Federal Court Reports
Owusu v. Canada (Minister of Citizenship and Immigration) (T.D.) [2003] 3 F.C. 172

Date: 20030129

Docket: IMM-3874-01

Neutral citation: 2003 FCT 94

BETWEEN:

SAMUEL KWABENA OWUSU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.:

INTRODUCTION

[1] These reasons arise out of an application for judicial review of a decision of an Immigration Officer wherein the Immigration Officer determined that, on the submissions and evidence before him or her, there were insufficient humanitarian or compassionate concerns to warrant exempting the applicant from the requirement that he apply for and obtain a visa before entering Canada[1]. The decision under review is dated the 24th of July, 2001.

BACKGROUND

[2] The applicant is a citizen of Ghana and a member of the Ashanti tribe. His father, who the applicant indicates was "...a leading member of the National Independence Movement, a secessionist Ashanti Movement," died in 1983, allegedly at the hands of the Ghanaian government. The applicant attests that prior to his death, his father was detained and severely beaten by the authorities by reason of his political opinion and his tribal affiliation. While he was still in Ghana, the applicant himself was, he attests, an active member of the Movement for Freedom and Justice.

[3] In mid-October, 1991, the applicant fled Ghana "... to escape the political and ethnic violence in [his] home country." He left behind in Ghana his wife and two young children who were born in January, 1986 and April, 1988, respectively.

[4] The applicant arrived in Canada, once again in mid-October, 1991. He has remained in Canada since his arrival. The applicant made an unsuccessful claim to Convention refugee status.

[5] The applicant has worked hard to integrate himself into the Canadian community. He has been gainfully employed since April of 1993. He is active in community work and in his religious congregation. He alleges that each month since he started working in Canada he has been sending money back to Ghana to support his wife and children. Unfortunately, neither that allegation nor evidence to support it was before the Immigration Officer who made the decision that is under review.

[6] In March of 1999, the applicant filed his application to remain in Canada as a permanent resident on humanitarian or compassionate grounds. In covering submissions, the applicant's counsel wrote:

> Should he [the applicant] be forced to return [to] Ghana he will not have any way[s] to support his family financially and he will have to live every day of his life in constant fear.[2]
>
> Counsel concluded submissions on behalf of the applicant with the following paragraph:
>
> Mr. Owusu wants to live in a country where hard work can get you ahead so that he will have a better chance in life then [sic] he had. He is willing to work long, hard hours to provide for himself and never rely on social assistance. Mr. Owusu has been brought up on strong moral and political beliefs and hopes that through his hard work he can better himself. Unfortunately, the [sic] he was born in a country with serious political and racial strife and so he came to Canada because he feared for his life. For almost many years [sic] he toiled to provide a stable income and all the necessities in life. He has contributed to the economic prosperity of this country and has shown that he has the characteristics and virtues that Canadians value. We respectfully submit that he is an asset to Canada and, as such, we would respectfully request that Mr. Owusu's In Canada Application for Landing be accepted and approved on humanitarian and compassionate grounds.[3] [emphasis added]
>
> The foregoing quotations from submissions on behalf the applicant are the only passages in those submissions that could conceivably have led the Immigration Officer to think that the applicant has, since 1993, been supporting his wife and children in Ghana by sending them a portion of his Canadian income from employment. As previously noted, there was no evidence tendered to support such an allegation.

[7] Despite enquiries, the applicant heard nothing from the respondent regarding the status of his application until mid-September, 2000 when he received a letter from a Post Determination Claim Officer enclosing a "Risk Opinion" report and inviting comment on that report. Following receipt of that report, the applicant once again heard nothing from the respondent until he received the rejection decision that is here under review. He was neither invited to provide further evidence or submissions or both, nor invited to an interview. In the material before the Court, he attests:

> 25. I was never interviewed in connection with my H & C application. I was really counting on an interview so that I could discuss my circumstances in person with an Immigration Officer and address any questions that the Immigration Officer had about my case.
>
> 26. Attached hereto and marked as Exhibit "I" is some documentary proof of my financial support of my family in Ghana from 1993 to 2001. After my H & C application was submitted, I collected these documents with the intention of providing them and discussing them at an interview. Since I did not receive an interview or even a request for further documentation since my H & C application was filed in March 1999, I did not provide these or other updated documents in support of my case.[4]

The "documentary proof" referred to in quoted paragraph 26 was not before the Immigration Officer whose decision is under review and, apart from very limited circumstances not here present, should therefore not have been before the Court. I nonetheless agreed to have it left on the record solely for the purpose of demonstrating that, at the time the Application Record in this Court was assembled, it existed.

DECISION UNDER REVIEW

[8] The Immigration Officer prepared a document entitled "Decision and Rationale" in support of the decision letter dated the 24th of July, 2001. The substance of the "Decision and Rationale" document is reproduced in full in a schedule to these reasons. The Decision and Rationale document contains only two (2) references to the applicant's children in Ghana. The first appears in the last sentence of the third paragraph of the document where the applicant's two "dependant" children are mentioned in support of a determination that the applicant's ties with his home country are stronger than those with Canada. The second appears in the penultimate paragraph where the applicant's "...wife and two sons as well as his mother and other family members..." are noted to be in Ghana "...and there is insufficient evidence to indicate that they are encountering difficulties in Ghana." The latter reference is problematic in two respects. First, the applicant's mother who is referenced died in September of 1997 and that information was before the Immigration Officer. Second, there was apparently no evidence before the Immigration Officer that the applicant had surviving family members in Ghana other than his wife and two sons.

THE ISSUES

[9] The applicant's Memorandum of Argument identifies two (2) issues in the following terms: first, was the applicant denied procedural fairness; and second, was the Immigration Officer's assessment of the relevant humanitarian and compassionate factors, deficient. In the analysis that follows, I will deal very briefly with the issues of standard of review and onus on an application for relief on humanitarian or compassionate grounds before turning to the issues identified on behalf of the applicant. Following consideration of those issues, I will turn, once again briefly, to the issue of appropriate relief, if any.

ANALYSIS

a) Standard of Review

[10] It was not in dispute before me that the standard of review of a decision such as that here under review is reasonableness *simpliciter*[5]. That being said, counsel for the respondent quite properly noted that it is not appropriate on the standard of review of reasonableness *simpliciter* for this Court to engage in a re-weighing of the evidence.[6]

b) Onus

[11] The onus on an application for humanitarian or compassionate relief lies with the applicant. In *Prasad v. Canada (Minister of Citizenship and Immigration)*[7], in the context of judicial review of a visa officer decision, Justice Muldoon wrote at paragraph 7:

> The onus is on the applicant to satisfy the visa officer fully of all the positive ingredients in the applicant's application. It is not for the visa officer to wait and to offer the applicant a second, or several opportunities to satisfy the visa officer on necessary points which the applicant may have overlooked.
>
> In *Patel v. Canada (Minister of Citizenship and Immigration)*[8], Justice Heald, once again in the context of judicial review of a visa officer's decision, but dealing with the issue of humanitarian or compassionate grounds, wrote at paragraph 9:
>
> The applicant submits that he is entitled to have all relevant evidence considered on a humanitarian and compassionate application. I agree with that submission. However, the onus in this respect lies with the applicant. It is his responsibility to bring to the visa officer's attention any evidence relevant to humanitarian and compassionate considerations.

[12] I am satisfied that the foregoing authorities apply fully on an application for leave to apply for landing from within Canada on humanitarian or compassionate grounds.

c) Procedural Fairness

[13] Counsel for the applicant urged that the applicant was denied procedural fairness when he was neither interviewed nor extended an invitation to make further submissions and provide further evidence before the decision under review was finalized, particularly in light of the substantial lapse of time between the filing of his application and the finalization of the decision. I disagree.

[14] The applicant had received notice that progress was being made on processing of his application when he was provided an opportunity to comment on the risk opinion report prepared for consideration in conjunction with his application. That should have alerted him that something was going on and that he should submit whatever he had. He had been accumulating evidence to indicate the economic

support that he was providing to his wife and two children in Ghana. He withheld it, apparently in the hope or expectation that he would be granted an interview and would have an opportunity to submit the evidence at or before that time and to make submissions with respect to it. That was his decision to make. As it turned out, he was the author of his own misfortune. He could have submitted his accumulating evidence together with appropriate written representations. He had no rational justification for relying on his assumption that he would be granted an interview or be extended an invitation to make further submissions. While the duty of fairness owed to an applicant for humanitarian or compassionate relief is not simply "minimal", neither does it extend to place an obligation on an immigration officer who is considering such an application to invite further submissions and evidence or to provide an interview, no matter how long the delay in finalization of a decision on the application might be.

[15] Once again in *Baker*[9], Justice L'Heureux-Dubé wrote:

> Rather, the circumstances require a full and fair consideration of the issues, and the claimant and others whose important interests are affected by the decision in a fundamental way must have a meaningful opportunity to present the various types of evidence relevant to their case and have it fully and fairly considered.
>
> I am satisfied that, on the facts of this matter, the applicant was not deprived of a "meaningful opportunity" to present the various types of evidence relevant to his case and to have it fully and fairly considered. Rather, faced with such an opportunity, and with the onus on him, he simply failed to provide evidence and submissions which, if provided, would have had to be fully and fairly considered by the Immigration Officer.

d) Assessment by the Immigration Officer of the Humanitarian and Compassionate Factors Present

[16] It was not in substantial dispute before me that one of the humanitarian and compassionate factors at issue on the applicant's application was the best interests of his children in Ghana.

[17] The reasons of the Supreme Court of Canada in *Baker*[10], as they relate to "best interests" of a child or children, were not written in terms limited to Canadian-born children or to children in Canada. Nor does the United Nations Convention on the Rights of the Child[11] draw any distinction between circumstances where a child is physically present with a parent or is in a distant and separate location from a parent. While article 2 of the Convention requires States Parties to the Convention only to "...respect and ensure the rights set forth in the ... Convention to each child within their jurisdiction...", I am not prepared to interpret those words as a reference to "geographical " jurisdiction. I am satisfied that the positive and humane interpretation[12] of article 2 brings the children of the applicant within the "jurisdiction" of Canada where, as here, their best interests are inevitably impacted by their father's application which was properly before the respondent.

[18] In *Jack v. Canada (Minister of Citizenship and Immigration)*[13], I relied on the *Baker* decision in reviewing a decision of an immigration officer on a humanitarian or compassionate grounds application where the interests of children who were foreign born were at issue. I am satisfied that it is appropriate to do the same on the facts of this matter, where the children whose interests are impacted by the fate of their father were not only foreign born, but never have been in Canada and have been separated from the applicant, their father, for many years.

[19] In *Hawthorne v. Canada (Minister of Citizenship and Immigration)*[14], Justice Evans, in minority reasons concurring in the result, wrote at paragraphs 31 and 32:

> Counsel agreed that, under the legal test established by Baker and Legault for reviewing officers' exercise of discretion, the refusal to grant Ms. Hawthorne's H & C [humanitarian or compassionate grounds] application could be set aside as unreasonable if the officer had been "dismissive" of [the child's] best interests. On the other hand, if the decision-maker had been "alert, alive and sensitive" to them (Baker, at para. 75), the decision could not be characterized as unreasonable.
>
> It was also common ground that an officer cannot demonstrate that she has been "alert, alive and sensitive" to the best interests of an affected child simply by stating in the reasons for decision that she has taken into account the interests of a child of an H & C applicant (Legault, at para. 13). Rather, the interests of the child must be "well identified and defined" (Legault, at para. 12) and "examined ... with a great deal of attention" (Legault, at para. 30). For, as the Supreme Court has made clear, the best interests of the child are "an important factor" and must be given "substantial weight" (Baker, at para. 75) in the exercise of discretion under subsection 114(2) [of the *Immigration Act*].

[20] Justice Evans continued in paragraph 34 of his reasons in *Hawthorne*:

> ...In order to determine if the officer's decision was unreasonable, the Court must subject her consideration of the best interests of the child to the "somewhat probing examination" prescribed in Canada (Director of Investigation and Research v. Southam Inc., [1997] 1 S.C.R. 748 at para. 56.

[21] Finally, Justice Evans wrote at paragraph 52 of his reasons in *Hawthorne*:

> The requirement that officers' reasons clearly demonstrate that the best interests of an affected child have received careful attention no doubt imposes an administrative burden. But this is as it should be. Rigorous process requirements are fully justified for the determination of subsection 114(2) [humanitarian or compassionate grounds] applications that may adversely affect the welfare of children with the right to reside in Canada: vital interests of the vulnerable are at stake and opportunities for substantive judicial review are limited. [emphasis added]
>
> I am satisfied that the same might be said with respect to the welfare of children who do not have a right to reside in Canada but who might very well

> acquire a right to be sponsored to come to Canada if, as here, their parent were successful on an application for landing from within Canada on humanitarian or compassionate grounds.

[22] I noted earlier that Justice Evans' reasons in *Hawthorne* were minority reasons. Justice Décary, for the majority, arrived at the same result as did Justice Evans but based on different grounds. I derive the following principles from his reasons: first, the *Baker* and *Legault* decisions cited earlier in these reasons stand for the proposition that the best interests of a child are an important factor that must be given substantial weight; second, an Immigration Officer who is considering the best interests of a child should not be required to adopt a "magic formula" to explain the reasons for his or her exercise of discretion because to do so would "...elevate form above substance." Justice Décary wrote at paragraph 5 of the reasons in *Hawthorne*:

> ...the officer has before her a file wherein specific reasons are alleged by a parent, by a child or, as in this case, by both, as to why non-removal of the parent is in the best interests of the child. These specific reasons must, of course, be carefully examined by the officer.
>
> I note that, on the facts of this matter, there were essentially no "...specific reasons" before the Immigration Officer from anyone "...as to why non-removal of the parent [here the applicant] is in the best interests of the [children in Ghana]".

[23] Against the foregoing authorities and subjecting the decision of the Immigration Officer that is here under review to a "somewhat probing examination", I determine that decision to be unsustainable. I find no basis whatsoever upon which I could conclude that the Immigration Officer had been "alert, alive and sensitive" to the best interests of the applicant's children in Ghana. Those interests were not "well identified and defined" by the Immigration Officer. They were not "examined... with a great deal of attention". Indeed, they were not examined at all and no explanation was provided by the Immigration Officer as to why they were not.

[24] A simple explanation was available. The simple explanation was that the evidence and submissions from the applicant and on his behalf did not themselves identify the best interests of the applicant's children as a factor to be considered. The applicant and his advisors simply failed to put before the Immigration Officer the appropriate evidence and submissions. If the Immigration Officer had simply identified this reality in her Decision and Rationale set out in the Schedule to these reasons, I am satisfied that, on the facts of this matter, that would have been enough.

[25] I return to the principle that the onus on an application such as that here under review is on the applicant. Notwithstanding that the applicant's evidence and related submissions here identified that there were children whose best interests were at stake on this application, I am not satisfied that that of itself transferred an onus to the Immigration Officer where the applicant failed to discharge the onus on him. I am satisfied that the Immigration Officer was under no obligation on the facts of this matter to reach out to the applicant, to point out to him the deficiencies in his evidence and submissions, and to provide him an opportunity to remedy those deficiencies. It

might have been preferable if the Immigration Officer had done so, but the Immigration Officer was under no such obligation.

[26] I return once again to paragraph 5 of the reasons of Justice Décary in *Hawthorne*[15]. That paragraph is now quoted in full:

> The officer does not assess the best interests of the child in a vacuum. The officer may be presumed to know that living in Canada can offer a child many opportunities and that, as a general rule, a child living in Canada with her parent is better off than a child living in Canada without her parent. The inquiry of the officer, it seems to me, is predicated on the premise, which need not be stated in the reasons, that the officer will end up finding, absent exceptional circumstances, that the "child's best interests" factor will play in favour of the non-removal of the parent. [emphasis added]
>
> I would go further. I am satisfied that, as a general rule, a child wherever he or she may be living is better off living with his or her parent. There are, of course, significant exceptions to this rule but, once again on the facts of this matter, there was no evidence whatsoever before the Immigration Officer to indicate that the applicant's children were better off in Ghana and with their father in Canada then they would be if their father were with them in Ghana.

[27] On the sole basis of the deficiencies regarding best interests of the applicant's children in the Decision and Rationale set out in the Schedule to these reasons, I determine that the Immigration Officer erred in a reviewable manner in arriving at the decision under review.

e) Appropriate relief, if any

[28] Having determined on all of the facts of this matter, and taking into account the submissions of counsel, that the applicant was the author of his own misfortune when his application for landing from within Canada on humanitarian or compassionate grounds was rejected, and further considering my conclusion that no responsibility lay with the Immigration Officer to reach out to the applicant to provoke him into bolstering evidence and submissions, I am satisfied that it would not be appropriate to set aside the decision under review, and to refer it back for rehearing and redetermination on the basis of the evidence and submissions in the tribunal record and of further evidence and submissions that the applicant might see fit to provide to the respondent within a time that I might fix. To do so would be to insert this Court into the role of providing a remedy to the applicant in respect of his own errors, not in respect of a substantive omission or error on the part of the respondent.

[29] On the other hand, to set aside the decision under review and to refer the matter back for reconsideration and redetermination on the basis solely of the evidence and submissions that were before the Immigration Officer when the decision under review was made, would be meaningless. It would, in the words of Justice Décary in *Hawthorne*, "elevate form over substance". The respondent would have no alternative but to "patch up" the decision and rationale by noting that there is simply no evidence and there are no submissions before the respondent that could support a determination that the best interests of the applicant's children in Ghana lie in

allowing the applicant to remain in Canada. Quite the contrary. The only evidence regarding the best interests of the children that was before the Immigration Officer was that they have been separated from their father for now in excess of ten (10) years, a situation that, in the absence of evidence to the contrary, would generally be considered as not in the best interests of the children. Thus, I am satisfied that any new decision by another officer based upon the same evidence and submissions would inevitably result in rejection of the applicant's application.

[30] In *Yassine v. Canada (Minister of Employment & Immigration)*[16], the Court of Appeal had before it an appeal relating to a decision of the Refugee Division made in circumstances such that the applicant's, the appellant before the Court of Appeal, right to a fair hearing was denied in breach of natural justice. Justice Stone, for the Court, wrote at paragraphs 9 and 10 of the reasons:

> ...Ordinarily the denial of that right [the right to a fair hearing] will void the hearing and the resulting decision. An exception to this strict rule was recognized in *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*,... where, ..., the Supreme Court of Canada quoted the following views of Professor Wade:
>
> "A distinction might perhaps be made according to the nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless".
>
> While recognizing that natural justice or procedural fairness had been denied, the Supreme Court gave effect to Professor Wade's distinction by withholding a remedy because the outcome was "inevitable," in that the decision-maker "would be bound in law to reject the application" of the appellant therein.
>
> The limits within which Professor Wade's distinction should operate are yet to be established. Iacobucci J., writing for the court ... regarded the circumstances in *Mobil Oil* as "exceptional, since ordinarily the apparent futility of a remedy will not bar its recognition," citing *Cardinal v. Kent Institution*, ... It should be noted that *Cardinal* involved a complete denial of a hearing. Here it is not necessary to speculate as to the outcome, assuming of course that natural justice was denied and that there has been no waiver. The adverse finding of credibility having been properly made, the claim could only be rejected. It would be pointless to return the case to the Refugee Division in these circumstances. [citations omitted]

[31] As in *Mobil Oil* and *Yassine*, I am guided by the principle that "good public administration", and I would go and further and say good administrative law decision-making, is concerned with substance rather than form. I have already noted my satisfaction that, if this matter were referred back for redetermination on the record, another immigration officer would only reach the same conclusion as that reached by the Immigration Officer whose decision is here under review. Acknowledging that to refuse to provide relief in the face of reviewable error is truly exceptional and should not be applied broadly, I am satisfied that this is a case that justifies denying relief.

CONCLUSION

[32] In the circumstances, this application for judicial review will be dismissed.

COSTS

[33] Neither party sought costs. There will be no Order as to costs.

CERTIFICATION OF A QUESTION

[34] Counsel for the applicant sought certification of a question while counsel for the respondent urged that this matter turned on its unique facts and that therefore certification of a question was not warranted. There was some discussion between counsel for the applicant and the Court regarding the terms of a certifiable question and I am satisfied that the result was a question in somewhat the following form:

Where, as on this matter, a Trial Judge finds a reviewable error on an application for judicial review of a decision engaging the best interests of a child or children, is the Trial Judge obligated to set aside the decision under review and to remit the matter for reconsideration and redetermination on the basis, not merely of the record that was before the decision-maker whose decision is set aside, but on the basis of that record and any new evidence and submissions that the applicant might determine to put before the officer conducting the reconsideration and making the redetermination?

I will certify the foregoing question. I note that where a question is certified, the object of the appeal is the judgment itself, not merely the certified question[17]. I derive satisfaction from the result that, with certification of the foregoing question, an appeal of my decision would bring before the Court of Appeal my determination herein that "best interests of a child" extends to the interests of children wherever they might be, not merely to children in Canada

[1] *Immigration Act*, R.S.C. 1985, c. I-2, ss. 9(1) and 114(2).

[2] Applicant's Application Record, page 23.

[3] Applicant's Application Record, page 26.

[4] Applicant's Application Record, page 12.

[5] See *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817 at pages 857-8, paragraph 62.

[6] See *Suresh v. Canada (Minister of Citizenship and Immigration)* (2002), 208 D.L.R. (4th) 1 at page 25, paragraph [41] and *Canada (Minister of Citizenship and Immigration) v. Legault* [2002] 4 F.C. 358 at paragraph [11].

[7] (1996), 34 Imm. L.R. (2d) 91 (F.C.T.D.).

[8] (1997), 36 Imm. L.R. (2d) 175 (F.C.T.D.).

[9] *Supra*, note 5, at paragraph 32.

[10] *Supra*, note 5.

[11] UN Doc. A/Res/44/25, Can. UNTS 1993 No. 3 (entry into force September 2, 1990).

[12] See articles 10 and 27 of the Convention.

[13] (2000), 7 Imm. L.R. (3d) 35.

[14] [2002] F.C.J. No. 1687 (online: QL)(C.A.).

[15] *Supra*, note 14.

[16] (1994), 27 Imm. L.R. (2d) 135 (F.C.A.), not cited before me.

[17] *Baker, supra*, note 5, paragraph 12.

SCHEDULE

DECISION AND RATIONALE

I have reviewed this case under humanitarian and compassionate grounds and under the guidelines policy relating to Mr. Owusu's situation. There are insufficient compelling humanitarian and compassionate grounds to warrant an exemption from the normal legislative requirements.

Applicant's main reasons for wishing to apply from within Canada are that he feared returning to his native Ghana because while in Canada, he lived in the Ashanti region and was therefore persecuted for his political beliefs. In addition, Mr. Owusu had stated that he was a member of the Movement for Freedom And Justice (MFJ), and he fled Ghana when he heard that the Militia were arresting everyone that attended the MFJ meetings. Furthermore, the applicant stated that he was very well established in Canada, self-supporting, and has a full time job and a lot of friends through work and his church.

I have considered the fact that Mr. Owusu successfully attempted to adopt and integrate into the community, as well as become self-supporting, the fact that he has a full time job, and that he is a hardworking individual. This is all very commendable, However, it does not constitute grounds for approval, and I am not satisfied that he has become so established to the pint where it would cause him undue and disproportionate hardship to leave Canada and seek an immigrant visa in the normal manner. I have considered that he has upgraded his skills by taking courses and that he has substantial savings and had volunteered his time to help others. It is to be noted that Mr. Owusu's ties with his home country are a lot stronger than those with Canada, where he still has his wife and two dependant children as well as his other family members.

I have also considered Mr. Owusu's fear of returning to his home country because of fear of authorities - - - There is insufficient evidence to indicate that Mr. Owusu would be at risk should he be returned to Ghana. I have reviewed the PCDO's decision with regards to this fear of returning to his home country and I agree with the decision in that there is insufficient evidence to support the conclusion that the applicant would be at risk of threat to life or inhumane treatment. The applicant stated that he had had to flee Ghana because of his fear of authorities as a result of his membership with the MFJ. I am not satisfied that sufficient evidence exists to indicate that the applicant would be at risk if returned to his native country and there is insufficient evidence to indicate that any particular group or individual would be interested in pursuing the applicant or targeting him for harm upon his return. In addition, there is insufficient evidence to indicate that the applicant would be at risk of being accused and punished for anti-government activities upon his return to Ghana. Also, it is noted that the applicant still has his wife and two sons as well as his mother and other family members, and there is insufficient evidence to indicate that they are encountering difficulties in Ghana. The applicant had stated that his father had died from injuries inflicted to him during his detention and torture at the hands of Ghanian Government. There is insufficient evidence to indicate that Mr. Owusu's father's death was caused as a result of the persecution of the Ashanti tribe. As per the PCDO's decision and the Country Report, there is no evident link between the applicant's personal

circumstances and the country conditions existing in Ghana today. Therefore, I am not satisfied that the applicant would face any personal risk to life should he be removed to Ghana.

After carefully considering all information provided in submissions and on file, I am not satisfied that sufficient humanitarian and compassionate grounds exist to warrant the applicant's request to waive a 9(1) of the immigration act.

APPLICATION IS REFUSED - INSUFFICIENT HUMANITARIAN AND COMPASSIONATE GROUNDS.

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

DOCKET: IMM-3874-01

STYLE OF CAUSE: SAMUEL KWABENA OWUSU

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND

IMMIGRATION

Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: WEDNESDAY JANUARY 15,2003

REASONS FOR ORDER BY: GIBSON J.

DATED: WEDNESDAY JANUARY 29, 2003

APPEARANCES BY:

Mr. Mark Rosenblatt For the Applicant

Mr. Robert Bafaro For the Respondent

SOLICITORS OF RECORD:

Mark Rosenblatt For the Applicant

Barrister and Solicitor

335 Bay St. Suite 1000

Toronto, Ont. M5H-2R3

Morris Rosenberg For the Respondent

Deputy Attorney General of Canada