

Federal Court



Cour fédérale

Date: 20130620

Docket: IMM-8534-12

Citation: 2013 FC 691

Toronto, Ontario, June 20, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

VICTORIA NENE AGIDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] At the conclusion of the hearing I informed the parties that this application would be allowed and further stated that it ought to have been resolved by the Minister without a hearing.

These are my reasons for so finding.

[2] Ms. Agidi is a citizen of Nigeria. She applied for a temporary resident visa [TRV] on June 4, 2012, in order to visit a friend in Scarborough, Ontario, for the first three weeks of August 2012. Her application was denied by a visa officer on August 10, 2012.

[3] The officer's decision to deny Ms. Agidi's application was communicated by a standard form refusal letter. The following reasons were said to apply in the applicant's case:

I am not satisfied that you have a legitimate purpose in Canada and therefore I do not consider you to be a genuine temporary resident who would leave Canada.

...

You have not satisfied me that you meet the requirements of Regulation 179: that you would leave Canada at the end of the temporary period if you were authorized to stay. In reaching this decision, I considered your ties to the country of residence/citizenship balanced against factors which might motivate you to stay in Canada.

...

Other reasons: No travel history.
[emphasis added]

[4] The Certified Tribunal Record also discloses four entries in the Global Case Management System; however, these are purely of an administrative nature and none of them provides any reasons or notes by any assessing officer. However, one entry may explain why Ms. Agidi's request was given such short-shrift by the officer. It reads:

THIS APPLICANT HAS BEEN GROUPED TO EXPEDITE BACKLOG OF FILES AT MISSION >70-DAYS PROCESSING. AS A MEMBER OF THIS GROUP A MANUAL REFUSAL LETTER HAS BEEN ISSUED. THE REASONS FOR REFUSAL ALL INCLUDE PURPOSE AND MOST NO TRAVEL HISTORY BUT MAY INCLUDE EVENT HAS PASSED NOT TRUTHFUL INSUFFICIENT FUNDS OR ANY OTHER BONA FIDE REFUSAL REASON. FEW IF ANY OF THESE APPLICANTS WILL HAVE FAMILY MEMBER IN CANADA – POSSIBLE IF A DISTANT COUSIN OR A “BROTHER” OR “SISTER” WHO IS

NOT A BIOLOGICAL RELATIVE. ALSO THE REASON FOR TRAVEL MAY HAVE PASSED AND OR THE BUSINESS TRAVELLER IS NOT BONA FIDE. [emphasis added]

[5] The officer who decided the applicant's request for a TRV has sworn an affidavit in this judicial proceeding. Other than summarizing what can already be gleaned from the CTR, the officer adds:

7. Apart from mentioning that the host was a "friend" no other information was provided to clarify the relationship between the Applicant and the host.

8. I was not satisfied that the purpose of travel to Canada was compelling and that the Applicant would leave Canada when required to do so. On this basis, I refused her application for a temporary resident visa. [emphasis added]

[6] These paragraphs are inappropriate and the affidavit is inadmissible. With this affidavit the officer is impermissibly attempting to "bootstrap" his decision: See, e.g., *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 41. Frankly, it has become far too common in applications where the "reasons" are scant to offer such bootstrap affidavits. Does it require the Court's intervention by an award of costs before counsel will get the message?

[7] Even if the affidavit were accepted, it is not clear to me why the officer states that he was not satisfied that the applicant's purpose of travel to Canada was "compelling" and why he considers that to be a basis to refuse an application for a TRV. An applicant for a TRV need not establish that they have a "compelling" reason to travel to Canada. On the contrary, an officer "shall" issue a TRV if the conditions in section 179 are established. The only condition in section

179 relevant in this application for judicial review is that an applicant for a TRV establishes that he or she “will leave Canada by the end of the period authorized for their stay.” paragraph 179(b).

[8] The applicant in the written submissions argues that the officer breached the duty of fairness by failing to provide adequate reasons for his decision, and also that the decision is unreasonable. The respondent is quick to point out, correctly, that “adequacy of reasons” is no longer a stand-alone ground of judicial review, in light of the Supreme Court’s decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland and Labrador Nurses' Union*] at para 14. I agree; however, the decision rendered must still be reasonable in terms of “the existence of justification, transparency and intelligibility within the decision-making process [and] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law:” *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

[9] The decision under review fails on all counts. It is not transparent or intelligible and offers no justification for the result based on the record before the decision-maker.

[10] Ms. Agidi was seeking a TRV in order to visit her friend in Canada. Her application was amply supported by the following:

- a. An affidavit attesting to the invitation duly sworn by her friend, Rita Ezeakonobi with certified copies of her Canadian passport and Drivers’ Licence attached thereto;
- b. The applicant’s marriage certificate;

- c. The birth certificates of the applicant's two children;
- d. Evidence of the applicant's paid return ticket to Canada, her travel itinerary and visitor travel insurance policy;
- e. The applicant's offer letter for employment at DSV Pipetronix Limited;
- f. A letter confirming the applicant's employment at DSV Pipetronix Limited;
- g. A letter of introduction by the applicant's employers, DSV Pipetronix Limited;
- h. The applicant's pay stubs;
- i. The applicant's Leave Form from her employer stating a leave date of July 2012 to August 30, 2012;
- j. The applicant's personal bank statements from First Bank of Nigeria showing funds equivalent to approximately \$13,000 CAD;
- k. A ING Direct Bank Statement from the applicant's host, Rita Ezeakonobi showing funds of over \$30,000 CAD; and
- l. A deed of assignment of a plot of land in Nigeria belonging to the applicant.

[11] In the absence of any real reasons in the CTR as to why the officer reached his conclusion that the applicant had not satisfied him that the applicant would leave Canada at the end of her intended three week stay, this decision is unreasonable and must be set aside. Although this Court should first look to supplement before subverting the officer's reasons and may look to the record to do so (*Newfoundland and Labrador Nurses' Union*, above, at para 12), a review of the record almost exclusively reveals factors – those canvassed immediately above – that strongly support the opposite conclusion to that reached by the officer; namely she has been invited by a Canadian friend

to visit and holiday with her for three weeks (and the friend provides an affidavit to the effect), and she leaves behind in Nigeria a job, a husband, two minor children, and property. How on those facts can it reasonably be said that she has failed to establish on the balance of probabilities that she will leave Canada at the conclusion of her visit?

[12] For those reasons, I grant this application and quash the officer's decision. The decision rendered is so outrageous that it is perverse. As such, it is appropriate that this Court also order that the applicant's file with the Minister reflect that it has been quashed and is of no force or effect and further that it is not to be at all considered in any future application by Ms. Agidi.

[13] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is allowed and the decision of an officer dated August 10, 2012, is quashed;
2. The period for which the temporary resident visa was sought has expired; however, should Ms. Agidi wish a temporary resident visa to visit Canada, she may refile her application with the existing or new supporting information and it is to be considered by another officer on an expedited basis;
3. The decision dated August 10, 2012, that has been quashed shall not be considered by any officer when considering any future request for a temporary resident visa by Ms. Agidi; and
4. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8534-12

STYLE OF CAUSE: VICTORIA NENE AGIDI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 19, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** ZINN, J.

DATED: June 20, 2013

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