Federal Court  Cour fédérale

Date: 20241218

Docket: IMM-14365-23

Citation: 2024 FC 2054

Toronto, Ontario, December 18, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

EFEMENA ORITSEGBUBEMI EJEVUVOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Efemena Oritsegbubemi Ejevuvor, seeks judicial review of a Visa Officer's decision to refuse her study permit. The Officer found Ms. Ejevuvor had not established she would leave Canada at the end of her stay, based primarily on a conclusion that she had failed to demonstrate that she had sufficient resources to fund her studies.

[2] For the reasons that follow, I will grant this application for judicial review, as I find that the Officer's decision was neither responsive to, nor supported by, the application materials submitted by Ms. Ejevuvor.

II. BACKGROUND

A. *Facts*

[3] Ms. Ejevuvor is a citizen of Nigeria. She was accepted into the Certificate in Business Administration Program at the University of Victoria, a program that was to last a little over a year. Based on this acceptance, the Applicant applied for a study permit to come to Canada. One of Ms. Ejevuvor's relatives – Lydia Akpikie, the cousin of her mother – is a Canadian permanent resident and undertook to support her financially throughout her studies. Ms. Akpikie grew up in the same home as Ms. Ejevuvor's mother and considers Ms. Ejevuvor to be her niece. Both the Applicant and Ms. Akpikie explained their relationship in their Statement of Purpose and Letter of Support, respectively.

[4] In her notarized Letter of Support, Ms. Akpikie [also referred to here as the Applicant's "Sponsor"] committed $25,000 to Ms. Ejevuvor's studies in Canada. The tuition for the Business Administration program was $6,600, of which Ms. Akpikie had already paid a $2,000 deposit, and a $300 application fee. Instructions from Immigration, Refugees, and Citizenship Canada [IRCC] indicated that, on top of tuition fees, applicants had to demonstrate available funds of $10,000 per year, on top of tuition fees. From the Record, then, it therefore appears that Ms. Ejevuvor was required to show that she had roughly $20,000 in available funds for her course of study.

[5] The Applicant and her Sponsor also submitted the following as Proof of Funds in support of the application:

- Confirmation of Ms. Akpikie's employment as a Senior Financial Advisor at Scotiabank, and confirmation of her salary and income of roughly CAD $74,000 per year;
- Summaries of Ms. Akpikie's investment portfolios, showing values of CAD $30,883; CAD $14,943; and CAD $12,977, respectively as of September 11, 2023; and
- A screenshot of a TD Personal Investment bank account, showing a balance of USD $17,337.58.

B. *Decision under Review*

[6] A Visa Officer refused the Applicant's study permit by letter dated November 2, 2023. The Officer was not satisfied, pursuant to paragraphs 220(a) and 220(b) of the *Immigration and Refugee Protection Regulations* [IRPR], that Ms. Ejevuvor had sufficient available financial resources to pay her tuition and to maintain herself during her period of study.

[7] In notes entered into the Global Case Management System [GCMS], which form part of the reasons for decision, the Officer stated:

> Applicant has provided financial documents from sponsor - Lydia E Akpikie. Insufficient supporting documents on file to establish relationship between applicant and sponsor. Most of the financial document were for trading/shares accounts where liquidity could be a concern. Personal investment account of $17,337.58USD is provided. However name of account holder not stated. Based on the documentation on file, and the limited information demonstrating nature of relationship between applicant and sponsor, I have concerns that third party funds would be sufficient and/or available for the proposed studies…Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

III. ISSUES AND STANDARD OF REVIEW

[8] The Applicant argues that the decision rejecting her study permit is both unreasonable and was tainted by procedural unfairness.

[9] The parties agree, as do I, that the standard of review applicable to the substance of the Officer's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85.

[10] The approach used to evaluate the fairness of the process that led the decision under review is akin to the correctness standard*: Canadian Pacific Railway Company v Canada (Attorney General),* 2018 FCA 69 at paras 34-35, 54-55. That said, I will not consider the Applicant's arguments related to the fairness of the proceedings, as I have concluded that the decision itself is unreasonable.

IV. ANALYSIS

[11] As noted above, the Officer in this matter was not satisfied that the Applicant would leave Canada at the end of her stay, based on their conclusion that the Applicant's assets and financial situation were insufficient to support the stated purpose of travel.

[12] While I have concluded that this decision was unreasonable, I find at the outset that it was reasonable for the Officer to put limited weight on the TD Canada Trust investment

statement that was included in the Record. As the Officer noted, this statement did not indicate the account owner. And importantly, the support letter provided by Ms. Akpikie, which listed the other bank statements that were in the Record, did not list this account. In these circumstances, I see no error in the Officer's treatment of this account.

[13] However, I do see other errors in the Officer's assessment.

A. *The Applicant's Relationship with her Sponsor*

[14] First, I have concluded that the decision under review is unreasonable because it contains essentially no justification for the Officer's conclusion that the relationship between the Applicant and Ms. Akpikie had been insufficiently documented. The totality of the Officer's reasons on this point is as follows:

> Insufficient supporting documents on file to establish relationship between applicant and sponsor.

[15] Respectfully, this statement is a conclusion, rather than a reason offered for a conclusion. Noticeably absent from the Officer's reasons is a justification, even a brief one, explaining *why* the information provided by both the Applicant and Ms. Akpikie was insufficient to establish their relationship.

[16] In the Applicant's Statement of Purpose, she explains that Ms. Akpikie supports her desire to receive a quality education, is a permanent resident of Canada, and is willing to cover her expenses while in Canada.

[17] Ms. Akpikie's letter, which was sworn before a notary, is more detailed. In it, she explains the precise nature of her relationship with the Applicant. She also explains that she grew up in the same household as the Applicant's mother, that they come from a close-knit family, and that she has "considered and treated" the Applicant as her niece and has always provided financial support to her and her parents. In the letter, Ms. Akpikie further indicated that she will be providing all the financial support Ms. Ejevuvor will require to successfully complete her intended studies. Given the information that was before the Officer, it was unreasonable to simply conclude, without any rationale, that it was insufficient.

[18] In arriving at this conclusion, I have considered the recent decision of my colleague Justice Pentney in *Oyewole v Canada (Citizenship and Immigration)*, 2024 FC 1690 [*Oyewole*]. The facts of that case are, in some respects, similar to those at issue in this application. In *Oyewole*, the Applicant's uncle had undertaken to cover the costs of the Applicant's studies in Canada. The uncle provided a sworn statement indicating that he had always covered the Applicant's educational expenses. Despite this statement, the officer in that case found the evidence on the relationship between the applicant and the sponsor to be insufficient. Justice Pentney found this determination to be reasonable.

[19] I have arrived at a different conclusion in this case for the following reasons. First, Justice Pentney was explicit in *Oyewole* that his findings were rooted in the circumstances of that case. Second, the facts of this matter appear distinguishable from *Oyewole*. While unclear from the *Oyewole* decision, it appears that the applicant in that case had filed minimal documentation describing the nature of the applicant's relationship with his sponsor. In this case, Ms. Akpikie described in detail the close-knit nature of her relationship with the Applicant, the proximity of

their relationship in relation to other family members, and the rationale underlying her willingness to cover the Applicant's educations costs. In addition to this sworn information, the Applicant also described her relationship with Ms. Akpikie in her Statement of Purpose. There is no indication in *Oyewole* that the record in that case contained a similar level of detail regarding the Applicant-Sponsor relationship.

[20] With all of this in mind, it is difficult to reconcile the evidence that was before the Officer with the finding that the Applicant had failed to make out her relationship with Ms. Akpikie, unless, the Officer simply did not believe what was in the Record. If such was the case, the Officer's findings would constitute precisely the kind of 'veiled' credibility finding that this Court has frequently found to be unreasonable: *Abusaninah v Canada (Citizenship and Immigration)*, 2015 FC 234 at para 54, citing *Liban v Canada (Citizenship and Immigration)*, 2008 FC 1252 at para 14.

[21] In oral argument, counsel for the Applicant noted that there is no single civil status or identity document that could have proved her relationship with Ms. Akpikie, because they are not immediate family. The Respondent suggested in reply that the Applicant could have provided better documentation, for example, an affidavit from one of her parents. Respectfully, I disagree. The Record contains a sworn statement from the Sponsor attesting to her own relationship with the Applicant. It is not at all apparent to me how a letter from the Applicant's parents, in which *they* affirmed the Applicant's relationship with Ms. Akpikie, would constitute stronger evidence. I am also persuaded by the Applicant's argument that there may well have been no other way for her to demonstrate her relationship with Ms. Akpikie, aside from a sworn statement. In these

particular circumstances, the Officer's summary dismissal of the evidence provided by the Applicant was not adequately justified.

B. *The Applicant's Proof of Financial Support*

[22] For a number of reasons, I have also concluded that the Officer's findings on the sufficiency of the Applicant's finances were unreasonable. First, I accept the Applicant's argument that the GCMS notes contain no indication that the Officer considered Ms. Akpikie's income in their assessment of her ability to cover the Applicant's education and living expenses. Ms. Akpikie is a regular, full-time employee with the Bank of Nova Scotia, where she earns roughly $74,000 per year as a Senior Financial Advisor. The Officer was not obliged to accept that this income was sufficient to establish the financial viability of the Applicant's study plan - but it was an important part of the financial calculus, and it does not appear to have been weighed by the Officer.

[23] Second, even without including the TD Canada Trust Account in the assessment of the Applicant's available funds, it is unclear to me how the Officer concluded that Ms. Akpikie's income, assets, and commitment to funding the Applicant's studies were insufficient. It is relevant here that the tuition fees associated with the Applicant's program were relatively modest, and that roughly a third of those fees had already been paid at the time of the study permit application. It is also apparent that Ms. Akpikie's financial commitment to the Applicant exceeded the amounts indicated in IRCC's "Proof of Financial Support" Guidelines, which at the time required applicants to demonstrate that they had $10,000 in available funds per year, in addition to covering tuition fees. These Guidelines have been updated, such that they now

require students to have CAD $20,635 - but this updated quantum is not relevant to the decision under review. I refer to these facts not to reweigh the evidence that was before the Officer, but rather to identify the absence of any such weighing in the first instance. Absent any indication of the financial benchmarks against which the Officer assessed the Applicant's finances, the decision to deny her application on the basis of financial insufficiency lacks transparency.

[24] Third, it is entirely unclear to me why the Officer would raise concerns as to the liquidity of Ms. Akpikie's assets. These assets appear to consist of common shares in widely traded companies. Counsel for the Applicant, in his oral submissions, suggested that the Applicant does not own these shares, but from my review of the Record, I disagree. Irrespective of the Applicant's characterization of the funds, however, I see no rational basis for the Officer's concerns about their liquidity. As I indicated in the hearing, Ms. Akpikie's funds were not tied up in assets such as real estate or closely-held companies that can give rise to legitimate, logical, and rational concerns over liquidity. On the contrary, they appear to consist of investments in publicly traded companies such as Apple and Tesla. In this context, I see little justification for the Officer's conclusion that liquidity "could" be a concern.

[25] In oral argument, the Respondent suggested that it is reasonable for Officers to be concerned over the source, nature, and stability of funds offered up in support of a visa application. While I agree with this assertion in a broad sense, I note that the Officer raised no concerns about these factors. For example, the Officer raised no concerns about the volatility of individual securities, and the corresponding uncertainty that may arise about the value of assets when it comes time to pay for education costs. The only specific concern identified by the

Officer related to the liquidity of the Sponsor's funds, which I have already found to be unreasonable.

V. CONCLUSION

[26] For the above reasons, this application for judicial review will be granted and the matter will be remitted for redetermination.

[27] The parties agree that no question of general importance arises from this case and none will be stated.

JUDGMENT in IMM-14365-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;

2. The matter is remitted to Immigration, Refugees and Citizenship Canada for reconsideration by a different Officer; and

3. No question of general importance is certified.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-14365-23
STYLE OF CAUSE:	EFEMENA ORITSEGBUBEMI EJEVUVOR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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