

Federal Court



Cour fédérale

**Date: 20181108**

**Docket: IMM-1944-18**

**Citation: 2018 FC 1129**

**Ottawa, Ontario, November 8, 2018**

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

**BETWEEN:**

**JENE TITA KAREN LYDIE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] for judicial review of a decision by an officer at the Visa Section of the Embassy of Canada in Abu Dhabi, United Arab Emirates [the Visa Office], dated April 11, 2018, denying the Applicant's application for a temporary resident visa [TRV] to visit Canada.

II. Background

[2] The Applicant, Jene Tita Karen Lydie, is a citizen of Cameroon. She resides in Dubai, United Arab Emirates on a temporary residency permit which expires in 2021. She is currently employed in Dubai at Super City One Electromechanical LLC, a building and cleaning company of which she also owns a 15 percent share. Prior to obtaining this position, she was employed as a beautician in Dubai.

[3] The Applicant filed an application for a TRV on May 2, 2017 [the Application]. The Visa Office refused this Application on May 12, 2017.

[4] The Applicant then brought an Application for Leave and for Judicial Review before this Court on May 29, 2017 (IMM-2374-17). Justice Roy granted leave on September 1, 2017. The parties reached a settlement agreement prior to the hearing, and the matter was returned to the Visa Office for redetermination by a different officer. The Applicant submitted additional documentation to the Visa Office for the purposes of this redetermination.

[5] In a decision dated April 11, 2018 [the Decision], an unnamed officer at the Visa Office [the Officer] refused the Application. The Applicant now seeks judicial review before this Court. The hearing of this matter was scheduled for November 8, 2018.

[6] On November 2, 2018, the Applicant wrote to the Court, advising that she would be unable to appear at the hearing and unable to hire a lawyer due to financial constraints. The

Applicant sought leave of the Court to allow her sister, Dr. Valerie Mgbatogu, and her brother-in-law, Dr. Samuel Mgbatogu, to appear on her behalf at the hearing.

[7] Also on November 2, 2018, counsel for the Respondent wrote to the Court, opposing leave for reasons I consider below.

### III. Issues

[8] The issues are:

- A. Can a lay representative appear on behalf of the Applicant?
- B. Was the Officer's Decision reasonable?
- C. Was the Officer's Decision procedurally fair?

### IV. Standard of Review

[9] The standard of review of reasonableness in respect of the visa officer's refusal to issue a temporary resident visa, and is correctness with respect to procedural fairness.

V. Analysis

A. *Can a lay representative appear on behalf of the Applicant?*

[10] The Applicant seeks leave to have her sister and brother-in-law appear on her behalf as lay representatives.

[11] The Respondent opposes this request as contrary to Rule 119 of the *Federal Courts Rules*, SOR/98-106, which reads:

Individuals

119 Subject to rule 121, an individual may act in person or be represented by a solicitor in a proceeding.

[12] Rule 121 does not apply to the facts of this case.

[13] The Respondent cites in support three decisions of this Court and the Federal Court of Appeal in which requests to have a lay representative appear were denied, including *Scheuneman v Canada (Attorney General)*, 2003 FCA 439 [*Scheuneman*].

[14] The law on the issue of lay representatives is concisely stated in *Scheuneman*, above, at paragraph 5:

[5] The Court may well have an inherent discretion, exercisable in unusual circumstances, to permit a person other than a lawyer to represent a litigant when the interests of justice so require: *Erdmann v. Canada*, 2001 FCA 138 at para. 11. However, if it exists, this residual discretion can only properly be exercised in the context of specific facts, including the suitability of the person who has agreed... to represent him.

[15] Thus, while the Court may have an inherent discretion to permit lay representatives, this discretion should only be exercised in exceptional circumstances.

[16] In *Bautista v Canada (Citizenship and Immigration)*, 2018 FC 669 [*Bautista*], the applicant, a citizen of the Philippines, sought judicial review of a decision by a visa officer to refuse her application for a temporary work permit. One week before the hearing of the matter, the applicant sought to have her brother appear on her behalf as a lay representative. The respondent opposed this request. Justice Gagné recognized that she had the discretion to allow this request, but refused to exercise it, citing the respondent's opposition and a lack of evidence as to why the applicant could not either hire a lawyer or appear on her own behalf – both factors which apply to the facts of this matter.

[17] Having reviewed *Bautista*, *Scheuneman*, and the other decisions cited by the Respondent, I do not believe that exceptional circumstances exist which would merit exercising the Court's discretion to allow lay representatives to appear on behalf of the Applicant.

[18] As per my Order of November 5, 2018, this application is being dealt with on the basis of the written record filed with the Court.

B. *Was the Officer's Decision reasonable?*

[19] In the Decision, the justification for the Officer's reasoning is the marking of a box beside the words:

You have not satisfied me that you would leave Canada at the end of your stay as a temporary resident. In reaching this decision, I considered several factors, including...

[20] In the lines below, the Officer marked the factors of "immigration status in country of residence" and "current employment situation" as having been explicitly considered.

[21] The Officer provided additional details in an April 11, 2018 entry to the Global Case Management System notes related to the Applicant [the GCMS Notes]:

File and notes reviewed. 27 year old female separated with one claimed minor dependent. Dependent is not accompanying and at present is living in Cameroon. Has temporary employment status in UAE since at least 2014. Initially at time of this application was employee claiming a salary of 5000 dirhams per month. With additional submission her renewed UAE visa lists her as a Partner. Her personal account in UAE does not support consistent [sic] savings or income from business. She has gone from a low paid beautician to a 15 % partner. Has not provided any support for the businesses viability or her portion of the earnings. Her only travel is between UAE and Cameroon. Given that she has a child in Cameroon and has chosen to work in a low paying occupation in UAE (a country where she has virtually no path to permanence) as opposed to working in her country of citizenship is not a positive indicator of strong factors that will provide and [sic] incentive leave Canada if granted entry. Based on the information presented I am not satisfied applicant is a bona fide temporary resident and will leave Canada at the end of any authorized stay as per section R179 of IRPA. Refused

[22] The Applicant takes issue with several statements in the Decision and the GCMS Notes.

[23] The Applicant argues that the Officer made erroneous findings of fact in relation to the Applicant's employment situation and immigration status. These arguments are premised on notes, quoted at paragraph 10 of the Applicant's Memorandum, which I have not considered as they are not before the Court in this matter.

[24] The Applicant also takes issue with the statement in the GCMS Notes that the Applicant had been a "low paid beautician". I agree with the Respondent that this was a reasonable conclusion for the Officer to reach.

[25] The Applicant further takes issue with the statement in the GCMS Notes that the Applicant "[h]as not provided any support for the businesses viability or her portion of the earnings." I note that the Officer had before them the Applicant's bank statements, deeds of conveyance, as well as a copy of the Applicant's commercial license, which appear to show that the Applicant has a 15 percent ownership share of Super City One Electromechanical LLC. Nonetheless, I find that the Officer was reasonable in concluding that these documents neither provide support for the viability of the business, nor give any indication of the Applicant's potential earnings from the business.

[26] Finally, the Applicant takes issue with the statement in the GCMS Notes that "[h]er only travel is between UAE and Cameroon." As the Applicant rightly states, there was evidence before the Officer that the Applicant had travelled to Bahrain on at least two occasions. However, the Officer's failure to note this travel was not determinative of the issues before the Court, and does not render the Decision outside the range of reasonable outcomes.

[27] A visa officer's decision to issue a TRV is discretionary in nature and should be given significant deference on judicial review. Having reviewed the materials before the Officer, the Decision, and the GCMS Notes, I find that the Officer's Decision was reasonable.

C. *Was the Officer's Decision procedurally fair*

[28] The Applicant also alleges that the Officer violated the Applicant's right to procedural fairness. The Respondent does not address this argument. I see no indication that the Applicant's right to procedural fairness was not observed. The Officer gave the Application due consideration, considered the materials before them, and provided sufficient reasons as evidenced by both the Decision and the GCMS Notes.

[29] This application for judicial review is dismissed.



**JUDGMENT IN IMM-1944-18**

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

1. The application is dismissed;
2. The parties proposed no question of general importance for certification and none arises from this case.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-1944-18

**STYLE OF CAUSE:** JENE TITA KAREN LYDIE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**JUDICIAL REVIEW DEALT IN WRITING PURSUANT TO ORDER OF THE COURT  
DATED NOVEMBER 5, 2018**

**DATED:** NOVEMBER 8, 2018

**WRITTEN REPRESENTATIONS BY:**

Jene Tita Laren Lydie

FOR THE APPLICANT,  
ON HER OWN BEHALF

Leanne Briscoe

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT