

Federal Court



Cour fédérale

**Date: 20181212**

**Docket: IMM-2262-18**

**Citation: 2018 FC 1262**

**Vancouver, British Columbia, December 12, 2018**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**NNE MODELINE NSIEGBE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Nne Modeline Nsiegbe (the “Applicant”) seeks judicial review of the decision of an Immigration Officer (the “Officer”) refusing her request for a study permit.

[2] The Applicant is a citizen of Nigeria. She is a nurse and at the time of applying for the study permit, she was working in the Kingdom of Saudi Arabia on a work permit that is valid

until August 1, 2021. She was granted a leave of absence to pursue studies in Canada, for a period of 18 months, beginning in July 2018.

[3] The Officer denied the application because he was not satisfied that the Applicant would leave Canada at the end of her stay or that she had sufficient available financial resources to support herself in Canada, pursuant to subsection 216(1) and subsections 220(a) to (c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[4] In the Global Case Management System notes, the Officer recorded that there was limited evidence of the Applicant’s establishment in Saudi Arabia. The Officer expressed concern that recent transfers to the Applicant’s bank account were made for the purpose of inflating her financial resources, in that the money did not come from her regular employment income.

[5] The Applicant pleads that the decision is unreasonable because it is inconsistent with the evidence provided. She also argues that the Officer breached the requirements of procedural fairness by failing to give her the opportunity to respond to any concerns.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that the decision is reasonable and that there was no breach of procedural fairness.

[7] The merits of the decision are reviewable on the standard of reasonableness; see the decision in *Solopova v. Canada (Citizenship and Immigration)*, 2016 FC 690.

[8] The issue of a breach of procedural fairness is reviewable on the standard of correctness; *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[9] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[10] In my opinion, the decision of the Officer does not meet this standard.

[11] I see no foundation in the evidence submitted to support the conclusion of the Officer that the Applicant inflated her bank account for the purpose of her application for a study permit.

[12] The evidence submitted shows transfers from one account of the Applicant into another account.

[13] If the Officer was concerned about the source of those funds, he could have inquired of the Applicant about the status of that other account. No authority was cited to support the notion that an applicant cannot transfer funds from one account to another, for the purpose of showing financial stability.

[14] There is nothing in the record to contradict the Applicant's deposition that she has paid the tuition fees in full.

[15] Second, the Officer assessed the likelihood of the Applicant's departure from Canada against Saudi Arabia, rather than in respect of her country of nationality, that is Nigeria.

[16] The evidence is clear that the Applicant enjoys temporary status in Saudi Arabia, pursuant to a work permit issued by that country.

[17] In my opinion, it was unreasonable for the Officer to overlook her return to Nigeria.

[18] The application for judicial review will be allowed, the decision of the Officer set aside and the matter remitted to another Officer for re-determination. There is no question for certification arising.

**JUDGMENT in IMM-2262-18**

**THIS COURT'S JUDGMENT** is that the application for judicial review will be allowed, the decision of the Officer set aside and the matter remitted to another Officer for re-determination. There is no question for certification arising.

"E. Heneghan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2262-18

**STYLE OF CAUSE:** NNE MODELINE NSIEGBE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** DECEMBER 12, 2018

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** DECEMBER 12, 2018

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