

Date: 20080320

Docket: IMM-1398-07

Citation: 2008 FC 366

Ottawa, Ontario, March 20, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

OLUGBOYEGA GBOLAGUNTE OLADIPO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant is obligated to submit documents that show he meets the criteria of a skilled worker; he did not do so, even after he had been made aware of the Officer's concerns and was afforded an opportunity to provide further documentation to the Officer.

[2] The Computer Assisted Immigration Processing System (CAIPS) notes provide additional, more detailed information in respect of the interview and the reasons for refusal. To reiterate the reason stated in the decision letter, for the denial of the application, is clearly sufficient for the Applicant to know exactly why the application was dismissed. The Applicant did not prove that he

met the requirements in the skilled worker category due to his failure to provide reliable documentation in support of his employment history in the United States (U.S.) and Nigeria, as he was obliged to do.

II. Judicial Procedure

[3] This is an application, pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA), for judicial review of a decision of a Visa Officer of the Canadian Consulate, refusing the Applicant's application for permanent residence to Canada, made pursuant to subsection 75(2) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (Regulations).

III. Background

[4] The Applicant, Mr. Olugboyega Gbolagunte Oladipo, holds a bachelor degree in electronics and solid state physics from Nigeria, and worked as a network support engineer for three years before he arrived in the United States (U.S.), in August 2001.

[5] Mr. Oladipo was destined to attend Capitol College, in Laurel, Maryland, in order to complete his Master's Degree in Information and Telecommunication Systems' Management. He obtained a Certificate of Eligibility for a Non Immigrant (F-1) Student Status Visa – For Academic and Language Students (also known as form A-20AB).

[6] Mr. Oladipo's authorization to study in the U.S. also provided him the opportunity to partake in optional practical training (OPT) employment, from March 2, 2004 to February 28, 2005, in computer information systems and management related to his Master's degree.

[7] Mr. Oladipo obtained his Master's degree in January 2004 and was given the opportunity to complete his OPT with Verizon Wireless, in Houston, Texas, as a Data Support Coordinator, where he is still employed today.

[8] On October 8, 2004, Mr. Oladipo submitted an application for an immigrant visa as a Federal Skilled Worker to the Consulate General of Canada, in Buffalo, U.S. (CAIPS notes, Tribunal Record, p. 3.)

[9] On December 21, 2005, Mr. Oladipo, subsequent to having submitted his application for a Visa, was married and his wife was added to his application, in March 2006. The Applicant's wife has completed an M.B.A. degree and is currently working with JP Morgan Chase as an investment banker. (Applicant's Record, Applicant's Memorandum of Argument, para. 2.)

[10] On March 2, 2007, Mr. Oladipo attended an interview with the Visa Officer. The premise of the interview was to examine his employment experience; however, it did not preclude the Officer from reviewing other aspects of Mr. Oladipo's application for permanent residence.

[11] Mr. Oladipo's credibility was questioned and he was advised that he had thirty days to provide an updated I-9 form from Verizon which confirmed his immigration status. Failure to comply with this request could justify the refusal of his application in accordance with subsection 16(1) of the IRPA, above. (CAIPS notes, Tribunal Record, p. 5.)

[12] On March 15, 2007, Mr. Oladipo submitted further documentation; more precisely, a letter of reference from Verizon Wireless together with a letter in which he explains why he was unable to obtain the I-9 form from his employer. (CAIPS notes, Tribunal Record, p. 5.)

[13] None of the additional documentation or the information provided, enabled the Visa Officer to confirm Mr. Oladipo's duties and responsibilities. Consequently, the Visa Officer determined that, given the undocumented employment with Verizon and the circumspect letter from its Human Resources Department, very little weight could be given to the documents which were provided in support of Mr. Oladipo's employment in the U.S. Furthermore, the Visa Officer determined that Mr. Oladipo's employment experience with Intracom Internet service in Nigeria was not supported by credible and reliable documentation. (CAIPS notes, Tribunal Record, p. 5.)

[14] Mr. Oladipo's application for permanent residence was, therefore, refused, on March 16, 2007. (CAIPS notes, Tribunal Record, p. 5.)

[15] After assessing Mr. Oladipo's application for a permanent resident visa as a skilled worker, the Visa Officer was not satisfied that he met the requirements in order to qualify as a skilled worker in Canada.

[16] The Visa Officer concluded that Mr. Oladipo had not provided any reliable documentation to support his employment history, from neither the U.S. nor Nigeria. As a result, zero units were awarded for Mr. Oladipo's experience. (CAIPS notes, Tribunal Record, p. 5.)

Credibility

[17] Mr. Oladipo is of the view that the Visa Officer erred in law in determining that he had not demonstrated that he has the minimum necessary work experience to qualify as a skilled worker. According to Mr. Oladipo, the Visa Officer fettered her discretion by considering an irrelevant matter, namely, the employment in the U.S. was without lawful employment authorization. The decision is patently unreasonable, as the only rational conclusion from the evidence provided is that Mr. Oladipo was employed by Verizon Wireless as claimed, but without lawful authorization. (Applicant's Record, Applicant's Memorandum of Argument, para. 1.)

[18] In addition, the Officer erred in law and breached the principles of procedural fairness by failing to give any reasons for rejecting Mr. Oladipo's evidence of his work experience in Nigeria. (Applicant's Memorandum of Argument, above.)

[19] The Respondent contends that, contrary to Mr. Oladipo's assertion, a reading of the CAIPS notes and the Visa Officer's affidavit shows that the application as a skilled worker was denied due to credibility issues and the failure to provide reliable documentation in support of his claimed employment in both the U.S. and Nigeria, and, not due to whether or not he was working legally for Verizon Wireless. (Respondent's Memorandum of Argument, para. 4.)

[20] Furthermore, the Respondent holds that Mr. Oladipo had been told, at the interview, of the Visa Officer's concerns in respect of the documents and as to his credibility; the statement in the decision letter, that Mr. Oladipo failed to provide reliable documentation to support his employment history in the U.S. and Nigeria, represents clear reasons for the refusal. Mr. Oladipo was awarded an opportunity, both, at the interview and after the interview, to provide information that would respond to the Visa Officer's concerns, but failed to do so. (Respondent's Memorandum of Argument, para. 14.)

IV. Relevant Legislation

75. (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

75. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

Skilled workers

(2) A foreign national is a skilled worker if

(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the *National Occupational Classification*; and

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the

Qualité

(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la *Classification nationale des professions* — exception faite des professions d'accès limité;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les

occupational descriptions of the *National Occupational Classification*, including all of the essential duties.

descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

Minimal requirements

Exigences

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

V. Issue

[21] Were the Reasons of the Visa Officer sufficient to know why the application for permanent residence was refused?

VI. Standard of Review

[22] The standard of review, with respect to a decision to deny a visa, has consistently been held by this Court to be in the realm of a Visa Officer's particular expertise; and, therefore dictates a deferential approach upon review.

[23] The assessment of an application for permanent residence, under the Federal Skilled Worker Class, is an exercise of discretion that should be given a high degree of deference. To the extent that this assessment has been done in good faith, in accordance with the principles of natural justice applicable, and without relying on irrelevant or extraneous considerations, the decision of the Visa Officer should be reviewed on the standard of patent unreasonableness.

VII. Analysis

The Applicant's application was denied due to a credibility issue and a failure to provide reliable supporting evidence

[24] The case law establishes that the onus is on the applicant to file an application with all relevant supporting documentation and to provide sufficient credible evidence in support of his application. The applicant must put his “best case forward”. (*Chen v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1123, para. 26; *Dardic v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 150, [2001] F.C.J. No. 326 (QL); *Tahir v. Canada (Minister of Citizenship and Immigration)* (1998), 159 F.T.R. 109, [1998] F.C.J. No. 1354 (QL); *Lam v. Canada (Minister of Citizenship and Immigration)* (1998), 152 F.T.R. 316, [1998] F.C.J. No. 1239 (QL).)

[25] Contrary to Mr. Oladipo's assertion, a reading of the CAIPS notes and the affidavit of the Visa Officer shows that the application as a skilled worker was denied due to credibility issues and the failure to provide reliable documentation in support of his claimed employment, in both the U.S. and Nigeria, not due to whether or not he was working legally for Verizon Wireless.

[26] The Visa Officer noted that, as Mr. Oladipo's had stated that he had been working for Verizon for three years, he was asked for a copy of his petition filed by Verizon for his H-1B (temporary worker) status in the U.S. Mr. Oladipo advised her that the company was “still working on it”. As the Officer also noted, Mr. Oladipo did not stray from this explanation throughout the interview. (Affidavit of Mary Keefe, para. 22.)

[27] In light of Mr. Oladipo's statement of employment with Verizon, the Officer asked him for an employment reference from them. Mr. Oladipo provided his 2004 written offer of employment and his 2006 W-2 U.S. Wage and Income Statement. The Officer acknowledged that Mr. Oladipo earned an income during this period of time, addressed him, specifying that the information provided was deficient as it did not define his job duties and responsibilities.

[28] The Officer noted, in her affidavit, that she advised Mr. Oladipo that his employment experience with Verizon would be taken into consideration regardless of the legality or illegality of his employment; however, what he provided was insufficient, as it was lacking pertinent basic information, such as his job duties and responsibilities. The Officer stated:

18. Notwithstanding what may have transpired between the Applicant and U.S. Departments of Immigration and State, I reiterated to the Applicant that his employment experience with Verizon would be taken into consideration. As previously noted however, upon a review of the copy of the Applicant's original offer of employment dated October 13, 2004, from Verizon Wireless, it only showed the proposed start date, salary, terms and conditions of employment, but did not define or make reference to his job duties and responsibilities. The 2006 W2 wage and income statement also made no specific reference to the Applicant's job description and duties. Therefore, the documentation presented at interview was inconclusive with respect to the Applicant's actual duties and responsibilities as a "data coordinator." (Emphasis added.)

(Affidavit of Mary Keefe.)

[29] Similarly, the subsequent documentation that Mr. Oladipo submitted with the March 13, 2007 letter (such as the employment letter signed by Cecily Wilkinson), was also deficient with regard to the most basic required information, such as job duties and responsibilities, to show that he met the criteria for a skilled worker. The Officer noted:

24. On March 14, 2007, I received a letter dated March 13, 2007, from the Applicant, in which the Applicant thanked me for another opportunity to provide proof of his employment with Verizon. The Applicant explained he was unable to obtain the I-9 "Employment Eligibility Verification." He submitted an employment reference letter dated March 12, 2007, authored by Cecily Wilkinson, Verizon Wireless Human Resources. The author of the letter did not reference her title in the Human Resources Department at Verizon Wireless. More importantly, this letter did not identify or address the Applicant's duties and responsibilities, despite the lack of supporting information being a concern expressed to the Applicant at the interview.

25. The 2006 performance evaluation submitted by the Applicant at the same time also did not outline the Applicant's job duties and responsibilities...

(Affidavit of March Keefe.)

[30] As noted above, Mr. Oladipo is obligated to submit documents that show he meets the criteria of a skilled worker; he did not do so, even after he had been made aware of the Officer's concerns and was afforded an opportunity to provide further documentation to the Officer.

[31] With respect to the issue of the request for an I-9, in light of Mr. Oladipo's repeated assertion that Verizon was petitioning for him, the Officer stated:

22. ... Notwithstanding the lack of reliable documentation to support his employment experience with Verizon Wireless, in the interest of procedural fairness I afforded the Applicant an opportunity to provide proof of an ongoing petition for a work permit or proof of his "Employment Eligibility Verification," form I-9 as referred to in his original offer of employment. The purpose of this request was to confirm the veracity of the Applicant's statements made to me about his work experience with Verizon Wireless. He was advised that upon review of this documentation or any other documentation he wished to provide in support of his employment experience, a final determination would be rendered. (Emphasis added.)

(Affidavit of Mary Keefe.)

[32] As the Officer stated, in her affidavit, which is supported by the entries in the CAIPS notes:

26. The issue at hand was the Applicant's credibility and his inability to demonstrate through reliable documentation that he possessed the necessary

experience in a skill level O, A, or B occupation thereby supporting his verbal statements made at his selection interview, not whether he was working legally for Verizon.

[33] Similarly, with respect to the Nigerian documents, the issue was the lack of reliable evidence, to support Mr. Oladipo's statement as to the paid work in Nigeria. As the Officer stated, in her affidavit:

19. With respect to his employment in Nigeria, the Applicant provided two reference letters from his former employer, IntraCom5. In the letter of appointment from IntraCom5 dated October 2, 1998, the employer referenced the Applicant's occupation as "Marketing Staff." The Applicant included a letter dated September 11, 2003, which he wrote to advise that there was an error in his employment reference letter. He stated that he had been employed as a technical support engineer. The Applicant included another letter dated August 26, 2004, from IntraCom (the number 5 was not included in the company logo) which stated the Applicant was a full-time employee as a customer service engineer in their technical department and referred to the Applicant's final salary of NGN 35,000.00 dollars.

20. Although the August 26, 2004, letter contained an original signature, unlike the first employment reference letter it did not contain the name of its author. I noted to the Applicant that neither of these letters was supported by proof of paid income in the form of pay stubs or personal income tax statements, and furthermore no job description was included with these letters. Therefore, I could not extrapolate from these letters what the Applicant's actual duties and responsibilities as a technical support engineer were. As such, I placed little weight on the letters as evidence of paid employment in Nigeria. (Emphasis added.)

[34] The Applicant did not provide any further evidence to address the Officer's concerns when he submitted the March 13, 2007 letter. He had the opportunity to do so if he so chose.

Were the Reasons of the Visa Officer sufficient to know why the application for permanent residence was refused?

[35] Contrary to Mr. Oladipo's assertion, in light of the fact that he had been aware, at the interview, of the Officer's concerns with the documents and his credibility, the statement in the decision letter that he failed to provide reliable documentation to support his employment history in the U.S. and Nigeria, represent clear reasons for the refusal. Mr. Oladipo was afforded an opportunity, both, at the interview and after the interview, to provide information that would treat the Officer's concerns, but failed to do so.

[36] The reason for the refusal stems from the same issues of which Mr. Oladipo was made aware and for which he was given an opportunity to respond in regard to his employment, in both, the U.S. and Nigeria; furthermore, the CAIPS notes provide additional, more detailed information in respect of the interview and the reasons for refusal. To reiterate, the reason stated in the decision letter, for the denial of the application, is clearly sufficient for Mr. Oladipo to know exactly why the application was dismissed. Mr. Oladipo did not prove that he met the requirements in the skilled worker category due to his failure to provide reliable documentation in support of his employment history in the U.S. and Nigeria, as he was obliged to do.

VII. Conclusion

[37] For all of the above reasons, the application for judicial review of the decision of the Visa Officer, is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1398-07

STYLE OF CAUSE: OLUGBOYEGA GBOLAGUNTE OLADIPO
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 12, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: March 20, 2008

APPEARANCES:

Mr. Paul Vandervennen FOR THE APPLICANT

Mr. David Joseph FOR THE RESPONDENT

SOLICITORS OF RECORD:

VANDERVENNEN LEHRER FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada