

Federal Court



Cour fédérale

**Date: 20161020**

**Docket: IMM-4830-15**

**Citation: 2016 FC 1162**

**Ottawa, Ontario, October 20, 2016**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**OKEOMA NCHELEM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of an Immigration Officer at Citizenship and Immigration Canada (CIC) dated October 19, 2015 denying Mr. Nchelem a post-graduate work permit. The Officer concluded that Mr. Nchelem had worked in Canada without authorization, contrary to subsection 183(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

[2] Mr. Nchelem argues that the decision of the Officer is both unfair and unreasonable. I agree. For the reasons that follow, this judicial review is allowed.

[3] In 2010, Mr. Nchelem came to Canada from Nigeria on a study permit. He completed a year of study at York University and then attended Bow Valley College. In 2014, he undertook the practical nursing program at NorQuest College and graduated in May 2015.

[4] Following graduation, Mr. Nchelem applied to CIC for a post-graduate work permit. He listed his intended occupation as a licensed practical nurse.

[5] On October 8, 2015, he received a letter from CIC asking that he provide his English language test results, as well as a copy of all transcripts from his studies in Canada. The Officer also asked for “a letter from the school he wished to attend showing that all the requirements of admission have been met”. However, Mr. Nchelem had already obtained his diploma. He was applying for a work permit, not a study permit. He was given until October 15, 2015 to provide this information.

[6] Mr. Nchelem was in Nigeria when he received this letter from CIC and only had his transcript from NorQuest College with him, which he faxed to CIC on October 10, 2015.

[7] By letter dated October 19, 2015, the Officer refused the application. The Officer found that the Applicant had worked in Canada without authorization, and therefore violated a condition of his study permit. The Officer noted that the Applicant took a number of practicums during his studies at NorQuest College, but he did not hold a work permit which authorized him to work in Canada. The Officer also noted that the only course the Applicant undertook in the spring 2014 semester was “Nursing Practice: Continuing Care Practice”.

[8] The Officer also noted that the Applicant was asked to provide transcripts for all of his studies in Canada and that he only provided transcripts for studies as of January 2014, despite having been on a study permit since August 18, 2010.

[9] The determinative issue is whether Mr. Nchelem was treated fairly in the process.

[10] Allegations of procedural unfairness are reviewed on the standard of correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43.

[11] Mr. Nchelem maintains that he has never worked in Canada and has always been a full-time student.

[12] Mr. Nchelem sought to introduce a letter from NorQuest College, dated November 5, 2015, explaining the program. The Respondent objects to the admissibility of this letter, as it post-dates the Officer's decision: *Zolotareva v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1274 at para 36; *Gallardo v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 45 at para 7.

[13] While judicial review is generally limited to the material before the decision-maker, there is an exception to this rule when the evidence is introduced to support an allegation of procedural unfairness: *Ochapowace First Nation v Canada (Attorney General)*, 2007 FC 920 at para 9.

[14] Here, the letter was not before the Officer and thus, cannot be used to undermine the Officer's assessment of the evidence and findings of fact. However, the letter does illustrate the evidence which Mr. Nchelem could have provided to CIC, had he been afforded the opportunity to respond.

[15] In the circumstances of this case, I am of the view that the content of the duty of fairness included a duty to inform Mr. Nchelem of the concern the Officer had about his practicum courses. The October 8, 2015 letter sent to the Applicant did not do this. It erroneously requested information from the Applicant for the purposes of a study permit. The Applicant was asked to provide his transcripts but he was not asked to explain his practicum coursework at NorQuest College. This was unfair. Therefore this judicial review is allowed. There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this judicial review is allowed. There is no question for certification.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4830-15

**STYLE OF CAUSE:** OKEOMA NCHELEM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** AUGUST 15, 2016

**JUDGMENT AND REASONS:** MCDONALD, J.

**DATED:** OCTOBER 20, 2016

**APPEARANCES:**

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