

**Date: 20071115**

**Docket: IMM-560-07**

**Citation: 2007 FC 1190**

**Ottawa, Ontario, November 15, 2007**

**PRESENT: The Honourable Mr. Justice Blanchard**

**BETWEEN:**

**AYODEJI J ADEWALE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

1. Introduction

[1] This is an application for judicial review of a Visa Officer's (the Officer) decision rendered on December 6, 2006, at the Canadian Deputy High Commission in Lagos, Nigeria.

The Officer denied the applicant's request for a temporary resident visa in the visitor class.

[2] The applicant is a resident of Lagos, Nigeria and is employed as a Technical Manager at Semyna Oil and Gas Nigeria Ltd. (Semyna). The applicant also works for Quality International Company, a sister company to Semyna.

[3] Semyna has an ongoing relationship with RTI Turbo Inc. (RTI); a Canadian company which is headquartered in Montreal. Semyna had purchased an engine from RTI in 2005. In 2006, Semyna negotiated the purchase of two Detroit Diesel engines from RTI. The agreement of purchase and sale requires that before payment and shipment, the engines must be tested in the presence of Semyna's technical representative who must approve the engines. To that end, on November 2006, after concluding an agreement of purchase and sale, RTI sent a request to the High Commission in Lagos, Nigeria, for the issuance of a visitor's visa for the Applicant, Semyna's technical representative, and for Mr. Yinka Jinadu, Chief Executive Officer of the company. The Applicant contends that he is the only employee familiar with Detroit Diesels, and that he would be responsible for commissioning, repairing and troubleshooting the engines after delivery.

[4] The Applicant's visa application contained (a) evidence that he was employed by Semyna and (b) was visiting Canada on the request of RTI in the course of his employment. A letter from RTI dated November, 20, 2006 signed by Mr. Ronnie Wallace, Director-Engine and Components Sales, was annexed to the application. I reproduce the body of the letter in its entirety below:

We would like to request for visiting visa on behalf of Mr. Semiu Yinka Jinadu and Mr. Ayodeji Adewale to visit our facilities in Montreal and Moncton.

Mr. S. Y. Jinadu is the C.E.O. of Semyna Oil and Gas Limited and Quality International Company and Mr. Adewale is the technical Manager for both companies. Semyna Oil and Gas Limited would like to purchase two diesel engines (GENSETS) from RTI Turbo Inc of Montreal and Mr. Jinadu and Mr. Adewale are required to conduct a final inspection and witness the testing process of the engines before final payment is remitted to RTI Turbo Inc.

Mr. Jinadu and Mr. Adewale would be coming to our Montreal diesel engine rebuilding workshop and later visit our Moncton

workshop to inspect our other diesel engine and diesel components capability. This would enable them evaluate our capability for future business deals. Mr. Jinadu holds a Nigerian passport number A177567 and Mr. Adewale holds a Nigerian passport number A3440583A. They are due to visit Montreal and Moncton from December 11<sup>th</sup> to December 20<sup>th</sup> of 2006 for the inspection. Hotel accommodation has been reserved at the Holiday Inn, Midtown Montreal; please see the attached confirmation of the reservation for both gentlemen.

If you require any further information, please do not hesitate to contact us. We can be reached at the numbers above or through our web site at [www.rtiturbo.ca](http://www.rtiturbo.ca) or via e-mail: [rtiturbo@canada.com](mailto:rtiturbo@canada.com) or [rtiturbo@sympatico.ca](mailto:rtiturbo@sympatico.ca)

## 2. Decision under Review

[5] On December 6, 2006, the Visa Officer refused the application for visitor visa on the grounds that he was not:

- (a) Satisfied that the Applicant had a legitimate purpose in Canada;
- (b) Satisfied that he had sufficient funds, including income or assets, to carry out the stated purpose in going to Canada or to maintain himself while in Canada and to effect his departure; and
- (c) Satisfied that he met the requirements of section 179 of the *Immigration and Refugee Protection Regulations* ("Regulations") (i.e. that he would leave Canada at the end of the temporary period if he was authorized to stay).

[6] The Officer's CAIPS notes indicate the following:

pa – male; age 34; single; no prev travel;  
has been working with RTI Turbo for less than 2 years;  
pa is a type of engineer;  
no previous work history indicated;  
travel to meet business associates;  
not satisfied with pa's person/financial tied (provided no personal supporting docs);  
application refused.

### 3. Issues

[7] The Applicant argues that the Officer's decision was based on an erroneous finding of fact made without regard to the material before him. The Applicant further argues that the Officer had failed to provide sufficient cogent reasons for the decision and breached the rules of procedural fairness by failing to communicate with the Applicant for further clarification on his circumstances.

### 4. Standard of Review

[8] The decision of a Visa Officer is discretionary in nature. The Court will only intervene in such decisions are found to be patently unreasonable (*Gandhi v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1054, [2003] F.C.J. No. 1327 (QL); *Al-Rifai v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1236, [2002] F.C.J. No. 1703 (QL)).

### 5. Analysis

[9] As a preliminary matter I will deal with the Respondent's motion that evidence be struck from the record. The Respondent submits that documents marked as exhibits A-2, A-3, A-9 and A-10 postdate the decision under review, and as such, constitute new evidence which was not before the Visa Officer. Additionally, it is claimed that there is no evidence demonstrating that documents marked as exhibits A-1, A-4, A-5 and A-6 were adduced before the Visa Officer for consideration.

[10] Exhibits A-1, A-4, A-5 and A-6 are not found in the certified tribunal record. There is no evidence to show that these exhibits were adduced before the Officer. It is well accepted that

only evidence that was before the decision maker can be considered by a Court on judicial review. I therefore agree with the Respondent that the impugned exhibits cannot be considered on this application. Consequently, the exhibits are expunged from the record.

[11] The Applicant contends that the tribunal record is incomplete and that certain documents are missing. It is alleged that documents which establish that hotel reservations were made for the Applicant are missing from the record. The “alleged” missing document is referred to in the November, 20, 2006 letter from RTI. The Applicant further contends that certain financial documents which serve to establish the wherewithal of the Applicant’s employer to finance the business trip are also missing from the record. Notwithstanding the Applicant’s submissions, no evidence was adduced to support the proposition that this evidence was before the visa officer. I have no option but to consider the certified tribunal record produced as reflecting the complete record before the visa officer.

[12] On the face of the record, the decision is based at least in part on an erroneous finding of fact. The Officer writes in his CAIPS notes that the Applicant has been working with RTI Turbo for less than 2 years. This is an obvious mistake, since nowhere in the evidence is there any indication that the Applicant ever worked for RTI or had any intention of working for RTI. The evidence clearly establishes that the Applicant is employed with Semyna and that his stated purpose for visiting Canada is to conduct a technical assessment of the two diesel engines for Semyna. The Officer’s misapprehension of the Applicant’s relationship with RTI is important since it demonstrates that the Officer did not appreciate the nature of the visa application or its stated purpose. The Officer stated that he was not satisfied that the Applicant had “legitimate

purpose in Canada”. The Applicant’s employment relationship with Semyna is central to the purpose of the visit which underlies the visa application. I do not accept the Respondent’s contention that the error is simply clerical. Nothing in the parse notes of the Officer would allow me to conclude that this is the case.

[13] It is not for this Court to speculate on how the Officer would have exercised his discretion had he not misapprehended the Applicant’s status as an employee of Semyna. It is my view that an erroneous finding of fact on such a fundamental element of the visa application renders the Officer’s decision patently unreasonable and consequently warrants the Court’s intervention.

## 6. Conclusion

[14] For the above reasons the application will be allowed and the matter is to be remitted for reconsideration before another Visa Officer.

[15] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question

**ORDER**

**THIS COURT ORDERS that:**

1. The application for judicial review is allowed.
2. The matter is to be returned for reconsideration before another Visa Officer.
3. No question is certified.

“Edmond P. Blanchard”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-560-07

**STYLE OF CAUSE:** AYODEJI J ADEWALE v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 25, 2007

**REASONS FOR ORDER:** BLANCHARD J.

**DATED:** November 15, 2007

**APPEARANCES:**

Mr. Idoerenyn E. Amana FOR THE APPLICANT

Mr. Evan Liosis FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mr. Idoerenyn E. Amana FOR THE APPLICANT

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada