

Federal Court



Cour fédérale

**Date: 20110325**

**Docket: IMM-209-10**

**Citation: 2011 FC 372**

**Ottawa, Ontario, March 25, 2011**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**OLABANJI OLUSHOLA BANKOLE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This application commenced as an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, RSC 2001, c. 27 (the Act) for an order of *mandamus* with respect to the permanent residence application in Court file IMM-1244-10.

## **Background**

[2] Olbanji Olushola Bankole (the applicant) is a citizen of Nigeria. He was granted Convention refugee status in Canada on May 20, 2004. He applied for permanent residence on May 27, 2004. This application was approved in principle by Citizenship and Immigration Canada (CIC) Vegreville on January 26, 2005.

[3] On January 31, 2005, the applicant was stopped at Pearson International Airport in Toronto, returning from the Bahamas, allegedly escorting an undocumented person, Mr. Prince Sarumi. The applicant alleged that he had only just met Mr. Sarumi, but an address book attributed to the applicant was found containing Mr. Sarumi's contact information in several locations. The applicant alleges that this address book did not belong to him. Charges were laid against the applicant for counseling/abetting a person to misrepresent a matter to induce error in the administration of the Act, contrary to section 126. Reports were made pursuant to section 44 of the Act. The charges were ultimately dropped and the applicant submitted a provincial court document to Canada Border Services Agency (CBSA) indicating as much. As a result of this event, the applicant's application was referred to a local CIC office for further investigation.

[4] On September 22, 2005, the applicant was stopped at the Kotoka Airport in Accra, Ghana, with another traveller who was impersonating Nicole Aborra. The migration integrity officer (MIO) found that the applicant and the impostor's flights had been booked and purchased on the same day. The applicant was interviewed at the Kotoka airport and the Canadian High Commission in Ghana. The applicant changed his story several times regarding how he knew the impostor. The applicant

was never charged or arrested in Ghana. At Pearson International Airport, after returning to Canada, the applicant was found carrying documents in his baggage that were in the names of people other than himself.

[5] The Royal Canadian Mounted Police (RCMP) investigated the allegations of abetting personation but did not file charges. The RCMP report notes that the principal reason for this was that the evidence and witnesses were in Ghana.

[6] The applicant applied for an order of *mandamus* on January 12, 2010 to have a decision made on his application for permanent residence. A decision was reached by CIC on March 1, 2010, despite the fact that an order for *mandamus* was never issued.

[7] At the hearing of this matter, the applicant conceded that the application for a writ of *mandamus* was moot. As a result, the only issues remaining before me are the issue of costs and the request for the expungement order.

[8] Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22

reads as follows:

22. No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

22. Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[9] The jurisprudence of this Court has held that the threshold for special reasons within the meaning of Rule 22 is high (see *Yadov v. Canada (Minister of Citizenship and Immigration)* 2010 FC 140. The Court has also stated that even when the pace of the processing of the application is slow, special reasons to award costs will not often exist (see *Uppal v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1133).

[10] The applicant submitted that the officer's and CIC's conduct and delay were equivalent to bad faith. I would note that some of the time was required to review the applicant's incidents with respect to his travel with others. From a review of all the evidence, I cannot conclude that there is any evidence of improper conduct that amounts to bad faith.

[11] I have considered the examples of behaviour which the applicant submits would qualify as special reasons so as to permit an award of costs. I have reviewed each of these examples and I am not satisfied that they qualify as special reasons so as to justify an award of costs.

[12] The applicant has also requested an order from the Court "directing the respondent to expunge anything from his record that has not been proven through a judicial process". I have considered this request and I am not prepared to grant this order. In any file, there will be material that has not been proven through a judicial process. As an example, an officer may gather facts and place the facts on a file. These facts can remain there but they were not proven in a judicial process. I simply do not have the jurisdiction to make the order requested.

[13] The application for judicial review (*mandamus*) is dismissed by agreement and there shall be no order as to costs.

[14] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

**[15] IT IS ORDERED that:**

1. The application for judicial review (*mandamus*) is dismissed.
2. There shall be no order for costs.
3. The request for an order “directing the respondent to expunge anything from his record that has not been proven through a judicial process” is denied.

“John A. O’Keefe”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-209-10

**STYLE OF CAUSE:** OLABANJI OLUSHOLA BANKOLE

- AND -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 5, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** March 25, 2011

**APPEARANCES:**

Olabanji Olushola Bankole	FOR THE APPLICANT (ON HIS OWN BEHALF)
Bola Adetunji	FOR THE APPLICANT
Alex C. Kam	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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