Federal Court  Cour fédérale

Date: 20240212

Docket: IMM-2905-23

Citation: 2024 FC 237

Ottawa, Ontario, February 12, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

SAID BABATUNDE AJIROTUTU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by a visa officer (the "Officer") denying the Applicant a study permit.

II. Background

[2] Mr. Said Babatunde Ajirotutu (the "Applicant") is a 42-year-old citizen of Nigeria. He owns 80% of the shares in a company in Nigeria (the "Company") and acts as its managing director and chief executive officer. His spouse owns the remaining 20% of the Company's shares and is also a director.

[3] The Applicant was accepted into a two-year business management program at Fanshawe College (the "College"). He was set to begin attending the program in September 2023. The tuition amount was $18,538.25 per year.

[4] The Applicant applied for a study permit in early 2023. By then, he had paid his first year's tuition in full. He also transferred his management duties for the Company to his spouse for the duration of the program.

[5] Pursuant to section 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"), in order for the permit to be issued, the Applicant must show that he had sufficient financial resources to pay his tuition fees, maintain himself, and pay the cost of transporting himself to and from Canada.

[6] The Applicant stated on his application that he expects to need $28,800.00 in total living expenses for his two years in Canada, and $3,000.00 for tickets to and from Canada. Therefore,

the total amount to satisfy the financial requirements of the Regulations, including his second year's tuition, was $50,087.45.

[7] At the time of his application, the Applicant's personal savings account in Nigeria had the equivalent of $30,342.24. The Company had the equivalent of $249,292.88 in funds in a separate corporate account.

[8] In support of the Applicant's application, the Company's directors (i.e. he and his spouse) resolved that the Company would financially sponsor the Applicant's studies.

[9] The Officer denied the application for a study permit, concluding that the Applicant's financial situation was insufficient, which in turn also suggested to the Officer that the Applicant is unlikely to leave Canada at the end of his stay, contrary to section 216(1)(b) of the Regulations. The Officer's determinative finding was that there was insufficient evidence to support the "relationship/connection" of the Applicant to the Company, and that the Company's obligation to sponsor the Applicant was limited.

[10] The Applicant states that the Officer's decision was unreasonable in light of the evidence.

[11] The Applicant also argues that the Officer breached their duty of procedural fairness because (1) the Officer did not adequately explain why the evidence was unsatisfactory, suggesting that they were merely speculating, (2) the Officer made a veiled credibility finding by rejecting

the Applicant's evidence, and (3) the Applicant had a legitimate expectation that the Officer would base their decision on the evidence.

[12] The Applicant's submissions with respect to procedural fairness address the *substance* of the Decision in light of the evidence, not the process taken by the Officer. There are no real issues arising with respect to procedural fairness.

III. Issue

[13] Was the Officer's conclusion that the Applicant lacked sufficient funds and was therefore also unlikely to leave Canada reasonable?

IV. Analysis

[14] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

[15] The Respondent argues that the Officer's conclusion was reasonable because (1) the balance on the Applicant's bank account was low until he received transfers shortly before submitting his application for a study permit, (2) the transfers to the Applicant were not from the Company, and (3) the Company's financial statements were not disclosed. However, the determinative issue cited by the Officer was that there was insufficient evidence to support the "relationship/connection" between the Applicant and the Company, and that the Company's obligation to sponsor the Applicant was limited.

[16] The Applicant owns a controlling share of the Company. His spouse owns the remaining share. The Applicant is the chief executive officer and the managing director of the Company. His spouse is a director and will take over the Applicant's role for the duration of his studies.

[17] The Company's board of directors, which is composed solely of him and his spouse, adopted a written resolution stating that the Company will sponsor the Applicant's education financially. The resolution did not place any limits on the Company's financial sponsorship of the Applicant.

[18] To prove the above facts, the Applicant provided the Officer with a copy of the resolution adopted by the Company's board of directors, and corporate records attesting that the Applicant owns 80% of the Company's shares.

[19] The Officer's notes do not indicate that they questioned the authenticity of the evidence. Rather, the Officer found that the evidence was insufficient.

[20] The Officer's conclusion that there was insufficient evidence in support of the Applicant's relationship and connection to the Company ignores the substance of the evidence before them.

[21] The Decision was unreasonable.

[22] At the conclusion of the oral hearing, the Applicant stated that he wishes to submit a question for certification. However, the Applicant had failed to inform the Court and the Respondent prior to the hearing of his intention to do so.

[23] In any case, the Applicant provided the Court with the following proposed question:

> Does the interpretation and application of sections 220 and 216(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, in the refusal of the Applicant's study permit for purportedly not demonstrating sufficient financial resources, constitute a misapplication of law, given the evidence of financial capacity presented by the Applicant?

[24] A certified question must be a serious question that is dispositive of the matter, transcends the interests of the parties, and raises an issue of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46).

[25] The Applicant’s proposed question fails to meet that standard. It takes issue with the application of the law to his particular facts. Therefore, it does not raise an issue of broad significance or general importance.

[26] The question is not certified.

V. Conclusion

[27] The application for judicial review is granted and the matter is remitted for redetermination by a different officer.

[28] There is no question for certification.

JUDGMENT in IMM-2905-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted for redetermination by a different officer.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2905-23
STYLE OF CAUSE:	SAID BABATUNDE AJIROTUTU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 1, 2024
JUDGMENT AND REASONS:	MANSON J.
DATED:	FEBRUARY 12, 2024

APPEARANCES:

Abayomi Ogayemi	FOR THE APPLICANT
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Abayomi Ogayemi Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT