Federal Court  Cour fédérale

Date: 20241016

Docket: IMM-13107-22

Citation: 2024 FC 1634

Toronto, Ontario, October 16, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

ATINUKE MUTIAT OLASEHINDE
OLUWAMUREWA OLUDWADIMIMU OLASEHINDE

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench at Toronto, Ontario on October 15, 2024)
(Edited for syntax and grammar)

[1] The Applicants seek judicial review of the decision rendered by an officer (Officer) of Immigration, Refugees and Citizenship Canada (IRCC) refusing their 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*].

[2] The sole issue is whether the Officer's decision is reasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[3] The Officer's decision is unreasonable because it imposed a higher standard than the requirement of demonstrating humanitarian and compassionate grounds as demonstrated in subsection 25(1) of the *IRPA*.

[4] The Officer elevated the requirement under subsection 25(1) when they assigned little weight to the Applicants' establishment because it was not "exceptional" or "remarkable" (*Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at paras 29-47; *Buchberg v Canada (Citizenship and Immigration)*, 2024 FC 1581 at paras 6-8). The Officer's failure to describe this standard lacks transparency and intelligibility and is therefore unreasonable (*Vavilov* at para 99).

[5] The Respondent states that the term "exceptional" was not used as a legal test. However, in my view it is clear from the penultimate paragraph of the Officer's reasons that these words were used to establish a legal standard: The Officer stated that generally H&C applications were for applicants "facing exceptional circumstances" and that an "applicant must clearly demonstrate exceptional circumstances." An example of the application of this elevated standard is apparent when the Officer described the Applicants' residence in Canada of more than 5 years to be "a short period of time."

[6] The Officer's assessment of country conditions in Nigeria also demonstrates the application of an elevated standard. The Officer's reference to the lack of "rampant and widespread lawlessness" and the fact that the entire Nigerian population does not face hardship indicates an elevation of the test as described by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 33.

[7] The application for judicial review is granted based on the Officer's misapplication of the test under subsection 25(1) of the *IRPA*.

JUDGMENT in IMM-13107-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, and the decision rendered on the Applicants' application for permanent residence in Canada is quashed.

2. The application will be returned to a different officer for re-determination.

3. There is no question to certify under s. 74(d) of the *IRPA*.

"Michael Battista"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13107-22
STYLE OF CAUSE:	ATINUKE MUTIAT OLASEHINDE OLUWAMUREWA OLUDWADIMIMU OLASEHINDE v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 15, 2024
JUDGMENT AND REASONS:	BATTISTA J.
DATED:	OCTOBER 16, 2024

APPEARANCES:

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