Federal Court  Cour fédérale

Date: 20160301

Docket: IMM-3465-15

Citation: 2016 FC 268

Ottawa, Ontario, March 1, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

KEHINDE PAUL BALEPO
TEMITOPE JULIANA BALEPO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated June 1, 2015 of an officer of the Visa Section of Citizenship and Immigration Canada, at the High Commission of Canada in Accra, Ghana [the Officer], in which the Officer refused the application of the Principal Applicant, Kehinde Paul Balepo, for issuance of a study permit under section 219 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application is allowed.

I. Background

[3] The Principal Applicant is a 28 year old citizen of Nigeria who has been working as a relationship manager with First Bank of Nigeria Ltd since 2008. He was accepted to pursue a post-secondary diploma in Environmental Engineering Technology at Saskatchewan Polytechnic and applied for a study permit. The other Applicant is his spouse, who is planning to accompany him to Canada.

II. Impugned Decision

[4] The Officer was not satisfied that the Principal Applicant met the requirements of IRPA and the regulations made thereunder. In particular, the Officer was not satisfied the Principal Applicant would leave Canada at the end of his authorized stay. The factors considered were his travel history, his family ties in Canada and Nigeria, the length of his proposed stay in Canada, the purpose of visit, his current employment situation and his personal assets and financial status. The Global Case Management System [GCMS] notes, prepared prior to issuance of the decision, include the following:

A. The Principal Applicant is married, with no children, and his spouse is accompanying him and had requested a work permit;

B. The Principal Applicant declares his mother and one sibling as residing in Canada. He has strong family ties to Canada and limited remaining family ties to his home country;

C. He had some UK travels but no significant travel since 2013;

D. He obtained a BSc in Geology with average grades in 2005;

E. He has limited financial and professional ties to his home country;

F. There was no evidence that the Principal Applicant's employer is aware that he intended to study abroad;

G. He was sponsored by siblings;

H. He had been out of studies for nine years, and it was unclear why he wanted to return now. The Principal Applicant had already obtained a higher bachelor degree in a similar field and it appeared unusual to apply now for a post-secondary diploma in this field.

[5] The GCMS notes record that, based on the evidence, the Officer was not satisfied with the Principal Applicant's purpose for his studies. The Officer was not satisfied that he had sufficient ties to compel return to his home country, that he was a genuine student who would depart at the end of his authorized stay, or that studying in Canada was not principally for the purpose of gaining entry to Canada.

III. Issues and Standard of Review

[6] The parties agree, and I concur, that the standard of review applicable to the Officer's decision is reasonableness (see *Obot v Canada (Minister of Citizenship and Immigration)*, 2012 FC 208). The sole issue raised by the parties is whether the Officer's decision is reasonable.

IV. Submissions of the Parties

A. *The Applicants' Position*

[7] The Applicants submit that the Officer relied on extraneous considerations and considered irrelevant facts in reaching the decision to refuse the study permit application, such as the Principal Applicant's current employer's awareness of his intentions, his average grades and the sponsorship by his sibling.

[8] The Applicants also argue that the Officer disregarded evidence including the Principal Applicant's positive travel history to the UK without any overstay, the fact that his parents and several siblings live in Nigeria, and his financial assets, which he argues the Officer erroneously described as "limited". The Principal Applicant notes that his mother is not a permanent resident of Ontario but was visiting Canada on a temporary resident visa. His application indicated her present address, not her permanent address, to be in Canada.

[9] The Principal Applicant refers to his personal statement which explained the reason for proposing his course of study, which is to retrain in an advanced course in a field in which he had not worked since getting his degree. He also says that the Applicants erroneously requested a work permit for his spouse rather than a temporary resident visa and submits that it was unfair for the Officer not to have given them an opportunity to clarify this as well as his mother's status in Canada.

B. *The Respondent's Position*

[10] The Respondent argues that the onus was on the Applicants to demonstrate that they would leave Canada at the end of the period for which they were authorized to stay. The Applicants' arguments amount to taking issue with the weight given to the various factors and evidence by the Officer, in a circumstance where the Officer's decision should be afforded a high level of deference.

[11] The Respondent's position is that, with the evidence indicating his mother and sister were in Canada and that his wife would be accompanying him, the Officer reasonably found the Principal Applicant to have strong ties to Canada and limited remaining ties to Nigeria. On the subject of the Principal Applicant's assets, the Respondent notes that the value of his real estate was not provided and, while the Officer did not expressly discuss the value of the Principal Applicant's stocks, the Officer is not required to refer to every piece of evidence. The Respondent also submits that, in the personal statement provided with his application, the Principal Applicant did not explain why he wanted to complete a program similar to, and at a lower level than, the one he had already completed in Nigeria.

[12] Responding to the Applicants' other arguments, the Respondent submits that the Principal Applicant's employer's knowledge of his study plans is relevant to his application for a study permit, as it could have been a positive factor if the employer had been aware, and submits that his travel history was not a significant or determinative factor in the decision.

V. Analysis

[13] The Officer's June 1, 2015 letter to the Principal Applicant, which denied his application for a study permit, conveys that the denial is based on the Officer not being satisfied that the Principal Applicant would leave Canada at the end of his stay. While that letter recites a number of factors considered by the Officer in reaching this decision, it is apparent from the GCMS notes that the decision was based on a combination of the Officer not being satisfied that the Principal Applicant was a genuine student and not being satisfied that he had sufficient ties to Nigeria to compel a return home. As explained below, it is the Officer's findings on the Principal Applicant's ties to Nigeria that the Court finds to be unreasonable and which result in this application for judicial review being allowed. The Officer considers both the Principal Applicant's family ties and his financial and professional ties. In both areas, I find that the Officer's decision does not demonstrate sufficient regard to the evidence to be transparent and intelligible.

[14] On the subject of family ties, I do not fault the Officer for concluding that the Principal Applicant's mother resides in Canada. While that may not be accurate, as the Respondent did not contest the Applicants' assertion that the mother was just visiting Canada, the Officer was making the decision based on the information available, which included the Family Information form completed by the Principal Applicant that gave his mother's present address as that of his sister in Ontario. However, even operating with the understanding that the mother lived in Ontario, my conclusion is that the combination of the Officer's finding that the Principal

Applicant has strong family ties to Canada and the finding that he has limited remaining family ties to his home country cannot be reconciled with the evidence.

[15] The evidence before the Officer on this issue appears on the Family Information form. This document refers to the Principal Applicant's mother and one sister having addresses in Ontario, his father and three siblings having addresses in Nigeria, and (although the relationships are not expressly provided) apparently two siblings living in the United Kingdom and two living in the Unites States. While the picture is one of a family that is somewhat dispersed, it does not support the combined conclusion of strong family ties to Canada and limited remaining family ties to Nigeria. I appreciate the Respondent's point that the Principal Applicant's spouse should be taken into account, as the GCMS notes refer to her intention to accompany him to Canada immediately before stating there are limited remaining ties to Nigeria. However, this still leaves one of his parents and three of his siblings in Nigeria.

[16] The Officer then refers to the mother and sister residing in Canada and states the conclusion that the Principal Applicant has strong family ties to Canada. It is not clear how the Officer concludes that the presence of one parent and one sibling in Canada results in strong family ties to this country, while the presence of the other parent and three siblings in Nigeria results in limited family ties in the home country. It may be that, as argued by the Applicants, the Officer did not advert to the evidence. Regardless, in the absence of a transparent and intelligible analysis by the Officer supporting these findings, I conclude them to be unreasonable.

[17] The Officer's finding that the Principal Applicant has limited financial ties to Nigeria suffers from the same difficulty. The GCMS notes refer to the Principal Applicant's pay slips showing limited income and his bank statements showing limited funds. I find no fault with those particular conclusions. However, the Applicants point out that the decision demonstrates no consideration of the Principal Applicant's stock or real estate holdings. The Respondent argues that the Officer is not required to refer to every piece of evidence. However, when a decision-maker is silent on evidence pointing to the opposite of its conclusion, this supports an inference that the contradictory evidence was overlooked (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration*), [1998] FCJ No 1425).

[18] The evidence demonstrates stock holding with a value exceeding 4.1 million Nigerian naira. While there is no evidence before the Court on the applicable exchange rate, the Applicants' written submissions refer to this being close to 30,000 Canadian dollars, and I am comfortable taking judicial notice that the exchange rate is such that this is the correct order of magnitude. More important than the absolute value of the stock is the comparison to the Principal Applicant's bank statements, which demonstrate accounts with balances in the range of 28,000 and 15,000 Nigerian naira. The stock holdings are a couple of orders of magnitude larger than these figures. The Officer makes no mention of the stock holdings or the real estate. The Respondent correctly points out that there is no evidence as to the value of the real estate. However, with the stocks alone appearing to have a value so significantly higher than the bank accounts, the Officer's finding of limited financial ties to Nigeria, which expressly refers to the latter and makes no mention of the former, cannot be considered reasonable.

[19] In my view, the findings related to the Principal Applicant's family and financial ties are sufficiently fundamental to the Officer's decision as to make the decision unreasonable and require the Court to set it aside and return the application to be considered by another visa officer. I emphasize that I am not making any finding as to whether the Principal Applicant's family and financial ties to Nigeria should be regarded as sufficient to compel return to his home country. That is a decision to be made by the visa officer who re-determines the application.

[20] The Applicants proposed for certification a question related to the correct manner of completing forms associated with an application for a study permit, when the applicant has a relative who is staying in Canada on a temporary basis. The Respondent opposed certification, taking the position that the question proposed by the Applicant is not of general importance, as it arises out the particular circumstances of the present case. As the Applicants have prevailed on this application, such that this question would not be dispositive of an appeal, no question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is referred to another visa officer for re-determination. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3465-15
STYLE OF CAUSE:	KEHINDE PAUL BALEPO, TEMITOPE JULIANA BALEPO V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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