

Federal Court



Cour fédérale

Date: 20180207

Docket: IMM-2171-17

Citation: 2018 FC 138

Calgary, Alberta, February 7, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**GABRIEL EHIKIOYA EIDANGBE,
KIMBERLY OSEREME EIDANGBE,
ALEXANDERSON OSEGHLE EIDANGBE,
EHINOME GABRIEL EIDANGBE,
SARAH FATIMA EIDANGBE,
EFUA PEARL EIDANGBE AND
AIZENOSE FAITH EIDANGBE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Gabriel Ehikioya Eidangbe (the “Principal Applicant”), his wife Sarah Fatima Eidangbe and their children Kimberly Osereme Eidangbe, Alexanderson Oseghale Eidangbe, Ehinome Gabriel Eidangbe, Efua Pearl Eidangbe and Aizenose Faith Eidangbe (collectively “the

Applicants”) seek judicial review of the decision of a Visa Officer (the “Officer”) working at the Canadian High Commission in Lagos, Nigeria. In that decision, dated April 27, 2017, the Officer refused the Applicants’ application for a Temporary Resident Visa (“TRV”).

[2] The Applicants are citizens of Nigeria. The Principal Applicant applied for a TRV in July 2016, for the purpose of visiting a friend in Canada and otherwise, touring around Toronto and southern Ontario.

[3] The application was refused by a decision dated October 11, 2016. Upon applying for leave and judicial review in cause number IMM-4459-16 that decision was set aside upon the motion of the Minister of Citizenship and Immigration (the “Respondent”) and the matter remitted to a different Officer for redetermination.

[4] Following that redetermination, the negative decision of April 27, 2017 was rendered.

[5] The Applicants now argue that their rights to procedural fairness were breached by the Officer’s failure to communicate his concerns about the financial information, by his reference to extrinsic information to calculate the costs of their trip without giving them the opportunity to respond and by asking for updated information rather than deciding their application upon the information originally submitted.

[6] The Applicants also submit that the consent judgment in cause number IMM-4459-17 gives rise to issue estoppel.

[7] Finally, the Applicants argue that the Officer unreasonably considered the lack of visits to family members in the United State and Sweden in refusing their request to come to Canada as visitors.

[8] For his part, the Respondent submits that the Applicants have shown no reviewable error on the part of the Officer and the application for judicial review should be dismissed.

[9] Whether the Applicants' arguments about procedural fairness are reviewable on the standard of correctness or reasonableness, I see no such breach as alleged.

[10] I agree with the Respondent that the duty of procedural fairness arising in respect of a TRV is at the low end of the scale. I see nothing irregular in the Officer taking steps to estimate the costs of the proposed travel to Canada. It was not necessary for the Officer to review those costs with the Applicants.

[11] However, I am not satisfied that the Officer's consideration of the evidence about the family income meets the test of "reasonableness" set out in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190 that is justifiable, intelligible and transparent and falls within a range of possible and acceptable outcomes.

[12] Equally, I am not satisfied that the Officer's comments about the lack of family travel to visit other family members in the United States and Sweden were reasonable or relevant.

[13] In the result, the application for judicial review will be allowed, the decision is set aside and the matter is remitted to a different Officer for redetermination. There is no question for certification arising.

JUDGMENT for IMM-2171-17

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision set aside and the matter remitted to a different Officer for redetermination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2171-17

STYLE OF CAUSE: GABRIEL EHIKIOYA EIDANGBE, KIMBERLY OSEREME EIDANGBE, ALEXANDERSON OSEGHAE EIDANGBE, EHINGOME GABRIEL EIDANGBE, SARAH FATIMA EIDANGBE, EFUA PEARL EIDANGBE AND AIZENOSE FAITH EIDANGBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 25, 2018

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 7, 2018

APPEARANCES:

Josephat Nwabuokei FOR THE APPLICANTS

Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada FOR THE RESPONDENT