

Federal Court



Cour fédérale

Date: 20131022

Docket: IMM-9254-12

Citation: 2013 FC 1058

Ottawa, Ontario, October 22, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

OSAHENI ITOTA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is the judicial review of a Visa Officer's decision to deny a student visa on the supposed grounds that the Applicant, a citizen of Nigeria, was not a *bona fide* student. The reasons are contained in the Foss Notes, where the Visa Officer wrote:

- the relationship between the sponsor (an uncle) and the Applicant was not established;
- the sponsor's bank statement does not reflect income; and

- funds presented are adequate but not satisfied that funds will be available for expenses.

[2] The Visa Officer does note that a letter from the sponsor's employer was on plain paper. That letter provides the sponsor's income. It is unclear what the Visa Officer made of the letter or whether it was disregarded because it was on plain paper.

[3] This case also raised the bizarre and unacceptable practice of the High Commission of keeping virtually none of the documents filed for a visa application. The documents are returned to the Applicant. In this case, the Certified Tribunal Record did not contain all the documents upon which the decision was made. It is no excuse to say that the documents are not in the government's possession.

[4] On that ground alone, the Applicant is entitled to relief because the record on which the decision is based is not complete. Courts are frequently required to accord deference to decision makers; they are even obligated under *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador*, 2011 SCC 62, [2011] 3 SCR 708, to consider whether the record could sustain the decision. That test becomes difficult, if not impossible, to apply when the decision maker cannot establish the record upon which a decision is based.

[5] In the present case, the Applicant was able to reproduce what was filed and the parties accepted that the Applicant's Record contained all the material filed with the visa office.

[6] Having reviewed the record, it is impossible to discern on what basis the Visa Officer concluded that the funds would not be available for the Applicant's expenses.

[7] While visa officers need not write extensive reasons for a decision, the Court must be able to determine how a particular conclusion was reached.

[8] The Applicant had filed all the documents which are initially called for by the visa process. If there is an insufficiency in the evidence, it is not clear what it was.

[9] The Respondent's own OP 12 recognizes that officers have a discretion in requesting documents from students. OP 12 further recognizes that in circumstances where there is a high risk of indigent and non-*bona fide* applicants, a visa officer may require substantial history of funds and supplementary individual or family financial and employment documentation.

[10] In this case, given the record, if the Visa Officer had doubts, he or she was required on the principle of procedural fairness to advise the Applicant of what further documents were required.

[11] Therefore, this judicial review is granted, and the decision is quashed. The application is to be determined by a different officer based upon the record as supplemented at the option of the Applicant or in response to any reasonable requirement of the deciding officer.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, and the decision is quashed. The application is to be determined by a different officer based upon the record as supplemented at the option of the Applicant or in response to any reasonable requirement of the deciding officer.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9254-12

STYLE OF CAUSE: OSAHENI ITOTA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 9, 2013

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

DATED: OCTOBER 22, 2013

APPEARANCES:

Kingsley I. Jesuorobo

FOR THE APPLICANT

Sybil Thompson

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley L. Jesuorobo
Barrister and Solicitor
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT