Date: 20080618

Docket: IMM-5162-07

Citation: 2008 FC 754

Toronto, Ontario, June 18, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

REVEREND CHARLES KWASI OBENG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by a visa officer (the officer), made on October 9, 2007, to refuse the applicant's application for a religious worker permit exemption and temporary resident visa (TRV).

I. The Facts

[2] The applicant claims to be a pastor of a City Chapel Ministries International (City Chapel) Church in Ghana. He applied for a TRV and a religious worker permit exemption on October 9, 2007 in Accra, Ghana. He had been invited by City Chapel in Toronto to work as an Associate Minister from October 1, 2007 to November 30, 2007. The applicant apparently also had his itinerary planned and his tickets booked so that he would be leaving October 1, 2007 from Accra and arriving in Toronto on October 2, 2007.

[3] To support his application, the applicant provided a number of documents in addition to his application for a TRV. These apparently included: a letter from his legal counsel (lawyer's letter) dated September 4, 2007; a letter of invitation from City Chapel, dated August 27, 2007, to work temporarily as an Associate Minister in Toronto (invitation); a letter of appointment from City Chapel, dated April 1, 2003, as an Associate Minister (Letter of Appointment); a copy of his itinerary; three (3) pay slips; a Certificate of Ordination as an ordained Evangelist from the Association of Education & Evangelism International, Texas – USA, dated June 6, 1998; and a copy of a Criminal Investigation Check; a vehicle registration; and two bank statements.

[4] In his application for a TRV, the applicant noted that he would not be travelling with his wife and two (2) children, and that he would be staying with his sister. He also noted that he had been previously refused a visa to travel to Canada because of unsatisfactory requirements/inadequate financial support. Finally, the applicant disclosed that he would visit his

sister and brother-in-law in Canada, but did not mark down his sister on the Visitor Visa. It appears though that there was some confusion by the officer as the applicant simply filled in the section indicating he would be visiting his sister, but that his lawyer's letter indicated that he would be staying at the Church's expense.

[5] The applicant attended a meeting with a Non-Immigrant Case Analyst (analyst) the same day that he made his application. The applicant claims that the analyst became infuriated with him during the interview, and shouted at him when he claimed that the 200,000,000 Cedies in his bank account were earned by his wife selling bread and telephone units. He also claims that the analyst abruptly ended the interview at that point. Though in her own affidavit, the analyst denies this claim.

[6] The applicant's application was rejected that same day by the officer.

[7] At the time of the hearing, the purpose of the applicant's proposed visit to Canada was his employment with City Chapel. This offer, as laid out in the invitation, has lapsed.

II. The Impugned Decision

[8] According to the letter of refusal, the applicant's application was refused because he did not satisfy the officer that he would leave Canada at the end of an authorized stay as a temporary resident. The officer took into account several factors, such as:

> (a) available funds;
> (b) residence of family members and the degrees of relationship to family members in Ghana;
> (c) previous travel history;
> (d) plausibility of the applicant's stated purpose for travel;
> (e) employment ties to the applicant's home country; and
> (f) economic incentive to seek entry to the Canadian labour market, or access to Canadian social services
> (officer's Affidavit, paragraph 4)

[9] The officer noted that the applicant submitted a bank statement with large deposits and that he stated that these deposits came from his spouse who sold breads and telephone units. The bank statement was not in the applicant's wife name and the deposits were large and appeared to be more than what would be obtained from proceeds of the sale of bread and telephone units. For instance, one deposit alone was the equivalent $21,739US. The officer found it odd that it was deposited and credited on the same day. She felt that the statement might not be genuine.

[10] The applicant's letter of employment and letter of invitation both referred to the applicant as an "Associate Minister". The latter described him as "formerly an itinerant Evangelist". Even if the applicant did submit, as he alleges, a certificate of ordination as an evangelist, this would not have overcome the officer's concerns about the genuineness of his intention to return to Ghana at the end of any authorized stay in Canada.

[11] In the applicant's letter of employment in Ghana, his claimed earnings were limited to 4.5 million Ghanaian Cedies being equivalent to about $454.90CAN, which indicated a possible financial incentive to remain in Canada for higher paid employment.

[12] The officer noted that the applicant's spouse and children were listed as residents in Ghana. However, the existence of close family members in Ghana did not outweigh her concerns about the applicant's economic incentive to remain permanently in Canada, based on her experience that families are frequently willing to undergo periods of lengthy but temporary separation for economics reasons, and/or in the expectation of being reunited in Canada at a later date.

[13] Previous travel is a factor which is normally considered an assessment of TRV eligibility, as evidence of previous travel which did not violate the immigration laws of Canada or other countries can be favourable to establishing temporary resident applicant's credibility as legitimate international travellers. No evidence was submitted of international travel by the applicant for the purpose of his TRV application.

[14] The officer noted that the applicant claimed he would be visiting a sister in Canada, but that he did not indicate this sister as a sibling on the Visitor Visa Questionnaire submitted with his application form, which requires applicants to "list all" brothers, sisters, step-brothers and step-sisters. On this questionnaire, the applicant listed only one step-brother in Ghana.

[15] On weighing the totality of the evidence, the officer concluded that the applicant had failed to meet the requirements of section 11(1) of the Act, as he failed to satisfy the officer that he was not intending to relocate to Canada on a permanent basis.

[16] Did the officer commit any reviewable error in rejecting the applicant's submission?

III. Issues

[17] This application raises a number of issues:

a. Is there a live controversy and, if not, should the Court exercise its discretion and hear the matter?

b. Should the affidavits of the officer and the analyst be struck?

c. Did the officer err by misapprehending some evidence?

d. Did the officer give adequate reasons?

IV. The Relevant Legislation

[18] Section 20(1) of the Act imposes the following obligation on every foreign national seeking to enter or remain in Canada:

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

[…]

b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay. [Emphasis added]

20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

[…]

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée. [Souligné ajouté]

[19] Also, Regulation 179 of the Act imposes the following obligation to the officer called upon to issue a resident visa:

179. An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national […] (*b*) will leave Canada by the end of the period authorized for their stay under Division 2; [Emphasis added]	**179.** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis : […] *b*) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2; [Souligné ajouté]

[20] There is a legal presumption that a foreign national seeking to enter Canada is presumed to be an immigrant, and it is up to him to rebut this presumption. It was therefore up to the applicant, in the present instance, to prove to the visa officer that he is not an immigrant and that he would leave Canada at the end of the authorized period that he requested. (*Danioko v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No.578, 2006 FC 479, *Li v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 791, [2001] F.C.J. No. 1144, paragraph 37).

V. Standard of Review

[21] The officer's decision is an administrative decision made in the exercise of her discretionary power, having in mind the obligation imposed on her by the Law and its regulations. Such a discretionary decision is for the most part a question of fact, and as such, a decision entitled to considerable deference in view of the officer's special expertise, and that certain questions she has

to decide call on her experience and do not lend themselves to one specific, particular result but instead give rise to a number of possible and reasonable conclusions. (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, at paragraph 47). When the decision at issue falls within that spectrum, the Court should not interfere.

IV. Analysis

A. *Is this application moot?*

[22] Neither party has commented on the fact that the sole reason for the Applicant's application, namely his employment as an Associate Minister at City Chapel for the period of October 1, 2007 to November 30, 2007, had passed by the time this judicial review was heard. This raises the issue of mootness, as there does not appear to be a live controversy that meets the first step in the two-step analysis for mootness provided by the Supreme Court of Canada in *Borowski v. Canada (Attorney General*, [1989] 1 S.C.R. 342: (1) has the required tangible and concrete dispute disappeared and the issues become academic; and (2) if so, should the court exercise its discretion to hear the case?

[23] After reviewing the file once again after the oral arguments, the Court does not see that there is a live controversy here. The applicant's invitation has expired, and there is no evidence of a continuing or further offer.

[24] The Court does not see either the practical purpose of the application, as the applicant could simply apply for another visitor's visa and point out the apparent conflict between the finding and the evidence that the court declined to hear. *Toor v. Canada (Minister of Citizenship and Immigration*), [2008] F.C.J. No. 353, 2008 FC 287.

[25] But since neither party has addressed this issue at the time of the hearing, the Court will therefore decide on the issues.

B. *The affidavits*

[26] Although contested by the applicant, the affidavit of the analyst who interviewed the applicant is admissible in as much as it responds the allegations of the applicant's own affidavit. In her affidavit the analyst swore that the applicant's allegations about her behaviour are untrue. The applicant has not attempted to cross-examine the analyst, even though he has the burden of proof in this application.

[27] The officer's affidavit refers basically to the CAIPS notes made in the applicant's file, both by the officer and the analyst. The officer does not add to her reasons, she states why she made the remarks in the CAIPS notes, and also indicates how her reasons do not bear the interpretations given them by the applicant and why they are based on her experience and on the evidence or lack of evidence before her. Furthermore the applicant has not demonstrated that the officer should be precluded from responding to the applicant's allegations. Since also the applicant did not cross-

examine the Officer, and his view of his burden with the present application, he can hardly now justify questioning what is stated in the officer's affidavit. (*Oie v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 600, 2002 FCT 466, paragraph 29).

[28] The present affair is distinguishable from cases cited by the applicants (*Jesuorobo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1092, [2007] F.C.J. No 1680; *bin Abdullah v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1185), and where the visa officers provided evidence that were not reflected in their CAIPS notes. This is quite different from the present case, where the analyst was responding to allegations and she and the officer are merely elaborating on the reasons already provided in the CAIPS notes as pointed out in *Jesuorobo*, above, at paragraphs 5-6 and in *bin Abdullah*, above, at paragraph 15.

[29] *Jesuorobo*, and *bin Abdullah* are also distinguishable due to their significantly different facts. In *Jesuorobo*, above at paragraph 3, the applicant had extensively cross-examined the visa officer. In *bin Abdullah*, above, at paragraphs 15, 19, the decision under review related to an application for permanent residence which was "critical" to the applicant's future and the visa officer had provided an entire line of reasoning that was not reflected anywhere in her notes.

[30] But when, as is the case here, the officer's affidavit is properly before the Court, explains the provenance of the CAIPS notes, affirms their accuracy, and does not add to or modify the reasons for the officer's decision, there is no ground to strike the affidavit as requested by the applicant.

[31] It was also open to the officer to state in her affidavit that on the basis of her experience, she knew that families are frequently willing to undergo periods of lengthy but temporary separation for economic reasons and or in the expectation of being reunited in Canada at a later date. The officer did not make a finding that this was the case regarding the applicant, since her statement about her experience was merely to show that the applicant had a family in Ghana and that the evidence as a whole did not convince her that he would leave Canada at the end of an authorized stay. Further, the officer here was both entitled and required to apply to her task of making an administrative decision, and when doing so, she was not obligated to give the applicant an opportunity to comment or respond on her experience. In any event the applicant did not choose to cross-examine the Officer on her experience. There was no breach of procedural fairness or natural justice here (*Ayatollahi v. Canada (Minister of Citizenship and Immigration),* 2003 FCT 248, [2003] F.C.J. No. 340, paragraph 23-24; *Soor v. Canada (Minister of Citizenship and Immigration),* [2006] F.C.J. No.1726, paragraphs 13, 18).

[32] The applicant therefore fails on this issue.

C. *Misapprehension of Evidence*

[33] The applicant provided no evidence that he was a pastor. He submitted two letters which described him as an “Associate Pastor”, and as “formerly an itinerant Evangelist”. Further, his certification or ordination did not specify that he was a pastor; it only stated that he was an “Ordained Evangelist”. Given that the applicant provided no evidence that he was a pastor, it was

open to the analyst to state in her notes that he did not submit evidence of pastorship. In any event, the note about no evidence of pastorship was not made by the officer, and did not form part of her refusal. It appears clearly that the officer's refusal was made because she did not believe the applicant intended to return to Ghana, and had nothing to do whether he was or not a pastor or an associate pastor.

[34] The applicant did not list his sister in Canada on the "Visitor Visa Questionnaire" that he was required to complete as part of his application. It was therefore open to the officer to note this omission in her reasons. While the applicant mentioned his sister elsewhere, this does not change the fact that he failed to disclose this information on an important form he was required to complete.

D. *Ignoring Evidence*

[35] The applicant has not shown that the officer ignored any evidence. Further, the officer is assumed to have weighed and considered all evidence presented to her unless the contrary is shown, and that is not the case here. (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) at paragraph 1).

[36] The officer was entitled to rely on common sense and rationality in determining that the evidence did not establish that the applicant would leave Canada at the end of his stay, including the rejection of the applicant's explanation for the large deposit. Nor is there anything to indicate that the officer did not consider the applicant's payslips. Similarly, the applicant's employment in Ghana

and his ownership of a car there did not establish that he would leave Canada at the end of an authorized stay. In making findings of fact, the officer was entitled to rely on common sense and rationality. It is not the role of this Court to reweigh the evidence as the applicant seems to propose.

[37] The same with the large deposits in the applicant's account. It was open to the officer to reject the applicant's explanation, and to find that it seemed more than bread and telephone units would provide for, based on her experience and common sense.

E. *Adequacy of Reasons*

[38] Reasons, as a general rule, are adequate when they fulfill the functions for which the duty to provide them was imposed (*Via Rail Canada Inc. v. Lemonde*, [2000] F.C.J. No. 1685 (F.C.A.) at paragraphs 21 and 22). In the context of this affair however, the analyst made certain findings and recommended that the applicant's application be refused. The officer reviewed the evidence, made some additional notes and refused the applicant's application. These notes are adequate to inform the applicant why his application for a TRV was refused (*Mendoza v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 846, 2004 FC 687 at paragraph 4.

[39] In the present case, while the reasons do not show the depth of analysis and consideration that one would hope, they are sufficient for the applicant to determine whether or not judicial review was warranted. An applicant should not expect from a visa officer the same type of judgment a Court would generally render.

[40] In brief, and after considering all the circumstances in issue, this is a case where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The result may not be what the applicant expected, but this Court, having already concluded that the decision is reasonable on all the issues, will resist the applicant's invitation, that is to analyse the evidence differently than the Board did, in order to substitute its own conclusion to the Board's conclusion. This is not the role of this Court.

[41] Consequently, this Court will dismiss the application.

[42] No question of general importance was put forward for certification, and none will be certified.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the application.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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