

Federal Court



Cour fédérale

Date: 20180831

Docket: IMM-675-18

Citation: 2018 FC 878

Ottawa, Ontario, August 31, 2018

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

EHIOSUN ELVIS OMIJIE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Omijie is a 26 year old Nigerian national who wants to come to Canada to continue his university studies. He applied for a student visa, but was turned down. He sought judicial review of that decision, which was discontinued on consent when the Respondent agreed to have his student visa application re-considered by a different decision-maker. Mr. Omijie filed a further submission in support of his visa application. On January 19, 2018 his application was refused by a different visa officer, and he now seeks judicial review of that decision.

[2] Mr. Omijie lives in Nigeria. He completed his Bachelor of Science in Economics at Ambrose Alli University in Nigeria in 2015, receiving second class honours. This is equivalent to a four-year bachelor's degree in Canada. Upon completion of his compulsory service in Nigeria, Mr. Omijie worked for his uncle's trucking company, managing the business while his uncle is away. More recently, he was also offered a job as a junior business analyst with Valland International (Nigeria) Limited, which was to commence upon completion of his studies.

[3] In support of his application for a study permit, Mr. Omijie submitted documentation to establish his education and work history. He also submitted a letter of unconditional acceptance into the Bachelor of Applied Business Administration – Finance Program, by the Northern Alberta Institute of Technology [NAIT] in Edmonton, Alberta. In addition, he submitted proof that he had paid the full tuition for this program in the amount of \$16,084.00 CAD. This tuition was paid by his uncle, who submitted a letter indicating that he intended to sponsor Mr. Omijie during his education and to pay for all of his expenses. The uncle also submitted information regarding his financial resources, as did Mr. Omijie.

[4] In regard to his choice of program, Mr. Omijie submitted several documents, which will be examined in more detail below, since this forms the crux of the visa officer's decision to refuse his study visa.

[5] As is often the case, the visa officer's decision refusing the student visa is succinct. The officer states that the refusal was because Mr. Omijie had "not satisfied me that you would leave Canada at the end of your stay. In reaching this decision, I considered several factors, including: purpose of visit." In the GCMS Notes, which form part of the reasons for decision in a case such

as this, the officer reviewed the material submitted by Mr. Omijie in regard to his application to the NAIT and his work history. The officer noted that Mr. Omijie's uncle offered to pay for his studies and that the uncle appeared to have sufficient funds to do so.

[6] The crux of the officer's decision is expressed in the following passages from the notes:

I note that the applicant has already completed a qualification at the same level to that which the applicant proposes to study in Canada. [...] Despite demonstrating finances, applicant has not provided compelling reason for study in Canada. Unclear why applicant would incur costs of relocating to Canada in order to undertake study at the same academic level to that already completed. Refused.

[7] This decision gave rise to this application for judicial review. Mr. Omijie argues that the visa officer's decision is unreasonable. In light of the evidence submitted in support of the application, Mr. Omijie further argues that the Court should infer that the officer must have ignored the evidence.

[8] In the alternative, he submits that the Court should infer that the officer must have made a negative credibility finding against Mr. Omijie, and that this amounted to a denial of procedural fairness because Mr. Omijie was never given any notice of the officer's specific concerns or the opportunity to correct them. Mr. Omijie also alleges bias against the officer – essentially on the basis that the officer's refusal based on such strong and compelling evidence must reflect some prejudgment by the officer.

[9] This case turns on whether the officer's decision is reasonable. There is no evidence in the record of any consideration of any extrinsic evidence, or of the application of stereotypes or generalizations, or of any bias on the part of the officer.

[10] The standard of review for a visa officer's decision in regard to a student visa application is reasonableness (*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at paras 9-10.). The burden is on an applicant to submit evidence that is sufficient to satisfy the officer that the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the *Immigration and Refugee Protection Regulations*, SOR/2002, subsection 216(1), have been met. In reviewing these types of decisions courts have accorded officers a high degree of deference, and in particular it has been observed that "the Court must guard against imposing a level of procedural formality that, given the volume of applications visa officers are required to process, would unduly encumber efficient administration" (*Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32).

[11] Mr. Omijie submits that the officer's decision is inadequate in that there is no explanation for why the officer concluded that he had "not provided [a] compelling reason for study in Canada." Mr. Omijie argues that his reasons were perfectly clear – he wanted to pursue the NAIT program because it would enable him to gain practical experience relevant to his desired field of work, which would help him to advance in his career in Nigeria. Mr. Omijie points to the letters he submitted in support of his application. In these letters he explains that he chose Canada "due largely to the fact that the country places great importance on learning...", and, furthermore, that his brother – who had previously come to Canada to study and was now a

resident here – had informed him of the quality of a Canadian education compared to that available in Nigeria.

[12] Mr. Omijie points to the letter he submitted in support of his original application, which was part of the file before the visa officer. In that letter he sets out the advantages of the NAIT program, including its outstanding faculty, small class size, and emphasis on collaborative learning. He notes that the NAIT program “provides tech-based education with applied research [and] hands-on learning experience which is very comprehensive and competitive.” This degree would provide him with both a “theoretical understanding and [an] in-depth idea of practical approaches”. He summarizes his desire to enrol in the NAIT program by noting that Nigeria offers many employment opportunities in the field of financial analysis, and that obtaining a finance degree from the NAIT would give him “a huge head Start [*sic*] to achieve my long term goals and ambition.”

[13] In a Study Permit Questionnaire completed by Mr. Omijie (see Certified Tribunal Record at 41-42), he offers the following explanation as to how the NAIT program differs from similar programs available in Nigeria: “Business Administration Finance offers Technology-based education and applied research with two work experience terms.” This is not repeated word-for-word in the subsequent letters submitted by Mr. Omijie, but it captures the essence of his interest – to supplement his degree in economics with a more practical, technology-based, and hands-on educational experience.

[14] Mr. Omijie points to case law which has found that visa officers must provide reasons which are sufficient to permit the applicant to understand why the application was denied, and to

permit a court to review these reasons to assess whether the denial was reasonable (*Asong Alem v Canada (Citizenship and Immigration)*, 2010 FC 148; *Wang v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 146). He argues that the explanation he provided demonstrates how the NAIT program was a progression in his education that was linked both to his short-term employment goals, and his longer-term career aspirations. The officer did not explain the basis on which this was found to be insufficient.

[15] The Respondent submits that the officer's decision is entitled to a large degree of deference, and that in the face of Mr. Omijie's general and vague explanations, it was reasonable for the officer to find that the information did not provide a satisfactory explanation for why he wanted to pursue the NAIT program. Mr. Omijie has a relatively recent honours Bachelor of Science in Economics degree; he is employed in a related field, and has a job offer that would allow him to continue his chosen career in financial analysis. It was not clearly explained how the NAIT program would provide him with expertise or experience that he was lacking, or how it was needed for him to obtain employment or advancement in his chosen field.

[16] The onus rests on the applicant, and visa officers are afforded deference by the Court on judicial review. Other visa refusals have been upheld in previous decisions, largely because the visa officer concluded that the applicant's explanations for the desire to come to Canada were found to be too vague or general, and this was upheld as reasonable by the Court (see, for example, *Hamad v Canada (Citizenship and Immigration)*, 2017 FC 600 at paras 13-16).

[17] This is a difficult case. On the one hand, Mr. Omijie's explanation for choosing the NAIT program is not stated in a clear and succinct manner – and in particular, his reasons for pursuing

this program so soon after completing an honours Bachelor of Science in Economics degree and then obtaining work in his chosen field, are not stated clearly. I agree with the Respondent that parts of the arguments in the written and oral submissions go beyond the explanations offered by Mr. Omijie in the material he submitted to the visa officer. Because these submissions were not before the officer, I have ignored these particular points.

[18] On the other hand, the visa officer states the reason for refusing the visa in conclusory terms, and the notes that set out the reasoning for the refusal are not particularly helpful. The officer concluded that Mr. Omijie had not provided sufficient information about why he wanted to pursue a second degree in a related field of study. The officer does not express any doubts about the other documents submitted – that Mr. Omijie had been accepted by the NAIT; that his uncle had paid the tuition and was prepared to pay the costs of his studies; and that Mr. Omijie had arranged for living accommodation in Edmonton. The reasons mention this in the summary background, but do not appear to give them much weight in the final analysis.

[19] A somewhat similar set of facts arose in *Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764. In that case, the applicant sought a student visa to pursue a Post-Graduate Certificate in International Business at the Manitoba Institute of Trades and Technology. The applicant had already studied economics and statistics at the University of Benin, and had been employed in business for over ten years. The student visa was denied, on the basis that the officer found that the “program of study in Canada does not appear to be consistent with previous education and employment history.” The officer was not persuaded that the applicant was a genuine student who intended to pursue the proposed course of study, or who would leave Canada at the end of the authorized stay.

[20] Justice Alan S. Diner found that the visa officer's decision was unreasonable because it lacked justification. The following captures the essence of his reasoning:

[12] It may be that the Officer was aware of underlying issues in the application. However, the only explanation regarding the reason for refusal – that the Applicant would not leave Canada at the end of his authorized stay because of his “educational and employment history” – is entirely unhelpful since the Officer does not state what it is about either his education or employment that is actually problematic.

[13] In other words, the Officer may have had perfectly justifiable reasons for basing a refusal on any of the grounds, but needed to state, with a modicum of clarity, what they were. A visa officer's reasons need not be perfect but they must “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). Where, as in this case, the reasons are so inadequate as to render the decision itself unjustified and unintelligible, and the conclusion thus falls, as a result, outside of the range of reasonable outcomes, then the decision should be reviewed and sent back for reconsideration.

[21] In that case, Justice Diner found that the desire of the applicant to pursue a Post-Graduate Certificate in International Business was entirely consistent with his education and employment background. The officer's refusal was not explained – it was simply stated as a conclusion, and thus did not permit the applicant, or the Court, to understand the reasoning process – it was simply not possible to “connect the dots” to follow the visa officer's reasoning (see *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431).

[22] On balance, I find that the officer's decision in this case is unreasonable, because there is no explanation as to how the officer came to the conclusion that the degree in applied finance at the NAIT was sufficiently similar to the Bachelor of Science in Economics that Mr. Omijie had

previously obtained, so as to cast doubt on his desire to pursue this course of study. I find that the decision is not justified or intelligible.

[23] Mr. Omijie submitted evidence that he had been accepted into the NAIT program, that he had the financial backing to undertake the program, and that he had arranged living accommodation in Edmonton. He also demonstrated that he had a history of employment in Nigeria, and a job offer waiting for him upon the completion of his studies. In his personal statement and letters in support of his application, Mr. Omijie makes repeated reference to his desire to pursue the type of hands-on, practical, and technologically advanced training that the NAIT program offers.

[24] None of this appears to have been questioned by the officer. Yet, the officer concludes that it is “unclear” why Mr. Omijie would incur the costs of relocating to Canada in order to “undertake study at the same academic level” to that which he had already completed.

[25] While it is accurate to state that the materials submitted by Mr. Omijie could have been more direct, succinct, and specific, the same might be said of the officer’s reasoning. While the onus rests on the applicant to provide evidence that satisfies the officer, neither the IRPA, nor the case law, require a particular standard of expression or persuasion. Much is left to the discretion of the officer, and that discretion should be given due deference on judicial review by the Court, especially in light of the interests at stake in a student visa case (the applicant can generally simply reapply), and the volume and circumstances of the decisions that visa officers must make.

[26] However, it is fair to expect a degree of explanation by an officer not just as to what the decision is, but on what basis it was reached, given the information that has been submitted. Here, the focus of the officer was on the fact that the Applicant was seeking a degree at the same level as that previously obtained. Mr. Omijie submits that his explanation was clear – this was a logical progression from an “academic” course of study to a program that offers more practical and hands-on experience. Although this is perhaps not stated as clearly as it could have been, Mr. Omijie does make reference to this explanation in the original letter he submitted in support of his application. I find it was not reasonable for the officer to reject this, without some sort of explanation as to why it was not adequate – in particular given the other evidence submitted.

[27] Mr. Omijie contends that the officer must have concluded, implicitly, that he was not a *bona fide* student with a genuine interest in attending the program. This would amount to a credibility finding, which triggers a duty on the officer to provide an opportunity to rebut the inference. I am not persuaded that this is what happened. I agree with the Respondent that the officer simply found that Mr. Omijie had not provided sufficient information to support his intent to pursue a second degree. For the reasons set out above, I am overturning this decision. But I do not do so on the basis that the officer made a negative credibility finding, but rather due to the lack of reasons given in his decision.

[28] For these reasons, I find that the officer’s decision is unreasonable. It simply does not explain on what basis the officer rejected Mr. Omijie’s explanation for wanting to pursue his studies in the Bachelor of Applied Business Administration – Finance Program at the NAIT. Absent some explanation of the officer’s reasoning that takes into account – in some manner – the rationale offered by Mr. Omijie, I find that the officer’s decision must be overturned.

[29] Mr. Omijie sought a number of remedies, including an order that the visa officer grant the application for a student visa. The Respondent argued that such an order is simply not available in a judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. I agree.

[30] The decision of the officer is overturned, and the matter is remitted back for reconsideration by a different visa officer.

[31] No question was submitted for certification by either party, and none arises in this case.

JUDGMENT in IMM-675-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The matter is remitted back for reconsideration by a different visa officer;
3. No question for certification arises in this matter.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-675-18

STYLE OF CAUSE: EHIOSUN ELVIS OMIJIE v THE MINISTER OF
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