

Federal Court



Cour fédérale

Date: 20100211

Docket: IMM-2312-09

Citation: 2010 FC 148

Quebec, Quebec, February 11, 2010

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

APOLONIA ASONG ALEM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Apolonia Asong Alem (the Applicant) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, for judicial review of a decision dated April 17th, 2009, by the Minister's representative at the Canadian Embassy in Abidjan (the visa officer), denying the Applicant's application for temporary resident visa.

[2] The Applicant is a 60 year old citizen of Cameroon. She has eight surviving children. Five live in Cameroon; one in France; one in Germany; and one in Canada.

[3] The Applicant is a trader and travels extensively between Cameroon and Nigeria for the purposes of her business. In addition, in 2007, she travelled to Germany, staying there for three months.

[4] In January of 2009, the Applicant applied for a Canadian visitor's visa. She wanted to be with her daughter who, already having two young children, was having a difficult pregnancy and asked for her help. Her application was denied.

[5] The Applicant reapplied for a Canadian visitor's visa on April 14th, 2009. She submitted additional information in support of her application. That application was denied on April 17th, 2009.

[6] The letter sent to the Applicant stated that in rejecting her application, the following factors were considered: her "family ties in Canada and in [Cameroon];" the "length of proposed stay in Canada;" the "limited employment prospects in [Cameroon];" insufficiency of documentation submitted; the purpose of her visit to Canada; her "travel history;" her "current employment situation;" and her "personal assets and financial status."

[7] The visa officer's CAIPS notes indicate that he considered that the Applicant did not have sufficient means to finance her trip to Canada; was not sufficiently established; had a weak travel history; did not have independent financial means; and did not have sufficient grounds for returning

to her country. Thus the visa officer was not convinced that she would leave Canada at the end of her stay as a temporary resident.

[8] The Applicant mainly submits that the reasons provided for the refusal of her visitor's visa were insufficient.

[9] She argues that the visa officer's reasons are not sufficient for her to know why her application was denied. Neither the letter sent to the Applicant nor the officer's CAIPS notes explain his reasoning, and in particular the way in which the factors he claims to have considered actually led him to conclude that the Applicant would not leave Canada at the end of her stay.

[10] For his part, the Minister submits that the visa officer's reasons are adequate "and they explain clearly and unequivocally the grounds for dismissing the application for temporary resident visa."

[11] The visa officer noted that the Applicant's family and economic ties with Cameroon were insufficient to ensure her return and that the Applicant has little travel history, and was entitled to rely on these facts. In addition, he noted that the money in the Applicant's bank account had been deposited two weeks before she applied for a visa. He also noted that the Applicant did not have a steady employment, and was entitled to consider this factor. Finally, he was of the view that the Applicant's family's low income was insufficient to establish that she would be able to assume all expenses related to her three-month stay in Canada.

[12] The Minister adds that, contrary to the Applicant's submissions, the visa officer did explain his findings and took the relevant evidence into account. He insists that the duty to provide reasons for a rejection of a temporary resident visa is limited, and that the visa officer discharged it because the reasons he provided make clear the grounds on which the Applicant's application was denied. I disagree for the following reasons.

[13] While the Minister rightly points out that the requirements of procedural fairness in the context of applications for a temporary resident's visa are limited, the reasons given by a visa officer denying such an application must, as Justice Eleanor Dawson held in *Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 687, at par. 4, "be sufficiently clear, precise and intelligible so that a claimant may know why his or her claim has failed." Similarly, in *Ogunfowora v. Canada (Citizenship and Immigration)*, 2007 FC 471, at par. 60, this Court held that "CAIPS notes can constitute sufficient reasons, but only if they provide sufficient details for the person to know the reason for which the application was denied." In the context of a rejection of an application for a visitor's visa, the notes must "provide in sufficient detail an analysis of why the officer held that the applicants would not return to [their home country] at the end of their authorized stay."

[14] While I am mindful of the time constraints under which visa officers operate, they must nevertheless provide applicants whose applications they reject with an explanation of the elements

that weighed against their applications, rather than with a litany of factors, but no explanation for why they supported the rejection.

[15] In my view, the visa officer's letter to the Applicant and CAIPS notes do not disclose the reasons for which her application was denied. While it is clear from the notes that the officer was of the opinion that the Applicant had limited financial means and was not sufficiently established in Cameroon, so that her incentives to return there would be weak, there is no explanation for why he formed these opinions.

[16] As the Applicant points out, the Minister's explanations for the visa officer's decision have little or no basis in either the letter sent to the Applicant or the CAIPS notes. Thus, while the officer wrote that the Applicant "does not demonstrate proof of establishment," there is no mention at all of the fact that five of her children live in the country, and that she operates a business and owns property there. Nor is there any explanation for why the Applicant's travel history is considered to be "weak," despite her trip to and return from Germany in 2007 (the customs stamps from which are clearly visible on her passport). And, contrary to the Minister's assertions, the visa officer simply did not say that he believed the Applicant's bank statement to be a sham designed to establish in-existent economic ties, or that the Applicant did not have a steady employment, or that her family could not support her in Canada.

[17] Furthermore, several grounds invoked in the letter sent to the Applicant, such as the length of her stay in Canada and the employment prospects in Cameroon, are not even mentioned in the officer's notes.

[18] In short, even the letter and the CAIPS notes taken together are not "sufficiently clear, precise and intelligible" (*Mendoza, supra*, at par. 4) to allow the Applicant to know why her application was denied, or to allow this Court to assess whether this denial was reasonable.

[19] The Minister's explanations may or may not be correct, but whether they are is irrelevant. This Court has consistently held that the very fact that a decision-maker's reasoning requires additional explanation, by way of an affidavit sworn by the decision-maker himself (as in *Ogunfowora, supra*) or a party (as in *Canada (Citizenship and Immigration) v. Wong*, 2009 FC 1085) is indicative of the reasons' inadequacy. Speculation by way of counsel's argument is not different. The duty to give reasons for rejecting an application for a temporary resident visa is limited, but the person whose application is rejected should still not have to apply for judicial review of that decision to obtain an explanation for it from the Minister's counsel's argument.

[20] For these reasons, the application for judicial review of the decision is granted, and the matter is referred back to be decided by a different visa officer.

JUDGMENT

[21] **THIS COURT ORDERS that** the application for judicial review of the decision be granted and the matter be referred back to be decided by a different visa officer.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2312-09

STYLE OF CAUSE: APOLONIA ASONG ALEM
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Quebec, Quebec

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AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: February 11, 2010

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