

Federal Court



Cour fédérale

**Date: 20220209**

**Docket: IMM-6825-19**

**Citation: 2022 FC 167**

**Ottawa, Ontario, February 9, 2022**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**ADEBAYO OLAWALE ADEYEMI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision of a Senior Immigration Officer of Immigration, Refugees, and Citizenship Canada [the “Officer”], dated October 16, 2019, refusing the Applicant’s application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [the “Decision”], pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the “Act”].

## II. Background

[2] The Applicant, Adebayo Olawale Adeyemi, is a citizen of Nigeria. The Applicant arrived in Canada on October 14, 2011 and submitted a refugee claim. The Applicant's refugee claim was denied on May 2, 2012. An appeal of this denial was dismissed on May 18, 2012.

[3] On November 20, 2017, the Applicant filed an H&C Application [the "Application"], seeking an exemption from the requirements of the *Act* to facilitate the processing of his Application for permanent residence from within Canada. The Applicant sought H&C relief due to the loss of his vision on February 24, 2016 as a result of kidney failure secondary to severe hypertension.

[4] The Applicant has been receiving care in Canada since 2016 that he claims is not available in Nigeria. The Applicant also claims that there is little to no accessibility and limited or non-existent social support due to stigma for people living with disability in Nigeria.

[5] On March 1, 2018, the Applicant was issued with a Direction to Report for Removal from Canada scheduled to take place on March 15, 2018. On March 8, 2018, the Applicant submitted an application to defer his removal from Canada, which was refused the next day. On March 13, 2018, the Applicant commenced an Application for Leave and Judicial Review challenging the refusal of his deferral request. On March 15, 2018, the Minister of Citizenship and Immigration [the "Minister" or the "Respondent"] agreed to defer the Applicant's removal until the determination of this Application.

[6] The Officer refused the Applicant's H&C Application in the Decision. The Applicant seeks an Order setting aside the Officer's Decision and returning the matter to a different immigration officer for either reconsideration or with a direction granting the Application.

### III. Decision Under Review

[7] The Officer outlined the factual background and evidence provided by the Applicant, including:

- The Applicant arrived in Canada on October 14, 2011 and made a refugee claim, which was denied on May 2, 2012. An appeal was also dismissed.
- The Applicant lost his vision in both eyes on February 24, 2016 due to kidney failure secondary to severe hypertension. Medical records and a Canadian National Institute for the Blind identification card were provided in support of this claim.
- The Applicant has a Bachelor of Science degree and a Diploma in Website Design and Development.
- The Applicant worked in IT in Nigeria, including managing his own business until he left for Canada.
- The Applicant has an ex-wife and three children in Nigeria, who he maintains an active relationship with and has supported emotionally and financially since his arrival in Canada.

- The Applicant claims that he would suffer if he were to return to Nigeria for the purposes of applying for permanent residence because his income in Canada is a significant source of support for his three children that reside in Nigeria. Letters from two of his children and receipts of money transfers up to July 2017 were provided.
- The Applicant's ex-wife in Canada ended their marriage after three years when he fell ill and lost his vision. This ex-wife also withdrew an application to sponsor the Applicant for permanent residence, which the Applicant claims would have been granted. Marriage and divorce certificates were provided.
- The Applicant has received support from Vision Loss Rehabilitation Ontario [VLR]. He has completed training in Independent Living Skills and these skills allow him to perform activities of daily life safely and independently.
- The Applicant has been unemployed since his loss of vision in 2016 and is currently receiving payments from Ontario Disability Support Program.
- The Applicant provided articles outlining the treatment of disabled people in Nigeria. The Applicant claims that Nigeria does not provide assistance to disabled people.

[8] The Officer was not satisfied that the Applicant had demonstrated that his level of establishment in Canada was to such a degree that he would experience hardship in having to apply for permanent residence from Nigeria. The Officer noted the Applicant's health issues but

was not satisfied that the Applicant had a reasonable expectation that he would be allowed to remain in Canada permanently, recognizing that the Applicant was on an enforceable removal order since his refugee claim was denied in 2012 and there should have been an expectation that he would be removed to Nigeria. Therefore, the Officer did not grant significant weight to the Applicant's length of time or establishment in Canada.

[9] In addition, the Officer found that there was little evidence before them to indicate that the Applicant would be unable to re-establish himself in Nigeria. While the Officer acknowledged that there might be some difficulty in re-adapting to Nigeria, there was insufficient evidence that the Applicant's family were unwilling or unable to assist him. The Officer noted the Applicant's completion of Independent Living Skills training and that the Applicant has experience with the culture in Nigeria.

[10] The Officer found that there was insufficient evidence to support:

- i. The Applicant's claim that Nigeria does not provide assistance to disabled people;
- ii. That the Applicant was unable to travel;
- iii. That the Applicant would be unable to maintain his relationships and support from VLR via modern technology; or
- iv. That the best interests of the Applicant's children will be jeopardized by the removal of the Applicant to Nigeria.

[11] In denying the Applicant's Application, the Officer indicated that they based the Decision on a cumulative assessment of the evidence and a global assessment of all the relevant factors, including the Applicant's personal circumstances, establishment, employment, best interests of the children, and medical condition.

IV. Issues

[12] The issue is whether the Officer's Decision was reasonable.

V. Standard of Review

[13] The standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

VI. Analysis

[14] Subsection 25(1) of the *Act* provides the Minister the discretionary authority to exempt foreign nationals from the requirements of the *Act* if such an exemption is justified on the basis of H&C considerations. The Applicant bears the onus of establishing that H&C relief is warranted.

[15] An officer must consider and weigh all relevant factors in an H&C application. Although an officer may be guided by a liberal and compassionate approach, subsection 25(1) was not intended to be an alternative to the immigration scheme [*Kanhasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61[Kanhasamy] at paragraph 23].

[16] The application of the “unusual and undeserved or disproportionate hardship” standard is supported by a non-exhaustive list of factors, such as establishment in Canada, ties to Canada, the best interests of any children affected by their application, factors in their country of origin, health considerations, consequences of the separation of relatives, and any other relevant factors. Relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances and should not fetter the immigration officer’s discretion to consider all relevant factors.

[17] A decision under subsection 25(1) will be found unreasonable if the interests of children affected by the decision are not sufficiently considered [*Kanthasamy* at paragraph 39].

[18] Absent H&C relief, the Applicant would be required to apply for permanent residence in Canada from Nigeria.

[19] The Applicant argues that the Officer’s Decision failed to consider or ignored evidence:

- i. The Officer erred in finding that the Applicant had not provided sufficient or relevant supporting evidence in regards to his claim that Nigeria does not provide assistance to people with disabilities or that he would be unable to re-establish himself in Nigeria.
- ii. The Officer erred in finding that the Applicant had immediate family to assist and support him, if required, when re-adapting to life in Nigeria.

- iii. The Officer over-relied on the training provided by the VLR and ignored or failed to consider the Applicant's evidence that similar facilities and support services were not available in Nigeria.

[20] Furthermore, the Applicant argues that the Officer took a narrow approach when analyzing the best interest of the Applicant's children.

[21] The Respondent's position is that the Decision is reasonable:

- i. The Officer reasonably awarded low weight to the Applicant's establishment in Canada. The Applicant has been unemployed since 2016 and has no family in Canada.
- ii. The Officer's conclusion regarding hardship was reasonable. The Officer accepted that the Applicant may face some difficulties in re-adapting to life in Nigeria; however, the skills he developed during his Independent Living Skills training are transferable to life in Nigeria.
- iii. The Officer reasonably determined that the best interest of the Applicant's children did not require an exemption. The Applicant's children live in Nigeria.

[22] The Officer's findings regarding the Applicant's lack of establishment in Canada are reasonable. The Applicant has been in Canada since 2011, was employed in Canada until 2016 (when he lost his vision and fell into a coma), and was married from 2013 to 2016. The



Applicant has established care and support with the VLR here in Canada. The Officer's finding that the Applicant could not have reasonably expected to stay in Canada permanently, having failed in his refugee claim in 2012, is reasonable.

[23] As well, the Officer's consideration of the best interests of the Applicant's three children is reasonable. The Applicant stated that his children are dependent on his financial support that he is able to provide by being in Canada. However, there is no evidence before the Court that he has been able to provide financial support since 2017. The Officer also found that the best interests of the Applicant's children would be better served with their father in Nigeria. In addition, the Officer found that the Applicant's children can support him as he adapts to life in Nigeria without his vision. The Applicant's Independent Living Skills training to cope with his disability transcends only being relevant in Canada.

[24] Moreover, the Officer's finding that there was insufficient evidence to support the Applicant's claim that Nigeria does not provide support to disabled people is reasonable. While the Applicant provided several resources outlining the lack of support provided in Nigeria, as well as the stigma and discrimination that persons with disabilities face in Nigeria, that evidence failed to deal with a disability of visual impairment, and two of the three references were not current, being outdated as published in October 2014 and November 2013. This Court has repeatedly decided that dated documentary evidence is not relevant or sufficient to support an Applicant's position, unless that evidence has been updated or shown to be relevant to current country conditions.

[25] While I am sympathetic to the Applicant's challenges in returning to Nigeria, the Officer's Decision is reasonable.

**JUDGMENT in IMM-6825-19**

**THIS COURT'S JUDGMENT is that**

1. This Application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-6825-19

**STYLE OF CAUSE:** ADEBAYO OLAWALE ADEYEMI v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 7, 2022

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** FEBRUARY 9, 2022

**APPEARANCES:**

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