

Federal Court



Cour fédérale

Date: 20240509

Docket: IMM-1169-23

Citation: 2024 FC 719

Toronto, Ontario, May 9, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**HUMUL-HARI BOLANLE ABIOLA
OLATOKUNBO OMITOGUN
DANIEL OLUWADAMILOLA OLAYEMI
OMITOGUN
VICTOR OLUWAJOBA OLUWAJUWONLO
OMITOGUN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Humul-Hari Bolanle Abiola Olatokunbo Omitogun (the “Applicant”) and her sons Mr. Daniel Oluwadamilola Olayemi Omitogun and Mr. Victor Oluwajoba Oluwajuwonlo

Omitogun (collectively “the Applicants”) seek judicial review of the decisions of an officer (the “Officer”), refusing their applications for work permits and a study permit.

[2] The Minister of Citizenship and Immigration (the “Respondent”) objected to the inclusion of Mr. Daniel Oluwadamilola Olayemi Omitogun in the Applicant’s application for judicial review, on the grounds that he is no longer a minor child and should have filed a separate application for judicial review on his own behalf.

[3] In response, the Applicant advised that a study permit had recently been issued to Mr. Daniel Oluwadamilola Olayemi Omitogun and his interests need not be considered in the within application. The second son remains a minor and his interests can be considered within the application for judicial review filed by the Applicant.

[4] The Applicant is a British citizen. She is a lawyer. On July 10, 2022, she applied for an extension of her open work permit. In her application, she referred to an “active public policy or pilot program announced by IRCC”.

[5] The Officer refused the application on the ground that the Applicant failed to demonstrate her eligibility for an open work permit.

[6] The Applicant now argues that the decision is unreasonable because the Officer placed overwhelming weight on her failure to provide a Labour Market Impact Assessment and did not consider evidence from her previous applications.

[7] The Respondent objects to the inclusion of certain materials in the Applicant's affidavit filed in support of her application for judicial review. He argues that some exhibits, including her initial study permit that expired on July 31, 2020 and her open work permit that expired on July 8, 2021, were not before the Officer and should not be considered by the Court upon this application for judicial review. He also objects to the inclusion of "evidence" in the Reply.

[8] The Applicant argues that she has only included "background" information to assist the Court in understanding the issues relevant to the judicial review. She acknowledges that her affidavit includes information and exhibits relating to her immigration and academic history that were not part of the Certified Tribunal Record.

[9] Following the hearing of this application for judicial review, the Applicant was given the opportunity to address the decision of the Federal Court of Appeal in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)* (2012), 428 N.R. 297 (F.C.A.).

[10] The Applicant made post-hearing submissions and maintained her position that the exhibits complained of by the Respondent meet the general background exception described in *Access Copyright, supra*.

[11] The Respondent filed submissions in response to the post-hearing arguments filed by the Applicant. He argued that the exhibits in question do not fall within any of the three exceptions identified in *Access Copyright, supra*.

[12] I agree with the position advanced by the Respondent about the improper inclusion of materials by the Applicant, as attachments to her affidavit. Although some of these exhibits, for example her work permit, may be relevant, the fact remains that not all the exhibits were submitted together with her application for the open work permit.

[13] An applicant cannot, usually, supplement the evidentiary record after a decision has been made. I am not satisfied that the Applicant has shown that the “extra” materials fall within any of the exceptions described in *Access Copyright, supra*. Accordingly, the following exhibits will not be considered in disposing of this application for judicial review:

Exhibit A: the University of Alberta acceptance letter dated March 22, 2019;
Exhibit B: the Applicant’s initial study permit valid until July 31, 2020;
Exhibit C: the Letter of Explanation dated July 7, 2019;
Exhibit D: the University of Alberta Transcript dated June 24, 2021;
Exhibit E: the Applicant’s open work permit valid until July 8, 2021;
Exhibit K: The Applicant’s articling employment agreement dated September 7, 2021;
Exhibit M: The Applicant’s certificate of enrolment with the Law Society of Alberta dated October 14, 2022;

[14] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the merits of the Officer’s decision are to be reviewed on the standard of reasonableness.

[15] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov, supra*, at paragraph 99.

[16] The Applicant carries the burden of submitting the evidence to support the benefit that she seeks under the *Immigration and Refugee Protection Regulations*, SOR/2002-227, that is the open work permit. There is no onus on the Officer to search for evidence in the Applicant's previous applications for work and study permits.

[17] In my opinion, the decision meets the applicable legal standard of reasonableness – it is justified, transparent and intelligible.

[18] There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-1169-23

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

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1169-23

STYLE OF CAUSE: HUMUL-HARI BOLANLE ABIOLA OLATOKUNBO
OMITOGUN ET AL. v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: MARCH 11, 2024

ADDITIONAL WRITTEN SUBMISSIONS ON
APRIL 9, 2024, APRIL 23, 2024, and APRIL 30, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MAY 9, 2024

APPEARANCES:

Humul-Hari Omitogun

FOR THE APPLICANTS
(ON HER OWN BEHALF)

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FOR THE RESPONDENT