

Federal Court



Cour fédérale

**Date: 20170509**

**Docket: IMM-3660-16**

**Citation: 2017 FC 466**

**Ottawa, Ontario, May 9, 2017**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**AADIL MAQBUL SAJAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Aadil Maqbul Sajjan (the “Applicant”) seeks judicial review of the decision of a Visa Office (the “Officer”) denying his application for restoration of a visitor’s visa.

[2] The Applicant, a citizen of Tanzania, claims that he arrived in Canada on September 8, 2015, in possession of a visitor’s visa issued by the Government of Canada. He submitted an

application for a study permit in March, 2016; that application was refused by letter dated April 1, 2016.

[3] The Applicant's request for restoration of his visitor's visa was refused by letter dated August 16, 2016, on the grounds that he had not provided evidence of entry into Canada on September 8, 2015.

[4] The Applicant filed an affidavit in support of this application for judicial review in which he deposed as follows: "Included in my application for a restoration and a visitor's visa was proof that I had received a visitor's visa on September 8, 2015 when I entered Canada."

[5] Attached as an exhibit to his affidavit are copies of pages from his passport showing various stamps, including an entry stamp for Pearson International Airport on September 8, 2015.

[6] The Minister of Citizenship and Immigration (the "Respondent") filed the affidavit of the Officer in response. At paragraph 4 of the affidavit, the Officer deposed as follows:

The Applicant failed to provide the relevant page(s) from his passport which established proof of entry into Canada in September 2015 as alleged. Applicants seeking restoration of status are required to submit copies of passport pages clearly showing, among other things, the stamp made by Canadian authorities on their most recent entry into Canada. The Applicant, however, provided a copy of passport pages showing his (most recent) entry into Canada dated April 2014. Attached hereto and marked as Exhibit "A" is a copy of the only Canadian entry included in the Applicant's application for restoration.

[7] The dispositive question arising in this application is whether the Officer committed a reviewable error.

[8] The Applicant argues that the Officer committed a breach of procedural fairness by failing to give him the opportunity to answer any concerns about the documents he had submitted in support of his application for restoration of his visitor's visa. He also submits that the Officer erred by failing to restore that visa.

[9] For his part, the Respondent argues that the Applicant did not meet his onus to provide the necessary documentation and that there is no obligation upon the Officer to seek further information. He submits that the Applicant did not provide a copy of his passport showing the entry stamp of September 8, 2015.

[10] Any issue of procedural fairness arising in this application is reviewable on the standard of correctness; see the decision *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339. The Officer's assessment of the evidence is reviewable on the standard of reasonableness; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[11] According to the decision in *Dunsmuir, supra* at paragraph 47, the "reasonableness" standard requires that a decision be intelligible, transparent and justifiable, and fall within a range of possible, acceptable outcomes.

[12] In this case, each party has filed an affidavit. Neither party cross-examined the deponent of the opposing party. The Certified Tribunal Record does not contain a copy of the Applicant's passport showing a stamp for entry into Canada on September 8, 2015.

[13] The situation then is one of competing claims. The Applicant says that he submitted copies of his passport showing the September 8, 2015 stamp; the Officer says the most recent visible entry stamp was for April 2014.

[14] There is no presumption of truth in favour of the Respondent's deponent. Sworn affidavits filed in an application for judicial review are presumed true unless and until the contrary is shown; see the decision in *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (F.C.A.) at paragraph 5.

[15] In his affidavit, as quoted above, the Applicant does not specify exactly what he submitted with his application to restore his visa. The Certified Tribunal Record does not contain the copy of the passport page that is attached to the affidavit he filed in support of this application for judicial review.

[16] The Applicant bears the burden of submitting the material necessary for obtaining the benefit sought; see subsection 11(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[17] I see no breach of procedural fairness resulting from the fact that the Officer did not request clarification or further information from the Applicant. The Applicant was responsible for submitting the relevant and necessary information. In light of the evidence before the Officer, the negative decision meets the applicable standard of reasonableness.

[18] In the result, the application for judicial review is dismissed. There is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification arising.

"E. Heneghan"

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Judge

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

**DOCKET:** IMM-3660-16

**STYLE OF CAUSE:** AADIL MAQBUL SAJAN v MCI

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** MARCH 29, 2017

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** MAY 9, 2017

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Ms Neeta Logsetty

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