Federal Court  Cour fédérale

Date: 20111215

Docket: IMM-2431-11

Citation: 2011 FC 1482

Toronto, Ontario, December 15, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

CLEMENT ANAENE OKONKWO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a decision of an Immigration Officer of the Canadian High Commission in Accra, Ghana, dated January 10, 2011, in which the finding was made that the Applicant did not meet the requirements for a permanent resident visa under the federal investor class on the following central finding:

> Based on a careful review of the information on your file, it has not been establish [*sic*] that you are coming to Canada to establish permanent residence in Canada. You were elected to the Senate of the Federation of Nigeria in April of 2007, are currently continuing to sit as a senator and are actively seeking re-election.

> After careful consideration of the information provided by you in your letter dated December 23, 2010, I am not satisfied that it has been established that you intend to establish permanent residence in Canada. According to the Order Paper for the senate, sessions run from late June to the following mid June and appear to cover most months (no sessions seen in August) with the number of monthly sessions ranging between 10 and 22, for an average 15 sessions per month. Given that, on average, these sessions take place 3-4 times on most weeks, I do not find the suggestion that you would be able to spend sufficient time in Canada to meet this residency obligation to be credible. In coming to this conclusion, I have considered travel time to and from Canada, other obligations outside of the Senate within your home state as well as your business interests in Nigeria.
>
> [Emphasis added]
>
> (Application Record, pp. 5 - 6)

[2] The history with respect to the Applicant's application is important contextual information. The Applicant, a Nigerian citizen, applied for permanent residence under the federal investor class in August of 2004, and provided evidence of his purchase of real estate in Mississauga, his involvement with a Canadian business entity, and his son's residence in Canada. The Applicant also declared in the course of his application that, in 2007, he was elected a Senator in the government of Nigeria. In July 2010, the Applicant was informed that his application was complete and was requested to make the required $400,000 investment; the Applicant deposited the money. On November 9, 2010, the Applicant received a letter expressing the Immigration Officer's intention concern.

[3] The Applicant was given 60 days to respond, and he did respond in an attempt to persuade the Immigration Officer that his re-election as Senator was not contrary to his intention to be a permanent resident, and would not interfere with the fulfillment of his residency obligation.

[4] An important fact in play at the time the decision was made was that the impending election in which he was running was to be held in May 2011. The issue with respect to the central finding is whether it is fairly made. In my opinion, given the significance of the decision to the Applicant, the Immigration Officer was required to consider all the available evidence respecting intention, past, present, and future, if the latter can be reliably ascertained. In the result, the Immigration Officer neglected to meaningfully consider the evidence with respect to the Applicant's past and present except the fact that he became a Senator in 2007 and was a Senator at the moment of decision.

[5] Indeed, the most focussed reliance was placed on speculation that the Applicant would be elected in May 2011. The Immigration Officer determined that, if the Applicant continues to be a Senator, it is evidence that he has no intention to be a permanent resident. Thus, I find that the corollary applies: if the Applicant does not continue to be a Senator, there is no evidence that he has no intention to be a permanent residence. Either way, I find that the Immigration Officer's decision was the result of sheer speculation at work in the decision-making process. As a result, I find that the decision under review is made in reviewable error.

ORDER

UPON the Court providing draft reasons and upon counsel consenting to the following:

1. Granting the application for judicial review;

2. The matter is sent back for redetermination and the redetermination is to be completed within 120 days of this order;

3. The Application will be processed in accordance with the law as it stood on August 16, 2004 and on the basis of the Applicant's Record currently on file, along with any updated submissions provided by the Applicant;

4. If requested the Applicant and his accompanying family members will attend for medicals at a designated medical practitioner within 10 days of receiving any such request, and if requested, provide updated security certificates, and provide within 10 days of such request evidence of having applied for such certificates;

AND UPON reading the material filed, including the consent of the parties;

THIS COURT ORDERS that:

1. The application is granted on terms recited.

2. There is no order as to costs.

"Douglas R. Campbell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2431-11
STYLE OF CAUSE:	CLEMENT ANAENE OKONKWO V. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	December 15, 2011
REASONS FOR ORDER AND ORDER:	CAMPBELL J.
DATED:	December 15, 2011

APPEARANCES:

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