

Federal Court



Cour fédérale

Date: 20171127

Docket: IMM-1623-17

Citation: 2017 FC 1067

Ottawa, Ontario, November 27, 2017

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

UGOCHUKWU DARLINGTON ONYEKA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ugochukwu Darlington Onyeka is a Nigerian citizen who applied for a study permit to pursue a two-year diploma in Canada. On March 15, 2017 a Visa Officer denied his study permit application, finding that the evidence submitted by Mr. Onyeka did not establish that he had sufficient financial resources to pay for the program, nor did it show that he would leave Canada at the end of his studies.

[2] By this application, Mr. Onyeka seeks judicial review of that decision. He contends that the Officer ignored evidence of his sponsor's financial situation, rendering the decision unreasonable. Further, he asserts that he has ample family and social ties in Nigeria, and that there was sufficient evidence on which to find that he would return to Nigeria after completion of his studies.

[3] For the reasons that follow, I have found that the Officer's decision was reasonable. Consequently, Mr. Onyeka's application for judicial review will be dismissed.

I. Background

[4] Mr. Onyeka currently resides in Nigeria. Between 2007 and 2015, he studied and worked in the United Kingdom, returning to Nigeria, where he was offered a position at a firm in Lagos. Mr. Onyeka had previously been granted visitor visas to allow him to visit his sister who resides in Canada, but he had never used them as he was unable to travel to Canada at the time.

[5] In February of 2017, Mr. Onyeka submitted an application for a Canadian study permit, having been offered admission into a two-year diploma program in Ontario. In support of his application, he provided a letter of admission from Lambton College, proof that he had paid the first semester's tuition, various identity documents, a study permit questionnaire, and evidence regarding his father's ability to support him financially.

II. Decision under Review

[6] As discussed above, Mr. Onyeka's study permit was declined on two grounds. First, the Officer found that Mr. Onyeka did not have sufficient funds to pursue his program of study.

Second, the Officer was not satisfied that he would leave Canada at the end of his authorized stay.

[7] The Officer noted that Mr. Onyeka's father was sponsoring him financially, but that the father's bank statements showed insufficient funds to cover the total cost of his son's tuition and living expenses in Canada. The Officer observed that there were no visas or stamps from the United Kingdom in his passport, although she appears to have accepted that he had received a degree from a British university. That said, the Officer noted that it was not clear why Mr. Onyeka wanted to enrol in the College program in Canada, after receiving a university degree and working in the United Kingdom for a year and a half.

[8] The Officer thus concluded that the evidence had not established that Mr. Onyeka was a genuine student who intended to complete a course of study in Canada who would depart at the end of his authorized stay.

III. Standard of Review

[9] Findings of fact reached by visa officers are subject to review on the standard of reasonableness: *Dhillon v. Canada (Citizenship and Immigration)*, 2009 FC 614 at para. 19, 347 F.T.R. 24. The decision must fall within the range of acceptable outcomes that are defensible in respect of the facts and the law: *New Brunswick v. Dunsmuir*, 2008 SCC 9 at para. 47 [2008] 1 S.C.R. 190; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59, [2009] 1 S.C.R. 339.

[10] Moreover, visa officers have wide discretion in assessing applications for student visas: *Solopova v. Canada (Citizenship and Immigration)*, 2016 FC 690 at paras 11, 33, [2016] F.C.J.

No. 662; *My Hong v. Canada (Citizenship and Immigration)*, 2011 FC 463 at paras 10-13, [2011] F.C.J. No. 648.

IV. Analysis

[11] The first issue is whether Mr. Onyeka's evidence showed that he had the necessary financial support to allow him to complete his studies in Canada. Applicants for a Canadian study permit must establish that they have the financial resources to pay the cost of travel to and from Canada, as well as the tuition fees for the program of studies they intend to pursue and their living expenses over the course of their program of study: *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 220.

[12] Mr. Onyeka's letter of admission from Lambton College in Ontario provided a breakdown of the anticipated cost of the program in issue. The letter estimates living expenses to be \$10,080 for twelve months, and \$14,460 as the cost of tuition and fees. In order to grant the study permit, the Officer would have therefore required evidence of at least \$24,540 in available funds for each of the two years of study, in addition to the cost of travel to Canada.

[13] In order to satisfy the Officer that he had access to the required funds, Mr. Onyeka submitted an affidavit from his father and financial sponsor, Mr. Francis Onyeka. In his affidavit, the father provided a list of properties that he claimed to own in Nigeria, estimating their value at over \$733,000. He also provided a letter of support from his bank, certificates of occupancy for the properties in question, certificates of incorporation for Nigerian companies, a receipt from Lambton College showing that he made a \$7,350 tuition payment, and bank statements showing that he had \$16,915 on deposit. The father further stated in his affidavit of sponsorship that he had five dependents.

[14] Of this collection of financial evidence, only a narrow set was relevant for the Officer's purposes. Certificates of incorporation do not demonstrate a person's cash flow. Certificates of Occupancy do not show mortgages that may be on properties, and they therefore do not establish the equity in these properties. Further, it is not clear that the sponsor could sell or would be willing to sell these properties if necessary.

[15] Mr. Onyeka argued in his written submissions that the evidence established his father's net worth at \$2.5 million and that he received \$150,000 in annual income. At the hearing, Mr. Onyeka conceded that the record did not include evidence regarding his father's annual income. Moreover, as discussed, his sworn statement regarding property ownership did not establish his net worth as being \$2.5 million.

[16] The two pieces of evidence that are the most pertinent to the question at hand are the evidence that Mr. Onyeka's father had paid the first semester of tuition for Lambton College in the amount of \$7,350, and the bank statements showing that he had \$16,915 in savings. This evidence showed that Mr. Onyeka's father could theoretically pay a total of \$24,265, which was a few hundred dollars short of the total amount required for one of the two years of studies, without including travel costs.

[17] Moreover, Mr. Onyeka's father has five dependents. The amount required for his son's studies in Canada would exhaust his entire bank balance, leaving nothing for his personal needs much less the needs of his other dependents. It was therefore open to the Officer to determine that Mr. Onyeka's father did not have sufficient funds available to him to support his son's course of study.

[18] The second issue is whether the Officer's determination that Mr. Onyeka was not a genuine student who would leave Canada at the end of his authorized stay was reasonable.

[19] The Applicant submits that Mr. Onyeka has social and family ties to Nigeria, that he had studied abroad in the past, and that there was a clear connection between his career and his proposed area of study. While these assertions may be true, the evidence before the Officer did not establish these facts.

[20] While Mr. Onyeka's parents and two siblings remain in Nigeria, one of his siblings is in Canada, another is in South Africa, and Mr. Onyeka previously spent eight years in the United Kingdom. Based on this evidence, it was open to the Officer to conclude that Mr. Onyeka's ties to his home country were limited.

[21] Moreover, Mr. Onyeka did not submit an affidavit or statement explaining why he was pursuing this particular course of study. He did, however, fill out a Study Permit Questionnaire with brief answers. For example, the Questionnaire asked: "Do you have any academic prerequisites or work experience relevant to the program? If so, please list and provide." The Applicant replied "No." The Questionnaire asked, "How does your selected program differ from similar programs available in Nigeria?" The Applicant replied "More research tools available."

[22] Without any further information from Mr. Onyeka, it was open to the Officer to determine that his proposed course of study raised concerns, especially considering that Mr. Onyeka had himself stated that he had no experience relevant to his course of study. Considering the thin record that was before the Officer, the conclusion that Mr. Onyeka had not

established that he was a *bona fide* student who intended to return to Nigeria at the end of his authorized stay was reasonable.

V. Conclusion

[23] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case is fact-specific and does not raise a question that is suitable for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1623-17

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OF CITIZENSHIP AND IMMIGRATION

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