

Federal Court



Cour fédérale

**Date: 20180109**

**Docket: IMM-1994-17**

**Citation: 2018 FC 14**

**Ottawa, Ontario, January 09, 2018**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**NNENNA JUDITH DIMGBA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms. Nnenna Judith Dimgba (the “Applicant”) is challenging the April 27, 2017 decision (the “Decision”) of an officer of the High Commission of Canada in Ghana (the “Officer”) refusing her application for permanent residence in Canada under the Skilled Worker Program, and finding the Applicant to be inadmissible for misrepresentation under subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

## II. Background

[2] The Applicant is a citizen of Nigeria. On November 11, 2014, she submitted an application for permanent residence in Canada as a member of the Skilled Worker Class. She applied under the National Occupation Code “NOC0112” which refers to “Human Resources Managers”. In support of her application, she submitted various documents, including:

- English language test results;
- A copy of her passport;
- A letter of introduction from Coutes Cleaning Services Limited, dated November 6, 2014, explaining that she was employed with the company since February 10, 2009, first as an administrative officer, and then as a Human Resources/Admin Manager;
- An offer of employment from Coutes Cleaning Services dated February 5, 2009;
- A confirmation of appointment dated September 2, 2009, confirming the end of her probationary period;
- A letter from Coutes Cleaning Services dated March 21, 2012, promoting her to the position of Manager;
- Various pay stubs;
- A credential evaluation;
- Diploma in Human Resources Management;
- A bank statement confirming investments valued at approximately \$33,304;
- Certificates of Birth and Baptism; and,
- A Police Character Certificate.

[3] On February 7, 2015, the Applicant received a positive determination of eligibility for her application to be processed, based on her work experience as a human resources manager.

[4] On May 10, 2016, the Officer provided the Applicant with a procedural fairness letter outlining concerns with her application. More specifically, the Officer expressed concerns that the letter of offer from Coutes Cleaning Services provided in support of her application may be fraudulent, which would render the Applicant inadmissible for misrepresentation as per paragraph 40(1)(a) of IRPA.

[5] The procedural fairness letter granted the Applicant 30 days to respond, and required her to submit the following documents:

- Bank statement reflecting salary deposits from Coutes Cleaning Services as per the regulations established by the Central Bank of Nigeria regarding the direct deposit of cheques over 150,000 Naira;
- Personal tax clearance certificate;
- Original offer letter from Coutes Cleaning Services;
- Company code and certificate of incorporation for Coutes Cleaning Services ;
- Samples of emails sent from her work account; and,
- Photos of company headquarters, including signage.

[6] The Applicant responded to the Officer in a letter dated May 20, 2016, affirming that her offer letter was genuine. The Applicant advised the Officer that she joined Coutes Cleaning Services in February 2009. The company was initially a sole proprietorship, but was

incorporated in March 2012, which explains the change of name from “Coutes Cleaning Services” to “Coutes Cleaning Services Limited.” When she applied for permanent residence, she did not have the original letter of offer and confirmation, so she asked for reissuance. This explains the use of “Limited” in the company name in the offer letter on file. Although she was unable to provide the original, she provided additional documents to prove her employment, as requested by the Officer, namely:

- Another letter from Coutes Cleaning Services Limited, confirming her employment, explaining why the letters had to be reissued and explaining why the company could not provide her the tax clearance certificate requested;
- Her bank statement, displaying irregular deposits from “Coutes Cleaning Services Ltd” with a very detailed explanation;
- Coutes Cleaning Services Limited’s Certificate of Incorporation, dated March 6, 2012, as well as the company’s memorandum and articles of association;
- Pictures of the company’s offices; and,
- Sample emails from her work account.

[7] In a letter dated April 27, 2017, the Officer informed the Applicant that she did not meet the IRPA requirements because her response to the procedural fairness letter did not satisfactorily address the Officer’s concerns regarding her employment history. The Applicant’s application was refused without an interview.

[8] The refusal was also made pursuant to subsection 40(1)(a) of IRPA, which renders an applicant inadmissible to Canada if she/he directly or indirectly misrepresents or withholds

material facts relating to a relevant matter that could induce an error in the administration of the *Act*. After considering the Applicant's response, the Officer concluded that she had misrepresented information in her application. The Decision renders the Applicant inadmissible to Canada for a period of five years from the date of the Officer's refusal letter.

III. Preliminary issue: Applicant's Affidavit contains extrinsic evidence

[9] The Respondent argues that paragraphs 5, 7, 10, 12 and 13 of the Applicant's affidavit contain extrinsic evidence that was not before the Officer, as does the affidavit of Ene Nnabuike and its exhibits A, B and C. The Respondent submits that judicial review should proceed on the basis of evidence and arguments that were before the decision maker only. In addition, the Respondent submits that the information contained in paragraphs 5, 7, 10 and 11 of the Applicant's affidavit are argumentative in that they attempt to provide an alternate interpretation of the evidence before the Officer, which is contrary to the Court's ruling in *Canadian Tire Corporation v Canadian Bicycle Manufacturers Association*, 2006 FCA 56 at paras 9-10. For these reasons, the Respondent argues that the Applicant's affidavit should be considered inadmissible, and that paragraphs 7 to 12 should be struck or given no weight at all.

[10] The Court does not agree with the thrust of the Respondent's argument. The Officer accused the Applicant of providing a fraudulent employment letter. This is a serious accusation, resulting as it does in the Applicant being barred entry into Canada for five years. In the Court's view, the Applicant had no choice but to respond to such a serious accusation. The Applicant's affidavit and that of Mr. Ene Nnabuike are necessary to enable the Court to properly evaluate the Officer's accusation. I find that the proper characterization of these affidavits is that they serve to

explain and clarify the Applicant's evidence already before the Officer. As such, the affidavits will not be stricken from the record. To the extent that the affidavits are argumentative, they will be afforded less weight, but due weight will be given to them in so far as they serve to respond to the Officer's accusation of fraud.

#### IV. Issues

[11] Although the parties frame the issues somewhat differently, I believe this matter raises two main issues:

1. Was the Decision to refuse the Applicant's permanent residence application taken in accordance with requirements of procedural fairness?
2. Was the Officer's Decision reasonable?

#### V. Statutory Provisions

[12] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are applicable in this case:

**75 (1)** For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

**75 (1)** Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

**Skilled workers**

(2) A foreign national is a skilled worker if

(a) within the 10 years before the date on which their application for a permanent resident visa is made, they have accumulated, over a continuous period, at least one year of full-time work experience, or the equivalent in part-time work, in the occupation identified by the foreign national in their application as their primary occupation, other than a restricted occupation, that is listed in Skill Type 0 Management Occupations or Skill Level A or B of the National Occupational Classification matrix;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification;

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties;

(d) they have submitted the results of a language test that

**Qualité**

(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé, de façon continue, au moins une année d'expérience de travail à temps plein ou l'équivalent temps plein pour un travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de sa demande de visa de résident permanent, dans la profession principale visée par sa demande appartenant au genre de compétence 0 Gestion ou aux niveaux de compétence A ou B de la matrice de la Classification nationale des professions, exception faite des professions d'accès limité;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles;

d) il a fourni les résultats — datant de moins de deux ans

is approved under subsection 74(3), which results must be provided by an organization or institution that is designated under that subsection, must be less than two years old on the date on which their application for a permanent resident visa is made and must indicate that they have met or exceeded the applicable language proficiency threshold in either English or French that is fixed by the Minister under subsection 74(1) for each of the four language skill areas; and

(e) they have submitted one of the following:

(i) their Canadian educational credential, or

(ii) their foreign diploma, certificate or credential and the equivalency assessment, which assessment must be less than five years old on the date on which their application is made.

[...]

### **Minimal requirements**

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

au moment où la demande est faite — d'un test d'évaluation linguistique approuvé en vertu du paragraphe 74(3) provenant d'une institution ou d'une organisation désignée en vertu de ce paragraphe qui indiquent qu'il a obtenu, en français ou en anglais et pour chacune des quatre habiletés langagières, au moins le niveau de compétence établi par le ministre en application du paragraphe 74(1);

e) il a soumis l'un des documents suivants :

(i) son diplôme canadien,

(ii) son diplôme, certificat ou attestation étranger ainsi que l'attestation d'équivalence, datant de moins de cinq ans au moment où la demande est faite.

[...]

### **Exigences**

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

[13] The following provisions of the IRPA are applicable in this case:



**11 (1)** A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

### **Misrepresentation**

**40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation

**(a)** for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

### **Fausses déclarations**

**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :

**a)** directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

## VI. Analysis

### A. *Standard of Review*

[14] The parties agree that an officer's assessment of evidence in support of an application for permanent residence is reviewed under the reasonableness standard (see e.g. *Taleb v Canada (Citizenship and Immigration)*, 2012 FC 384). Questions of procedural fairness are reviewed under the correctness standard (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

B. *Procedural Fairness*

[15] The Applicant submits that she was not given an adequate opportunity to respond to the information held against her. The Applicant argues that the Officer had issues with the Applicant's credibility and the genuineness of some documents provided, and therefore had a duty to alert her of those specific concerns (see *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 [*Hassani*]). She further states that several issues were never brought to her attention when they should have been: the notion that the letter was self-serving; the appearance of her phone number on the employer's letter; etc. In addition, the Applicant alleges the Officer relied on extrinsic evidence, such as the company's website and her Facebook page. As such, the Applicant relies upon *Jesuorobo v Canada (Citizenship and Immigration)*, 2007 FC 1092 [*Jesuorobo*] and *Ogunfowora v Canada (Citizenship and Immigration)*, 2007 FC 471 [*Ogunfowora*] for the proposition that she should have been able to comment on this evidence.

[16] Conversely, the Respondent submits that procedural fairness was met: the Applicant was sent a procedural fairness letter, given an opportunity to respond, and her further submissions were duly considered. The Respondent argues that the procedural fairness letter warned the Applicant of concerns that the employment letter may be fraudulent. The Applicant had the burden to rebut these concerns. The Respondent notes that procedural fairness owed to visa applicants is at the lower end of the spectrum; there is no legal right to permanent residence, and no obligation on a visa officer to notify applicants of all the inadequacies in their applications. Finally, the Respondent argues that the company's website and the Applicant's Facebook page

cannot be considered “extrinsic evidence” as the Applicant could have reasonably anticipated that this information would be reviewed. Specifically, the company’s website was in the letterhead of the employer’s letter.

[17] I find the Officer’s Decision was not made in accordance with requirements of procedural fairness. Indeed, an applicant does not have a right to an interview, and an officer need not put forward concerns that arise from the evidence provided or from IRPA requirements (see e.g. *Hassani* at para 24; *Jesuorobo* at para 14; *Toor v Canada (Minister of Citizenship and Immigration)*, 2006 FC 573 at para 17). However, in some cases where the officer has doubts with respect to the applicant’s credibility, or the accuracy or genuine nature of the information submitted, an interview should be granted in order to allow the applicant to address those concerns (see e.g. *Hassani* at para 24).

[18] The GCMS notes provide further insight into the Officer’s reasons for the Decision:

#### Eligibility

The telephone number on the Employment letter links to applicant, giving concern the letter is self—serving. The website is a basic website giving out few details. The address of the cleaning services differs from that on the letterhead. The telephone number on the website links to Nnabuike Fumigation (same name as on letter dated May 20, 2016). In "Meet our Team" there is a picture of a man scrubbing a floor. In the “Home” Link a boardroom, elevator doors and computers boards are shown A review of applicant's FB page indicates she is involved with Swissgolden, which appears to be a pyramid scheme of some sort — see open source information I note the bank statement has been verified as genuine and there are entries related to Coutes Cleaning services. However they were not consistent deposits throughout the year. It is not credible that applicant’s personal telephone number would be on the letterhead of the company, if she was an employee of the company. Applicant states she was unable to submit original

confirmation of Appointment letters, and submitted backdated letters — viewed as self-serving. Based on a review of file and contents, I am not satisfied applicant was employed as stated. I am not satisfied the offer letters are genuine. I am not satisfied applicant has performed the main duties as stated in the N00 01112. Applicant was advised of concerns by letter dated May 10, 2016. File to officer for review of misrepresentation.

#### Admin/Misrep

File reviewed along with response to procedural fairness letter, officer notes and submissions the applicant made following our procedural fairness letter. I am satisfied that our concerns were accurately and fully disclosed to the applicant. Applicant has applied as a 'skilled worker. As such the applicant is required to provide background information which includes employment history. On this application she stated she was employed with Coutes Cleaning Services Ltd. I note we attempted to verify that the business was legitimate and were unable to do so. The listed phone number on the letterhead belongs to the applicant and the website is not convincing. Having considered this evidence, I am not satisfied applicant has provided truthful employment information. By not providing genuine background information the applicant withheld a material fact related to a relevant matter that could have induced an error in the administration of the IRPA. Specifically: - the applicant is applying for a permanent resident visa as a skilled worker. By not providing factual information regarding her background, including previous and current employment the applicant could have induced an error in the application of the Act as the officer may have issued a visa to a person who was not able to establish in Canada and did not meet the requirements of the skilled worker class. The lack of factual information also prevents the officer from making an informed decision on admissibility. The application is refused and this applicant is inadmissible under A40(1) of the IRPA.

[19] The Officer states that attempts were made to verify that the Applicant's employer was legitimate. However, there is nothing on record to show what steps were taken by the Officer to verify whether the Applicant's employer is legitimate. As such, the Applicant is left in total darkness as to the Officer's "attempts" to verify the legitimacy of her employment.

[20] The Officer contends that, because the Applicant's telephone number matches that of the employer, her employment letter was self-serving. It is noteworthy that this issue was never brought to the Applicant's attention, despite the fact that this telephone number appears on the employment letter provided by the Applicant *before* the procedural fairness letter was sent. The Applicant states that being the Head of Human Resources and Administration of the company, her employer believed that it was fit to have the Applicant's number on the company's letterhead paper. Furthermore, the Officer was in possession of the company's incorporation documents, which included the contact number of the Managing Director and majority shareholder of the company. There is nothing on the record to show that the Officer sought reasons to explain why the Applicant's phone number appears on the company's letterhead. In *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883 (*Maghraoui*), at paragraph 22, Mr. Justice de Montigny states that "the concern will always be to ensure that the applicant has the opportunity to fully participate in the decision-making process by being informed of information that is not favourable to the applicant and having the opportunity to present his or her point of view". A minimal effort by the Officer to clarify this information could have resolved the issue. In the case at hand, the Applicant was not given a meaningful opportunity to respond to the Officer's credibility concerns about her case. As such, the Officer's conduct amounts to procedural unfairness.

[21] The Applicant fittingly points out the Officer's concern that the "[w]ebsite of the Company being basic and that the Company's address differs between the website and the letterhead" is irrelevant and should not have an impact on her application. I fail to understand how the simplicity or complexity of a company's website should impact an application for

permanent residency in Canada. As with the issue of the phone number, the Applicant submits that the Officer could have easily inquired as to why the addresses were different. I agree.

[22] The Officer was also concerned that the phone number on the Coutes Cleaning Services Limited website links to Nnabuike Fumigation. The Applicant rightly refers this Court to a letter submitted in response to the procedural fairness letter, which clearly shows that Mr. Nnabuike is the Managing Director of Coutes Cleaning Services Limited. The Applicant submits that if the Officer had any doubts about genuineness of her employment, the Officer could have contacted the Managing Director to gain clarity. Again, I agree.

[23] Most importantly, the reasons for the Decision are quite different to the issue raised in the procedural fairness letter, which was limited to the genuineness of *employment letter* and the response of the Applicant to the Officer's concerns.

[24] The Officer's failure to explain the "inquires" conducted, failure to explore obvious avenues of inquiry available on the record, failure to afford the Applicant an interview in the face of credibility concerns, and failure to base the inadmissibility conclusion on the alleged fraud raised in the procedural fairness letter, are such that when taken together, the Decision does not meet the requirement of procedural fairness. Having concluded that the Officer erred on the issue of procedural fairness, there is no need to deal with the second issue arising in this matter.

VII. Certification

[25] Counsel for both parties was asked if there were questions requiring certification, they each stated that there were no questions arising for certification and I concur.

**JUDGMENT in IMM-1994-17**

**THIS COURT'S JUDGMENT is that:**

1. The Application is allowed, the Decision is set aside and the matter is referred back for reconsideration by a differently constituted panel.
2. There is no question for certification.

"Shirzad A."

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1994-17

**STYLE OF CAUSE:** NNENNA JUDITH DIMGBA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** DECEMBER 12, 2017

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 09, 2018

**APPEARANCES:**

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