

Federal Court



Cour fédérale

Date: 20210826

Docket: IMM-1827-20

Citation: 2021 FC 886

Ottawa, Ontario, August 26, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

CHARLES ADEWALE OBAFEMI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Oral judgment delivered by videoconference on August 25, 2021)

[1] The decision at issue on this application for judicial review [a decision of a visa officer with the Canadian High Commission in Nairobi, Kenya dated November 28, 2019] was so clearly made in error that it is surprising that the respondent, Attorney General of Canada, required a hearing before this Court.

[2] The applicant, Mr. Charles Obafemi applied for a work permit and visitor visa from his home in Lagos, Nigeria on September 13, 2019, seeking to join his wife in Canada, where she has status as a protected person.

[3] On November 13, 2019, a visa officer with the Canadian High Commission in Nairobi, Kenya sent Mr. Obafemi a procedural fairness letter, stating they had reasonable grounds to believe Mr. Obafemi had not answered truthfully all questions put to him. In particular, the letter states that Mr. Obafemi answered “No” to question 2(b) of the application form, IMM 5257, which states “Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country?” The letter suggested that it had been found Mr. Obafemi did not disclose a visa refusal in another country.

[4] As counsel for the Attorney General recognized at the hearing, it is clear from the record that an error was made by the visa officer. Mr. Obafemi’s application for a work permit was made on form IMM 1295 with, as a schedule on form 5257, an application for temporary residence. The form IMM 5257 does not include the question “Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?” However, the form IMM 1295 includes the question, and Mr. Obafemi responded to the question with the answer “Yes,” together with information.

[5] Mr. Obafemi’s counsel explained this in a letter to the Nairobi High Commission dated November 18, 2019, responding to the procedural fairness letter and sent by email to the address given in the procedural fairness letter. However, this letter does not appear to have been received

by the officer who ultimately reviewed the application. That officer, who was not the same individual who sent the procedural fairness letter judging by the notes in the Global Case Management System (GCMS), rejected the application on November 28, 2019 and found Mr. Obafemi inadmissible for misrepresentation. The officer's GCMS notes read as follows:

Application reviewed. PA was sent a PFL to address the concerns of undisclosed information in the statutory questions. To date there is no reply received. Based on the application, I am satisfied that the applicant failed to provide complete and truthful information. This information is material to the assessment of the application; therefore it could have led to an error in the administration of the act. The PA was provided with an opportunity to address this concern and has failed to provide any information which overcomes said concern. Therefore, based on the information on file, I am satisfied that the PA is inadmissible under A40, misrepresentation and is inadmissible to Canada for a period of 5 years as a result. Refused.

[6] It is clear from the certified tribunal record that Mr. Obafemi did not make the misrepresentation of which he was accused. Nor did he fail to provide information in response to the procedural fairness letter. The refusal of his application and the inadmissibility finding must be overturned as unreasonable and unfair, and Mr. Obafemi's application returned for redetermination. It is unreasonable to make a finding so clearly at odds with the factual evidence, and unfair to have done so without giving consideration to Mr. Obafemi's response to the procedural fairness letter.

[7] What makes this situation all the more remarkable and dispiriting is that it is now over 21 months after the rejection of Mr. Obafemi's application on clearly incorrect grounds. He tried to draw the mistake to the attention of the visa office, sending letters on December 1 and December 5, 2019, and January 17, 2020. He received no response from the High Commission,

so was required to start this application for leave and judicial review, which he did in March 2020.

[8] The application for judicial review identified Mr. Obafemi's November 18, 2019 response to the procedural fairness letter. The applicant's affidavit and memorandum, filed in July 2020, provided a copy of the response, a copy of the application showing the "Yes" answer to the question about prior refusals, and a copy of the receipt confirmation email from the Nairobi High Commission. Nonetheless, the Minister, represented by the Department of Justice, responded to the application not with any inquiries into the apparent error, but with reliance on the facts in the reasons and the procedural fairness letter, with an assertion that Mr. Obafemi failed to answer the question about prior refusals truthfully, and—despite the receipt confirmation email being in the record—with an assertion that Mr. Obafemi did not demonstrate that the letter was transmitted to the visa officer. Counsel was unable to explain this other than to offer apologies to the Court.

[9] Even after the certified tribunal record was produced by the Nairobi High Commission in April 2021, four months ago, confirming that the response to the procedural fairness letter was in the records of the High Commission and that the application did not have the allegedly false statement on it, the Minister did not agree to an order setting aside the decision or agree to having Mr. Obafemi's visa application reconsidered. The failure to do so is inexplicable. It has left Mr. Obafemi in a state of uncertainty about his ability to join his wife in Canada for far too long.

[10] The application is therefore allowed and Mr. Obafemi's visa application returned for redetermination by an officer who has not been involved in the processing of his file. Given the entirely unnecessary delay that has occurred to date, I will order that Mr. Obafemi's application be processed on a high priority basis and that a decision, or further procedural fairness letter should there be any other issues arising, be issued within three weeks of the date of this judgment.

[11] I also consider the foregoing to be special reasons within the meaning of Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. The Minister notes that the applicant did not request costs and that no settlement discussions occurred in which the possibility of settling the matter might have arisen. In my view, however, given the circumstances, the special reasons test of Rule 22 is met and costs should be awarded notwithstanding that they were not requested by the applicant. However, I will take into account the lack of request and settlement discussions in fixing the quantum. I fix costs of this application at \$2,500.

[12] As will be clear from the foregoing, there is no question for certification.

JUDGMENT IN IMM-1827-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. Mr. Obafemi's visa application is returned for redetermination by a different officer. A decision or further procedural fairness letter shall be issued within three weeks of the date of this judgment.
2. Costs are fixed at \$2,500, payable to the applicant.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1827-20

STYLE OF CAUSE: CHARLES ADEWALE OBAFEMI v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 25, 2021

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: AUGUST 26, 2021

APPEARANCES:

Richard Odeleye FOR THE APPLICANT

Suzanne M. Bruce FOR THE RESPONDENT

SOLICITORS OF RECORD:

Richard Odeleye FOR THE APPLICANT
Barrister and Solicitor
North York, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario