

Federal Court



Cour fédérale

Date: 20170320

Docket: IMM-343-16

Citation: 2017 FC 294

Ottawa, Ontario, March 20, 2017

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

AYODEJI AKANMU ALABI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Ayodeji Akanmu Alabi [Mr. Alabi], challenges a Citizenship and Immigration Canada [CIC] decision dated January 16, 2016, which denied him a Temporary Resident Permit [TRP]. Mr. Alabi was removed to Nigeria on June 5, 2015, despite having a long history with our immigration system and living here since January 17, 1998.

[2] Mr. Alabi seeks an order of mandamus directing the Respondent's officials to issue a TRP *nunc pro tunc* to the date of his initial refusal. He requests an order requiring the Respondent to facilitate his re-entry into Canada no later than thirty days from the date of this decision. Mr. Alabi is no longer seeking costs.

[3] I will grant the application for judicial review; however, I will not grant the relief that is sought by Mr. Alabi. This matter will be sent back to be re-determined by a different officer for the reasons that follow.

II. Background

[4] Mr. Alabi is a citizen of Nigeria. He has been in an ongoing common law relationship with a Canadian citizen for sixteen years, has five children, operates a successful Toronto business, and had been heavily involved in his community.

[5] On May 11, 1993, Mr. Alabi pled guilty to and was convicted in the United States [US] of conspiracy to distribute heroin. There is conflicting information in the Applicant's material concerning the date of conviction as it is also noted as May 11, 1995. Nothing in this application turns on this discrepancy so 1993 will be used. He was sentenced to 24 months in jail.

[6] After being deported from the US, Mr. Alabi came to Canada in 1998 and made an application for refugee status. His refugee claim was refused in April 1999. His subsequent humanitarian and compassionate relief [H&C] application was also refused. On April 17, 2007, the Immigration Division found Mr. Alabi inadmissible to Canada based on serious criminality

and misrepresentation, issuing a deportation order and a concurrent exclusion order. Application for leave and judicial review of both these decisions was refused by the Federal Court.

[7] Mr. Alabi then submitted a criminal rehabilitation application to CIC which was refused on May 4, 2012. Application for leave and judicial review of this decision was also refused. A second H&C application was submitted on April 20, 2009. This application is still under review by CIC some eight years later.

[8] A second criminal rehabilitation application was submitted by Mr. Alabi on October 2, 2012. The second rehabilitation application was refused on October 24, 2013, as was the application for leave for judicial review. A third criminal rehabilitation application was submitted on January 21, 2014, and was transferred to the Canadian High Commission in Lagos, Nigeria in 2016. This third rehabilitation application is also still under review.

[9] A duplicate of Mr. Alabi's second H&C application was filed on October 2, 2012. Contrary to Mr. Alabi's belief, CIC has not received a spousal sponsorship application. CIC does, however, have the outstanding H&C and rehabilitation applications.

[10] Mr. Alabi submitted a TRP application on February 5, 2015, which was refused; however, on judicial review, the parties agreed to a re-determination by way of consent judgment. Mr. Alabi then brought a motion to hold the Minister of Citizenship and Immigration personally in contempt of court for the closed file, which was dismissed. Mr. Alabi was removed

from Canada on June 5, 2015. On January 13, 2016, Mr. Alabi's TRP was re-determined and refused. The case before me is a judicial review of this re-determined TRP application.

[11] CIC's reasons for refusing Mr. Alabi's TRP are very brief and in point form. The reasons given are that Mr. Alabi's application indicates that the reason for his TRP is so he can attend his daughter's convocation in the US. He alleges that to do so, he must have "durable immigration status in Canada, [or] the US consulate will not issue a visitor visa". Mr. Alabi's daughters and step-daughter submitted letters in support of his TRP application. One of his daughters indicated her convocation from Howard Law School would be in May 2016. No evidence from her law school was presented to confirm this. A letter from Mr. Alabi's step-daughter (whom he also intended to visit in the US) was addressed from a medical school in St. Kitts in the Caribbean. On further inspection this medical school is based out of New York although no confirmation from this university was provided either. Mr. Alabi did not provide supporting documentation from the US consulate or US immigration to satisfy the officer of this claim.

[12] Mr. Alabi indicated he owns and operates a business in Canada but did not satisfy the officer as to how his absence from Canada would impact the business. The officer was equally unsatisfied as to how his absence would impact any community organizations that he had been a member of or supported. Overall, the officer was not satisfied that there were sufficient reasons to justify the issuance of a TRP and Mr. Alabi's application was correspondingly refused.

III. Standard of Review

[13] The applicable standard of review to the issue in this case is that of reasonableness and the decision must fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[14] Mr. Alabi submits that the officer breached his duty to give reasons because he did not mention the important factors that were clearly in his immigration record (*Turner v Canada (Attorney General)*, 2012 FCA 159 at paras 40-42; *Via Rail Canada Inc v National Transportation Agency*, [2001] 2 FC 25 at para 22). However, the Respondent counters that the granting of a TRP is exceptional and the reasons, though succinct, allow Mr. Alabi to understand why the TRP was refused and responds directly to his “scant” submissions and evidence.

[15] The Supreme Court of Canada, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], established that the inadequacy of reasons is not a stand-alone basis for setting aside a decision. Rather, the reasons should be examined in the context of whether the outcome of the decision is reasonable. Reasons do not need to include every argument, provision, or case in order to be found reasonable and valid. Simply put, the Court must be able to understand from the reasons why the decision was made and whether the result meets the *Dunsmuir*, above, criteria.

IV. Issue

[16] The issue to be determined is whether this decision is reasonable.

V. Analysis

[17] The concern in this case is that the officer did not consider all of the major factors at issue such as the Applicant's wish for him and his wife of sixteen years to be united as well as to see his children. Furthermore, no consideration is given to the materials contained in Mr. Alabi's outstanding H&C and rehabilitation applications. The officer came to his determination within a very short time period relying solely on the very narrow submissions presented by Mr. Alabi as a self-represented applicant. Given that the TRP application before the Court now was as a result of a re-determination after the Federal Court sent it back, I would expect the reasons this time to indicate that Mr. Alabi's entire factual situation was considered.

[18] As noted by the Respondent, the onus is on Mr. Alabi to present compelling evidence as to why a TRP should be granted, even if he is inadmissible. The Respondent submits that the officer must assess whether there are "compelling reasons" for Mr. Alabi to enter Canada; if the officer finds that is not the case, he is not required to continue the assessment (*Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22).

[19] Mr. Alabi quite reasonably did not believe he needed to resubmit in detail all of the information contained in his other two applications as to why he wants to return to Canada. All of his immigration matters are about him and he never considered that one department did not

share all his information with the officer that was making the decision from another department. I recognize that there may be different departments or officers analyzing Mr. Alabi's H&C, rehabilitation and TRP applications. However, given that the TRP application was sent back for re-determination, I question why only a portion of the information regarding Mr. Alabi's immigration proceedings in CIC's system such as dates and immigration history was used by the officer and yet the rest ignored.

[20] The Respondent filed an affidavit from CIC's Case Processing Centre which gave a detailed description of Mr. Alabi's long immigration history. The officer assessing the TRP application does not have to list every piece of history in their reasons, but I find it was unreasonable for the officer to ignore this information in its entirety. I would expect at the very least that the sixteen year relationship with his wife, and the outstanding eight year old H&C application, would be major factors to be considered.

[21] All that the officer considered was the contents of Mr. Alabi's brief application which only referred to the new events that were coming up in the future. I agree with the Respondent that the onus is on Mr. Alabi to present compelling reasons; however, given these unique facts, it is unreasonable to think that Mr. Alabi would have thought to send a copy of his H&C and rehabilitation applications with his TRP application. The officer's determination was done in complete isolation of the actual situation of Mr. Alabi, after being directed by the Federal Court to re-determine the matter.

[22] Mr. Alabi says the officer was selective in what evidence it used and what it dismissed and I agree. Justice Lemieux, when dealing with a negative TRP case, said it best in *Rudder v Canada (Minister of Citizenship and Immigration)*, 2009 FC 689 at para 33 [*Rudder*]: “Another way of putting it, the officer’s error is the failure to take into account relevant factors in the exercise of his/her discretion.”

[23] Reliance on other applications would not normally constitute grounds for review although given the ongoing relationship between Mr. Alabi and CIC, the fact he was self-represented, and the fact this was a decision sent back for redetermination from the Federal Court, CIC should have included a review of all major factors that weigh both for and against Mr. Alabi. This is unique to these facts and of course I am not suggesting that is the case in other TRP applications.

[24] Some of the fault for this administrative breakdown belongs to Mr. Alabi as his submissions and evidence are sparse. However, the totality of his application was not sparse given his lengthy background with CIC which was all before what he saw as the decision maker. This is an exceptional circumstance and these findings will be distinguishable because of the distinctiveness of the situation.

[25] I note that one of the reasons Mr. Alabi applied for the TRP was the May 2016 convocation of his daughter. That date has since passed. Therefore in sending this back for re-determination, Mr. Alabi should be allowed to make new submissions.

[26] I wish to be very clear that I am in no way indicating that a TRP should be granted as that is for the decision maker to decide after the Applicant has had an opportunity to file more evidence or at least update the application.

[27] As a final note, Mr. Alabi argued that I should issue a directed verdict by ordering CIC to issue him a TRP. He relies on *Rudder*, above, where Justice Lemieux granted such declaration and *Singh v Canada (Citizenship and Immigration)*, 2010 FC 757 [*Singh*]. In *Rudder*, Justice Lemieux found that the only reasonable outcome the officer could reach on re-determination was the granting of a TRP. This case is distinguishable as it is open to another officer to refuse the TRP once the merits of the application are given full consideration. This case is also distinguishable from *Singh*, above, in which the decision was not rendered for 14 years because CIC had lost the applicant's passport. In this case, there has been an eight year delay which is long but not of a duration such as 14 years in *Rudder* and the delay is not a CIC induced error. These facts do not justify a directed verdict or mandamus. I find that an order for re-determination with the possibility for Mr. Alabi to file further evidence is a sufficient remedy.

[28] Reasonableness requires that the decision must exhibit justification, transparency and intelligibility within the decision making process and also the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir; Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12) and for the reasons stated herein, I find that the officer's decision is not reasonable. As such, I am sending it back for re-determination and will allow Mr. Alabi to file further evidence and submissions (hopefully utilizing counsel to do so).

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is sent back to be re-determined by a different officer;
2. The Applicant can file new evidence and/or written submissions. Any fees for this re-determination will be waived;
3. No question is certified;
4. No costs are ordered.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-343-16

STYLE OF CAUSE: AYODEJI AKANMU ALABI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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DATE OF HEARING: NOVEMBER 15, 2016

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APPEARANCES:

Mr. Rocco Galati FOR THE APPLICANT

Ms. Melissa Mathieu FOR THE RESPONDENT

SOLICITORS OF RECORD:

ROCCO GALATI LAW FIRM FOR THE APPLICANT
PROFESSIONAL CORPORATION
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario