

Federal Court



Cour fédérale

Date: 20151117

Docket: IMM-423-15

Citation: 2015 FC 1277

Ottawa, Ontario, November 17, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ESTHER CHIOMA AWGU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Awgu came to Canada from Nigeria in 2008; pregnant and penniless. She promptly applied for refugee status, and soon thereafter gave birth to twin boys, one of whom has a severe stutter.

[2] Her application for refugee status was dismissed. Her application for leave and judicial review from that decision was dismissed. Her pre-removal risk assessment was dismissed. Her

first application to stay in Canada on humanitarian and compassionate grounds was dismissed. This is the judicial review of her second humanitarian and compassionate application.

[3] The general principle is that one must apply for Canadian permanent resident status from outside Canada. By exception, s 25(1) of the *Immigration and Refugee Protection Act* provides that “the Minister must ... examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status ... taking into account the best interests of a child directly affected”. A Senior Immigration Officer of Citizenship and Immigration Canada dismissed her application because she was not satisfied that it would amount to an unusual and underserved or disproportionate hardship if Ms. Awgu returned to Nigeria.

I. The Issues

[4] The issue is not whether I would have granted the application. The issue is whether the decision was unreasonable. The first factor under consideration is whether Ms. Awgu would face unusual and underserved or disproportionate hardship should she be returned to Nigeria. In considering hardship, the Senior Immigration Officer was required to take into consideration her degree of establishment in Canada.

[5] The second factor is the best interest of the children.

[6] As I have come to the view that the Senior Immigration Officer’s analysis of Ms. Awgu’s establishment in Canada was unreasonable, it is not necessary to review her analysis of the best interests of the children. However, a red flag is raised in that regard. Undeserved hardship is not

relevant when speaking of innocent children (*Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475). It may be that the one sentence in which the Senior Immigration Officer appears to have applied that principle to the children was taken out of context, when one considers her reasons as a whole.

[7] The fatal error is that the Senior Immigration Officer equated establishment in Canada with economic establishment. Ms. Awgu has been on the dole, although this may be attributable to her mental and physical issues. Ms. Awgu is not applying for permanent resident status as a provincial nominee, where economic establishment is the key factor (*Immigration and Refugee Protection Act*, s 87). Although economic establishment may be a factor, it is certainly not an exclusive one (*Tartchinska v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 373 (QL), a decision of Mr. Justice Nadon, as he then was).

[8] The case which has most influenced my reasoning is that of Madam Justice Mactavish in *Klein v Canada (Citizenship and Immigration)*, 2015 FC 1004, particularly at paragraph 7 where she speaks to the officer demonstrating a lack of sensitivity: “To require that someone in Mr. Klein’s position be able to demonstrate that he has achieved the conventional markers of establishment is to ignore the reality of his life.”

[9] Ms. Awgu has a wide circle of friends and acquaintances, and community involvement which should have been taken into consideration.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT'S JUDGMENT IS that:

1. The application for judicial review is granted.
2. The decision is quashed and the matter is referred back to a different immigration officer for redetermination.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-423-15

STYLE OF CAUSE: ESTHER CHIOMA AWGU v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 9, 2015

JUDGMENT AND REASONS: HARRINGTON J.

DATED: NOVEMBER 17, 2015

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