

Federal Court



Cour fédérale

Date: 20161219

Docket: IMM-1641-16

Citation: 2016 FC 1384

Ottawa, Ontario, December 19, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ANTONIO BERIYUT MEDAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Antonio Beriyut Medah, the applicant, arrived in Canada in 1990. His application for permanent residence, completed in 1990, states that he was born in 1953 in “Debougor”, “Burkina [Faso]” and states that he is a citizen of Burkina Faso.

[2] Upon arrival in Canada, Mr. Medah was issued a Confirmation of Permanent Residence Document or Record of Landing [ROL]. The ROL reflects the date and year of birth set out in his application for permanent residence. Mr. Medah now asserts that his year of birth was incorrect in the permanent residence application and is therefore incorrectly recorded on the ROL. He applied in January 2016 to have the ROL amended to reflect his year of birth as 1963, instead of 1953. His request was denied. Mr. Medah now seeks judicial review of that decision.

[3] Mr. Medah submits that in refusing his request, the Officer ignored his baptismal certificate, a document that predates his landing in Canada and establishes that he was born in 1963. Mr. Medah further argues that he was owed a high degree of procedural fairness due to the importance of an accurate birthdate on the ROL, a document that is relied upon to establish his birthdate for other purposes. He also submits that an inaccurate birthdate on the ROL will impact his eligibility for government benefits in the future. He submits that the Officer acted in a procedurally unfair manner by not considering the baptismal certificate and that the decision is unreasonable.

[4] The application raises the following issues:

- A. Did the Officer fail to consider all of the evidence?; and
- B. Is the decision unreasonable?

[5] For the reasons that follow I am of the opinion that the Officer's decision is reasonable.

II. The Amendment Process

[6] Prior to addressing the issues raised in this application, a brief review of the Government of Canada's process available to permanent residents and Canadian Citizens when requesting an amendment to a ROL is helpful.

[7] The process is set out in a Government of Canada Guide entitled *Request to Amend Record of Landing, Confirmation of Permanent Residence or Valid Temporary Resident Documents (IMM 5218)* [Guide]. The Guide notes that a ROL is an historical document that will only be amended to correct errors made by Canadian Immigration officials in recording information provided when applying to come to Canada. The Guide sets out a list of information that can be corrected such as the date of birth, place of birth, country of birth and citizenship. The Guide requires an applicant to: (1) complete and sign a *Request to amend the Record of Landing* [Request Form]; (2) include a photocopy of one "piece of federal or provincial/territorial government issued photo identification or, if unavailable, a photocopy of government issued or internationally recognized photo identification before your entry into Canada"; and (3) include a photocopy of one "piece of government issued or internationally recognized identification from outside Canada before your entry to Canada indicating that an error was made in recording your information". The Guide states that a baptismal certificate is acceptable where the country of birth did not issue birth certificates.

[8] The Guide then proceeds to set out detailed instructions for the completion of the Request Form. Part C of the Request Form requires the applicant to set out in a narrative form: (1) the

reasons for seeking the amendment; (2) the error that was made; (3) the information provided in the application; and (4) why the change is required. The Guide then provides instructions for the submission of the Request Form and provides some guidance on the steps to be taken in processing the request.

III. The Request for Amendment

[9] Mr. Medah submitted a completed Request Form seeking to amend his year of birth from 1953 to 1963. In support of his request, he included a copy of his baptismal certificate from the Catholic Diocese of Navrongo-Bolgatanga, Ghana stating that he was baptised on April 21, 1984. The baptism certificate records his date of birth as November 15, 1963, and identifies his father as Joseph Ergzal Medah and his mother as Mary Magdalene Kuunuo.

[10] Mr. Medah also provided a “Certified Copy of Entry in Register of Births” issued by the Registrar for births and deaths of Ghana dated July 15, 2011. This document also indicates the birthdate of November 15, 1963, and identifies Mr. Medah’s father as Joseph Ergzal Medah and his mother as Mary Magdalene Kuunuo. The certificate indicates that the birth was registered on June 17, 2011.

[11] The information contained in the baptismal certificate and the birth certificate differed from that included in his application for permanent residence in that his parents’ names were different, his place and country of birth were different, and his year of birth was different. The only amendment Mr. Medah sought was to the year of birth.

[12] Mr. Medah's reasons for seeking the amendment as recorded in Part C of the Request Form state simply "Year of birth needs to be amended from 1953 to 1963 as I made a mistake when I provided my year of birth. Now I am enclosing herewith two documents to confirm my actual year of birth". He neither acknowledged nor addressed the discrepancies relating to his parents' names or place of birth.

IV. Decision under Review

[13] Mr. Medah was provided with a refusal letter dated March 29, 2016. In that letter, the Officer noted that "... we are not satisfied that an error was made in recording your information" and further noted that the issuance date for the documents in support of the request for amendment must be dated prior to the issuance date of the ROL.

[14] The Officer's notes state the following:

Request to amend COPR/ROL: DOB from 1953/11/15 to 1963/11/15. Supp Docs: COPR, Birth Certificate, etc. (see correspondence attachments) Decision: Refused – based on Insufficient Proof provided by the client was not issued prior to landing and discrepancy on COB between sup doc and Original COPR. We are not satisfied that a departmental error was made in recording the information. Letter sent to client.

V. Standard of Review

[15] Mr. Medah argues that a correctness standard of review applies as the issues raised engage a question of law. I disagree. The issues raised in this matter relate to the interpretation and application of a policy document that falls within the expertise of the decision-maker attracting a reasonableness standard of review. A review of the decision itself engages questions

of fact and mixed fact and law that again attract the reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51, 53 and 54 [*Dunsmuir*]).

VI. Analysis

[16] Mr. Medah submits that the failure of the Officer to make reference in the refusal letter or the notes to the baptismal certificate, a document that predated his arrival in Canada, demonstrates that the Officer ignored this document. He submits, relying on *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, that the decision is one that would have a significant impact on him and, as such, the fairness requires that he be told why the certificate was not sufficient to change his year of birth. I am not convinced.

[17] Matters that are placed before administrative decision-makers frequently do not lend themselves to a specific result. Therefore, a court on judicial review must provide a "... respectful attention to the reasons offered or which could be offered in support of a decision" (*Dunsmuir* at paras 47 and 48). Reasonableness requires the Court to consider whether the reasons provided, either in fact or principle, support the conclusion reached. This, in turn, requires that a court "first seek to supplement [reasons] before it seeks to subvert them" (David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in Michael Taggart, ed, *The Province of Administrative Law* (Oxford: Hart Publishing, 1997), 279 at 304 cited in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 12 [*Newfoundland and Labrador Nurses*]). The "courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the

purpose of assessing the reasonableness of the outcome” (*Newfoundland and Labrador Nurses* at para 15).

[18] In this case, the reasons are admittedly sparse and do not make direct reference to all of the documentary evidence that was placed before the decision-maker. However, the Officer’s notes acknowledge the existence of a number of supporting documents when the Officer wrote “Supp. Docs: COPR, Birth certificate, etc (see correspondence attachments)”. The Officer then highlighted not only that the birth certificate postdates Mr. Medah’s landing but that there are discrepancies between the ROL and the birth certificate. These discrepancies are identified as relating to the place and country of birth. Mr. Medah does not explain or even identify these discrepancies in the Request Form. These same discrepancies are found in the baptismal certificate provided by Mr. Medah.

[19] Mr. Medah relies on the Officer’s reference in the refusal letter to the requirement that supporting documents must be dated prior to the ROL to conclude the baptismal certificate was overlooked. Again I am not convinced. I am in agreement with the respondent’s submission that this reflects a flawed interpretation of the Officer’s letter. This statement is intended as a reminder that any evidence submitted with a future request must satisfy the requirement of having been created prior to entry into Canada.

[20] Mr. Medah’s argument that fairness requires a specific explanation as to why the baptismal certificate was not sufficient to grant the requested amendment ignores the simple fact that he has the onus of demonstrating that an error was made. The evidence provided did not

satisfy that onus. Instead, the evidence contained significant and relevant discrepancies that were unexplained. While Mr. Medah takes issue with the sparse reasons for refusal, his Request Form is equally sparse in details, limited to a single sentence.

VII. Conclusion

[21] I am of the opinion that the Officer's reasons, although brief, justify the decision in a transparent and intelligible manner. The outcome is defensible in light of the facts and applicable law (*Dunsmuir* at para 47).

[22] The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1641-16

STYLE OF CAUSE: ANTONIO BERIYUT MEDAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

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