

Federal Court



Cour fédérale

Date: 20220330

**Dockets: IMM-8484-21
IMM-8487-21**

Citation: 2022 FC 438

Ottawa, Ontario, March 30, 2022

PRESENT: The Honourable Mr. Justice Zinn

Docket: IMM-8484-21

BETWEEN:

DEBORAH BUKUNMI ADEPOJU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-8487-21

AND BETWEEN:

AYODEJI OLUWATOSIN ADEYANJU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

Background to the Motion

[1] The Applicant, Deborah Bukunmi Adepoju, and her husband, Ayodeji Oluwatosin Adeyanju, each separately applied for study permits. Both were refused. Deborah Adepoju filed an application for leave and judicial review of the refusal of her application [Court File IMM-8484-21]. Ayodeji Adeyanju filed an application for leave and judicial review of the refusal of his application [Court File IMM-8487-21].

[2] The Respondent Minister brings a motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR 98-106, for an order joining these two applications and striking both without leave to amend. Alternatively the Minister seeks the joinder of these two applications “such that they are decided together by the same Justice, on the basis of both applicants’ materials, at leave and at judicial review if leave is granted.” The Minister also seeks costs and ancillary relief.

[3] The Minister submits that these applications constitute an abuse of process. It is submitted that both Deborah Adepoju and Ayodeji Adeyanju come before this Court with unclean hands. It is alleged that they, “with the assistance of counsel, are attempting to mislead this Court.”

[4] The Minister says that Deborah Adepoju and Ayodeji Adeyanju, in their supporting materials submitted to Immigration, Refugee, and Citizenship Canada [IRCC] with their study permit applications, “repeatedly and unequivocally told IRCC that they each planned to come to

Canada alone, and that their spouse would remain in Nigeria to act as a ‘home tie’ to incentivise them to return.” Neither made reference to their spouse’s application.

[5] Deborah Adepoju’s application was rejected for two reasons:

- I [the visa officer] am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR [*Immigration and Refugee Protection Regulations*, SOR/2002-227], based on the purpose of your visit.
- I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on your family ties in Canada and in your country of residence.

[6] Ayodeji Adeyanju’s application was rejected for four reasons:

- I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on your family ties in Canada and in your country of residence.
- I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on your personal assets and financial status.
- Pursuant to paragraph 220(a) of the IRPA [*Immigration and Refugee Protection Act*, RSC 2001, c 27], I am not satisfied that you have sufficient and available financial resources, without working in Canada, to pay the tuition fees for the course or program of studies that you intend to pursue.
- Pursuant to paragraph 220(b) of the IRPA, I am not satisfied that you have sufficient and available financial resources, without working in Canada, to maintain yourself and any family members who are accompanying you during your proposed period of study.

Joinder Motion

[7] The Minister submits that it is appropriate for the two applications to be joined so that the Court can determine whether they should be struck in the context of this motion. It is submitted that by joining these two applications, the Court avoids having to consider a second and ultimately duplicative motion, which would have to be filed in Ayodeji Adeyanju's application.

[8] The Minister correctly observes that no attempt has been made by either Deborah Adepoju or Ayodeji Adeyanju to articulate why these two applications ought not to be joined.

[9] I am satisfied, given the relationship of these two applicants, their common plan as described below, and the allegations made of abuse of process, that it is appropriate to order that these two applications be joined with immediate effect.

Abuse of Process – Unclean Hands

[10] Analysis of the Minister's allegation of unclean hands requires first that the Court review the statements made by each applicant (or their representative) regarding their spouse in their respective study permit application and to this Court in their Applications for Leave and Judicial Review.

Statements Made by or on Behalf of Deborah Adepoju Regarding Ayodeji Adeyanju

[11] In her letter to IRCC dated May 27, 2021 in support of her study permit application (Exhibit A to her affidavit filed in support of her Application for Leave and Judicial Review) she writes:

Home Ties

I have a very strong and non-negotiable ties to my home country, Nigeria which is my current country of residence. This revolves around my professional and family responsibilities. I have grown a familial bond with my family members. My husband is resident in Nigeria and gainfully employed in a construction company. He also has huge investments in real property. We have only been married for almost a year now and have a very strong bond. My Husband is very supportive of my career goals and is committed to sponsoring my studies in Canada[.] I will greatly miss this all through the duration of my study in Canada. I also have aged parents in Nigeria who are a strong support system to my husband and I. The decision to be away from my family for a while is one, I consider as a price to be paid to attain more competence and to better prepare myself for my career. I look forward to resuming my responsibilities upon my return.

[emphasis added]

[12] Deborah Adepoju's lawyer wrote to IRCC on June 3, 2021, (Exhibit A to her affidavit filed in support of the Application for Leave and Judicial Review): "She has strong family ties to her home country. Her husband and close family members reside in Nigeria and are a strong support system to her."

[13] In Deborah Adepoju's affidavit sworn January 13, 2022, filed in support of this Application for Leave and Judicial Review, she swears at paragraph 12:

In addition, I reside in Nigeria with my family members and relatives. I provided documentation showing family real estate

property showing that my family is well established in my home country. I have no family member resident in Canada and do not have family ties to Canada; yet the visa officer refused my application on the ground of family ties to Canada and my country of residence.

[14] The IRCC “Family Information” form submitted as part of a study permit application asks the applicant to list all family members and asks “Will [they] accompany you to Canada” with Yes and No boxes. In her study permit application, Deborah Adepoju lists Ayodeji Adeyanju and indicates that he will accompany her to Canada.

Statements Made by or on Behalf of Ayodeji Adeyanju Regarding Deborah Adepoju

[15] In Ayodeji Adeyanju’s letter to IRCC dated June 2, 2021, in support of his study permit application (Exhibit A to his affidavit filed in support of his Application for Leave and Judicial Review) he writes:

Home Ties

I have a very strong and non-negotiable ties to my home country, Nigeria which is my current country of residence. This revolves around my professional and family responsibilities as well as investments owned by me. I have grown a familial bond with my family members. My wife is resident in Nigeria and gainfully employed as a chemical pathologist. We have only been married for almost a year now and have a very strong bond. I also have aged parents in Nigeria who are a strong support system to us. The decision to be away from my family for a while is one, I consider as a price to be paid to attain more competence and to better prepare myself for my career. In addition I have invested heavily in real estate property (referenced above) in my home country. I look forward to resuming my responsibilities upon my return.

[emphasis added]

[16] Ayodeji Adeyanju's lawyer wrote to IRCC on June 3, 2021, (Exhibit A to his affidavit filed in support of his Application for Leave and Judicial Review): "Mr. Adeyanju is a family oriented man, a husband whose wife and his aged parents all reside in Nigeria."

[17] A number of submissions are made in his Memorandum of Fact and Law regarding his spouse and their relationship:

20. The Applicant gave no indication of family ties to Canada. In the GCMS Notes, the visa officer made no reference to any family tie in Canada or any analysis in that regard. The Applicant is left to wonder how the visa officer arrived at the conclusion that the Applicant would not leave Canada at the end of his stay based on his family ties to Canada. The only logical inference that could be made from this is that the visa officer did not review the Applicants documents presented in support of his application but relied on and/or imported extraneous materials in arriving at the decision.

[...]

22. The visa officer also premised the decision on the Applicant's family ties to his home Country. There is nothing in the GCMS Notes which supports this conclusion. The visa officer mentioned that the Applicant has a young marriage and is not satisfied that the Applicant will leave his young family behind. The Applicant submits that the fact that he has a young family demonstrates all the more that the Applicant has strong family ties to his home country would return to there at the end of his study.

[...]

31. In the Refusal Letter, the visa officer stated that:

Pursuant to paragraph 220(b) of the IRPA, I am not satisfied that you have sufficient and available financial resources, without working in Canada, to maintain yourself and any family members who are accompanying you during your proposed period of study." [Emphasis supplied]

32. Meanwhile, the GCMS Notes made no reference to the Applicant as one to be accompanied by any family member. The

Applicant himself did not indicate that he was to be accompanied. This demonstrates that the visa officer took [sic] failed to review the Applicant's application, rather he/or [sic] misapprehended the facts before him/her and imported extraneous facts into the application.

[18] In Ayodeji Adeyanju's affidavit sworn January 4, 2022, filed in support of his Application for Leave and Judicial Review he swears at paragraphs 10 and 11:

The total cash which I have set aside and provided in my proof of funds document (a total of \$59,072.06CAD) is sufficient and available for my study. As a student with no dependent children or accompanying spouse, the said sum is more than enough for my study at Centennial College.

Despite the sufficiency and availability of funds in my bank statements for my study and proof of ownership of real estate the visa officer refused my application on grounds of "personal assets and financial status." In addition, I did not apply to be accompanied by any family member, yet the visa officer refused my application on the ground that my finances would not be sufficient for myself and my family members who would accompany me.

[emphasis added]

[19] In the "Family Information" form submitted by Ayodeji Adeyanju as part of his study permit application, he lists Deborah Adepoju and indicates that she will accompany him to Canada.

The Explanation for the Information Provided by Deborah Adepoju and Ayodeji Adeyanju

[20] Deborah Adepoju filed an affidavit in response to this motion. She swears that Ayodeji Adeyanju is her spouse and asserts that the facts set out in their respective applications are true:

4. My spouse and I applied for a study permit simultaneously and we indicated in our family information form that each of us will be accompanied to Canada by our spouse. We also indicated in our individual letters of explanation for our study permit that our spouse will stay back in Nigeria to serve as home ties.

5. The fact in our application is true and it is possible to be implemented as there is no law that says that a study permit holder must travel to Canada. Our intention was that either of us that gets approved for the study permit will travel for studies while the other person will stay in Nigeria to serve as home ties.

6. Alternatively, the spouse staying in Nigeria may subsequently apply for a work permit since the spouse of students are entitled to apply for an open work permit. The fact that we have said one of us will stay back in Nigeria does not render that spouse inadmissible and does not bar them from applying for a work permit as the spouse of a student. This [sic] our plans do not amount to unclean hands as it does not violate any known immigration law in Canada.

7. We decided to apply for study permit simultaneously because we know our chances of getting approved was [sic] low since the IRCC is bias[ed] against Nigerians as indicated in the report available at https://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/immigration_refugees/2021/122-20-e/POR_122-20-Final_Report_EN.htm. A search of the word “Nigeria” through the document in that web link will reveal three instances where IRCC’s racial bias against Nigerians was identified.

[bolding in original]

[21] Paragraph 4 of this affidavit is contradictory: One cannot “accompany” the other to Canada and also remain in Nigeria. The word “accompany” in its usual and ordinary meaning means “to go with: escort” (*Canadian Oxford Dictionary*, 2d ed). It does not mean to follow at a

later date. The following paragraphs do not directly addresses this material and clear contradiction.

[22] The Court also notes, as did the Minister, that the document referenced at paragraph 7 of this affidavit postdates the permit applications. In any event, the allegations of racial bias are not relevant to the issue before this Court on this motion or on judicial review.

[23] As noted above, the Minister submits that this couple concurrently advanced separate Applications for Leave and Judicial Review “in which they advance contradictory and misleading evidence and argument.” It is submitted that it “is an abuse of this Court’s process for spouses, with the assistance of the same legal counsel, to mislead the Court.”

[24] In response to the explanation now offered by Deborah Adepoju that there was always a potential that the spouses would be together in Canada, the Minister responds that “this claim is belied by her husband’s clear statements to the contrary in his memorandum of argument.” The Minister specifically points to two statements therein:

In the applicant’s husband’s memorandum of argument, he uses the clearest language confirming that he would be coming to Canada alone. At paragraph 32 of his memorandum, he says that **“The Applicant himself did not indicate that he was to be accompanied.”** At paragraph 50, he says that **“...the visa officer alleged that the Applicant would be accompanied by family members when that was not the case”**

[bolding in original].

[25] The Minister further responds noting that Deborah Adepoju “has also neglected to explain what she and her husband would have done if they both successfully obtained study permits on the pretense that they would each be coming to Canada alone.”

Analysis

[26] Notwithstanding they checked a box on the application form that each applicant would have an accompanying spouse, I am satisfied, on the basis of the statements reproduced above, that both members of this couple represented to IRCC that their spouse would remain in Nigeria to support their assertions that they would return there after the education period was ended. However that “home tie” exists only so long as the spouse remains in Nigeria. On the basis of the records before me, I am also satisfied that it was always their intention that one way or another they would be together in Canada.

[27] The obvious answer to the Minister’s question is that if both were successful in obtaining study permits, then they both would have come to Canada on their respective permits, which were each obtained, in part, on the false pretense that they would each be coming to Canada alone.

[28] I am satisfied on the balance of probabilities that this couple misrepresented the true nature of their intentions when they applied to IRCC for a study permit. That misrepresentation has been carried through to this Court in their respective Applications for Leave and Judicial Review.

[29] The Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 at paragraphs 9 and 10 addresses when and under what circumstances this Court may dismiss an application for judicial review, irrespective of the merits of the application:

[T]he case law suggests that, if satisfied that an applicant has lied, or is otherwise guilty of misconduct, a reviewing court may dismiss the application without proceeding to determine the merits or, even though having found reviewable error, decline to grant relief.

In exercising its discretion, the Court should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights. The factors to be taken into account in this exercise include: the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.

[30] As noted above, I am convinced that Deborah Adepoju and Ayodeji Adeyanju are guilty of misconduct in misrepresenting their true intentions. There may not be a positive obligation on applicants to voluntarily fully disclose that their spouse is also applying for a study permit; however, there is an obligation not to conceal the true state of affairs or to couch applications in a misleading manner.

[31] I view this misconduct as very serious. Study permit applicants are seeking from Canada the right to travel here for the purposes of education. Paragraph 216(1)b of the *Immigration and Protection Regulations*, SOR/2002-227 provides that “an officer shall issue a study permit to a

foreign national if, following an examination, it is established that the foreign national ... will leave Canada by the end of the period authorized for their stay...” It is well known, and is specifically referenced in IRCC’s operational guides, that an officer will consider obligations and ties in home country. It is obvious that applicants going to Canada with no family left behind in their country of nationality are more likely to have difficulty establishing that they will return there at the end of their studies. An applicant with parents, spouse or children is more likely to establish “ties” that support a statement that they will return to their home country.

[32] I accept the submission of this couple that the spouse of an international student may apply for an open work permit after the spouse has entered Canada on a study permit. However, I do not accept their submission that this “explains why each of the applicants indicated in their family information form that their spouse will accompany them subsequently to Canada so that anyone [sic] of them that gets the study permit will be accompanied by the spouse on a work permit to be obtained after the determination of the study permit” [emphasis added]. I find this explanation to be *post facto*, created for the purposes of explaining their otherwise inexplicable conduct, and without merit. First, the question they responded to does not ask if the family member will be joining the applicant at a later date or subsequently – it asks if the family member will accompany the applicant. Second, at no time did either spouse inform IRCC or this Court, prior to this motion, that their spouse would subsequently accompany them. Indeed, the exact opposite assertion is given to this Court. Ayodeji Adeyanju in his submissions on his Application for Leave and Judicial Review at paragraph 32 states that “[t]he Applicant himself did not indicate that he was to be accompanied” and at paragraph 50 that “[t]he visa officer alleged that the Applicant would be accompanied by family members when that was not the

case.” He cannot have it both ways – either Deborah Adepoju is accompanying him or she is not.

[33] Applications for study permits and other visas to enter Canada are determined largely on the statements and evidence provided by applicants. Accordingly, there is a public interest in ensuring that applicants are truthful and give clear and straight statements to those charged with assessing these applications. As such, there is a strong interest in deterring others from the sort of conduct exhibited by this couple.

[34] A non-citizen has no right to enter Canada to study or to obtain a study permit. This couple have minimal impairment of their rights by dismissing their applications for judicial review. Moreover, having reviewed both Court files in full, I am satisfied that they are very weak applications that were unlikely to have been granted leave.

[35] For these reasons, I find that it is appropriate to dismiss these applications on the basis of an abuse of process.

Conclusion

[36] This motion will be granted and the two applications joined. They will be dismissed as an abuse of process.

[37] The Minister seeks costs of \$750.00 for each of the applications dismissed and has provided a draft Bill of Costs. This must be seen to be a reasonable sum, as it is exactly the amount sought by Deborah Adepoju and Ayodeji Adeyanju if this motion were dismissed.

[38] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 provides that there are to be no costs awarded in respect to applications for leave, “unless the Court, for special reasons, so orders.”

[39] Although I have found the conduct of Deborah Adepoju and Ayodeji Adeyanju to be seriously objectionable, I am not convinced that it raises to the level required to constitute a special reason for departing from the norm. Thus no costs will be ordered.

ORDER IN IMM-8484-21 AND IMM-8487-21

THIS COURT'S ORDER is that this motion is granted, Court Files IMM-8484-21 and IMM-8487-21 are joined with immediate effect, both Applications for Leave and Judicial Review are dismissed, with prejudice, and there is no order as to costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8484-21

STYLE OF CAUSE: DEBORAH BUKUNMI ADEPOJU v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

DOCKET: IMM-8487-21

STYLE OF CAUSE: AYODEJI OLUWATOSIN ADEYANJU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: ZINN J.

DATED: MARCH 30, 2022

WRITTEN REPRESENTATIONS BY:

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