

Federal Court



Cour fédérale

**Date: 20231101**

**Docket: IMM-7810-22**

**Citation: 2023 FC 1435**

**Toronto, Ontario, November 1, 2023**

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

**BETWEEN:**

**OLUWADAMILOLA AMINAT SOPEYIN  
ABDUL-RAHMAN ALADE AZEEZ  
AZEEZ AISHA OLAMIDE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of an Immigration Officer [Officer] dated August 3, 2022 [Decision]. In the Decision, the Officer refused the application for an open work permit submitted by the Principal Applicant, Oluwadamilola Aminat Sopeyin,

and the visitor visa applications of the other Applicants, who are the Principal Applicant's minor children [Minor Applicants].

[2] As explained in greater detail below, this application is allowed, because the Decision is both unreasonable and procedurally unfair in its reliance on information related to a separate study permit application submitted by the Principal Applicant's husband.

## II. Background

[3] The Applicants are citizens of Nigeria. The Principal Applicant's husband [Husband], who is also the father of the Minor Applicants, has been a student in Canada at the Fisheries and Marine Institute of the Memorial University of Newfoundland [Marine Institute] under a study permit.

[4] In July 2021, the Principal Applicant applied for a spousal open work permit, and the Minor Applicants applied for visitors' visas, to allow them to enter Canada and temporarily unite with the Husband. In August 2022, the Officer made the Decision, which is the subject of this application for judicial review, refusing the Applicants' applications.

## III. Decision under Review

[5] In a letter conveying the Decision, the Officer stated that the applications were refused because the compensation indicated in the Principal Applicant's job offer and her assets and

financial situation were insufficient to support the stated purpose of travel for herself and any accompanying family members.

[6] The Officer's reasons for the Decision are further captured in Global Case Management System [GCMS] notes, which state as follows:

I have reviewed the application. The documentation provided in support of the applicant's financial situation does not demonstrate that the applicant is sufficiently established that travelling to Canada with dependents for the proposed employment would be a reasonable expense. The applicant's spouse showed funds of 45 000\$CAD in support of their SP application. Tuition for the applicant's spouse studies is 20 000\$ per year. The applicant wants to travel to Canada with their 3 children. LICO is at 56 000\$ for a family of 5. I am not satisfied that the applicant will have access to sufficient funds to finance their stay in Canada. Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

#### IV. Issues and Standard of Review

[7] The Applicants' submissions raise the following substantive issues for consideration by the Court:

- A. Whether the Decision was unreasonable; and
- B. Whether the Officer breached the procedural fairness owed to the Applicants.

[8] The Respondent's submissions also raise the following preliminary issues:

- A. Whether the Principal Applicant placed information before the Court that was not before the Officer; and
- B. Whether this application for judicial review should be dismissed for mootness.

[9] As is implicit in the articulation of the first substantive issue above, the merits of the Decision are reviewable on the reasonableness standard (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65). The procedural fairness issue is governed by a standard of correctness.

V. Analysis

A. *Whether the Principal Applicant placed information before the Court that was not before the Officer*

[10] The Respondent takes the position that the original affidavit sworn by the Principal Applicant and included in the Applicants' Application Record [Original Affidavit] is misleading, because it does not reflect the fact that three of her children (not just the two Minor Applicants) applied for visitor permits. The Respondent submits that the Applicants' Memorandum of Fact and Law furthers this narrative, which is inconsistent with the fact that there were three visitor permit applications before the Officer.

[11] In an effort to respond to this position, on the day of the hearing of this application on October 26, 2023, the Applicants served on the Respondent and sought to file with the Court a Further Affidavit of the Principal Applicant sworn on October 25, 2023 [Further Affidavit]. The Further Affidavit identifies the sequence of events surrounding the visa applications of the Principal Applicant's three children and is intended to explain why only two of her three children are Applicants before the Court. The Respondent opposed the late filing of the Further Affidavit.

[12] The Applicants submit that the Court should admit the Further Affidavit, because it will assist the Court in adjudicating the Respondent's assertion that the Principal Applicant has attempted to mislead the Court. The Applicants also asserts that the information in the Further Affidavit is all known to the Respondent and that the Respondent will therefore not be prejudiced by its admission. On the subject of their delay in providing the Further Affidavit, the Applicants assert that it was not possible to previously obtain a copy of the decision in the third child's visitor visa application, which decision is attached as an exhibit to the Further Affidavit.

[13] In my view, the Applicants have not provided a reasonable explanation for their delay. The issue to which the Further Affidavit is intended to respond was first raised by the Respondent in its Memorandum of Argument dated February 14, 2023. The Applicants have provided no evidence in support of their assertion that they could not obtain a copy of the decision attached to the Further Affidavit until immediately before the hearing of this application. Nor have they explained why, even without a copy of that decision, they could not have provided a timely explanation of the relevant sequence of events.

[14] Also, as will be explained below, the Court does not need the information in the Further Affidavit in order to address the issue raised by the Respondent. In that context, and without a reasonable explanation for the delay, I decline to admit the Further Affidavit.

[15] However, I also find no merit to the Respondent's position on this preliminary issue. In paragraph 2 of the Original Affidavit, the Principal Applicant identifies that she and her Husband have three children but states that only two of them applied with her. However, in the previous

paragraph of the Original Affidavit, she references the application for judicial review. I read paragraph 2 as accurately reflecting that two of her children are Applicants in this matter before the Court.

[16] In paragraph 4 of the Original Affidavit, the Original Applicant states that she applied for a spousal open work permit and that two of her children applied for visitors' visas. I appreciate that this statement is incomplete, in that the third child also applied for a visitor's visa. However, I cannot conclude that this statement represents an effort to mislead the Court, as it is abundantly clear from the documents that were submitted in support of the visa applications, which the Principal Applicant attached as an exhibit to the Original Affidavit, that all three children applied for visas.

[17] Moreover, the Respondent has not explained to the Court's satisfaction how the Respondent suggests this issue should affect the adjudication of this application on its merits. The Respondent's Further Memorandum of Argument asserts that evidence that was not before the Officer cannot be used to challenge the reasonableness of the Decision. While I accept that principle, I do not understand the Applicants to be arguing that that the Decision is unreasonable because the Officer assessed their applications based on the wrong number of children.

[18] I find no basis to arrive at any conclusions adverse to the Applicants arising from this preliminary issue raised by the Respondent.

B. *Whether this application for judicial review should be dismissed for mootness*

[19] The Respondent argues that this application for judicial review is moot, because the underlying visa applications were made in order to allow the Applicants to temporarily unite with the Husband for the duration of his stay in Canada. The Respondent asserts that the Husband's educational program ended on August 31, 2002, and that the Principal Applicant is therefore no longer eligible for the work permit that was the subject of her application.

[20] In support of this assertion, the Respondent relies on documentation in the Certified Tribunal Record [CTR]. This includes a June 27, 2021 letter from the Husband, written in support of the Applicants' visa applications, which refers to completion of his studies in September 2022, as well as a March 24, 2022 letter from the Marine Institute, confirming that the Husband was currently enrolled in the spring semester of his program and that the expected end date for the current academic year was August 31, 2022.

[21] In my view, this evidence is not sufficient to support the Respondent's mootness argument. The letter from the Marine Institute is particularly lacking in probative value on the point, as it refers only to the expected end date of the current academic year, not to the end date of the Husband's program. In the absence of evidence that speaks more contemporaneously and definitively to the Husband's current status, I am not prepared to dismiss this application based on a mootness argument.

C. *Reasonableness and procedural fairness*

[22] The Applicants advance a number of arguments in support of their position that the Officer did not afford them appropriate procedural fairness in arriving at the Decision or that the Decision is unreasonable. The arguments that I find to have merit surround the Officer's reliance on evidence as to the available funds the Husband relied on in support of his study permit application and the annual tuition for his program. As noted earlier in these Reasons, in concluding that the Principal Applicant had not shown access to sufficient funds to finance the family's stay in Canada, the GCMS notes include the following information:

... The applicant's spouse showed funds of 45 000\$CAD in support of their SP application. Tuition for the applicant's spouse studies is 20 000\$ per year. ...

[23] As I best interpret the Officer's reasoning, the \$45,000 in available funds identified in the Husband's study permit application, being the same figure and therefore probably the same funds as identified in the Applicants' application, would not be sufficient to finance the whole family's stay in Canada, particularly when the \$20,000 annual tuition cost was taken into account.

[24] The source of this information about the Husband's study permit application is not apparent from the record before the Court. Neither party identified this information as being available from the CTR. One might assume that the Officer was able to source the Husband's study permit application in the files of Immigration, Refugees and Citizenship Canada and obtained this information therein. However, there is no evidence to support this assumption.



[25] As such, the fact that the Decision is based on evidence of unknown provenance, which the Court is unable to assess, undermines the transparency, justification and intelligibility of the Decision and therefore its reasonableness. This evidence also represents evidence extrinsic to the Applicants' applications, and the principles of procedural fairness required the Officer to afford the Applicants an opportunity to respond to that evidence before relying on it to reject their applications (see, e.g., *Pena Torres v Canada (Citizenship and Immigration)*, 2011 FC 500 [*Pena Torres*] at para 12). As the Applicants argue, such response may have included evidence disputing that the Husband's tuition costs remained outstanding as a call upon the family's current financial resources.

[26] The Respondent argues that information from the Husband's study permit application should not be considered extrinsic evidence, because it relates to an application submitted by the Applicants' family member. However, authorities of this Court have previously treated immigration records related to a member of an applicant's family as extrinsic evidence (see, e.g., *Amri v Canada (Citizenship and Immigration)*, 2012 FC 713 at para 11; *Pena Torres* at para 12; *Mushimiyimana v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1124 at para 23; *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 780 at paras 16-18).

[27] I would not necessarily conclude that such evidence should always be treated as extrinsic evidence and give rise to procedural fairness obligations, particularly if there is a sound evidentiary basis to conclude that an applicant was aware of the relevant details of a family member's immigration records. However, the Respondent has not referred the Court to any evidence in the case at hand that would support such a conclusion.

[28] Based on the foregoing analysis and the resulting concerns surrounding both the reasonableness and procedural fairness of the Decision, I will allow this judicial review and return the matter for redetermination by a different decision-maker.

[29] Neither party proposed any questions for certification for appeal, and none is stated.

**JUDGMENT IN IMM-7810-22**

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

1. The Further Affidavit is not admitted into evidence.
2. This application for judicial review is allowed, and this matter is returned to a different decision-maker for redetermination.
3. No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-7810-22

**STYLE OF CAUSE:** OLUWADAMILOLA AMINAT SOPEYIN, ABDUL-  
RAHMAN ALADE AZEEZ, and AZEEZ AISHA  
OLAMIDE v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE USING ZOOM

**DATE OF HEARING:** OCTOBER 26, 2023

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** NOVEMBER 1, 2023

**APPEARANCES:**

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