

Federal Court



Cour fédérale

**Date: 20190109**

**Docket: IMM-279-18**

**Citation: 2019 FC 26**

**Ottawa, Ontario, January 9, 2019**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**GIFTY IRENE ADOM**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Gifty Irene Adom (the “Applicant”), is a citizen of Ghana. On January 2, 2018, an officer with the High Commission of Canada in Ghana (the “Visa Officer”) rejected her application for a study permit to attend Algonquin College in Ottawa. The Visa Officer found her tenuous establishment in Ghana and lack of financial resources was insufficient to establish that she will leave Canada at the end of her stay.

[2] On January 18, 2018, the Applicant applied to this Court for judicial review. For the reasons that follow, I am setting aside the decision.

## II. **Facts**

[3] The Applicant is a 34 year old citizen of Ghana. She wishes to study human resources at Algonquin College in Ottawa. This is her second application for judicial review of a dismissed study permit application. The first application (IMM-1468-17) was returned for redetermination on consent of the parties.

[4] A person who applies to study in Canada must fulfill a number of requirements. For example, a designated learning institution must accept the applicant, the applicant must have enough money for tuition, living expenses, as well as the return trip back to the country of origin, and they must satisfy Citizenship and Immigration Canada that they will leave the country at the end of their permitted stay.

[5] On October 26, 2017 the Applicant submitted further evidence to support her application, including: a letter confirming her deferred acceptance at Algonquin College, a copy of a deed showing she owned land in Ghana, copies of her brother's bank statement, and a copy of her own bank statement. In addition, the Applicant's original application included a study plan detailing why she wants to study Human Resources Management at Algonquin College and her intention to set up a human resources firm in Ghana when she completes her studies.

[6] After a review, the Visa Officer rejected the application. The decision letter states the factors considered by the Visa Officer included her lack of travel history, her family ties in

Ghana, the purpose of her visit, her current employment situation, and her personal assets and financial status.

[7] Further details about the decision are included in the Global Case Management System (“GCMS”) notes attached to the decision. These notes explain how the Visa Officer came to the determination that the Applicant’s establishment in Ghana is weak: she does not live on her own (she resides with her three younger siblings), and she does not have paid work (she volunteers for her brother on a part time basis in exchange for an allowance). In addition, the Visa Officer finds the Applicant’s lack of previous travel is a factor in the broad assessment of her establishment in Ghana.

[8] The GCMS notes also detail the Visa Officer’s concern that the Applicant’s intended studies in Canada would not significantly enhance her work for her brother. The Visa Officer finds that her brother’s “support of her studies merits no scrutiny when objectively considering whether the applicant is a genuine temporary resident and eligible for a study permit.” And although her brother says he will fund her certificate program, the Visa Officer finds he does not have a consistent reliable and available source of funds. Instead, the Visa Officer is critical of his two bank accounts’ relatively low initial balances, which eventually received large cash deposits. One deposit was made on November 14, 2016 and another on October 23, 2017. In regards to the Applicant’s own savings, the Visa Officer notes the Applicant has only the equivalent of \$2,800.00 Canadian.

[9] When considering the land deed submitted as evidence, the Visa Officer is also critical. In particular, the GCMS notes state there is no information about the state of the land, no

pictures of the land, no information about the date of purchase, and no evidence about the land's value.

[10] On January 2, 2018, the Visa Officer rejected the application, finding that the evidence did not establish that the Applicant would leave Canada at the end of her stay.

### III. **Issue**

[11] The Applicant submits the issues are:

1. Was the decision unreasonable and without regard to the evidence?
2. Was the Applicant's right to procedural fairness breached by failing to send a procedural fairness letter?

### IV. **Standard of Review**

[12] The standard of review of a visa officer's decision is reasonableness (*Ngalamulume v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1268 at para 16). Issues of procedural fairness are reviewed for correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

### V. **Analysis**

A. *Was the decision unreasonable and without regard to the evidence?*

[13] A reasonable decision is made with regard to the evidence before the decision maker. The Applicant argues this did not happen in this case. In particular, she argues that the Visa Officer ignored her detailed study plan which she included as part of her study permit application. The Applicant also points out that according to *Dhanoa v Canada (Minister of Citizenship and*

*Immigration*), 2009 FC 729 at paragraph 12 [*Dhanoa*], the Visa Officer erred by using her lack of travel in the past as evidence that she will not return to Ghana in the future.

[14] According to the Respondent, the Visa Officer did not overlook the evidence. Rather, the Respondent submits that no evidence supports the Applicant's statements in her study plan. For example, the Respondent says there is no evidence about the land's value, no evidence about an intention to live in the building under construction, and no evidence of an established career in Ghana. The Respondent further submits that the Applicant's resume outlines an administrative work history, but provides no details about any human resources experience. At the judicial review hearing, the Respondent also argued that "what she says, and what her brother says on her behalf is not supported by the documentation and that is a concern of the Visa Officer." In regards to the Visa Officer's findings about her lack of travel outside of Ghana, the Respondent argues this finding is insufficient to overturn the otherwise reasonable decision.

[15] First, as this Court held in *Dhanoa*, a lack of travel history is a neutral factor. Accordingly, the Visa Officer erred by using the lack of travel history as a negative factor.

[16] Second, I disagree with the Respondent's argument that the decision is otherwise reasonable. Having reviewed the Applicant's educational plan myself, it is clear that at no point does she ask for career counseling advice. Yet this Visa Officer apparently fancied the opportunity to assume the role of career counsellor and opine that the Applicant's intended studies in Canada would not enhance her work for her brother. Such extraneous considerations make it obvious that the Visa Officer engaged in an unreasonable review of the evidence.

[17] I would be remiss not to point out that the Visa Officer's foray into career counselling also indicates that the Applicant's detailed education plan was not reviewed. While this study plan explains her intent is to return to Ghana and set up a human resources consultancy firm, the reasons indicate the Visa Officer's incorrect belief that her intent is to work for her brother's company:

Moreover, I am not satisfied that pursuing studies in Canada at this time would lead to a significant enhancement in the applicant's life and work for the company...As fulfilling all three roles of family member/employer/sponsor, I am not satisfied that the brother's support of her studies merits no scrutiny when objectively considering whether the applicant is a genuine temporary resident and eligible for a study permit.

[18] Had the Visa Officer read the study plan, then the Visa Officer would have known that the Applicant intends to open her own human resources firm, which is why she wants to study human resources at Algonquin College. The quoted passage also illustrates that this erroneous belief impacts the Visa Officer's assessment of the evidence, as it leads to the conclusion that evidence of her brother's support is unsatisfactory.

[19] This decision is unreasonable and I am setting it aside. There is no need to consider the second issue put forward by the Applicant.

VI. **Certified Question**

[20] Counsel for both parties was asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VII. **Conclusion**

[21] This application for judicial review is granted.

**JUDGMENT in IMM-279-18**

**THIS COURT'S JUDGMENT is that:**

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-279-18

**STYLE OF CAUSE:** GIFTY IRENE ADOM v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 17, 2018

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 9, 2019

**APPEARANCES:**

Adam Hummel

FOR THE APPLICANT

Sally Thomas

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mamann, Sandaluk & Kingwell  
LLP  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT