Federal Court  Cour fédérale

Date: 20190116

Docket: IMM-2577-18

Citation: 2019 FC 55

Toronto, Ontario, January 16, 2019

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

OLUSOLA MOFOLORUNSO ADEOSUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This decision concerns an application for judicial review of a decision of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada which (i) dismissed an appeal of a visa officer's determination that the applicant failed to meet his residency obligation to maintain his permanent residence in Canada, and (ii) refused the applicant's request for special relief from his residency obligation on humanitarian and compassionate (H&C) grounds.

[2] The applicant alleges many errors by the IAD with regard to his residency in Canada and reasons for his time outside Canada, but he provides little detailed support for his arguments. The

applicant also alleges many errors in the IAD's analysis of H&C considerations, again with little detailed support. For the most part, the applicant's arguments amount to requests that the Court consider new evidence and re-weigh evidence that the IAD already considered. This is not the Court's role.

[3] The applicant asserts that the standard of review on a point of law is correctness. The respondent disputes this where, as here, the IAD is interpreting its home statute. Without accepting the applicant's assertion on this point, I conclude that the errors alleged by the applicant are not issues of law, but rather issues in the application of the law. These issues attract a standard of review of reasonableness.

[4] Having reviewed the IAD's decision and considered the applicant's arguments, I am not convinced that there are any errors in the IAD's analysis of the residency issue or the H&C considerations that warrant the Court's intervention. I am satisfied that the IAD did not fail to consider any of the evidence. For the most part, the IAD's concerns related to the insufficiency of the evidence. Though it was open to the IAD to reach different conclusions on the evidence before it, I am not convinced that any of the IAD's consideration of the evidence was unreasonable and would have resulted in a different outcome.

[5] The IAD does appear to have made a few minor errors in considering the evidence, but I am of the view that such errors would not have altered the result. There are no more than three such minor errors. The first is that, throughout the impugned decision, the IAD referred to the applicant's alleged employer as "NuMedia." Its actual name is "NuDenia." A second apparent error is that one of the applicant's children lived in Ottawa. Based on the applicant's testimony,

that had been the case during the child's high school education, but was not the case at the date of the hearing. Thirdly, the applicant alleges that the IAD erred in stating that there was no evidence that the applicant's family ever visited him in Nigeria since their landing in Canada. In fact, the applicant testified that his wife and youngest son had stayed with him in Nigeria on occasion during that time. While I accept that the IAD's statement in this regard is potentially misleading, it is true that the family as a whole never visited him. I take this to be the IAD's meaning.

[6] The applicant also alleged that the transcript of the hearing before the IAD contained an error concerning the scope of the applicant's assets in Nigeria. However, I was pointed to no evidence to support this allegation. In the absence of such evidence, I conclude that the transcript accurately reflects the applicant's testimony, and that there is no error there.

[7] The applicant argues that the IAD engaged in speculation in a number of its conclusions. In my view, the IAD's conclusions were not the result of speculation. Rather, they were the result of reasonable inferences based on the insufficiency of the evidence presented by the applicant in a context in which he bore the burden of proof.

[8] Many of the applicant's submissions are based on new evidence that was not before the IAD. The respondent rightly objects that, generally speaking and in this case, such evidence is irrelevant to the question before the Court as to whether the IAD erred in considering and applying the evidence before it. Therefore, I have given such new evidence no weight.

[9] For the foregoing reasons, the present application will be dismissed. The parties agree that there is no serious question of general importance to certify.

JUDGMENT in IMM-2577-18

THIS COURT'S JUDGMENT is that:

1. The present application is dismissed.

2. There is no question of general importance to certify.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2577-18
STYLE OF CAUSE:	OLUSOLA MOFOLORUNSO ADEOSUN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 14, 2019
JUDGMENT AND REASONS:	LOCKE J.
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APPEARANCES:

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