

Federal Court



Cour fédérale

Date: 20170126

Docket: IMM-3097-16

Citation: 2017 FC 103

Toronto, Ontario, January 26, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

KEVIN EJIAFE AKPODUADO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant has applied for judicial review of a decision [the Decision] of a Visa Officer [the Officer] at the Canadian High Commission in Accra, Nigeria, dated June 14, 2016 refusing his application for permanent residence as a federal skilled worker [FSW] and declaring him inadmissible to Canada for five years due to misrepresentation. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is a 35 year old Nigerian citizen who states he was employed by Guaranty Trust Bank (GT Bank) as a Cash Receipt Supervisor [CRS].

[3] On October 10, 2014, he made an FSW application for permanent residence as a CRS under National Occupation Classification (NOC) Code 1212.

[4] The application included a letter dated October 10, 2014 from the Applicant's direct Supervisor Timothy Agindotan [the Reference]. It stated that the Applicant had worked at GT Bank as a CRS on a full time basis since March 2009. The letter also provided his salary and listed his duties.

[5] On October 10, 2014, one of the Applicant's colleagues at GT Bank (Tomiwa Akinbile) (the Colleague) also applied for permanent residence in Canada as an FSW. Although they worked at different branches of GT Bank, the Applicant and his Colleague were aware of each other's applications and agreed to use the same email and post office addresses when corresponding with the Canadian High Commission (CHC).

[6] The Applicant received a letter dated February 6, 2015 saying that his application was eligible to be processed and that a visa office would make the final decision.

[7] As a result of the Colleague's application, the Officer received two applications for permanent residence accompanied by two letters of reference (the Letters) from two employees

of the same bank on the same day. The Officer was therefore concerned about the genuineness of the Letters.

[8] GT Bank was asked to confirm the genuineness of the Letters. By letter dated July 28, 2015, the GT Bank responded as follows: “Please note that the letters were not signed in line with the Bank’s mandate and as such we are unable to confirm same” [the Denial]. This was an odd letter but the Officer did not enquire to see if it meant that the Applicant was not a CRS at GT Bank.

[9] On July 30, 2015, both the Applicant and his Colleague sent emails to the Officer from the same email address indicating they were aware that the Officer had asked GT Bank whether their Letters were genuine. The Applicant’s email explained that the GT Bank had verified that his Supervisor wrote the Reference but the Denial occurred because the Letters did not emanate from GT Bank’s Human Resources Department. The Applicant’s email also explained that, since a reference from Human Resources would not include the compulsory information such as his job description required to qualify for NOC 2012, he had asked his Supervisor to write the Reference.

[10] Because GT Bank refused to verify the genuineness of the Reference, the CHC sent the Applicant a procedural fairness letter [PF letter] dated March 15, 2016, which referred to the Reference and stated in part:

Specifically, we have concerns that the employment letter from GT bank which you have provided in support of your application is fraudulent.

[11] The Applicant responded by letter dated March 18, 2016 (the Response). He again explained that he had requested a letter of reference from his direct Supervisor, Mr. Agindotan, because CIC form IMM5612-E, specified that employer reference letters must be “signed by the responsible officer/supervisor” and among other things, must include “main duties and responsibilities in each position” held by the Applicant. He again stated, as he had in his email of July 30, 2015, that GT Banks’s Human Resources Department would not provide such a letter.

[12] With the Response, the Applicant provided additional documents. They included his original offer of employment, which offered him the position of ‘Assistant Banking Officer,’ a promotion letter which stated he had been promoted to ‘Banking Officer,’ and a letter from the Bank’s HR Department confirming that he is a Banking Officer. He provided a Solemn Affirmation setting out his duties as they had appeared in the Reference, and explaining that GT Bank would not provide a letter setting out his job description. He also attached email correspondence between himself and the HR Department confirming they would not provide the required letter. The email from GT Bank was dated March 17, 2016. It said “We do not prepare letters stating job description for current staff of the bank.”

[13] The Response created a new problem because none of the documents from GT Bank described the Applicant as a CRS. The only document that spoke of him as a CRS was the Solemn Affirmation sworn by the Applicant and attested to by his Supervisor who was the person who had written the Reference which the GT Bank had said was not genuine.

[14] The Response did not explain why the Applicant would be described as a Banking Officer by GT Bank and as a CRS by his Supervisor.

[15] In the GCMS computer notes [the Notes], the Officer considered the Response and said:

On updated evidence provided it does not appear that the PA has ever held the position of Cash Receipt Supervisor. **The Applicant was unable to explain this discrepancy in his response.** I am satisfied the PA worked for GTBank as a Banking Officer, however I am not satisfied the PA worked there as a Cash Receipt supervisor.

[emphasis my own]

[16] The Notes show the Officer accepted that the Applicant was a Banking Officer with GT Bank but, in view of the Bank's Denial, was still left with no credible evidence that he was a CRS. However he had received written confirmation from GT Bank of the Applicant's oft repeated explanation for the Reference – he went to his Supervisor because HR would not prepare the necessary letter. The Notes do not indicate that the Officer appreciated this development.

[17] The Decision is dated June 14, 2016. It said in part:

I am not satisfied that you meet the first, second and third part of these requirements because a review of your application raised concerns regarding the genuineness of your work experience as a Cash Receipt Supervisor. A thorough verification was undertaken to satisfactorily respond to concerns that were put forward to you regarding your employment history.

...

I reached this determination because you have submitted documents containing errors and gave contradictory information in support of your application. The initial employment letter you

provided regarding your work experience at GTBank indicates contradictory information from your letter dated March 18, 2016 and other supporting documents you provided in response to our procedural fairness letter. You were unable to explain this discrepancy in response to our procedural fairness letter.

[emphasis my own]

[18] Following the Decision, the Applicant wrote the Officer on June 17, 2016 and complained that the Fairness Letter had not been clear when it expressed concern that his Reference was “fraudulent.” He said that the real concern appeared to be whether he had experience and duties as a CRS. However, that was not stated.

[19] He also asked for 15 days to submit material from Spring Banks – another employer listed on his application as a FSW. He asked that this application as a FSW be revisited based on material to come from Spring Bank. However, the record does not indicate whether this material was ever filed.

[20] The Notes disclose that the last correspondence from the Applicant was an email [the Final Email] explaining that his job “Title” is Banking Officer and his job “Trade” is CRS. He attached a page from the GT Bank handbook to establish that these two categories exist. However, while it mentions Banking Officers it does not refer to CRS or to the categories “Title” and “Trade.” Lastly the Applicant asked that his application for permanent residence based on his experience at GT Bank be reconsidered on the basis that he did not misrepresent the facts [the Reconsideration].

I. The Issues

[21] The issues are:

- I. Did the Fairness Letter alert the Applicant to all the Officer's concerns?
 - II. Did the Officer appreciate that a Banking Officer could be a CRS?
 - III. Did the Officer use evidence of the Colleague's application to impugn the Applicant's credibility?
 - IV. Did the Officer err in failing to reconsider the Applicant's application for permanent residence?
- II. Standard of Review

[22] Issues involving procedural fairness will be reviewed on a correctness standard. Other issues will be reviewed using reasonableness as the standard of review.

III. Discussion and Conclusions

A. *Issues 1 and 3*

[23] When the Fairness Letter was written on March 15, 2016, the Notes show that the Officer had one concern. It was the Denial. The Applicant says that the Officer also had credibility concerns because the Colleague and the Applicant had applied for permanent residence and sent emails on the same dates. However the Notes show that the Officer considered the two applications on the day the Fairness Letter was sent and no concern was expressed to indicate that the Colleague's application detracted from the Applicant's application. Indeed they shared

the same problem – GT Bank had also refused to confirm that the Colleague’s letter of reference was genuine.

[24] However, the enclosures sent with the Response to the Fairness Letter created a new issue because, as described above, all the GT Banks documents referred to the Applicant as a Banking Officer. This was inconsistent with the Reference and with the Solemn Affirmation made by the Applicant and included with the Response which described the Applicant as a CRS. The Response did not include an explanation for this inconsistency. The Applicant is now saying that, even though the Officer’s concern arose from an unexplained inconsistency on the face of the documents the Applicant provided with the Response, the onus was on the Officer, as a matter of procedural fairness, to send a second fairness letter alerting the Applicant to the new concerns.

[25] In my view sending a second fairness letter in these circumstances would be the equivalent of providing the Applicant with a “running score”. There is no such obligation.

[26] Lastly, the Applicant criticizes the Fairness Letter for a lack of clarity. He says that the word “fraudulent” does not convey the fact that his job description was being questioned. However, I am not persuaded by this submission. In my view fraudulent meant that nothing about the Reference Letter was reliable and that included the description of the Applicant’s position and his duties.

B. *Issue II*

[27] The Applicant did not explain that he could be both a Banking Officer and a CRS until after he received the Decision. The Final Email enclosed a page from GT Banks's Employee Handbook which purported to explain how GT Banks described its employees but for the reasons given above in paragraph 20 the Handbook was not helpful. Accordingly, there was no Bank document the Officer could use as a basis for understanding and accepting the Applicant's explanation of how titles were used at the GT Bank.

C. *Issue III*

[28] The Notes show that the request for reconsideration in the Final Email has not been considered. In my view this failure makes the Decision unreasonable on the unusual facts of this case which include:

- The Applicant works at GT Bank.
- There was nothing concerning about the fact that a Colleague made a similar application for permanent residence.
- The GT Bank's Denial which is the cause of the Applicant's problems, can be read to suggest that the Denial was made because bank signing policy was ignored – not because the Applicant is not a CRS.
- The Applicant advised the Officer that internal control personnel at GT Bank had verified that the Supervisor wrote the Reference.

- The Applicant has explained and documented GT Bank's refusal to allow its HR Department to provide the letter the Applicant needs as a reference in support of his application for permanent residence.

[29] As part of the reconsideration the Officer is to make direct contact with the Supervisor (preferably by telephone) to determine whether the Reference accurately states the Applicant's job title and duties.

IV. Conclusion

[30] The application will be allowed.

V. Certification

[31] No questions were posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is hereby allowed and the Applicant's application for permanent residence is to be reconsidered in accordance with paragraph 29 of this Decision.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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