Federal Court  Cour fédérale

Date: 20171025

Docket: IMM-552-17

Citation: 2017 FC 949

Ottawa, Ontario, October 25, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MOBOLAJI JOSHUA CHIDIRIM ALAJE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Defendant

JUDGMENT AND REASONS

[1] The applicant challenges the reasonableness or legality of a decision rendered by the visa section of the High Commission of Canada in Ghana, refusing the applicant's study permit application which was filed pursuant to subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and section 213 of the *Immigration and Refugee Protection Regulations*, SOR/2002/227 [IRPR].

[2] The basic facts are not contested.

[3] The applicant is a twelve year old Nigerian citizen. He lives with his parents, both Nigerian citizens, in Lagos, Nigeria. His extended family resides in Nigeria as well. He applied for a study permit to attend an elementary school in Canada as a full-time student for the 2016-2017 school year, under the care of his aunt Joy Ochiabuto. He submitted a letter of admission to a private elementary school in Toronto, the Cathedral Christian Academy. The applicant claims having no family in Canada, apart from his aunt.

[4] A first study permit application was refused sometime in 2016, as the visa officer apparently questioned the purpose of the visit in Canada. On December 1, 2016, the applicant submitted a second study permit application. This time, to support this application, the applicant submitted additional evidence, including:

(a) A statutory declaration of Joy Ochiabuto explaining her relationship to the applicant, her intention to provide for him during his stay in Canada, and her intention to ensure his return to Canada;

(b) Joy Ochiabuto's certificate of citizenship and Canadian identification card;

(c) Various documents pertaining to Ms. Ochiabuto's employment and financial means, including a Scotiabank account summary displaying the applicant's name under designated beneficiaries;

(d) The applicant's parents' declaration of custodianship;

(e) The applicant's letter of admission at the Cathedral Christian Academy in Toronto, dated May 25, 2016, and proof of continued admission despite his first visa application refusal, dated October 13, 2016;

(f) A sworn affidavit of the applicant's mother, Nkechi Patience Alaje, in which she explains her choice to send the applicant to study in Canada under the care of her sister. She mentions the poor quality of schools in Nigeria and her strong ties with her sister. She affirms she will undertake to ensure her son's return to Canada upon completion of the program;

(g) A sworn affidavit of the applicant's father, Mobolaji Alaje. The content is similar to the mother's;

(h) The applicant's parents' marriage certificate; and

(i) The mother's birth certificate which shows her maiden name, Ochiabuto, the same as the care provider in Canada.

[5] On January 31, 2017, the visa section of the Canadian High Commission in Accra, Ghana, denied the application by way of a refusal letter in standard form. In a nutshell, the officer was not satisfied that the applicant would leave Canada at the end of his stay. He mentions having considered several factors, including "travel history" and "purpose of visit". On February 27, 2017, the applicant received lengthier written reasons by fax.

[6] The present case raises two distinct issues:

(a) Was the officer's decision to refuse the study permit application reasonable?

(b) Did the officer breach procedural fairness by not calling the applicant's parents to attend an oral interview?

[7] At the hearing, the Court ordered that the style of cause be amended to designate the Minister of Citizenship and Immigration as the respondent.

Was the officer's decision to refuse the study permit application reasonable?

[8] A foreign national seeking to enter Canada is presumed to be an immigrant. Subsection 11(1) of the IPRA states that a foreigner must obtain a visa before entering Canada. Moreover, subparagraph 20(1)(b) and subsection 22(1) of the IRPA provide that a foreigner must demonstrate that he or she will leave Canada at the end of his or her authorized stay. The burden is on the applicant to do such a demonstration, and rebut the presumption by submitting convincing evidence. To study in Canada, a foreign national needs to apply for a study permit (subsection 30(1) of the IRPA and section 213 of the IRPR).

[9] The standard of review applicable to the merits of the impugned decision is reasonableness, as it calls for a review of the visa officer's findings of fact with respect to the evidence provided in support of the work permit application (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51 [*Dunsmuir*]). Indeed, an officer's assessment of whether to grant

temporary resident status is an exercise of discretion that attracts a high degree of deference (see *Dunsmuir* at para 51).

[10] On its face, the impugned decision is transparent and intelligible. The officer's reasons to refuse the present application read as follows:

> PA LoA to attend school in Canada. State he will reside with his aunt who will cover all costs and be his custodian. State aunt is JOY CHINYERE OCHIABOUTCI (UCI: 3819 7128) but no evidence of relationship provided other than affidavits from her and parents. Mother states aunt has been involved in his upbringing but no evidence of this provided. Family state schools are not good in Nigeria and expensive and aunt willing to pay for him to attend school in Canada; however note schools are available in Lagos and are less expensive than bringing the applicant to Canada. Concerned that applicant is so young. Concerns as to whether it is in his best interest to be separated from his parents to live in a country where he has never visited and to stay with someone for whom there is no evidence (other than the affidavits) that he is related or has a relationship. Having reviewed the application, I am not satisfied that intended studies in Canada are not principally for the purpose of gaining entry to Canada. Application refused.

[11] Firstly, the applicant submits that the officer made a reviewable error in finding that the nature of the relationship between the applicant and the custodian in Canada had not been adequately established. The applicant claims having submitted strong evidence in this regard. It showed the custodian's relationship with the applicant, strong financial interest and history of support. He further claims Ms Ochiabuto met all Immigration, Refugees and Citizenship Canada's requirements for custodians of minor applicants studying in Canada. It was therefore unreasonable for the officer to question their relationship. Indeed, there is no statutory requirement to prove the relationship between the minor and the custodian. The applicant submits he complied with all requirements of the IRPA: he submitted a letter of admission,

evidence of financial means and resources, and evidence of family ties in Nigeria. He claims the officer failed to take into consideration the strength of his family ties and the affidavit evidence submitted.

[12] Secondly, the applicant submits that the officer failed to consider relevant factors on evidence in questioning the true purpose for making a visa application to study in Canada. While the applicant recognizes that the officer was allowed to consider the availability of less costly programs, he claims having submitted objective evidence on poor school conditions in Nigeria and the comparative value of the Canadian educational program. He further submits it is not the officer's role to assess the value of an education program. The applicant had strong ties with Nigeria. He is still a minor and is the only child of the two parents living in Nigeria. Thus, the officer acted unreasonably when he concluded that the applicant was not a *bona fide* student and would not leave Canada at the end of the authorized stay period.

[13] The respondent reminds the Court that an officer's assessment of whether to grant temporary resident status is an exercise of discretion that attracts a high degree of deference. The impugned decision to refuse the permit falls within the range of those reasonably open to him on the facts and law. The respondent claims it was not unreasonable to conclude that the applicant provided insufficient evidence of his relationship with the aunt: there was no birth certificate, no evidence of their actual relationship – just financial evidence and the designation as beneficiary, which could have been made just before filing the demand. The reasons show that all relevant evidence was considered, including the ties with Nigeria, and the young age of the applicant. The onus was on the applicant to come with his best case. The Court should not intervene simply

because the applicant disagrees with how the officer weighed the different factors or evidence submitted by the applicant. Finally, it was reasonable to consider the lack of travel history and the fact the applicant was never away from his parents.

[14] Overall, I find that the officer's decision was reasonable. I completely agree with the respondent's submissions. Indeed, the Court owes great deference to the officer's assessment of the evidence. Although brief, his reasons are sufficient to show that he carefully weighed the evidence submitted, and allow the Court to understand how his decision falls within the range of possible outcomes. The Court's role is not to reassess the officer's findings of fact, but rather to see whether his reasons generally support his conclusions. The onus was on the applicant to satisfy the officer that he will leave at the end of the period. The officer's findings should not be read microscopically. It was not necessary for the officer to refer to every specific aspect of the application in his decision.

[15] Firstly, the officer had to be satisfied that, as a minor child who will travel to Canada to study, the applicant will be under the care of a custodian. Once the aunt was designated by the applicant's parents as the custodian of the applicant in Canada, the officer could reasonably take issue with the nature and extent of their relationship. The officer's assessment of the evidence in this respect is not unreasonable. He clearly mentions having considered the affidavits, but concluded they were insufficient. The evidence only shows Ms Ochiabuto's financial means and the applicant as beneficiary. The designation could very well have been made the day before the application. Apart from the affidavit, nothing attests of the nature or strength of the relationship between the custodian and the applicant.

[16] Secondly, the officer's appreciation of the applicant's likelihood to leave Canada is also based on evidence. Again, this assessment is highly discretionary. The officer is allowed to consider and weigh in different factors. As long as his appreciation is based on the evidence, and not on generalizations and stereotypes, the decision will be reasonable. In the case at bar, the applicant simply disagrees with the officer's appreciation of the facts. While it seems odd to think that parents would send their child alone to Canada – his return to his family would seem likely – at the same time, the evidence could lead the officer to infer that the parents were so inclined to improving the child's life conditions that they would send him to Canada indefinitely. The officer was allowed to doubt the sincerity of a project to send a twelve year old alone, with a more or less distant relative, to Canada for only one year of high school. It was also reasonable for the officer to consider the availability of schools in Nigeria as one factor in his assessment of the applicant's visa project. Although I do not necessarily agree with all his findings, I cannot say the refusal to grant the application is not supported by the evidence or clearly irrational or arbitrary in the circumstances.

Did the officer breach procedural fairness by not calling the applicant's parents to attend an oral interview?

[17] The applicant readily recognizes that there is no statutory right to an oral interview. Nevertheless, the applicant submits that the officer should have permitted the applicant's parents to participate in an oral interview. By failing to do so, he breached the applicant's right to procedural fairness. In this case, the officer formed a strong opinion on the applicant's likelihood to stay in Canada, while at the same time questioning his relationship with the custodian. The officer could not disregard the applicant's statutory declaration that he or she will not overstay,

or the uncontradicted statements made in sworn affidavits by the parents and the aunt, without first convoking the parents at an oral interview. The applicant therefore submits that an oral interview with the applicant's parents would have been useful to alleviate the officer's concerns.

[18] The respondent submits that there is no obligation to grant an oral interview. Some factors indeed limit the content of the procedural fairness duty in visa application cases: the absence of a legal right to a visa, the burden of proof on the applicant, and the low impact on the individual of a visa application refusal. In addition, such a right to respond is usually available only when the officer has information of which the applicant is not aware. Where a concern arises directly from regulations' requirements, a visa officer has no duty to provide such a hearing. As such, the respondent concludes that the officer has no obligation to bring his concerns to the attention of the applicant and allow a response. He was merely assessing the information provided to him, as he must do to reach a decision. The case law does not support the claim made by the applicant that an oral interview was necessary in these circumstances (see *Huang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 145 at para 7).

[19] I find that the decision was made in accordance with procedural fairness. I endorse the arguments of the respondent. There was no obligation on the part of the visa officer to grant the applicant an oral interview, and despite the arguments made by the applicant's learned counsel, I am not able to see this case as one falling under some recognized exception. All the cases cited by the applicant are clearly distinguishable and not applicable here. Indeed, several cases have confirmed that the officer is under no duty to provide a hearing when he is simply drawing conclusions from the evidence submitted. In addition, where a concern arises directly from the

requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns.

Conclusion

[20] For the above reasons, the present application is dismissed. There is no question of general importance warranting certification.

JUDGMENT in IMM-552-17

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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