

Federal Court



Cour fédérale

Date: 20160119

Docket: IMM-7309-14

Citation: 2016 FC 53

Ottawa, Ontario, January 19, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

OLANREWAJU, OYERINDE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision by an immigration officer [the Officer] from the High Commission of Canada in the United Kingdom finding the Applicant inadmissible for permanent residence on health grounds pursuant to subsection 38(1)(c) of the Act because he suffers from Hepatitis B Virus [HBV] which would require treatment that may reasonably be expected to cause excessive demand on Canadian health services.

[2] The Applicant is a medical doctor and citizen of the United Kingdom and Nigeria. He applied for permanent residence in Canada under the skilled worker scheme. The sole issue raised is whether the Officer reasonably determined, based on the evidence, that the Applicant was inadmissible because he suffers from HBV which would require treatment that may reasonably be expected to cause excessive demand on Canadian health services.

[3] The Applicant submits that the Officer erred by failing to conduct an individualized assessment of the Applicant's medical condition, and in particular in misreading and misunderstanding the medical evidence demonstrating that the Applicant's health condition does not clinically require treatment, and that any treatment the Applicant is undergoing is optional.

[4] The Applicant presented the Court with significant new evidence not before the Officer when his application was rejected. The Applicant did not attempt to rely upon the evidence relating to the provision and costs of the drug Tenofovir and other medical procedures used in the treatment of patients suffering from HBV described in the Ontario Ministry of Health and Long-Term Care's documents.

[5] However, the Applicant also presented the Court with a medical report dated February 24, 2014, of Dr. Al-Chalabi, a physician in the United Kingdom. The report was not in the Certified Tribunal Record [CTR]. The Applicant submitted that the Medical Officer's Rationale [MOF Rationale] of April 25, 2014, which was the preliminary basis for rejecting his application, failed to consider Dr. Al-Chalabi's opinion that, although he was on an antiviral

therapy to reduce his viral load, “from the point of view of his health this was not indicated as his disease is very mild.”

[6] The Medical Officer reported as follows:

He was referred for a Consultant Hepatologist evaluation, which confirmed that the applicant met the criteria for anti-viral treatment. Recent liver biopsy showed evidence of inflammatory processes and fibrosis. Mr. Olanrewaju was started on antiviral treatment to reduce his viral load (reduce the quantity of the Hepatitis B virus in the blood). The applicant qualified for anti-viral treatment with an objective to eradicate (eliminate) the Hepatitis B virus and thus prevent the disease progression. Medical treatment with oral medication daily has been commenced; close specialist follow-up was recommended.

[Emphasis added]

[7] Because of the apparent discrepancy between Dr. Al-Chalabi’s report indicating that treatment was not indicated (necessary) and the MOF Rationale that the Applicant met the criteria for antiviral treatment, a discussion ensued at the judicial review hearing concerning the foundation for the Medical Officer’s conclusion that the Applicant met the criteria for antiviral treatment, if not from the February 24, 2014 report of Dr. Al-Chalabi. The CTR contained no medical documents in support of the MOF Rationale.

[8] The hearing was adjourned in order to determine whether Dr. Al-Chalabi’s report was relied upon by the Medical Officer. The Respondent reported back that the letter was before the Medical Officer, as was that of a Dr. Aung who conducted a medical examination on behalf of Citizenship and Immigration. Dr. Aung’s report was also not contained in the CTR. After considering the matter further, the Court concludes that the basis for the Medical Officer’s

Rationale was not determinative of the case, as the remaining evidence is not in dispute and is sufficient to conclude the matter.

[9] The application must be rejected because the Applicant has not met his onus of demonstrating that the treatment of his HBV condition in Canada may not reasonably be expected to cause excessive demand on Canadian health services.

[10] The MOF Rationale in the fairness letter indicated that the Applicant would require review and close follow-up by medical personnel and that he would likely be given a course of antiviral drug treatment, the cost of which for the most part would be provided at public expense. These costs were estimated to exceed the average Canadian per capita health costs over five years (*i.e.* \$6,285 per year), rendering him ineligible for admission.

[11] The Applicant responded to the fairness letter with a further report from Dr. Al-Chalabi dated June 3, 2014, (which made no mention of his earlier report). Dr. Al-Chalabi confirmed that the Applicant was suffering from a “mild disease” and “that the Tenofovir was started not because it was clinically indicated but purely because Mr. Oyerinde Olanrewaju is a medical doctor.” There is no indication in the record whether the Applicant was paying for this treatment, or if it was being provided by the State.

[12] The Applicant also included a letter from a United Kingdom medical physician, Dr. Jude, a gastroenterologist/hepatologist. Dr. Jude indicated that he “does need long term follow up with renal and liver function tests approximately every six months and an ultrasound scan

approximately every twelve months.” He indicated as well that “negative patients like him, with low viral loads, carry an excellent prognosis with increased possibility of Hepatitis B surface antigen clearance.”

[13] In his reply to the fairness letter, the Applicant indicated that it was his intention to continue the Tenofovir treatment in Canada. He indicated that the total costs for the drug would be \$632 per year, *i.e.* \$52.67 per month. He acknowledged that he would require blood tests every six to twelve months, an annual liver ultrasound scan and an annual specialist clinical review until he has maintained a sustained viral suppression to satisfactory levels. No evidence corroborating these evaluations was provided. He further indicated that he was willing to pay for all his medications and would take up private health insurance at his own personal expense to ensure that the Canadian taxpayer would not pay for the cost of treating his pre-existing health condition.

[14] In the follow-up letter, the Applicant did not provide evidence that he would be ineligible for treatment for his HBV condition under government-provided medical services regimes, as was his onus: *Chaudhry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 22.

[15] The Officer noted in his decision that the total costs for the Tenofovir treatment would be \$6,739 annually (\$561 per month), which exceed the Canadian annual average cost, even without factoring in the costs for testing and his medical visits. The Officer also pointed out that the Applicant failed to identify any specific medical insurance company in Canada that would cover the treatment. The only policy provided by the Applicant did not indicate that the required

coverage would be included. Furthermore, no plan was provided by the Applicant as to how he would pay for the cost of the unspecified long-term treatment for the disease required in Canada: *Jafarian v Canada (Minister of Citizenship and Immigration)*, 2010 FC 40.

[16] The Court is satisfied that the Officer's decision that the Applicant's HBV disease would require treatment that may reasonably be expected to cause excessive demand on Canadian health services is reasonable as falling within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law and supported by reasons that are justified, intelligible and transparent: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 48.

[17] For all the foregoing reasons, the application is dismissed. No questions are certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and there are no questions to be certified.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7309-14

STYLE OF CAUSE: OLANREWAJU, OYERINDE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 25, 2015

JUDGMENT AND REASONS: ANNIS J.

DATED: JANUARY 19, 2016

APPEARANCES:

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