

Federal Court



Cour fédérale

Date: 20250414

Docket: IMM-13443-23

Citation: 2025 FC 691

Ottawa, Ontario, April 14, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OLUBUNMI OLUWATOSIN AGBATO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Olubunmi Oluwatosin Agbato, seeks judicial review of the refusal of her application for permanent residence (“PR”) under the Saskatchewan Provincial Nominee Program (“PNP”) by a Case Processing Officer (the “Officer”) on August 21, 2023. The Officer determined the Applicant had misrepresented her previous employment and found the Applicant

inadmissible to Canada for a period of five years under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant asserts that the Officer’s decision is unreasonable and procedurally unfair.

[3] I agree, in part, with the Applicant. For the reasons that follow, this application for judicial review is allowed.

II. **Background**

[4] The Applicant is a citizen of Nigeria. For several years, she worked as a sales manager at a distribution company (the “Company”).

[5] On January 18, 2023, the Applicant was invited to apply for permanent residence in Canada in the Saskatchewan PNP class. Her application was received on February 22, 2023 and approved on June 28, 2023.

[6] On August 14, 2023, agents of Immigration, Refugees and Citizenship Canada (“IRCC”) conducted a site visit at the Company. The Applicant provided two addresses for the Company: “1 Itapeju Street, Apapa, Lagos” (the “Main Office”) and “R.O Lasis Building Railway Compound, Beside Flour Mills Nigeria PLC, Apapa, Lagos” (the “Annex Office”). The Applicant explained that the Company had temporarily relocated staff from the Main Office to the Annex Office as the Main Office was undergoing renovations.

[7] IRCC agents located the Main Office. They found no signage for the Company. Individuals at the Main Office complex said they had not heard of the Company. The IRCC agents saw no signs of renovations. As a result, the IRCC agents determined that “[the Company] doesn’t seem to have been operating at this address in the past.”

[8] IRCC agents attempted to visit the Annex Office but were unable to locate the address provided by the Applicant. The agents used Google Maps to search for the address of Flour Mills Nigeria PLC. They were then able to find the RO Lasisi Building, which matched photos provided by the Applicant of the Annex Office. They recorded the address of the site visit as “2, Old Dockyard road, R O Lasisi Compound, Apapa,” the address for Flour Mills Nigeria PLC.

[9] At the Annex Office, IRCC agents spoke with an individual who stated that they had not heard of the Company and that “no one had moved into the premises recently.” Believing that the Company moved into the premises in June 2023, the IRCC agents concluded that “[the Company] doesn’t appear to be functioning at [this] address.”

[10] IRCC issued a procedural fairness letter (“PFL”) to the Applicant on August 15, 2023. The Officer disclosed that, following a site visit, “[the Company] was verified to not have existed or currently operating [*sic*] at the addresses [the Applicant] had provided.” The PFL further stated that “the fact that [the Applicant’s] employment couldn’t be verified, has raised concerns about the credibility of [her] overall application,” warning, “if it is found that [the Applicant has] engaged in misrepresentation...[she] may be found...inadmissible to Canada for a period of five years.”

[11] The Applicant responded on August 19, 2023. She stated that she had resigned from her position and made arrangements to travel to Canada with her family following the initial approval of her application. The Applicant explained that “the persons who the [IRCC agents] may have met at [the Main Office] may have not been able to...confirm the names of the different company/offices located in the building,” as “many other offices located in the building had...closed” and the building “is almost deserted.” The Applicant stated that the Annex Office is located at “Flat 4, R.O Lasisi Building Railway Compound, Beside Flour Mills Nigeria PLC, Apapa Lagos.” The Applicant resubmitted photos of the Annex Office. She also provided several new documents, including acknowledgements of the filing of the Company’s annual returns, records of various transactions, and a letter and business card from the Company’s CEO.

[12] On August 21, 2023, the Officer refused the Applicant’s PR application, stating:

Your work experience with [the Company] was confirmed/verified to not be genuine... Verifications included a site visit during which, no one was able to confirm if [the Company] ever operated at either location. The submission of fraudulent work experience induced an error in the administration of the act by the initial approval of your application... You are now inadmissible to Canada for a period of five years from the date of this letter.

III. **Preliminary Issues**

A. *The Applicant’s New Evidence is Not Accepted*

[13] The Applicant seeks to adduce new evidence from the Company’s CEO. This evidence was not before the Officer. The Applicant asserts that the new evidence should be admitted as it “[is] necessary to enable the Court to properly evaluate the Officer’s accusation” of

misrepresentation (*Dimgba v Canada (Citizenship and Immigration)*, 2018 FC 14 at para 10).

The Applicant further asserts that this new evidence falls under the procedural fairness exception in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 (“*Access Copyright*”).

[14] The Respondent opposes the admission of the Applicant’s new evidence, as the new evidence seeks to challenge the Officer’s decision on the merits and does not fall under any of the exceptions in *Access Copyright* (at para 20).

[15] The Respondent is correct. As stated by the Applicant, the purpose of the new evidence is to “substantiate the validity...of [the Company]” given “[the Officer]’s concerns about the existence of [the Company] and the Applicant’s employment.” This evidence therefore goes to the merits of the Officer’s decision and will not be considered by the Court.

B. *The Proper Respondent is the Minister of Citizenship and Immigration*

[16] The Respondent submits and the Applicant agrees that the proper respondent for this matter is the Minister of Citizenship and Immigration, rather than “the Minister of Immigration, Refugees and Citizenship.” The style of cause is therefore amended to identify the Respondent as the Minister of Citizenship and Immigration, effectively immediately (*Immigration and Refugee Protection Act*, SC 2001, c 27, s 4(1)); *Federal Courts Rules*, SOR/98-106, s 76(a); *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-2, s 5(2)(b)).

IV. **Issues and Standard of Review**

[17] The issues in this application are whether the Officer's decision is reasonable and was rendered in a procedurally fair manner.

[18] The parties submit that the applicable standard of review for the merits of the Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[19] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 (“*Canadian Pacific Railway Company*”); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[20] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[21] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker and should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[22] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

V. Analysis

[23] The Applicant submits that the Officer erred by relying on adverse verification results from the site visit. According to the Applicant, IRCC agents visited the wrong address during the site visit to the Annex Office, unreasonably relied on passersby to verify the presence of the Company, and misapprehended the Applicant’s submissions by stating the Company had moved into the Annex Office in June 2023. The Applicant submits the Officer disregarded her

documentary evidence, engaged in speculation about the nature of the Company, and arbitrarily assigned more weight to the site visit than other evidence. The Applicant further submits that the Officer infringed her procedural rights by denying her the opportunity to respond to their concerns with her PFL response letter and declining to conduct an additional site visit following receipt of her PFL response.

[24] The Respondent submits the Officer made no reviewable error. The Respondent asserts that the IRCC agents visited the correct address for the Annex Office and the Officer did not err by relying on their findings. The Respondent submits that the refusal decision is reasonable in light of the Applicant's shifting evidence on the address of the Company and that the Applicant simply seeks to reweigh the evidence before the Officer. The Respondent further submits that there was no breach of the duty of procedural fairness, as the Officer was entitled to decide the Applicant's application based on the evidence available to them and was not obliged to seek further clarification from the Applicant or conduct additional verification.

[25] I agree, in part, with the Applicant. Although the Respondent rightly notes that there was no breach of procedural fairness and that the IRCC agents visited the correct address for the Annex Office, I find that the Officer's reliance on the site visit was unreasonable.

[26] The Applicant's submissions on procedural fairness are meritless. The Officer was under no obligation to alert the Applicant of deficiencies in her PFL response letter (*Walia v Canada (Citizenship and Immigration)*, 2016 FC 1171 at para 17). As stated in *Thandal v Canada (Citizenship and Immigration)*, 2008 FC 489 (at para 9):

It is well established that an applicant has the burden of establishing [their] case. Generally, an applicant is to do that once, rather than on the basis of some sort of rolling story of reply, sur-reply and so forth... There is nothing unfair in the officer deciding the case on the evidence as provided by the Applicant at that time.

[27] The Officer was similarly not obliged to conduct an additional site visit in light of the updated address for the Annex Office in the Applicant's PFL response. The Applicant's own submission was that the update was "neither major nor in discord with the [previously] stated address." It was therefore within the ambit of the Officer to conclude that no further verification was required. The Applicant's procedural rights were not infringed by this finding.

[28] In oral submissions, counsel for the Applicant repeatedly stated that the Officer fabricated evidence against the Applicant. This is a serious accusation that is wholly without foundation. There is nothing in the record to suggest that evidence was fabricated against the Applicant. The Applicant has not established any procedural flaw with the Officer's decision, and certainly not one as grave as the fabrication of evidence.

[29] The Applicant has similarly failed to establish that the IRCC agents visited the wrong address for the Annex Office. In support of this assertion, the Applicant highlights the discrepancy between the address provided in her application materials and the address recorded in the Global Case Management System ("GCMS") notes. However, the address provided by the Applicant contains no street number or street name. The Applicant simply stated that the Annex Office is located in the "R.O Lasis Building Railway Compound, Beside Flour Mills Nigeria PLC." The IRCC agents were only able to locate the R.O. Lasisi Building using the street address of Flour Mills Nigeria PLC. A sworn affidavit from one of the IRCC agents confirms

that the address in the GCMS notes is the location of Flour Mills Nigeria PLC, but that the site visit was conducted at the R.O. Lasisi Building, which matched the photos of the Annex Office provided by the Applicant. I therefore do not find that the IRCC agents visited the wrong address for the Annex Office, despite the discrepancy between the address provided by the Applicant and the address in the GCMS notes.

[30] However, I agree with Applicant that the Officer's reliance on the site visit was unreasonable. During the site visit at the Main Office, IRCC agents relied on information from individuals who were plainly not knowledgeable about their surroundings. For instance, IRCC agents conferred with a store clerk who provided the wrong address for the complex in which the Main Office was located. The IRCC agents also spoke with a receptionist who "was unable to tell [the agents] the name of her own employer." Despite the Applicant's statement in her PFL response that individuals at the Main Office complex would not be knowledgeable about the companies operating from the building and clear indications that these individuals were indeed unfamiliar with the building's occupants, the Officer relied on information from these individuals to refuse the Applicant's application. In my view, this constitutes a reviewable error.

[31] This error on its own would not be sufficient to render the refusal decision unreasonable. However, I find the Officer made further errors with respect to the Annex Office. At the Annex Office, IRCC agents spoke with an individual who said that "no one had moved into the premises recently." The Officer accepted the IRCC agents' determination that the Company must not be "functioning at that address," as the Applicant "claimed" that the Company had "mov[ed] in there recently." However, the Applicant made no such statement. In an explanation letter on June 27, 2023, the Applicant stated that "the management recently decided to move the

staff members who were working from the [Main Office] to the [Annex Office] located within the same locality.” I find the Applicant was describing the relocation of personnel, not the opening of a new office where none had previously existed.

[32] In addition to the flaws with the site visit, I find the Officer misapprehended the Applicant’s documentary evidence. In her PFL response, the Applicant provided two letters acknowledging the filing of the Company’s annual returns. The Officer found that “[i]t is not normal for a business to hand out tax documents with confidential information to their ex-employee.” I note that the two acknowledgements do not contain confidential information. They are also not tax documents, as they simply confirm “receipt of Annual return[s] filed by [the Company]” for 2020 and 2021.

[33] In my view, the cumulative effect of these errors is to render the Officer’s decision unintelligible and not justified (*Vavilov* at para 99). The lapse in the rational chain of analysis in this case is particularly significant given the serious impact of the Officer’s decision on the Applicant. As a result of the Officer’s decision, the Applicant was made inadmissible to Canada for five years. *Vavilov* stipulates that, “[w]here the impact of a decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes” (para 133). In this case, the Officer’s decision does not adequately reflect the “stakes” for the Applicant.

VI. **Conclusion**

[34] This application for judicial review is allowed. The Officer misapprehended the Applicant's materials, misconstrued the evidence on the record, and unreasonably relied on adverse verification results from a deficient site visit (*Vavilov* at paras 127, 126).

JUDGMENT IN IMM-13443-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The Respondent is named as The Minister of Citizenship and Immigration with immediate effect.
3. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13443-23

STYLE OF CAUSE: OLUBUNMI OLUWATOSIN AGBATO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 7, 2025

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DATED: APRIL 14, 2025

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