvantaged in society. If that were not the case, who would take up the cause of the disadvantaged, if not also those, with expertise in finances and thus combine an interdisciplinary set of studies to better the lot of the disadvantaged in society. For illustrious examples of this, why would Bill Gates and the small Bill Gates' society, as well as the small Warren Buffetts in society, give of themselves to the cause of the disadvantaged? The evidence is very clear as to the intentions of the Applicant based on the images he had seen, the voices he had heard and the call that he specified and reached him, for him to give of himself for such purpose. Otherwise, in the case of the Applicant, he would, himself, not have taken that direction; if not now, when and if not he, who? Who could do such? If not someone, who clearly demonstrated in the evidence, as the Applicant had, what the intentions for the said purpose of the intended study was, that demonstrated the direction which the Applicant wanted to take, to further a set purpose to better the lot of the disadvantaged.

[31] The Court concludes that the Officer ignored evidence submitted by the Applicant based on the intentions and reasons that the Applicant had given. That does not mean that the Applicant will not be involved in the financial aspects of his work; however, he would also like to get fully involved in creating a new entity for the betterment of the lives of the disabled.

[32] In the case at bar, the Officer should not have doubted the Applicant's explanations regarding his change of career path. The Applicant first studied in Sociology from 1995 to 2000, even though from 2004 to 2012, he has been employed as a Financial Officer and a Financial Manager. In 2012, the Applicant became the Financial Director at Tropical Spectrum BDC Ltd., a family owned business by the Applicant himself, in which he owns the majority of the shares of the company. The business is currently still running, recognizing that it is the Applicant's wife, as stated in her sworn affidavit of financial support that she will take care of the company during the absence of her husband. In light of all the evidence, it was thus unreasonable for the Officer to raise concerns with respect to the Applicant's intentions to obtain a Master's Degree in Disability Studies in Canada, although the Applicant has spent over ten years in the business employment. The Applicant's desire, as per his evidence, does not point in the direction of reasonableness of the Officer's decision. Therefore, the decision is unreasonable.

> It is only when a tribunal is silent on evidence clearly pointing to the opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact.
>
> (*Solopova*, above, at para 28.)

This is the case, in this matter in that the Officer did overlook the evidence as to its comprehensiveness.

[33] In addition, it was unreasonable for the Officer to conclude that the Applicant would not leave Canada at the end of the authorized stay.

B. *Did the Officer breach its duty of fairness by failing to offer the Applicant an opportunity to respond to the concerns raised?*

[34] Finally, the Court agrees fully with the Respondent that there was no obligation on the Officer to inform the Applicant of his concerns before rendering a decision (*Singh*, above, at para 52). There was no breach of procedural fairness from the Officer. The onus is on the Applicant to establish, on the balance of probabilities, that he will leave Canada at the end of the authorized stay (*Dhillon*, above, at para 41). The Officer's concerns arose from the sufficiency of the evidence that the Applicant himself provided. There was no external information that was considered by the Officer that required him to notify the Applicant of his concerns. The Applicant was aware of all the documentation that was before the Officer.

> If an officer intends to base his decision on extrinsic information of which an applicant is unaware, then an opportunity to respond should be made available to enable the applicant to disabuse the officer of any concerns arising from that evidence (*Huang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 145 at para 7). However, where the issue arises out of material provided by the applicant, as in this case, there is no obligation to provide an opportunity for explanation since the provider of the material is taken to know the contents of the material (*Poon v Canada (Minister of Citizenship and Immigration)* (2000), 198 FTR 56 at para 12, citing *Wang v Canada (Minister of Citizenship and Immigration)* (1999), 173 FTR 266).
>
> (*Hakimi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 657 at para 22.)

[35] Based on the entire evidence on the record, the Court concludes that the Officer's decision does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

IX. Conclusion

[36] The application for judicial review is granted.

JUDGMENT in IMM-2289-17

THIS COURT'S JUDGMENT is that the application for judicial review be granted and the matter be returned to another officer for decision anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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