Federal Court  Cour fédérale

Date: 20231026

Docket: IMM-1964-22

Citation: 2023 FC 1425

Vancouver, British Columbia, October 26, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JULIETTE MEREDITH JAMES [ADEBAYO]

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mrs. Juliette Meredith James (Adebayo) (the "Applicant") seeks judicial review of the decision made by a Migration Program Manager (the "Manager"), refusing the application for permanent residence submitted on behalf of her stepdaughter Ms. Temitope Rebecca Adebayo.

[2] The Applicant is married to Mr. Joseph Adebayo. She applied to sponsor Mr. Adebayo as a member of the "Spouse and Common-Law Partner in Canada" class. In his corresponding application for permanent residence, Mr. Adebayo included Ms. Adebayo. He also included a number of his other children.

[3] The application was refused on two grounds. First, that Ms. Adebayo did not meet the definition of a "dependent child" within the meaning of subsection 117(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"), as of the lock-in date of September 7, 2011. Secondly, that she was inadmissible for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), about her education. The Manager found that Ms. Adebayo had submitted fraudulent documents in support of her educational background.

[4] The refusal letter sent to the Applicant on January 29, 2020, erroneously advised that she could appeal the negative decision to the Immigration and Refugee Board, Immigration Appeal Division (the "IAD"). In a decision dated February 9, 2022, the IAD dismissed the appeal for lack of jurisdiction. The decision is nonetheless relevant as it sets out the history of the efforts made to obtain permanent residence visas for some of Mr. Adebayo's children, including Ms. Adebayo.

[5] The refusal letter sent to the Applicant referred to a letter, also dated January 29, 2020, addressed to Ms. Adebayo, setting out the basis of the negative decision upon her application for permanent residence as a member of the family class.

[6] By a decision made on August 3, 2017, Mr. Adebayo was advised that Ms. Adebayo was removed from his application for not meeting the definition of a dependent.

[7] On July 27, 2018, in cause number IMM-3550-18, the Applicant filed an Application for Leave and Judicial Review relative to that decision. The proceeding was subsequently settled when the Minister of Citizenship and Immigration (the "Respondent") agreed to redetermine the decision. Because Mr. Adebayo had been landed by that time, the application for permanent residence for Ms. Adebayo was continued as a separate application.

[8] Prior to issuing the negative decision in issue here, Immigration, Refugees and Citizenship Canada ("IRCC") sent Ms. Adebayo a "procedural fairness" letter, dated July 19, 2019, asking her to undertake a bone density test. There is no evidence that such test was conducted and the test, or lack thereof, was not a factor in the negative decision.

[9] On August 29, 2019, IRCC asked Ms. Adebayo to attend an interview scheduled for September 12, 2019. The interview took place on that date. Notes from the interview were entered into the Global Case Management System ("GCMS") on September 13, 2019. The notes show that Ms. Adebayo was questioned about her age and her education, in particular about the results recorded for the West Africa Examination Council ("WAEC") examination. Ms. Adebayo was questioned about one Becky Bunmi Adegbesan; according to the interviewing officer, this name appeared when IRCC checked the WAEC examination results for Ms. Adebayo.

[10] Subsequent to the interview on September 12, 2019, another “procedural fairness” letter was sent. According to the GCMS notes, this letter was sent on September 26, 2019.

[11] A response was received on November 25, 2019, consisting of a statutory declaration from Mr. Adebayo. In his statutory declaration, he declared the following:

> 6. That my daughter, Temitope Rebecca Adebayo certificates are truthful and that the documents shown to her was not her own. Please note that your department has in your possession all original documents that were given to you several years ago when the family applied for Canadian status.

[12] The Applicant now argues that the decision was made in breach of procedural fairness because the decision was not made by the person who interviewed Ms. Adebayo, and that the notes taken by the interviewing officer may not be accurate since they were not entered into the GCMS on the day of the interview. She also contends that there are inconsistencies between different entries of the interview notes into the GCMS.

[13] The Applicant further submits that the decision does not show a reasonable consideration of the evidence about Ms. Adebayo’s age, that is whether she was under the age of 22 at the lock-in date.

[14] For his part, the Respondent argues that there was no breach of procedural fairness. Relying on the decision in *Chin v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1003, he submits that the interviewer and the decision-maker need not be the same person.

[15] The Respondent also argues that a one-day delay in recording the interview notes in the GCMS did not give rise to a breach of procedural fairness.

[16] Otherwise, the Respondent submits that the Applicant has improperly introduced post-decision evidence in her affidavit and that that evidence should be struck out or ignored. He also argues that her submissions about a failure to consider the evidence amount to an invitation for the Court to re-weigh the evidence. Finally, he submits that the decision is reasonably grounded in the evidence that was provided and that the response to the last "procedural fairness" letter did not answer the concerns that were raised.

[17] Any issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[18] Following the instructions in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.) the merits of the decision are reviewable on the standard of reasonableness.

[19] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov*, *supra* at paragraph 99.

[20] I am not persuaded that there was any breach of procedural fairness. It was not necessary that the decision be made by the interviewing officer. There was no breach of procedural fairness arising from the one-day delay in entering the interview notes in the GCMS.

[21] I turn now to the merits of the decision. Does the refusal meet the applicable standard of "justification, transparency and intelligibility"?

[22] In my opinion, it does.

[23] The Manager made two separate but related findings. The first finding relates to Ms. Adebayo's age and the second to the time she completed her education. The two findings are related since in order to qualify as a "dependent child" within the scope of the Regulations, she must have been under the age of 22 and dependent upon her father. I refer to the definition of "dependent child" in effect at the relevant time:

Interpretation	**Définitions**
2. The definitions in this section apply in these Regulations.	**2.** Les définitions qui suivent s'appliquent au présent règlement.
…	**…**
"dependent child", in respect of a parent, means a child who	« enfant à charge » L'enfant qui :
(a) has one of the following relationships with the parent, namely,	**a)** d'une part, par rapport à l'un ou l'autre de ses parents :
(i) is the biological child of the parent, if the child has not been adopted by a person other than the	**(i)** soit en est l'enfant biologique et n'a pas été adopté par une personne

spouse or common-law partner of the parent, or

(ii) is the adopted child of the parent; and

(b) is in one of the following situations of dependency, namely,

(i) is less than 22 years of age and not a spouse or common-law partner,

(ii) has depended substantially on the financial support of the parent since before the age of 22 — or if the child became a spouse or common-law partner before the age of 22, since becoming a spouse or common-law partner — and, since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student

(A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and

(B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or

autre que son époux ou conjoint de fait,

(ii) soit en est l'enfant adoptif;

b) d'autre part, remplit l'une des conditions suivantes :

(i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,

(ii) il est un étudiant âgé qui n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents à compter du moment où il a atteint l'âge de vingt-deux ans ou est devenu, avant cet âge, un époux ou conjoint de fait et qui, à la fois :

(A) n'a pas cessé d'être inscrit à un établissement d'enseignement postsecondaire accrédité par les autorités gouvernementales compétentes et de fréquenter celui-ci,

(B) y suit activement à temps plein des cours de formation générale, théorique ou professionnelle,

(iii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition.	**(iii)** il est âgé de vingt-deux ans ou plus, n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents à compter du moment où il a atteint l'âge de vingt-deux ans et ne peut subvenir à ses besoins du fait de son état physique ou mental.

[24] From my review of the interview notes, Ms. Adebayo was advised about concerns about her age and her academic achievements. She was given the opportunity to respond. The Statutory Declaration provided by her father does not directly answer the concerns identified.

[25] The Manager was not satisfied that Ms. Adebayo had been a full-time student since before the age of 22.

[26] The Manager determined that Ms. Adebayo had submitted a fraudulent document that is relative to her attendance at Badestay Comprehensive High School.

[27] The Court cannot weigh the evidence in the record. That task lay within the mandate of the decision-maker, in this case the Manager.

[28] The Manager determined that Ms. Adebayo had misrepresented facts about the senior school examination from the Badestay Comprehensive High School. This finding led the Manager to the finding of misrepresentation, pursuant to paragraph 40(1)(a) of the Act.

[29] In my opinion, the misrepresentation finding is supported by the evidence. I refer to the decision in *Mugu v. Canada (Citizenship and Immigration)* (2009), 79 Imm. L.R. (3d) 64 at paragraph 64:

> [64] Even a bare recounting of the facts makes it clear that the Applicant is the author of his own problems. His application for permanent residence and his interview with Officer Riley gave rise to obvious inaccuracies, inconsistencies and potential misrepresentations that the Applicant was asked to clarify and resolve, but never did. His responses, in fact, gave rise to even greater concerns. He was made fully aware of the issues and given every opportunity to address them before final decisions were made.

[30] In spite of the able submissions on behalf of the Applicant, I am not persuaded that there is any basis for judicial intervention.

[31] There is no breach of procedural fairness. The misrepresentation finding meets the applicable standard of review. The application for judicial review will be dismissed. There will be no question for certification.

JUDGMENT IN IMM-1964-22

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

There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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