

Federal Court



Cour fédérale

Date: 20240604

Docket: IMM-2289-22

Citation: 2024 FC 836

Ottawa, Ontario, June 4, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

OLAOLUWA OLUFUMBI OGUNKOYA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the bench at Ottawa, Ontario, June 3, 2024)

[1] Ms. Ogunkoya, a citizen of Nigeria, came to Canada and unsuccessfully claimed refugee status. She then applied for permanent residence based on humanitarian and compassionate [H&C] considerations. She asked that her application be considered pursuant to the public policy concerning health care workers during the COVID-19 pandemic.

[2] Under that policy, among other conditions, an applicant must have worked at least 120 hours directly providing patient care between March 13, 2020 and August 14, 2020.

Self-employed persons are explicitly excluded from the policy.

[3] Ms. Ogunkoya asserted that during the relevant period, she was employed by Delore High Quality Health Care Services [Delore], a staffing agency, and that her services were offered to PACE Independent Living [PACE], an organization that provides services to adults with disabilities.

[4] Ms. Ogunkoya's application was denied. The officer found that Ms. Ogunkoya was self-employed during the relevant period, and that she provided insufficient evidence that she was actually providing direct patient care.

[5] Ms. Ogunkoya now applies for judicial review. On judicial review, my role is not to reweigh the evidence nor to decide the case afresh. Rather, I can only intervene with respect to factual determinations if the officer "has fundamentally misapprehended or failed to account for the evidence before it": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653.

[6] In my view, the officer's findings were reasonable. With respect to the first issue, the documentation Ms. Ogunkoya provided shows that the amounts she received from Delore were in respect of self-employment. No income tax was deducted, and Delore provided Ms. Ogunkoya with a tax slip indicating fees for services, not employment income.

[7] At the hearing before me, Ms. Ogunkoya suggested that the exception for self-employed persons covers only situations where the person is directly employed by the person receiving care or their family. Given the wording of the public policy, there is nothing unreasonable in the officer's interpretation of the exception. Moreover, this submission was not put forward before the officer and it cannot be advanced on judicial review for the first time.

[8] With respect to the second issue, it was reasonable for the officer to find that Ms. Ogunkoya had not provided sufficient evidence to prove that she worked as a personal support worker [PSW] during the relevant period. Despite being requested, she did not provide a personalized reference letter from PACE. The letter of employment from Delore noted that she worked as a PSW during "those periods of COVID-19 Pandemic", without specifying dates, nor specifying when she transitioned from an administrative assistant position to a PSW. The letter from PACE was generic and did not confirm what her role was. Moreover, the officer noted that Ms. Ogunkoya lacked the requisite education and experience to work as a PSW with PACE.

[9] While I take note of Ms. Ogunkoya's submission that the officer unduly focused on minute details, she bore the onus of convincing the officer that she met the conditions for the public policy. Combined together, the details mentioned earlier reasonably led the officer to find that she had not discharged her onus.

[10] For these reasons, Ms. Ogunkoya's application for judicial review will be dismissed.

JUDGMENT in file IMM-2289-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2289-22

STYLE OF CAUSE: OLAOLUWA OLUFUMBI OGUNKOYA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 3, 2024

JUDGMENT AND REASONS: GRAMMOND J.

DATED: JUNE 4, 2024

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