Federal Court  Cour fédérale

Date: 20171023

Docket: IMM-1240-17

Citation: 2017 FC 944

Ottawa, Ontario, October 23, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ISLAMIAT OLAWUNMI RAJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant asks the Court to set aside a decision of the Immigration Appeal Division that found that her son, Damilola Omoloro Raji [Damilola], did not meet the definition of a "dependent child" under paragraph 117(1)(b) of the *Immigration and Refugee Protection Regulations* [the Regulations] SOR/2002-227.

[2] The Applicant has four children. She came to Canada in May 2000 with her youngest son, Malik Ajibola Raji, and made a refugee claim. It was denied. On September 27, 2007, she submitted an application for permanent resident status under the spouse or common-law partner in Canada class.

[3] On January 29, 2010, Citizenship and Immigration Canada [CIC] sent the Applicant a letter stating that her common-law partner was not eligible to sponsor her due to his receipt of social assistance for a reason other than disability. The Applicant's spouse explained the reasons he was on social assistance and sought a humanitarian and compassionate [H&C] exemption from the requirements of the legislation. On September 19, 2012, CIC granted the Applicant an exemption from certain legislative requirements, and allowed her application for permanent residence to be processed from within Canada.

[4] On September 11, 2015, the Applicant and Malik Ajibola Raji were granted permanent residence status. Her two children in Ghana, including Damilola, who were named in the application, were not granted status.

[5] On September 22, 2015, the Applicant attended the constituency office of her local Member of Parliament to discuss Damilola. The office called CIC and was told that Damilola was not listed as an accompanying dependant and this was the reason he had not been granted permanent resident status. The Applicant informed the CIC officer that she had included all her children as accompanying dependents on all her application. The CIC officer suggested that as their record did not show Damilola as an accompany dependant, the Applicant should make

another application, as she was now a permanent resident. She did so, and the application was received on November 30, 2016.

[6] An officer at the High Commission of Canada, Accra, refused to issue a permanent resident visa to Damilola because he did not meet the definition of a "dependent child" under the Regulations. The Immigration Appeal Division dismissed an appeal from that decision. The Member noted that on August 1, 2014, the definition of "dependent child" in the Regulations was amended and dependent children must now be under the age of 19. The Member found that as Damilola, whose date of birth is December 26, 1995, was not less than 19 years of age at the time the Applicant sponsored him, he did not meet the definition of dependent child and could not be sponsored by her.

[7] There is no dispute that at the date that the Applicant became a permanent resident, Damilola was 19 years of age and thus ineligible to be sponsored as a dependent child.

[8] At the hearing of this application, it became obvious to all that it was critical to determine whether the Applicant had listed Damilola on the September 27, 2007, sponsorship application, as an accompanying minor as she attests. The Respondent agreed to see if that application could be found, and to provide a copy to the Court and to the Applicant.

[9] The Court and the Applicant has now been provided with that application. Regrettably for the Applicant, it clearly states that Damilola is not an accompanying minor. As such, there is no serious question whether the initial refusal to grant his status was validly made. Further, the

decision under review, based on the subsequent application is clearly reasonable, as at that date Damilola was no longer a dependent child, as defined in the Regulations. Accordingly, this application must be dismissed.

[10] There is one avenue open to the Applicant to sponsor Damilola, and it was suggested by counsel for the Respondent at paragraph 21 of her memorandum:

> [H]ad the Applicant chosen to do so, she could have requested humanitarian and compassionate relief from the Visa Officer who made the initial determination in this matter. That option remains open to the Applicant should she wish to re-apply to sponsor her son. [emphasis added]

[11] No question for certification arises on these facts

JUDGMENT

THIS COURT'S JUDGMENT IS that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1240-17
STYLE OF CAUSE:	ISLAMIAT OLAWUNMI RAJI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 4, 2017
JUDGMENT AND REASONS:	ZINN J.
DATED:	OCTOBER 23, 2017

APPEARANCES:

Islamiat Olawunmi Raji	FOR THE APPLICANT (ON HER OWN BEHALF)
Judy Michaely	FOR THE RESPONDENT

SOLICITORS OF RECORD:

- Nil -	SELF-REPRESENTED APPLICANT
Attorney General of Canada Department of Justice Toronto, Ontario	FOR THE RESPONDENT