

Federal Court



Cour fédérale

Date: 20170718

Docket: IMM-3590-16

Citation: 2017 FC 688

Ottawa, Ontario, July 18, 2017

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

HASSAN ABOLORE GANIYU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Hassan Abolore Ganiyu seeks judicial review of a decision of an immigration officer with Immigration, Refugees and Citizenship Canada to deny his application for permanent residence as a protected person.

[2] For the reasons that follow, I conclude that Mr. Ganiyu was given sufficient notice by the immigration officer that the documents he had submitted to prove his identity were inadequate. The application for judicial review is therefore dismissed.

II. Background

[3] Mr. Ganiyu entered Canada on August 22, 2014 and claimed refugee status shortly thereafter. On November 19, 2014, the Refugee Protection Division of the Immigration and Refugee Board determined that Mr. Ganiyu was a Convention refugee.

[4] In December 2014, Mr. Ganiyu applied for permanent residence as a protected person. As proof of his identity, he submitted a driver's licence, a birth certificate and a certificate of origin. The Canada Border Services Agency [CBSA] subsequently determined the driver's licence to be counterfeit, and the birth certificate and certificate of origin to be "apocryphal".

[5] The CBSA describes a document as apocryphal when there are "serious concerns about its authenticity and/or how it was obtained. A conclusion of apocryphal means the document in question does not constitute credible evidence of the applicant's identity".

[6] By letter dated June 2, 2016 [Fairness Letter], the immigration officer wrote to Mr. Ganiyu to inform him that the documents he had submitted had been found to be "counterfeited and fraudulent", and could not be used to establish his identity. The immigration officer explained that adequate proof of identity could include a passport, travel document or identity card issued by his country of origin. Alternatively, Mr. Ganiyu could provide certain

other documents accompanied by a statutory declaration from a third party. Mr. Ganiyu responded by submitting a Nigerian passport.

III. Decision under Review

[7] On August 11, 2016, the immigration officer informed Mr. Ganiyu that the Nigerian passport he had submitted had also been determined to be “counterfeited and fraudulent”. His application for permanent residence was therefore refused.

IV. Issue

[8] Mr. Ganiyu initially challenged the decision of the immigration officer on a number of different grounds. However, at the hearing of the application for judicial review he chose to limit these grounds to a single question of procedural fairness: did the Fairness Letter provide Mr. Ganiyu with sufficient notice of the case he had to meet?

V. Analysis

[9] Questions of procedural fairness are subject to review by this Court against the standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[10] Mr. Gayuni says that the Fairness Letter was confusing and misleading. It described all of Mr. Gayuni’s identity documents as “counterfeited and fraudulent”, when in fact only one of the documents was found to be counterfeit and the other two were found to be apocryphal.

Mr. Gayuni was not represented by counsel at the time, and he says that the proposed list of

alternative documents was confusing, given that he had previously submitted identity documents issued by his country of origin. Finally, and most importantly, he says that the Fairness Letter should have included the document analysis reports prepared by the CBSA in relation to the identity documents he submitted.

[11] According to Mr. Ganiyu, if the Fairness Letter had included the CBSA document analysis reports, then his response might have been different. He would have known that two of the documents were found to be apocryphal, rather than counterfeit, and he could have sought to obtain specimens to confirm their authenticity. Or he could have requisitioned an independent analysis of the documents and submitted the results.

[12] The Respondent argues that the immigration officer gave Mr. Ganiyu sufficient information to allow him to understand what was needed in response. The immigration officer was under no obligation to provide Mr. Ganiyu with a “running score” or a further opportunity to respond to continuing concerns (citing *Bhatti v Canada (Citizenship and Immigration)*, 2017 FC 186 at para 46 and *Liao v Canada (Citizenship and Immigration)*, [2000] FCJ No 1926 at paras 23-25).

[13] I am satisfied that the Fairness Letter provided Mr. Ganiyu with sufficient notice that the immigration officer considered the identity documents he had submitted to be inadequate. Nothing turns on the characterization of those documents as counterfeit, fraudulent or apocryphal. If Mr. Ganiyu genuinely believed the documents to be authentic, he could have

responded with proof to that effect. Instead, he responded with a Nigerian passport that was found by the CBSA to have been altered by substituting a new biographical page.

[14] Mr. Ganiyu does not dispute the document analysis report prepared in relation to the altered Nigerian passport, and accordingly the application for judicial must be dismissed.

VI. Conclusion

[15] The application for judicial review is dismissed.

[16] Mr. Ganiyu proposed that a question be certified for appeal concerning the sufficiency of the Fairness Letter. However, I am not persuaded that this raises a serious question of general importance that transcends the interests of the parties (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 35-36). The requirements of procedural fairness vary with the circumstances, and whether they have been met in a particular case will usually depend on the facts of the case.

[17] Counsel for the Respondent requests that the solicitor of record be changed to the Attorney General of Canada. This is because the former Deputy Attorney General of Canada, under whose name the Respondent's Notice of Appearance was filed, was recently appointed a judge of this Court. Counsel for Mr. Ganiyu does not oppose the request, and it is therefore granted.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.
3. The solicitor of record for the Respondent is changed to the Attorney General of
Canada.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3590-16

STYLE OF CAUSE: HASSAN ABOLORE GANIYU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

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JUDGMENT AND REASONS: FOTHERGILL J.

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