

Federal Court



Cour fédérale

**Date: 20121017**

**Docket: IMM-7722-11**

**Citation: 2012 FC 1209**

**Ottawa, Ontario, October 17, 2012**

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

**BETWEEN:**

**IFEANYI PATRICK UBAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] “Certain questions that come before administrative tribunals do not lend themselves to one specific, particular result.” *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. The question that was before the decision-maker in this application is one such question; however, the applicant would not have succeeded regardless of the answer selected by the decision-maker because a woman cannot give birth to a child 11 days after a medical doctor reports that she is not pregnant. Faced with the conflicting fact of a birth and a medical opinion that the mother is not pregnant, there

are but a few plausible explanations and each is equally plausible. The Counsellor deciding Mr. Ubah's application for permanent residence selected one. It cannot be said that his choice was unreasonable; accordingly, this application must be dismissed.

## **Background**

[2] Mr. Ubah, a very wealthy citizen of Nigeria, submitted an application for permanent residence indicating that he had four children, born in 1999, 2002, 2006, and 2007, respectively.

[3] On March 17, 2011, Citizenship and Immigration Canada (CIC) sent Mr. Ubah a letter that it was conducting a preliminary review of his application and that birth certificates for the two youngest children were not on file. He was asked to provide them within 90 days. In response, CIC received a "Statement of Live Birth" for Desire Dumebi Ubah, born January 9, 2006, and a birth certificate for Marvel Chibuikem Ubah, born May 20, 2007.

[4] On May 2, 2011, the Counsellor at the Canadian High Commission in Accra, Ghana, outlined his concern in an internal email to a colleague in Lagos, Nigeria, that Desire's Statement of Live Birth did not accord with other information on file with CIC. Specifically, the document indicated that Desire was born in Canada on January 9, 2006, but CIC's Computer Assisted Immigration Processing System (CAIPS) notes showed that the child's mother, Mr. Ubah's wife, applied for a temporary resident visa (TRV) from Lagos, Nigeria, on December 29, 2005; that medical instructions were issued on the same day requiring that she take a pregnancy test; and that the pregnancy test came back negative. Further, that TRV was not issued until January 18, 2006, nine days after Desire was allegedly born in Toronto, Canada.

[5] The Counsellor reasoned in his email that if Mrs. Ubah submitted to the medical test in Lagos, she was not giving birth in Canada and the birth certificate is fraudulent, or, alternatively, if she did in fact give birth in Canada on January 9, 2006, that she was not the person who attended the medical exam in Nigeria. This possibility was noted since Mrs. Ubah had previously been issued a TRV valid between August 17, 2005, and November 15, 2005.

[6] The Counsellor sent Mr. Ubah a fairness letter on May 2, 2011, outlining exactly these details and concerns, and his preliminary conclusion that the birth place, citizenship, and true parentage of Desire had been misrepresented.

[7] Mr. Ubah replied on June 28, 2011, nearly two full months later, stating that the information contained in the Statement of Live Birth – that Mrs. Ubah gave birth to Desire in Toronto, on January 9, 2006 – was correct. He also said that there must have been a mix up in the December 29, 2005, medical report, as Mrs. Ubah was most obviously and definitely pregnant at that time. Mr. Ubah did not, however, address how and when Mrs. Ubah travelled to Canada.

[8] On August 2, 2011, the Counsellor wrote to Mr. Ubah informing him that it had been concluded that Mr. Ubah had misrepresented Desire's Statement of Live Birth. The Counsellor recited his concerns from the fairness letter, noted Mr. Ubah's response, and indicated that no explanation had been provided as to how Mrs. Ubah was able to travel to Canada prior to the TRV being issued. The Counsellor concluded, on a balance of probabilities, that Mrs. Ubah was not in Canada at the time of Desire's birth and that consequently the birth certificate was fraudulent, and

that this misrepresentation could have induced an error in the administration of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in particular on the basis that Desire would have been considered a Canadian citizen and thus would not need to be examined as an accompanying dependent. As a result of this finding and pursuant to paragraph 40(2)(a) of the Act, Mr. Ubah is inadmissible to Canada for a period of two years following the date of the decision.

### **Issue**

[9] The only issue raised is whether the Counsellor's decision is unreasonable.

### **Analysis**

[10] The concerns these facts raised in the Counsellor's mind were legitimate because the facts are in conflict. The person who dealt with Mr. Ubah and his wife's request for a TRV in 2005 "was concerned that the spouse might be pregnant" and accordingly requested that she undergo a pregnancy test. There is no copy of the medical report in the file but the CAIPS notes indicate that on December 29, 2005, the report showed that Mrs. Ubah was not pregnant. The applicant later provided a document, the Statement of Live Birth, issued in Canada that purports that only 11 days later Mrs. Ubah gave birth to Desire in Toronto.

[11] Mr. Ubah says that that his wife did give birth on January 9, 2006, and was pregnant in December 2005. He submits that the indication in the CAIPS notes that she was not pregnant on December 29, 2005, must be in error. However, this leads one to ask, as the officer did, how Mrs. Ubah, only 11 days from delivering her child, travelled from Nigeria to Canada without a valid TRV. As the decision-maker noted: "You have not offered an explanation for this significant

discrepancy, specifically how Mrs. Uchenna Ubah was able to travel to Canada prior to the visa being issued.” Indeed, Mr. Ubah still does not have any explanation as to how his wife was in Canada in January 2006, and the only argument he has advanced in this application – that she may have overstayed her 2005 TRV – directly contradicts his response to the fairness letter, which was that she attended the medical assessment in Nigeria in December 2005, which was after the 2005 TRV had expired.

[12] Mr. Ubah’s counsel made a valiant attempt to support his client’s position and to convince the Court that the decision under review is unreasonable. The arguments he advanced cannot succeed. He is attempting to explain the inexplicable.

[13] The following are the points raised by Mr. Ubah:

- (i) his response to the fairness letter was adequate and appropriate and “there was no other evidence that [he] could have provided to confront the [Counsellor’s] allegations;”
- (ii) the Statement of Live Birth was corroborated by Desire’s Canadian passport, issued on February 27, 2006, which shows that Passport Canada “clearly had no concerns with [Desire’s] identity documents,” and the Counsellor failed to consider this;
- (iii) an explanation existed as to how Mrs. Ubah may have been in Canada on January 9, 2006, namely that she had been issued a TRV in 2005;
- (iv) the Counsellor relied on the CAIPS notes for the details as to the medical assessment and there is no evidence in the record that he relied on the actual medical file or any other paper-based materials; and

(v) whatever the explanation for the medical report, no error in the administration of the Act would have been induced.

***No other evidence could have been provided***

[14] In the fairness letter, the Counsellor raised the issues that Mrs. Ubah was in Nigeria in December 2005 undergoing a medical examination which showed that she was not pregnant, and that the January 2006 TRV was not issued to her until January 18, 2006. There were clearly two dimensions to his concern: the result of the medical assessment and the fact that “the temporary resident visa was issued ... nine days after the child was born in Canada.”

[15] In response to the fairness letter, Mr. Ubah simply confirmed that his wife attended both the physical examination in Nigeria and gave birth in Canada on January 9, 2006. Perhaps this is all the evidence he could have given as to the first aspect of the fairness letter, but there was another important aspect to the letter – how Mrs. Ubah was in Canada giving birth when she was not issued a TRV until nine days after the birth. If there was an explanation, none was given. Mr. Ubah could have provided his recollection of the events, flight tickets, passport stamps, and other documents that addressed how and when Mrs. Ubah travelled to Canada. However, he provided none.

***The Canadian passport***

[16] Mr. Ubah submits that Desire’s birth in Canada is corroborated by his Canadian passport, and that the Counsellor should have considered and given considerable weight to the existence of this passport because Passport Canada had already satisfied itself of the authenticity of the birth

certificate, and the Counsellor, who is not an expert in the authenticity of documents, should not be second-guessing Passport Canada.

[17] The respondent submits that “the Canadian passport was surely issued in reliance on the Canadian birth certificate and does nothing to address the discrepancy related to evidence that [Mrs. Ubah] was in Nigeria when she allegedly gave birth to him.” I agree with the respondent entirely.

### *The 2005 TRV*

[18] Mr. Ubah suggests that Mrs. Ubah may have been in Canada on January 9, 2006, because a TRV was issued to her in 2005. Mr. Ubah says that the Counsellor referenced this possibility, but failed to consider it or analyze it in his reasons. He says that the failure to do so renders the decision unreasonable, especially because that line of thought is consistent with the Certificate of Live Birth. I disagree.

[19] First, Mr. Ubah fails to mention that the 2005 TRV expired on November 15, 2005. If Mrs. Ubah was in Canada on January 9, 2006, she was not authorized to be here. Second, and far more important, Mr. Ubah acknowledged in reply to the fairness letter, at least implicitly, that his wife was in Nigeria in late December 2005 undergoing a medical assessment for the TRV that issued on January 18, 2006. The 2005 TRV thus provides no explanation whatsoever for how she came to be in Canada, unless the individual who attended the physical examination was not Mrs. Ubah, which is, of course, highly problematic in its own right.

### *Use of CAIPS notes*

[20] Mr. Ubah complains that the actual medical report was not available to the Counsellor and that he based his decision entirely on a terse CAIPS entry, which should be viewed with appropriate caution and that there must have been a mix-up in the medical assessment given to his wife in December 2005. This submission is relevant only to the issue of whether Mrs. Ubah was in fact pregnant in December 2005. No issue has been taken with the timing or location of the medical assessment. That was the evidence that the Counsellor used to arrive at his conclusion that, on a balance of probabilities the birth certificate is fraudulent because Mrs. Ubah was not in Canada on January 9, 2006, because she was in Nigeria on December 29, 2005, and had no valid travel document permitting her to enter Canada.

*No error in the administration of the Act*

[21] Mr. Ubah submits that whatever mistakes or confusion surrounds the medical report undertaken for the TRV, it would not have induced any error in the administration of the Act:

[W]hatever took place [at the Canadian Embassy in Nigeria in January 2006] has limited or no bearing on the Application at hand. [Desire] was born in Canada on 9 January 2006, his Statement of Live Birth is genuine, and he is a Canadian citizen; consequently, he was not a dependent and did not need to be examined within the Applicant's permanent residence application.

[22] This submission is rejected. The alleged mix-up in the medical report has nothing to do with the timing of Mrs. Ubah's travel to Canada, which is the premise upon which the Counsellor reached his conclusion.

[23] For these reasons, the decision under review is reasonable and the application must be dismissed. Neither party proposed a question for certification.





**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-7722-11

**STYLE OF CAUSE:** IFEANYI PATRICK UBAH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 26, 2012

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

**DATED:** October 17, 2012

**APPEARANCES:**

Mario D. Bellissimo FOR THE APPLICANT

David Cranton FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

BELLISSIMO LAW GROUP FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario