

Federal Court



Cour fédérale

Date: 20230119

Docket: IMM-8101-21

Citation: 2023 FC 89

Ottawa, Ontario, January 19, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

TAIWO BOLANLE ADEDIRAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of an Immigration Officer [Officer], dated November 2, 2021 [the Decision], in which the Officer refused the Applicant's applications for a temporary residence permit [TRP] and a study permit.

[2] As explained in more detail below, this application is granted because the Decision demonstrates that the Officer overlooked, or misunderstood the significance of, evidence of the Applicant experiencing an attempted sexual assault as a child.

II. **Background**

[3] The Applicant is a 28-year-old citizen of Nigeria. She came to Canada in 2012 to pursue her post-secondary studies. Prior to arriving in Canada, the Applicant lived with her family in the United Kingdom, where she completed high school. Her mother and brother continue to reside in the United Kingdom. Her father is deceased.

[4] The Applicant's initial study permit expired in 2015, but she remained in Canada and studied and worked without authorization. She eventually applied for a TRP and a new study permit, but both applications were refused on November 2, 2021. That refusal is the subject of this application for judicial review.

III. **Decision under Review**

[5] In the Global Case Management System notes, which form part of the reasons for the Decision, the Officer first summarized the Applicant's immigration history. The Officer then summarized some of the Applicant's submissions regarding the difficulty she experienced in adjusting to life in Canada, including the difficulties she and her family faced when her father fell ill and subsequently passed away.

[6] While acknowledging the Applicant's wish to remain in Canada, as she could not return to the United Kingdom and believed it would be difficult to return to Nigeria, the Officer noted that the Applicant had not made any attempt to regularize her status in Canada or use alternative options such as applying for permanent residence.

[7] The Officer also acknowledged the Applicant's submissions as to the country conditions in Nigeria, including risks of crime, violence, and sexual harassment. While acknowledging that the Applicant declared that several of her friends had experienced abuse, the Officer found that the Applicant had not herself provided any submissions that showed that she would be directly impacted by these hardships.

[8] In conclusion, while noting that there was no risk involved in issuing a TRP to the Applicant, the Officer was not convinced that granting a permit was justified in the circumstances. As the application for a TRP had been refused, the Officer also refused the Applicant's application for a study permit.

IV. **Issues**

[9] The Applicant has raised the following two issues for the Court's determination:

- A. Did the Officer err by failing to provide reasons as to why a TRP was not justified in the Applicant's circumstances?
- B. Did the Officer ignore evidence of harm to the Applicant in Nigeria?

[10] The parties agree (and I concur) that the applicable standard of review is reasonableness.

V. Analysis

[11] My decision to allow this application for judicial review turns on the second issue raised by the Applicant. She argues that the Officer's statement, that she had not provided any submissions showing that she would be directly impacted by sexual abuse, ignores her evidence of having been the victim of an attempted sexual assault as a child.

[12] In support of her TRP application, the Applicant submitted country condition evidence surrounding the prevalence of sexual violence in Nigeria, including at the hands of college professors. As I read the Decision, the Officer acknowledged this evidence but concluded that the Applicant had not linked this evidence to her personal circumstances.

[13] However, in a Statutory Declaration submitted in support of her TRP application, the Applicant explained that she was the victim of an attempted sexual assault when she was around 11 years old and linked this incident to her fear of being exposed to the risks of sexual violence in Nigeria. In my view, the Decision demonstrates that the Officer either overlooked this evidence or misunderstood its significance for the Applicant's submissions.

[14] The Respondent submits that, even if the Court identified a factual error of this nature, it is not a material or fatal flaw that warrants judicial intervention. I disagree with this submission. I appreciate that the Applicant's submissions in support of her TRP application related

significantly to her wish to remain in Canada to complete her studies. However, her arguments as to the isolation and risks she would face in returning to Nigeria also represented material components of her submissions. I therefore do not find the Officer's error in relation to the evidence supporting those arguments to be insignificant.

[15] This application for judicial review will be allowed, the Decision set aside, and the matter referred to a different officer for redetermination, following an opportunity for the Applicant to provide updated evidence and submissions. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT in IMM-8101-21

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is referred to a different officer for redetermination, following an opportunity for the Applicant to provide updated evidence and submissions. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8101-21

STYLE OF CAUSE: TAIWO BOLANLE ADEDIRAN V THE
MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 18, 2023

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JANUARY 19, 2023

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