

Federal Court



Cour fédérale

Date: 20170106

Docket: IMM-2385-16

Citation: 2017 FC 26

Ottawa, Ontario, January 06, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

EDISON JAMES NWABUEZE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Nwabueze's application for permanent residence status in Canada on humanitarian and compassionate grounds [H&C] was refused because of his involvement in the Movement for the Actualization of a Sovereign State of Biafra [MASSOB] while he was in Nigeria. He does not deny being involved with MASSOB. He denies that MASSOB is a terrorist organization.

[2] Mr. Nwabueze argues that the decision of the Officer is not reasonable. He also submits that his procedural fairness rights were not respected, as the Officer relied upon information to conclude that MASSOB was a terrorist organization which was not shared with Mr. Nwabueze.

[3] I agree that Mr. Nwabueze's procedural fairness rights were not respected and the judicial review is allowed on that basis.

[4] If the Court finds that the duty of fairness has been breached, it has no choice but to allow the application for judicial review: see *Canada (Attorney General) v Sketchley*, 2005 FCA 404 at para 54.

[5] In a similar context the court in *Karakachian v Canada (Citizenship and Immigration)*, 2009 FC 948 stated:

[38] A person who appears before a government authority is generally not on an equal footing and will generally not assume that he is entitled to see documents that happen to be on the desk of the person interviewing him. Since the officer did not expressly invite him to consult the documents on which she was relying, the applicant could reasonably believe that he was not permitted to see them. I realize that the duty of fairness is relatively relaxed in the context of an application for permanent residence. Nevertheless, the applicant's ability to respond to the officer's concerns regarding the true nature of the ARF was seriously hindered by the ignorance in which he was kept as to the documents consulted. Consequently, I am of the opinion that the applicant's right to procedural fairness was infringed.

[6] Here, the Officer conducted independent research on MASSOB and relied upon that research to make an inadmissibility finding against Mr. Nwabueze. The information was not

disclosed to Mr. Nwabueze despite requests that the Officer provide the information being relied upon.

[7] In *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 [*Fi*] at paras 8-10, the Court held that a decision-maker violates an Applicant's right to procedural fairness when they consult extrinsic evidence found on the internet upon which the Applicant was not given the opportunity to respond. While *Fi* was a Pre-Removal Risk Assessment application, the same considerations would apply to the H&C context.

[8] Here, Mr. Nwabueze was not afforded the opportunity to respond to the online information sourced by the Officer. Further, the Applicant's expert, Dr. Obiora Okafor, is faulted by the Officer for failing to address the specific incidents of "terror", which the Officer relied upon to conclude that MASSOB was a terrorist organization. However, because the information relied upon by the Officer was not disclosed, the expert was not given an opportunity to address those specific incidents.

[9] The information relied upon by the Officer was not disclosed to Mr. Nwabueze prior to the decision being rendered. Given the seriousness of being characterized as a member of a terrorist organization, Mr. Nwabueze should have been provided with this information. Therefore, his procedural fairness rights were not respected.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the Officer is set aside and the matter is remitted for redetermination by a different Officer;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2385-16

STYLE OF CAUSE: EDISON JAMES NWABUEZE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 14, 2016

JUDGMENT AND REASONS: MCDONALD J.

DATED: JANUARY 06, 2017

APPEARANCES:

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