Date: 20090401

Docket: IMM-4028-08

Citation: 2009 FC 336

Ottawa, Ontario, April 1, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

IFEANYI CHIBUEZE ONYEKA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of an Officer of Citizenship and Immigration Canada (Officer), dated July 14, 2008 (Decision) refusing the Applicant's application for a study permit.

BACKGROUND

[2] The Applicant is a citizen of Nigeria, born July 15, 1976. At the time of his application for a study permit he held a Master of Metallurgy degree from the University of Sheffield and was working as a Metallurgical Engineer in Lagos, Nigeria.

[3] The Applicant has applied for a study permit to Canada on six different occasions at the Canadian Deputy High Commission (CDHC) in Lagos, Nigeria. He has been admitted into three separate Masters and Ph.D. programs in Canada and has been offered scholarships to attend each of them. He has either been refused a permit, or had his application returned unprocessed, on all six occasions. The refusal reasons have varied from saying that he did not have sufficient funds, was not a genuine student, or that he would not return to Nigeria after completing his studies. The Applicant says he was unaware that he could appeal these decisions because his refusal letters said he could not.

[4] The last time the Applicant applied for a study permit was May 2008. This study permit was for a two-year Masters of Science degree at the Department of Mechanical Engineering at the University of Saskatchewan, with the possibility of a transfer to the PhD program after the first year.

[5] The Applicant was offered $1000 per month for the two-year program. As well, he could obtain a teaching assistant position worth approximately $3000 per year. The Applicant was also eligible to be nominated for a university scholarship worth $3000 per year if approved. The

Applicant's estimated living and tuition expenses were $925 per month. The Applicant also had personal savings in Nigeria equivalent to approximately $10,526 Canadian dollars.

DECISION UNDER REVIEW

[6] The Officer held that the Applicant did not have adequate funds available to him to pay for his tuition and living expenses while in Canada and to return to his country of residence. Also, the Officer was not convinced that the Applicant would leave Canada by the end of the period authorized for his stay.

[7] In the Officer's CAIPS notes, it is noted that the Applicant was single, had no dependents and had a low paying job.

ISSUES

[8] The Applicant submits the following issues on this application:

1) What is the standard of review?
2) Was the Decision unreasonable because the Officer disregarded or misconstrued the evidence in finding:
    i. The Applicant did not have sufficient funds to support his studies, and
    ii. The Applicant would not leave Canada at the end of his studies?
3) Did the Officer err by failing to consider dual intent?

4) Was the process unfair because:

i. The Applicant was never given an opportunity to address the concerns of the Officer; and

ii. The Applicant was led to believe he had no appeal rights?

5) Should costs be awarded to the Applicant?

STATUTORY PROVISIONS

[9] The following provisions of the Act are applicable in this proceeding:

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 :
(*a*) applied for it in accordance with this Part;	*a*) l'étranger a demandé un permis d'études conformément à la présente partie;
(*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;
(*c*) meets the requirements of this Part; and	*c*) il remplit les exigences prévues à la présente partie;
(*d*) meets the requirements of section 30;	*d*) il satisfait aux exigences prévues à l'article 30.

219. (1) Subject to subsection (2), a study permit shall not be issued to a foreign national unless they have written documentation from the educational institution at which they intend to study that states that they have been accepted to study there.

219. (1) Le permis d'études ne peut être délivré à l'étranger que si celui-ci produit une attestation écrite de son acceptation émanant de l'établissement d'enseignement où il a l'intention d'étudier.

220. An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(*d*) or (*e*), unless they have sufficient and available financial resources, without working in Canada, to

220. À l'exception des personnes visées aux sous-alinéas 215(1)*d*) ou *e*), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

(*a*) pay the tuition fees for the course or program of studies that they intend to pursue;

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

(*b*) maintain themself and any family members who are accompanying them during their proposed period of study; and

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

(*c*) pay the costs of transporting themself and the family members referred to in paragraph (*b*) to and from Canada.

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa *b*) pour venir au Canada et en repartir.

STANDARD OF REVIEW

[10] The Applicant and Respondent submit that the Decision of a visa officer in a study permit application is based on mixed fact and law and the standard of review in light of *Dunsmuir v. New Brunswick* 2008 SCC 9 (*Dunsmuir*) is reasonableness. See also: *Odewole v. Canada (Minister of Citizenship of Immigration)*, [2008] F.C.J. No. 887 (F.C.) and *Ji v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 744 (F.C.).

[11] The Applicant and Respondent also agree that on issues of procedural fairness or natural justice the correctness standard applies: *Dunsmuir* at paragraphs 58-60 and 129; *Bonilla v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 14 (F.C.) and *Saleem v. Canada (Minister of Citizenship and Immigration)* 2008 FC 389 at paragraph 11.

[12] The Respondent notes that the discretionary decisions of visa officers have attracted a high degree of deference in the past and that such deference continues to be appropriate: *Dunsmuir* at paragraph 53; *Li v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 837 at paragraph 11; *Bellido v. Canada (Minister of Citizenship and Immigration)* 2005 FC 452 at paragraph 5; and *Hua v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1647 at paragraphs 25-28 (*Hua*).

[13] The Respondent also submits that an application for a study permit gives rise to a discretionary decision on the part of the decision-maker, which requires it to be made on the basis of

specified statutory criteria. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant and extraneous to the statutory purpose, the court should not interfere: *To v. Canada (Minister of Employment and Immigration)*, [1996] F.C.J. No. 696 (F.C.A.).

[14] The Respondent points out that an officer's assessment of whether to grant temporary resident status is an exercise of discretion that attracts a high degree of deference. The standard of review is one of reasonableness. The duty of the decision-maker is to accord proper consideration to any application, but an officer is not required to issue a temporary resident visa unless he/she is satisfied that the applicant has met the legislative requirements. See: *Hua* and *De La Cruz v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 111 (F.C.T.D.).

[15] In *Dunsmuir*, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[16] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may

adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[17] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issues raised, with the exception of procedural fairness, is reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENT

The Applicant

Financial Resources

[18] The Applicant submits that the Officer's Decision was unreasonable because the Officer ignored, disregarded or misconstrued the evidence. The Applicant says that he provided solid evidence that the University of Saskatchewan would provide him with sufficient funding to allow him to pursue his studies there. As for his travel expenses, the Applicant had savings to defray the cost of a return ticket to Nigeria.

[19] The Applicant says that, based on the Officer's CAIPS notes, the Officer based his findings on the assumption that the (1) funding of $12,000 was conditional on the Applicant's academic performance, and that (2) the only other funding available to him was from his work. However, the Applicant contends that the Officer ignored the evidence that, although the $12,000 was conditional on academic performance, the professor who extended the offer to the Applicant did not foresee any difficulty in the way of the Applicant meeting the requirements for funding.

[20] In relation to the teaching assistant position, the Applicant explains that this is not considered "work" so much as an integral part of any graduate program of study. As well, the Officer completely ignored the other $3000 the Applicant could be given through a university scholarship and the fact that he had significant savings. Therefore, the Applicant states that the Officer's assessment of the evidence ignored or misconstrued the facts and was unreasonable: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (F.C.T.D.).

Not Leaving Canada after Completing Studies

[21] The Applicant submits that the Officer's finding that the Applicant would not leave Canada at the end of his studies was based on vague and irrelevant facts that disregarded the evidence. The Officer arrived at his conclusion because the Applicant was single, had no children and had a low paying job. These facts apply to the vast majority of students. The Applicant states that these factors do not establish that the Applicant would not leave Canada at the end of his studies.

[22] The Applicant also points out that the Officer ignored the fact that the Applicant's family were all in Nigeria or the UK, and that the Applicant has no family in Canada. As well, the Applicant's earnings were not low by Nigerian standards. The Officer also did not specify what factors would motivate the Applicant to remain in Canada. The Applicant submits that the Officer's assessment of the evidence was unreasonable and that the Decision should be quashed. See: *Ogbonnaya v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 387 (F.C.); *Dang v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 13 (F.C.); *Ji v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 744 (F.C.); *Wang v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 351 (F.C.T.D.) and *Zhang v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1885 (F.C.).

Dual Intent

[23] The Applicant further submits that, in considering whether he would leave Canada at the end of his studies, the Officer failed to consider dual intent. The Act provided as follows:

22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(*b*) and is not inadmissible.	22.(1) Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)*b*) et n'est pas interdit de territoire.
(2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the	(2) L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve qu'il aura quitté le Canada à la

officer is satisfied that they will leave Canada by the end of the period authorized for their stay.	fin de la période de séjour autorisée.

[24] This means that, even if the Officer had concerns as to whether the Applicant might hypothetically have the intention of remaining in Canada permanently, such intent was not a barrier to his entry as a temporary resident/student provided he would leave Canada at the end of his authorized stay. Recent changes to the immigration legislation regarding post-graduate work, permits for students, and the creation of the Canada Experience Class demonstrate that immigration authorities actually encourage foreign students to remain in Canada permanently. Therefore, the concern is not whether or not a student visa applicant will want to obtain permanent residence in Canada, but whether they will remain in Canada illegally without status or beyond their authorized stay. There was no evidence before the Officer that the Applicant would remain in Canada illegally.

[25] The Applicant concludes on this issue that the failure of the Officer to address these issues and his rejection of the Applicant on the basis that he would not leave Canada at the end of his authorized stay was a legal error: *Odewole* and *Dang*.

Unfair Decision

[26] The Applicant also submits that the Officer had a duty to give the Applicant an opportunity to respond to the Officer's concerns, and that the failure to do so renders the Decision unfair. There was no way that the Applicant could foresee that the Officer would refuse his application on the

basis that he was single, had no children and was employed in a low-paying job. So he could not address these matters in his application. The Applicant relies upon *Bonilla* at paragraph 25:

> The Federal Court has held that visa officers may not base their decisions upon stereotypes or generalizations, without allowing the applicant to respond. Mr. Justice Kelen stated the following in *Yuan*, see above, at paragraph 12:
>
> > While the duty of fairness does not necessarily require an oral hearing, there is a requirement that the visa officer provide the applicant with an opportunity to address a major concern, in other words, respond. The fact that the visa officer is of the opinion that there are many visa applicants from this location in China who apply for refugee status upon receiving the visa is not a fair or reasonable basis to dismiss all applicants from that region without providing a fair opportunity for the applicant to respond to this concern.

[27] In the present case, the Officer relied on a generalization that single people without children and with low-paying jobs do not leave Canada at the end of their studies. In order to meet the duty of fairness, the Officer should have given the Applicant an opportunity to respond, either by conducting an interview or by sending the Applicant a letter listing his concerns and giving him an opportunity to address them: *Wang v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 351 (F.C.). The failure of the Officer to do so is contrary to fairness and is a reviewable error.

[28] The Applicant also submits that he has been treated unfairly by the visa officer in Lagos, Nigeria because his refusals have repeatedly contained the following:

> Your application is refused and closed. There is no right of administrative appeal against this decision.

[29] The Applicant understood this to mean that he had no right of appeal and so he kept re-applying. He only found out about his right to appeal after finding the information on his current counsel's website. Had he known earlier, he would have appealed before. The Applicant argues that the misleading information on the refusal letters is a serious breach of procedural fairness because it prevents those rejected by the immigration authorities in Lagos from exercising their rights under the Act to seek judicial review. Therefore, the Court should overturn this Decision and direct the Respondent to remove such statements from its refusal letters and postings at visa offices.

Costs

[30] The Applicant submits that the errors made by the Officer in this case were egregious and justify awarding him costs. The reasons for the Decision are highly deficient and indicate the Officer treated the decision-making process in a "cavalier manner." The Applicant applied for a student visa six times and was refused for no apparent reason.

[31] The Applicant says that this application raises serious issues of fairness, including misleading information regarding his appeal rights. Under the circumstances, it is appropriate that the Respondent pay the costs of the litigation that has been incurred as a result of the failure of the Officer to make a proper Decision. See: *Johnson v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1523 (F.C.).

[32] The Applicant disagrees with the Respondent's assertion that deference is owed to discretionary decisions. The Applicant submits that there should not be any special deference given to the decision of a visa officer in a student visa decision.

[33] The Applicant also submits that the Respondent has misunderstood the facts and that the guarantee money the Applicant would receive from the professor at the University of Saskatchewan was enough to pay his living expenses. The teaching assistant salary and scholarship money were not speculative but were reasonably obtainable. Regardless, the Applicant was not relying upon them. The Applicant had other sufficient funding.

[34] In relation to the dual intent argument, the Applicant says that the Respondent has failed to explain on what basis the Officer arrived at his conclusion, unless he found that the Applicant would not leave at the end of his stay based on the finding that the Applicant would apply for permanent residence.

The Respondent

Financial Resources

[35] The Respondent submits that the Officer's Decision was not unreasonable based on the evidence before him. The Applicant's ability to pay and maintain himself during his course of study was dependent on obtaining a teaching assistant position and obtaining a scholarship from his

intended institution. It was completely reasonable for the Officer to deny the application because there was insufficient proof of existing funds. The Applicant's funds were entirely speculative.

Applicant Misapplies the Principal of Dual Intent

[36] The Respondent also submits that the Officer should not have considered dual intent when assessing the study permit application. The Officer did not assess the Applicant on the basis of an intention to establish permanent residence. The Officer made the Decision based on the Applicant's insufficient funds and the Applicant's lack of strong ties to his country of citizenship. The Respondent cites *Odewole* at paragraph 16 for the following:

> The Officer was not dealing with the family application for permanent residence, and the issue of dual intent arose only in relation to that application. The application for permanent residence was an irrelevant consideration for the purposes of the applicant's application for a Canadian study permit.

The Decision was Not Unfair

[37] The Respondent submits that there is no general requirement for a decision maker to advise an applicant of any concerns as they arise. The Respondent relies upon *Lu v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 579 (F.C.T.D.) at paragraph 11:

> ...The applicant submits that the visa officer should have asked the applicant to provide all missing documents. Again, I disagree. An applicant bears the burden of providing the necessary information to satisfy the visa officer that he or she meets certain criteria to enter Canada (*Kong*, *supra* at para. 21). This is made clear by the guidelines provided in the Application Kit for a student authorization which states that an applicant must provide all supporting documents for his or her application. Furthermore, contrary to the applicant's

> contention, the duty of fairness did not require the visa officer to conduct an interview. As stated by Teitelbaum J. in *Ali v. M.C.I.*, (1998) 151 F.T.R. 1, there is no statutory right to an oral interview.

[38] The Respondent points out that this Court has specifically held that the requirements of the duty of fairness are relaxed in the cases of student authorizations, and there is no obligation on an officer to advise an applicant of every concern: *Li v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1144 (F.C.T.D.) (*Li*); *Wen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1262 (F.C.T.D.) (*Wen*) and *Skoruk v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 1220 (*Skoruk*).

[39] The Respondent concludes on this issue by stating that the Officer's reasons are not unreasonable. A decision to grant a study permit is highly discretionary and based on the evidence. The Decision to refuse the Applicant's application for a study permit was reasonable.

Previous Decisions Not Under Review

[40] The Respondent submits that the Applicant has made several references to his previously refused applications; however, only one decision is being challenged. As well, the Applicant's arguments that he was misled by the wording on the refusal letter do not constitute a breach of natural justice. The Applicant is responsible for his own knowledge of the law and there is no obligation on the Respondent to advise him of his legal rights.

[41] The Respondent says there is no error in this Decision simply because the Applicant has amassed a significant number of refusals. If any application is deficient or lacking in some aspect, it will be refused. Nothing can be made of the number of refusals that the Applicant has received.

No Special Reasons Warranting Costs

[42] The Respondent submits that the Applicant has failed to establish special reasons warranting costs. The Respondent relies upon Rule 22 of the *Federal Court Immigration and Refugee Protection Rules*, SOR/93-22 (Rules):

22. No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.	**22.** Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[43] The Court has held that this rule displaces the broad discretion as to costs under Rule 400 of the Rules: *Xiao v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 731 at paragraph 13 (F.C.T.D.) and *Chen v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 780 at paragraph 34 (F.C.T.D.).

[44] The Respondent states that costs have been awarded in cases where special reasons for awarding costs arise as a result of the conduct of the litigation or bad faith conduct on behalf of a party. In *Koo v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 732 at

paragraph 20 (F.C.T.D.) it was noted that "special reasons exist when a case which ought not to be brought before this Court is nonetheless commenced or continued despite clear signs that it is frivolous." The Respondent also cites *Zheng v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 54 at paragraphs 13-14:

> The applicant seeks costs in the amount of legal fees of $6,600. plus examination expenses. It is urged that special reasons warrant costs in this case, as required by Rule 22 of the *Federal Court Immigration Rules*. Those special reasons are said to be payment of "a double non-refundable fee" to attend the immigrant-visa interview, the erroneous assessment of the applicant by improperly disallowing or ignoring his financial assets, failing to properly assess him in accord with the Act and Regulations, and failing in a duty to consider the exercise of positive discretion in accord with s. 11(3) of the Regulations. As I have noted the last of these is a discretionary authority vested exclusively in the Minister.
>
> While each of the other alleged failings may provide a basis for setting aside a decision, in my opinion they do not, individually or collectively, constitute special reasons within Rule 22 of the Immigration Rules, for an award of costs, in the absence of any finding of bad faith on the part of the respondent or his representative.

[45] The Respondent also notes *Johnson v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1262 at paragraphs 27 which makes it clear that "The fact that a tribunal has made a mistake does not by itself constitute a special reason for costs." Therefore, the Respondent concludes that the Applicant has failed to establish any special reason as to why costs should be awarded in this matter. There is no evidence of dereliction of duty or bad faith before the Court.

ANALYSIS

[46] While I accept the Respondent's position that the Decision attracts a high degree of deference from the Court, the exercise of discretion in this case approaches the arbitrary and capricious.

[47] The refusal of a study permit is based upon two grounds. One is that the Applicant did not satisfy the Officer that he would leave Canada at the end of the authorized stay. The reasons given for this are as follows:

> Applicant is single, has no dependant, low paid job. Considering PA's ties to Nigeria balanced against factors which might motivate to stay in Canada, I am not satisfied PA would leave the country at the end of an authorized stay.

[48] I can see some connection between being single and having no dependents and the issue of whether, under Regulation 216(1)(*b*), the Applicant will leave Canada at the end of the authorized period. These factors, however, merely place the Applicant in the position of most students applying for study permits. The Applicant has no family connections in Canada; his family is in the U.K. or Nigeria, and he has a highly responsible job in Nigeria. The Officer does give reasons – being single and having no dependents – but these reasons are hardly sufficient to amount to a reasonable exercise of discretion when the other factors are taken into account. There is simply nothing on the facts to suggest that the Applicant is not a *bona fide* student or that he would stay in Canada illegally at the end of the authorized period. See *Ogbonnaya* at paragraphs 16-17.

[49] More significant, however, is the Officer's approach to the other ground of refusal: "You have not satisfied me that you have adequate funds available to you to pay for your tuition and living expenses while in Canada and to return to your country of residence."

[50] In a letter dated December 19, 2007 from Dr. Qiaoqin Yang, Associate Professor and Canada Research Chair in the College of Engineering at the University of Saskatchewan, the Applicant has confirmed financial support of $12,000 per year as well as assurances that the Department makes available $3000 per year in the form of a "teaching assistant" payment for graduate students with the Applicant's qualifications. These monies alone would give the Applicant $15,000 per year to meet what Dr. Yang confirms is a $925 per month average tuition and living cost.

[51] Dr. Yang also pointed out that the Applicant would be nominated for a University scholarship, which would bring him up to $18,000 per year.

[52] I can accept that the nomination for a $3000 University scholarship creates a contingency that cannot be relied upon; but the evidence makes clear that the $15,000 per year is firm enough and this alone would appear to suffice for tuition and living expenses.

[53] In addition to this sum, however, the Applicant also provided evidence of personal savings in Nigerian currency that translated into about $10,526 Canadian at the time of the application for a permit. The Officer, for no apparent reason, simply disregards this money.

[54] This renders the Decision incomprehensible. Reasons are given but they appear entirely arbitrary in light of the evidence that was before the Officer. The well-known principles enumerated by Justice Evans in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 render this Decision unreasonable.

[55] Over and above these errors, however, the Applicant also says that the Decision was unfair in various ways.

[56] The Applicant says that it was unfair of the Officer not to give him an opportunity to respond to the concern that he would not return to Nigeria because he was single and had no dependents, and had a low paying job in Nigeria.

[57] It is well established that visa officers are generally not required to provide applicants with opportunities to clarify or further explain their applications. See, for example, *Li v. Canada (Minister of Citizenship and Immigration)* 2001, 208 F.T.R. 294.

[58] I have carefully reviewed the facts of this case and I cannot find that it falls into any of the established exceptions to this general principle, even the stereotyping issue that arose in *Bonilla*. In the present case, the Officer simply failed to provide an acceptable rationale for his conclusions and left significant facts out of account.

[59] Also, I cannot find unfairness on the basis of the words that appeared in the Applicant's refusal letters:

> Your application is refused and closed. There is no right of administrative appeal against this decision.

[60] The Applicant has provided an affidavit in which he says that he thought he had no way of appealing the consecutive refusals he received and so he went on submitting new ones until he learned from his present counsel's web-site that he could apply for judicial review.

[61] I do not doubt that the Applicant's mistake was genuine. But the statement concerning no administrative appeal is, literally speaking, true, even if the Applicant did not understand its full legal significance. Whether the statement is, in context, misleading or not would depend upon many factors that are not before me in this case, and there is just not sufficient evidence to suggest that the Embassy in Lagos is using the statement to mislead applicants concerning their rights or whether a fuller picture is available to any applicant who looks in the right places.

[62] In any event, I have to agree with the Respondent on this point. The Applicant is responsible for his own knowledge of the law and there is no obligation on the Respondent to advise him of his legal rights. On the evidence before me, I cannot say that the Embassy either deliberately or constructively misled the Applicant concerning his legal rights.

[63] This further leads me to conclude that there are no "special reasons" for an award of costs under Rule 22 of the Federal Court *Immigration and Refugee Protection Rules*. I think this is a case

where the Officer made a mistake and got it wrong and this, in itself, is not sufficient to constitute a special reason for costs. See *Johnson* at paragraphs 26-27.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application is allowed and this matter is returned for reconsideration by a different visa officer.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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