Federal Court  Cour fédérale

Date: 20230512

Docket: IMM-3359-22

Citation: 2023 FC 679

Ottawa, Ontario, May 12, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

DOUGLAS ELUOMUNO CHINWUBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Douglas Eluomuno Chinwuba [Applicant] seeks judicial review of an immigration officer's [Officer] January 13, 2022 decision [Decision] refusing his application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Officer was not

satisfied that the Applicant's personal circumstances, including his hardship in Nigeria, best interests of his children [BIOC], and establishment in Canada warranted an exemption.

[2] The application for judicial review is allowed. The Officer's assessment of the Applicant's establishment in Canada was unreasonable.

II. Background

[3] The Applicant is a 56-year-old citizen of Nigeria. He has five children, aged 19 to 26 at the time of the Decision. Four of the children live in Canada on various study permits, while the fifth child lives in Nigeria with the Applicant's spouse.

[4] On July 21, 2015, the Applicant was issued a visitor visa. He visited Canada from June 14, 2016 to September 29, 2016 to see his son.

[5] In January 2017, the Applicant returned to Canada. He applied, and was admitted to, Humber College. In May 2017, the Applicant's application for a study permit was denied.

[6] In June 2017, the Applicant initiated a refugee claim, alleging a fear of persecution by the Directorate of State Security [DSS] and other security agents due to his perceived political opinion as a supporter and financier of the Indigenous People of Biafra [IPOB]. On October 24, 2017, the Refugee Protection Division [RPD] rejected his claim, and in May 2018, the Refugee Appeal Division dismissed the Applicant's appeal of the RPD's decision.

[7] On January 11, 2021, the Applicant's first H&C application was refused. On April 2021, the Applicant initiated a Pre-Removal Risk Assessment [PRRA] application. Shortly thereafter, the Applicant submitted his second H&C application, which is the subject of this application for judicial review.

[8] Prior to his arrival in Canada, the Applicant was the Chief Executive Officer of a printing and packaging company in Nigeria. Following his arrival in Canada, the Applicant secured multiple successive work permits. Since March 18, 2021, the Applicant has been employed as a Personal Support Worker with Dorvict Home & Health Care Services. As a Christian, the Applicant was also involved with The Redeemed Evangelical Mission in both Nigeria and Canada.

III. The Decision

[9] The Officer was not satisfied that the Applicant's personal circumstances, including his hardship in Nigeria, BIOC, and establishment in Canada warranted an exemption on H&C grounds. The Officer was also the decision-maker for the Applicant's PRRA application.

A. *Hardships and Challenges in Nigeria*

[10] Overall, the Officer gave little favourable weight to this factor. The Officer first noted that the Applicant's allegations were largely examined by the RPD and determined to lack credibility. While the Officer acknowledged that different legal tests apply to the Applicant's H&C application and his claim for refugee protection, the Officer also noted that the facts for

each are established on a balance of probabilities. The Officer found that reiterating these allegations was insufficient to demonstrate that the Applicant faced any probable hardships in Nigeria. Therefore, the Officer gave much weight to the RPD's determinative credibility findings.

[11] Turning to the Applicant's new evidence, the Officer reiterated their PRRA conclusion that the affidavits were insufficient to challenge the RPD's credibility findings. Accordingly, the Officer gave no weight to the Applicant's allegations of harm from authorities, as the Officer was not satisfied that these matters were factually established on a balance of probabilities. Similarly, the Officer reiterated their PRRA conclusion that the new country condition evidence was insufficient to establish a specific personal and forward-looking risk. However, the Officer gave some favourable weight to the hardship faced by the Applicant in relocating to Nigeria in light of the human rights and general safety circumstances.

[12] The Officer then considered the Applicant's employment prospects in Nigeria. The Officer noted that the Applicant provided no evidence to support his assertions that his printing and packaging business collapsed and that his clients were threatening to sue him for damages, nor any evidence that the economic situation in Nigeria is especially poor and that someone with his profile would face challenges in securing employment. The Officer also noted that the Applicant did not submit any evidence that his large extended family could not support his reintegration, even for a short period of time.

B. *BIOC*

[13] The Officer considered the best interests of the Applicant's children, particularly as it concerned his two youngest children, aged 21 and 19, who live in Canada and Nigeria, respectively. Overall, the Officer gave little favourable weight to this factor.

[14] The Officer acknowledged the letters of support from his children that spoke to the negative impact of the Applicant's removal on their mental health. However, the Officer noted that the Applicant did not submit any evidence to confirm that his children were undergoing mental health challenges or treatment. The Officer also raised concerns as to whether the Applicant had an intimate relationship with his children that would cause a significant amount of mental distress, given the formality of the letters and lack of photographs.

[15] As for financial hardship, the Officer was not satisfied that the Applicant financially supported his children on a regular basis. The Officer was also not satisfied that the Applicant's return to Nigeria would result in anything more than a temporary interruption in his support, given the lack of evidence that his business in Nigeria had failed or that he would have trouble securing other employment.

C. *Establishment*

[16] Overall, the Officer gave moderate favourable weight to the Applicant's establishment in Canada, though it did not rise to a significant level. The Officer acknowledged that the Applicant made a serious effort to integrate into Canadian society and form long-lasting relationships, particularly through his volunteering and community service, as illustrated by photographs and numerous letters of support from friends and colleagues. The Officer similarly found that the

Applicant demonstrated meaningful progress in his field of employment. The Officer noted that the Applicant advanced evidence of his current position as a Personal Support Worker as well as his various certificates and diplomas on subjects related to his field. His employment, together with his regular tax payments, led the Officer to conclude that the Applicant made efforts to establish himself financially.

[17] On the other hand, the Officer found that the Applicant's bank statements did not clarify his currently financial circumstances, particularly his savings. The Officer also noted that the Applicant did not provide any evidence of his relationship with, or financial support to his sister. Accordingly, the Officer was not satisfied that the Applicant was her primary caregiver. Lastly, the Officer concluded that the Applicant's duration in Canada was not especially pronounced in light of his age and the fact that he lived his entire life in Nigeria prior to his arrival in Canada, where his closest personal ties largely remain.

IV. Issues

[18] After considering the submissions of the parties, the issues for determination are:

1. Was the Decision reasonable?
    a. Did the Officer err in their assessment of hardship?
    b. Did the Officer err in their assessment of the best interest of the child?
    c. Did the Officer err in their assessment of establishment?
2. Was there a breach of procedural fairness?

[19] In my view, the determinative issue is the Officer's assessment of the Applicant's establishment in Canada.

V. Standard of Review

[20] Both parties submit that the standard of review for the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[21] A reasonableness review requires the Court to consider both the outcome of the decision and the underlying rationale to assess whether the decision, as a whole, bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 15, 99). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). This may include instances where the decision-maker has failed to account for the evidence before it (*Vavilov* at para 126). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within a range of acceptable outcomes, the decision will be reasonable (*Vavilov* at para 85-86).

[22] Issues of procedural fairness involve a standard of review akin to correctness *(Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 54 [*CP Railway*]; *Canada*

(Citizenship and Immigration) v Khosa, 2009 SCC 12 at para 43). The Court has no margin of appreciation or deference on questions of procedural fairness. Rather, when evaluating whether there has been a breach of procedural fairness, a reviewing court must determine if the procedure followed by the decision-maker was fair, having regard to all the circumstances (*CP Railway* at para 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 837-41).

VI. Analysis

A. *Was the Decision reasonable?*

[23] While the Applicant raised three issues concerning the reasonableness of the Decision, the determinative issue relates to Officer's assessment of the Applicant's establishment. Accordingly, it is unnecessary to assess the remaining issues.

(1) Did the Officer err in their assessment of their assessment of establishment?

(a) *Applicant's Position*

[24] Firstly, the Officer erred in stating that only three, rather than four, of the Applicant's children live in Canada. The record illustrates that three of the children share the same address as the Applicant.

[25] Secondly, the Officer erred in concluding that the Applicant's employment history was insufficient to warrant an exemption on H&C grounds. It was not enough for the Officer to gloss

over the Applicant's employment without considering the nature of his employment and how it relates to his establishment in Canada. The Officer ignored the fact that the Applicant risked his own health to provide direct patient care during the COVID-19 pandemic. Doing so renders the Decision unreasonable (*Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1 at paras 42-45 [*Mohammed*]).

[26] Lastly, the Officer ignored the Applicant's paystubs, tax assessment, credit card statements, bank statements, and credit score in concluding that the Applicant did not provide sufficient information to clarify his current financial circumstances.

(b) *Respondent's Position*

[27] The Applicant has failed to demonstrate that the Officer exercised their discretion unreasonably (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125). It is not for the Court to reweigh evidence.

[28] There is nothing to indicate that the Applicant sought special consideration for his COVID-19 related work (*Muti v Canada (Citizenship and Immigration)*, 2022 FC 1722 at para 8). Namely, there is no evidence that the Applicant asked the Minister to use their authority pursuant to section 25.2 of *IRPA* under the "Pathway Policy" for those working in the health care sector during the pandemic, nor did the Applicant cite his work as a Personal Support Worker as an exceptional factor to be considered in his H&C application. Further, *Mohammed* is distinguishable as the officer failed to consider the applicant's efforts during COVID-19 as part

of the establishment analysis. Here, the Officer acknowledged the Applicant's employment and weighed it in his favour.

[29] The Applicant has also failed to show any error with the Offer's assessment of the Applicant's financial circumstances. It was open for the Officer to find that the bank statements covering a three-month period provided an incomplete picture of the Applicant's financial situation. The Officer also gave some favourable weight to the Applicant's efforts to establish himself financially, as reflected in his gainful employment and tax assessments.

(c) *Conclusion*

[30] As stated above, the Officer erred in their assessment of the Applicant's establishment.

[31] I agree with the Applicant that the Officer erred in initially noting in the "Factors for Consideration" section of the Decision that only three of the Applicant's children live in Canada. However, this error is merely superficial (*Vavilov* at para 100). The Officer did not rely on this factor in their establishment analysis. Further, the Officer confirms in both the "Dependents and Other Family Members" section as well as the reasons for the Decision that four of his children reside in Canada.

[32] Nevertheless, I agree that the Officer's establishment analysis was not conducted in accordance with the Applicant's particular circumstances (*Uwaifo v Canada (Citizenship and Immigration)*, 2022 FC 679 at para 24 [*Uwaifo*]).

[33] Contrary to the Respondent's submissions, the Applicant provided a letter of employment, dated September 28, 2021, from Dorvict Home and Health Care Services confirming that the Applicant actively worked throughout the third wave of the COVID-19 pandemic. As of that date, the Applicant worked over 1000 hours to support individuals with disabilities in group homes. His responsibilities included supporting individuals with personal care and household tasks, assisting with mobility and transfers, ensuring safety, providing emotional support, and communicating with friends and family, among others.

[34] The Applicant's submissions before the Officer also provide:

> It is submitted that the Applicant is among the front-line workers who have been making a significant contribution during the COVID-19 pandemic, while being at risk of contracting COVID - In recognition of their selfless service to Canadians, the Government of Canada recently created a public policy to acknowledge their contribution and risk to their health during the pandemic by paving a pathway for refugee claimants and former refugee claimants toward permanent residency in Canada. According to the Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic (the "Pathway Policy"), the Minister used his authority under section 25.2 of the IRPA to justify granting permanent residence to individuals who meet specified eligibility criteria.

[35] The Applicant explained that he met all of the eligibility requirements under the Pathway Policy save for the requirement of having completed 120 hours of work between March 13, 2020 and August 14, 2020. The Applicant submitted that his "significant contribution should be similarly recognized by the Government of Canada as he would otherwise meet all of the specified eligibility criteria."

[36] Despite these submissions, the Officer did not address the Pathway Policy or the Applicant's contributions as a Personal Support Worker during the COVID-19 pandemic before dismissing his establishment as not "exceptional". I agree with Justice Go that "[t]he lack of analysis is particularly disconcerting…in light of the substantial evidence and submissions made by the [Applicant] in this respect" (*Uwaifo* at para 32). This is sufficient to render the Decision unreasonable.

[37] As a final note, I disagree with the Respondent that *Mohammed* is distinguishable based on the context in which the officer considered the applicant's work during the pandemic. Rather, Justice Ahmed took issue with the decision-maker's lack of responsiveness to her work (*Mohammed* at para 45). Accordingly, I find Justice Ahmed's commentary in *Mohammed* particularly fitting for the present matter:

> [42] As a health care aide, the Applicant risked her own health and safety to support health-compromised and aging individuals. She is applying the very skills she acquired in Canada over a decade ago at a time when they are desperately needed, while not knowing if she herself will be able to stay in Canada. To frame this commitment and these contributions as only a "moderately positive" factor in the Applicant's appeal is unintelligible.
>
> [43] The moral debt owed to immigrants who worked on the frontlines to help protect vulnerable people in Canada during the first waves of the COVID-19 pandemic cannot be understated. I do not find that the IAD gave this contribution the weight it deserved.

[38] Turning to the Applicant's final submission, I disagree that the Officer ignored the Applicant's financial information in concluding that the Applicant provided insufficient information to clarify his financial circumstances, particularly his evidence of savings. The Officer explicitly noted that the Applicant submitted bank statements from March 2021 to June

2021, finding that they provided an incomplete picture of the Applicant's financial situation. Nevertheless, the Officer gave positive weight to the Applicant's efforts to establish himself financially based on his gainful employment, as confirmed by his pay stubs, and his regular tax assessments.

[39] While the Officer did not explicitly reference the Applicant's credit card statements or credit score, it is trite law than an officer is presumed to have considered all the evidence presented and is not required to refer to each piece of evidence (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28 [*Solopova*]). It is only where evidence clearly points to the opposite conclusion that the Court may intervene (*Solopova* at para 28). This is not the case here. Credit statements do not reflect an individual's savings.

VII. Conclusion

[40] For the above reasons, the application for judicial review is allowed. The Decision was unreasonable due to the Officer's failure to assess the Applicant's establishment in light of his particular circumstances.

[41] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-3359-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The matter is remitted to another officer for re-determination.
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3359-22
STYLE OF CAUSE:	DOUGLAS ELUOMUNO CHINWUBA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 27, 2023
JUDGMENT AND REASONS:	FAVEL J.
DATED:	MAY 12, 2023

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