Federal Court  Cour fédérale

Date: 20170816

Docket: IMM-1090-17

Citation: 2017 FC 770

Vancouver, British Columbia, August 16, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

ANNA ONA OYITA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of the denial of a temporary resident visa for the purposes of visiting a cousin in Canada. For the following reasons, I dismiss this application.

[2] The applicant is a citizen of Nigeria but has resided as a temporary resident in Israel since 1995. The applicant applied for her temporary resident visa in February 2017, shortly before her visitor visa to Israel was to expire in April 2017. Her application was supported by an invitation

letter dated December 7, 2016 from her cousin, and a doctor's letter dated January 12, 2017 from her cousin's doctor.

[3] A visa officer at the Canadian Embassy in Tel Aviv, Israel (the officer) denied the applicant her requested visa on the basis that the officer was not satisfied that the applicant would leave Canada at the end of her stay as a temporary resident. In reaching this conclusion, the officer cited three factors: (i) travel history, (ii) family ties in Canada and in country of residence, and (iii) purpose of visit. Specifically, the officer noted that the applicant had been on extended visitor status in Israel for over 20 years, but that the reasons for this were unclear. The officer was apparently also concerned about an inconsistency between the doctor's letter (which suggested that the reason for the visit was the applicant's cousin's ill-health) and the cousin's letter (which makes no mention of ill-health). Finally, the officer noted that the applicant is apparently alone in Israel and clearly does not wish to return to Nigeria.

[4] The applicant takes issue with the denial of her visa based on her travel history. While acknowledging a lack of travel history, she asks whether this should "necessarily mean that she is barred from visiting her seriously sick cousin in Canada?" But this is not the proper consideration. As noted by the respondent, a prospective visitor to Canada is presumed to be an immigrant, and it was up to the applicant to rebut that presumption: *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 16; *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 20. The respondent also notes correctly that the applicant does indeed have a travel history: she traveled to Israel as a visitor over 20 years ago and remains there. Though the applicant responds that there is no evidence that she ever overstayed her visit

in Israel or remained there illegally, this again is not the proper consideration. A lack of clarity concerning the applicant's travel history was of reasonable concern to the officer.

[5] The applicant also argues that there was no evidence to support the officer's comment that she clearly does not wish to return to Nigeria. In my view, this was a reasonable conclusion to reach based on the evidence that she has remained in Israel as a visitor for over 20 years, apparently with no family there or any other clear reason to stay.

[6] The applicant argues that the officer's concern about the purpose of her visit in light of inconsistency in the letters submitted demonstrates a misunderstanding of the evidence. The applicant notes that her cousin had not yet been admitted to hospital when his letter was written, so it should not be remarkable that that letter did not mention his ill-health. The applicant also argues that, regardless of the state of her cousin's health, the purpose for the applicant's visit remained unchanged: she wished to visit her cousin during a two-week vacation. I agree with the respondent's observation that the applicant's visa request was not submitted until three weeks after the doctor's letter and eight weeks after the cousin's letter; there was ample time to arrange a revised letter from the cousin to avoid the apparent inconsistency. The applicant responds that the cousin was in hospital and may not have been available to prepare a revised letter. In my view, this is speculation. If the cousin was so indisposed, the onus was on the applicant to prove it. It is also my view that it was reasonable for the officer to find that the evidence concerning the purpose of the visit was inconsistent.

[7] The applicant also takes issue with the officer's reference to a 2009 decision refusing a spousal sponsorship application for permanent residence on her behalf. The officer's comments in this regard were as follows: "PA applied for PR in Canada in 2009, sponsored by CLP. This application refused as relationship determined not to be bona fide." The applicant acknowledges that it was not improper to make reference to this denial of permanent residence, but notes that it was many years ago. The applicant argues that such a denial should not operate to exclude the applicant from Canada going forward. In my view, there was nothing unreasonable in the officer's consideration of the applicant's spousal sponsorship application.

[8] Finally, the respondent requests, and the applicant does not object, that the style of cause in the present application be amended to change the name of the respondent to the Minister of Citizenship and Immigration. I agree.

[9] The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application is dismissed.

2. The name of the respondent in the style of cause is changed to the Minister of Citizenship and Immigration.

3. No serious question of general importance is certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1090-17
STYLE OF CAUSE:	ANNA ONA OYITA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	AUGUST 14, 2017
JUDGMENT AND REASONS:	LOCKE J.
DATED:	AUGUST 16, 2017

APPEARANCES:

Malvin J. Harding	FOR THE APPLICANT
Marjan Double	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Malvin J. Harding Barrister and Solicitor Surrey, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT