

Federal Court



Cour fédérale

**Date: 20130530**

**Docket: IMM-4512-12**

**Citation: 2013 FC 579**

**Ottawa, Ontario, May 30, 2013**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**OBIANUJU NONYE ANIKWOBI,  
UZOAMAKA OBIAGELI OKOYE,  
CHUKWUNEDU CHUKWUEMEKA OKOYE,  
OBIANUJU EBELE OKOYE,  
UCHENNA OBIORA OKOYE  
AND CHUKWUNONSO NNAMDI OKOYE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of 5 (five) decisions of a Visa Officer dated April 10, 2012 and April 11, 2012 wherein she determined that none of the Applicants meet the definition of “dependent child” as defined by section 2 of the *Immigration and Refugee Protection*

*Regulations*, SOR/2002-227 and therefore cannot be included in Ms. Anikwobi's permanent residence application.

**I. Facts and decision under review**

[2] Ms. Anikwobi, the Principal Applicant, came to Canada on January 28, 2008 and sought refugee protection. Her claim was accepted and she applied for permanent residence on November 24, 2009. She listed her 5 (five) children in her application, who reside in Nigeria: Uzoamaka Obiageli Okoye, Chukwunonso Nnamdi Okoye, Obianuju Ebele Okoye, Uchenna Obiora Okoye and Chukwunedu Chukwuemeka Okoye.

[3] The Officer sent a letter on December 13, 2011 and a second letter in January 2012 asking them to provide various documents including original birth certificates, police clearance certificates, evidence of name change, school documents including letters of admission, transcripts, receipts, West Africa Examination Council [WAEC] Certificates and National Examination Council [NECO] Certificates, unused scratch cards for WAEC and NECO, student ID cards and copies of school admission/enrolment registers from primary, junior and senior secondary schools, communication with their mother and previous as well as valid passports. On March 27, 2012, all her dependent children were interviewed at the Visa Office in Ghana.

[4] The Officer reviewed the documentation provided which includes birth registration forms, University transcripts, passports, certificates of baptism, police clearance certificates, affidavits regarding their name change, student ID cards, WAEC Certificates, Offer of Provisional Admission Letters, online payment receipts, Senior School Statements of Results and Junior School Statements of Results. She noted that all the Applicants look older than their declared age, that there was a

name change that is unsupported by the evidence and that they all declared that they completed high school when they were 19 (nineteen) years old although the usual age to complete high school in Nigeria is between 15 (fifteen) and 17 (seventeen) years of age. She further noted that all documents seemed to have been damaged by water in the same manner and that the University's logo included in all the documents is different than the original one. All 5 (five) applications were therefore denied.

## **II. Applicants' submissions**

[5] The Applicants submit that the Officer was not procedurally fair to them as she did not make her concerns known to them. The Officer's determination that the Applicants look older is unreasonable as she was under an obligation to consult an expert before coming to a determination because such conclusion should have been based on scientific proof.

[6] The Applicants submit that the Officer erred in doubting the value of the birth registration forms on the basis that they are hospital-issued and that they were submitted in lieu of the National Commission birth certificate. Both documents are equally used in Nigeria and have the same probative value.

[7] The Officer's conclusion that the school documents as well as other documents appeared to be deliberately dirtied and soiled to give the appearance of being aged is subjective and drawn without regard to the explanation that their home was flooded.

[8] The Applicants further submit that the conclusion as to the discrepancies in their school records is drawn without regard to known and undisputed facts about primary and secondary school ages in Nigeria. Indeed, incessant disputes between teachers and the government have often resulted in the disruption of the school calendar hence it is no longer unusual to see students starting or ending their academic year at different times in different states of Nigeria.

[9] With regards to the date appearing on the Enegu State University of Science and Technology transcripts, the Officer's determination that the date of the Applicants' graduation from school contradicts the information contained in their transcripts disregards the Applicants' explanation that the transcripts were provided in a sealed envelope and that, therefore, any error contained in the documents was made by the issuer.

[10] In respect of the University's logo, the Officer failed to consider that the logo she considers as authentic is the old one as it has now changed. The documents submitted by the Applicants were new and bore the new logo. The Officer was under an obligation to verify which logo was the correct one.

[11] The Officer's conclusion, as to the authenticity of some documents, was drawn without contacting the issuer to verify their authenticity and without consideration for the explanation provided by the Applicants.

### **III. Respondent's submissions**

[12] The Respondent submits that the reasons provided by the Officer are reasonable and well within the range of possible and acceptable outcomes which are defensible in respect of the facts and the law for this type of discretionary, fact-driven type of decision.

[13] The Officer found that the Applicants did not meet the definition of “dependent child” because she was not satisfied that they were under 22 (twenty two) years of age at the time their mother submitted her application for permanent residence, nor was she satisfied that since turning 22 (twenty two) years of age they had been in full-time attendance at University.

[14] The Applicants bear the onus of showing that they meet the definition of a “dependent child.” Therefore, they had the responsibility to provide the Officer with all the necessary information to assess their applications.

[15] The Applicants were asked to provide their original birth certificates and they did not do so, nor did they provide an explanation as to why they had not produced them. The Officer’s explanation as to why the handwritten birth registration forms and passports are less reliable is reasonable.

[16] In any event, the Officer reviewed and considered all of their documentations in order to ascertain whether in its totality, the Applicants had proven that they meet the definition of a dependent child. The Officer had a number of concerns about these documents causing her to doubt their authenticity. Her conclusion in regard to the documentations submitted is reasonable.

**IV. Issue**

[17] Is the Visa Officer's assessment of the evidence presented by the Applicants reasonable?

**V. Standard of review**

[18] Findings of credibility are questions of fact and are therefore to be evaluated under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]). A Visa Officer must render reasonable decisions that fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir*, above at paras 47-48, 51, 53; *Natt v Canada (Minister of Citizenship and Immigration)*, 2009 FC 238, 80 Imm LR (3d) 80 at para 12).

**VI. Analysis**

[19] In order to be included in Ms. Anikwobi's permanent residence application, the Applicants bore the onus of submitting the necessary evidence to establish their status as dependent children.

[20] With regards to the Applicants' identity, the Visa Officer, noted that although she asked for their original birth certificates, all the Applicants however provided hospital-issued handwritten birth registration forms. Moreover, the Applicants provided their passports, which were issued in 2011 but failed to provide their expired passports, if any existed. The passports submitted were given low probative value as passports have known to be issued based on limited documentation in Nigeria. The Officer, therefore, considered that additional documents, such as birth certificates were

required to establish the identity of the Applicants, and in the absence of the former, the Officer reviewed additional supporting evidence.

[21] In her decision, the Visa Officer noted the following identical concerns with regards to the content of the applications of all 5 (five) Applicants:

- They all graduated from high school at the age of 19 (nineteen), which is inconsistent with the documentary evidence on the Nigerian education system.
- The logo on the front page of the transcripts from the Enegu State University of Science and Technology is inconsistent with the logo on the following pages.
- The logo on the first page of the transcripts is inconsistent with the logo on a sample genuine document kept at the Visa Office as well as with the logo on the University website.
- The logo used on the Offer of Provisional Admission Letters is inconsistent with the official logo of the University and they all appeared to have been soiled and suffered damages in the same manner, despite having been issued in different years.
- There is the same spelling error, "Independecne" on all student I.D. cards and they all seem to have been scratched and dirtied in the same way to make them look older.
- All the Applicants submitted the same student card, transcripts, Offer of Provisional Acceptance Letter, WAEC Statement of Results, Baptismal Certificate, online payment receipts and Senior School Statement of Results.

- The documents submitted all appeared to have been soiled and damaged by water in a similar manner.
- All Primary School Registration Forms of the Applicants are written in the same handwriting despite spanning from 1994 to 1998.
- The Offer of Provisional Admissions Letters and the West African Examination Council results post-date the mother's application for refugee protection and therefore, limited weight was assigned to the latter.

[22] The Visa Officer further noted that all Applicants seemed older to her. Such finding is reasonable. Indeed, the purpose of an interview is to assess the credibility of a claimant's application. Therefore, it was completely open to the Visa Officer to make a determination that the Applicants look physically older than their declared age.

[23] Moreover, except in the case of Chukwunedo Chukwuemeka, the Officer noted a number of additional issues with the evidence submitted. First, there are inconsistencies between admission dates and session dates on the University transcripts. Indeed, the transcripts indicate that the Applicants' first session took place before their alleged year of admission. The WAEC Statement of Results' dates are inconsistent with the University transcripts' dates: if the date of their first University session is taken into consideration, the Applicants would have completed senior school after they started attending University. In addition to this, if it is considered that the date of the first session in the Applicants' transcripts is the time when they first attended University, the Applicants



would be between 2 (two) to 7 (seven) years younger than their declared age included in their birth registration forms.

[24] Furthermore, the Officer noted that the name change of the Applicants is unsupported by the evidence. Indeed, they explained the name change in their affidavits, which consists in secondary evidence. An official document emanating from the Nigerian Government should have been provided.

[25] Contrary to what is alleged by the Applicants, the Visa Officer informed them of her concerns. A reading of the Visa Officer's notes taken during the interview shows that a number of the answers provided were evasive. As an example, one of the Applicants was not able to recall her date of birth. Therefore, the Applicants were provided with an opportunity to respond to the Officer's concerns and they did not provide satisfying answers. Her decision to reject the explanation that the issue with the University's logo on their transcript is not their responsibility as they were included in a sealed envelope is reasonable. Indeed, it is not credible that the University Registrar's Office would commit the same mistake in the case of all 5 (five) Applicants. Also, it was reasonably open for the Visa Officer to dismiss the explanation that the documents are damaged because their house was flooded as all the documents seemed to be soiled in a similar way.

[26] As for the Applicants' alleged late graduation from high school, the Visa Officer's determination that the documentary evidence states that in Nigeria students graduate from high school between the ages of 15 (fifteen) and 17 (seventeen) and that it is therefore not credible that all the Applicants graduated late is reasonable. Indeed, as noted by the Officer in her affidavit

submitted after the initial decisions were rendered, although the documentary evidence is to the effect that in Nigeria, the age of graduation is between 16 (sixteen) and 18 (eighteen) and not between 15 (fifteen) and 17 (seventeen) as indicated in her decisions, it remains that all the Applicants graduated at the age of 19 (nineteen), which is inconsistent with the said evidence. Her decision to reject the Applicants' explanations that they repeated a year/class or dropped some classes as the answers provided were vague is reasonable.

[27] In conclusion, the entirety of the Visa Officer's findings falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. All of the above-mentioned concerns with the evidence lead this Court to conclude that it was not unreasonable for the Visa Officer to determine that the Applicants did not credibly establish that they are the dependent children of Ms. Anikwobi. The Applicants were provided with the opportunity to respond to the Officer's concerns but did not give satisfactory answers.

[28] The parties were invited to submit a question for certification but none were proposed.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS THAT** this application for judicial review is dismissed.

No question is certified.

“Simon Noël”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-4512-12

**STYLE OF CAUSE:** OBIANUJU NONYE ANIKWOBI ET AL  
v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 23, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** NOËL J.

**DATED:** May 30, 2013

**APPEARANCES:**

Solomon Orjiwuru FOR THE APPLICANTS

Bridget A. O’Leary FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Solomon Orjiwuru FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada