Federal Court  Cour fédérale

Date: 20231026

Docket: IMM-3672-22

Citation: 2023 FC 1430

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] Ms. 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 stepson Mr. Oluwagbemiga Elijah Adebayo. The Manager found that Mr. Adebayo had misrepresented his date of birth and was inadmissible to

Canada for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the "Act").

[2] The refusal was set out in letters dated January 28, 2020. One letter was sent to the Applicant, advising that the application was refused because Mr. Adebayo did not meet the requirements of the Act. This letter erroneously advised the Applicant could appeal the negative decision to the Immigration and Refugee Board, Immigration Appeal Division (the "IAD").

[3] Although the Applicant pursued an appeal to the IAD, it was dismissed for lack of jurisdiction.

[4] In the letter sent to Mr. Adebayo, more details were given about the negative decision. He was told that the Manager was not satisfied that his birth date was January 5, 1991, rather the Manager had "reasonable grounds to believe" that the birth date was January 5, 1989.

[5] The Manager was not satisfied that Mr. Adebayo met the definition of "dependent child" as of the relevant date, that is September 7, 2011. That is the date when the Applicant made an application to sponsor her husband, Mr. Joseph Adebayo, to Canada as a member of the "Spouse and Common-Law Partner in Canada" class. When her husband submitted his application for permanent residence, he included several of his children, including Mr. Adebayo.

[6] According to the decision of the IAD, Mr. Adebayo, his brother Damiola Adebayo and his sister Rebecca Temitope Adebayo were removed from their father's application for

permanent residence because they were found to be ineligible for failing to meet the definition of "dependent child".

[7] The Applicant filed an Application for Leave and Judicial Review on July 27, 2018, in case number IMM-3550-18, challenging the decision to remove Mr. Adebayo, his brother and his sister from the application for permanent residence. The proceeding was settled, the negative decision was set aside and the matter remitted for redetermination by another officer.

[8] A "procedural fairness" letter, dated July 29, 2019, was sent to Mr. Adebayo, expressing concerns arising from an interview that was held on August 3, 2017. He was asked to undertake a bone density test. It seems that the test was never done. It also seems that the request for this test is not relevant to the disposition of this proceeding since the refusal letter does not refer to it as a basis for the negative decision.

[9] By letter dated August 29, 2019, Mr. Adebayo was invited to attend another interview on September 12, 2019. He appeared for the interview. According to the notes entered into the Global Case Management System (the "GCMS") on September 16, 2019, the notes reflect a concern about Mr. Adebayo's date of birth.

[10] Another "procedural fairness" letter, dated September 16, 2019, was sent. This letter highlighted the concerns of the officer about Mr. Adebayo's date of birth, his use of another name, and a record of prior applications made for Temporary Resident Visas to Canada.

[11] The Applicant responded to the letter of September 16, 2019 by submitting a Statutory Declaration from his father whose application for permanent residence had included Mr. Adebayo, and others, as "dependent" children. In the Statutory Declaration, the father said the following about Mr. Adebayo:

> 3. That my son, Gbemiga Elijah Adebayo has not changed his name, his date of birth is January 5th, 1991 and not January 5th, 1989.
>
> 4. That Gbemiga Elijah Adebayo has never applied for a Canadian visa outside of the family sponsorship process and has never misrepresented his date of birth.

[12] An employee of Immigration, Refugees and Citizenship Canada ("IRCC") reviewed this Statutory Declaration. The entry in the GCMS notes on January 28, 2020 indicate that IRCC was not satisfied with the response to the "Procedural Fairness" letter of September 16. The notes show that the officer concluded that Mr. Adebayo had not been truthful about his date of birth, that he had provided an incorrect date of birth and did not meet the definition of "dependent child" as of the lock-in date of September 7, 2011, and further, was inadmissible for misrepresentation, pursuant to paragraph 40(1)(a) of the Act.

[13] The Applicant now argues that the Manager improperly ignored the earlier positive eligibility decision made on January 14, 2014, by another officer. She submits that there is no explanation for the different decision in 2020. She characterizes the different findings as giving rise to a breach of procedural fairness.

[14] The Applicant further submits that procedural fairness was breached because the decision was not made by the interview officer but by someone else. As well, she contends that the GCMS notes may be inaccurate because they were recorded four days after the interview.

[15] As for the substance of the decision, the Applicant argues that the Manager ignored the evidence.

[16] The Minister of Citizenship and Immigration (the "Respondent") submits that there was no breach of procedural fairness on any basis argued by the Applicant.

[17] He argues that the Applicant and Mr. Adebayo were aware of the concerns of IRCC about Mr. Adebayo's birth date. As well, he submits that the refusal of permanent residence is supported by the evidence.

[18] Any issue of procedural fairness is 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.).

[19] Following the decision 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.

[20] 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.

[21] I am not persuaded that there was any breach of procedural fairness. I agree with the Respondent that the decision can be made by someone other than the interviewing officer, relying on the decision in *Chin v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1003.

[22] There is no breach of procedural fairness arising from the fact that one officer approved Mr. Adebayo's eligibility in 2014 but that, upon the request for more information, another decision was reached.

[23] In the absence of evidence to show irregular entry of the interview notes into the GCMS some four days after the interview, there is no basis to find that the delay, *per se*, gave rise to a breach of procedural fairness.

[24] The burden lay upon the Applicant and Mr. Adebayo to present evidence to support the application for permanent residence. In Mr. Adebayo's circumstances, questions were raised about his date of birth. In addition to the evidence he submitted, IRCC reviewed their own records and found information that contradicted the information provided by Mr. Adebayo.

[25] It is for the employees of the Respondent to weigh the evidence presented by an applicant, not for the Court.

[26] Upon an application for judicial review, a reviewing Court can look at a Tribunal Record to see what evidence it contains. Looking “for” and “at” the evidence in a Tribunal Record is far from “weighing” or assessing such evidence.

[27] 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.

[28] The Manager determined that Mr. Adebayo had stated his birthday as January 5, 1989 in two prior TRV applications rather than January 5, 1991. The Manager then made the finding of misrepresentation, pursuant to paragraph 40(1)(a) of the Act.

[29] In the result, there is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-3672-22

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

DOCKET:	IMM-3672-22
STYLE OF CAUSE:	JULIETTE MEREDITH JAMES [ADEBAYO] v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	APRIL 27, 2023
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	OCTOBER 26, 2023

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