

Federal Court



Cour fédérale

Date: 20190920

Docket: IMM-2831-18

Citation: 2019 FC 1192

St. John's, Newfoundland and Labrador, September 20, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**WISDOM CHIDIEBERE NWAUBANI
SANDRA NJIDEKA NWAUBANI
WISDOM CHIAGOZIEM NWAUBANI**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Wisdom Chidiebere Nwaubani (the “Principal Applicant”), and his wife Sandra Njideka Nwaubani and their son Wisdom Chiagoziem Nwaubani (collectively “the Applicants”) seek judicial review of the decision of a Visa Officer (the “Officer”) dated May 30, 2018. In that decision, the Officer refused the Applicants’ application for a Temporary Residence Visa (“TRV”) on the grounds that there was a material misrepresentation in their application relative

to the number of times an application for a visa to enter the United States of America had been refused.

[2] The Applicants are citizens of Nigeria.

[3] In 2017, the Principal Applicant applied for a visitor's visa to visit Canada with his wife.

[4] The application was denied, on the grounds that the Applicants had made a material misrepresentation about the number of times that they had been denied a visa for entry into the United States of America.

[5] The Applicants filed an application for leave and judicial review, in cause number IMM-3182-17, in respect of that decision.

[6] Upon consent of the Minister of Citizenship and Immigration (the "Respondent"), the application for judicial review was allowed, the initial negative decision was set aside, and the matter was remitted to a different officer for redetermination.

[7] The Applicants submitted updated information, including information about a child who had been born after the initial denial of a TRV.

[8] In response to the material submitted by the Applicants upon the reconsideration of their TRV application, the Officer sent a procedural fairness letter on April 23, 2018.

[9] The Applicants replied. Among other things, they expressed the opinion that they were being treated unfairly since the information requested was already available to the Officer from their prior application.

[10] The parties filed further submissions addressing the propriety of inquiries made by the Respondent's officers and agents to their American Immigration Authorities, about requests by the Applicants for issuance of visas to enter the United States.

[11] The decision under review was made pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the "Act"), which provides as follows:

Misrepresentation

40(1)(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

Faussees déclarations

40(1)a directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

[12] On the basis of the submissions filed by the Applicants on April 4, 2019 and by the Respondent on April 24, 2019, I am satisfied that no breach of procedural fairness arose from the inquiries made by the Respondent's agents of the American Immigration Authorities.

[13] The decision to refuse a TRV is a discretionary one, reviewable on the standard of reasonableness; see the decision in *Wang v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 368 at paragraph 12.

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

[15] I am not satisfied that the Officer reasonably refused the Applicants' request for a TRV. It is not transparent that the Officer considered the defence of an innocent mistake exception to misrepresentation.

[16] The defence of innocent misrepresentation is available in limited circumstances; see the decision in *Alkhaldi v. Canada (Citizenship and Immigration)*, 2019 FC 584.

[17] The facts relative to the Applicants' request in 2018 are essentially the same facts that were before an officer when the TRV request was made in 2017. The refusal of the 2017 request lead to the commencement of an application for leave and judicial review. Following the grant of leave, a settlement was recorded in the CTR; the notes found at page 42 show that the application for a TRV is to be "reconsidered."

[18] In my opinion, the circumstances of the Applicants in this case are unique and specific. The Officer did not explain in a justifiable, transparent, and intelligible manner, why the Applicants' evidence and response to the procedural fairness letter led to a negative decision.

[19] In my opinion, the decision is not "reasonable" within the meaning of *Dunsmuir, supra*.

[20] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for reconsideration.

[21] There is no question for certification arising.

JUDGMENT IN IMM-2831-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to another officer for reconsideration.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2831-18

STYLE OF CAUSE: WISDOM CHIDIEBERE NWAUBANI, SANDRA
NJIDEKA NWAUBANI, WISDOM CHIAGOZIEM
NWAUBANI v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: HENEGHAN J.

DATED: SEPTEMBER 20, 2019

APPEARANCES:

Peter Obuba Kalu FOR THE APPLICANTS

Brad Gotkin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Obuba Law Firm FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario