

Federal Court



Cour fédérale

**Date: 20150324**

**Docket: IMM-4045-14**

**Citation: 2015 FC 371**

**Ottawa, Ontario, March 24, 2015**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**NICOLAS MILLER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the decision of a senior immigration officer wherein the application for permanent residence processed from within Canada on humanitarian and compassionate [H&C] grounds under subsection 25(1) of IRPA was refused.

[2] The applicant is a citizen of St. Vincent and the Grenadines who came to Canada in 2003 as a visitor and remained in Canada without status since that time. He submitted an H&C application on September 20, 2013.

[3] The applicant submitted in his H&C application that he has a 4 year-old son in Canada for whom he has sole custody since his mother is unable to take care of him. His son is a Canadian citizen and has a serious and permanent hearing impairment, for which he wears hearing aids and receives care in Montréal.

[4] If his son had to go with him to St. Vincent, he would lose the medical, therapy and school services that he benefits from as a citizen of Canada. This would exacerbate his isolation and problems as a deaf person. In support of this submission, the applicant provided medical letters from his son's paediatrician and audiologist, confirming his hearing impairment. The paediatrician stated that it was in the boy's best interests to remain in Québec, where he could receive the proper care, and the audiologist said that to her knowledge and according to the parents, adequate professional services could not be offered to him in the Caribbean.

[5] On February 19, 2014, the officer contacted the applicant requesting, among other things, information regarding the medical care available to his son in St. Vincent.

[6] The applicant responded by letter that the medical care available to his son in Canada would not be available to him in St. Vincent. He stated that in St. Vincent, the deaf are fitted with low tech amplifiers rather than blue tooth devices that address specific needs and deaf

children are given an inferior education rather than the specialized schooling and resources they receive in Canada.

[7] At the end of this letter, the applicant wrote:

P.S. I have attached a study I found on the internet that may also help to explain the bad situation for deaf children in St. Vincent.

[8] However, according to the respondent, no such document was ever received.

[9] On April 28, 2014, the officer refused the applicant's H&C application.

[10] With respect to the applicant's son the officer stated that, despite a request for further information regarding the medical care available to him in St. Vincent, the applicant had provided additional written statements but no corroborative evidence.

[11] The officer concluded that the applicant's son could return with him to St. Vincent, given that: there was no evidence to suggest he would not have access to resources in St. Vincent to assist with his disability; the applicant's family could assist with the transition period in relocating to St Vincent; and, as a Canadian citizen, he could return to Canada at any time.

[12] The determinative issue in the present case is whether the officer breached procedural fairness by failing to provide the applicant with an opportunity to provide the missing Report given that the applicant's letter stated that it was attached.

[13] A question of procedural fairness is to be reviewed on a correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Riaji v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1240 at para 24; *Galyas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 250 at para 27).

[14] The applicant submits that the officer erred by failing to consider or follow-up on the report entitled “Sociolinguistic Profiles of the Deaf Communities in Trinidad, St. Vincent and Grenada” [the Report]. It was clearly relevant evidence as the officer found that, without evidence to the contrary, she was not satisfied that the applicant’s son would not have access to resources in St. Vincent to assist with his disability. The officer had a duty to request a copy of the missing study from the applicant given that it was corroborative evidence regarding the inadequacy of health services for deaf children in St. Vincent, and given that the applicant’s letter had stated clearly that the Report was “attached”.

[15] The respondent argues that the Report, which is included in the Applicant’s Record, was not submitted by the applicant in support of his H&C application and should not be considered by the Court. The onus is on the applicant to submit the evidence in support of his application (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 8 [*Owusu*]; *Nguyen v Canada (Minister of Citizenship and Immigration)*, 2005 FC 236 at paras 7-8, 13). The officer gave the applicant an opportunity to provide documents once, and did not have an obligation to do so again. In any case, there were other deficiencies in the applicant’s evidence, and the officer’s decision was reasonable.

[16] Procedural fairness requires that an applicant be provided with a meaningful opportunity to present the various types of evidence relevant to his or her case and to have it fully considered (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 28; *Sinnathamby v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1421 at para 25; *Ghasemzadeh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 716 at para 27).

[17] There is contradictory evidence in this case with respect to the Report that the applicant has included in the Applicant's Record. The applicant affirms that the Report was submitted, while the officer affirms that it was not.

[18] I am satisfied that the Report was relevant to the officer's BIOC analysis, as per this note in the decision:

[...] I also requested information from Mr. Miller regarding the medical care available for [his son] in Saint Vincent. In response to this request, Mr. Miller provided additional written statements.

[...]

He further states:

P.S. I have attached a study I found on the internet that may also help explain the bad situation for deaf children in St. Vincent.

However to date no report has been received. Aside from Mr. Miller's statements regarding the situation for deaf children in Saint Vincent and the lack of resources, no corroborative evidence regarding his findings has been submitted.

[19] The absence of this evidence led to the following specific key finding:

Without evidence to the contrary, I am not satisfied that if [his son] were to depart Canada with his father, he would not have access to resources in Saint Vincent to assist with his disability.

[20] I agree with the respondent that while the applicant had the onus of establishing the facts on which his H&C claim rested, in the circumstances of this case the officer should have been alert to the fact that the applicant specifically mentioned in his letter that a specific document was attached, and that absent a notification from the officer, he would have no way of knowing that it was not.

[21] In the circumstances, at a minimum, the officer should have informed the applicant that the Report was missing and requested a copy. By failing to do so, the officer breached her duty of procedural fairness.

[22] For these reasons, the application for judicial review is allowed. There are no questions for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

This application for judicial review is allowed, the decision of the officer dated April 28, 2014 is set aside and the matter is remitted for reconsideration by another officer.

"Danièle Tremblay-Lamer"

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Judge

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

**DOCKET:** IMM-4045-14

**STYLE OF CAUSE:** NICOLAS MILLER v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUÉBEC

**DATE OF HEARING:** MARCH 19, 2015

**JUDGMENT AND REASONS:** TREMBLAY-LAMER J.

**DATED:** MARCH 24, 2015

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