

Federal Court



Cour fédérale

**Date: 20170224**

**Docket: IMM-3730-16**

**Citation: 2017 FC 237**

**Ottawa, Ontario, February 24, 2017**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**WIKTOR ANTONI REINHOLZ**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES, AND CITIZENSHIP AND THE  
MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondents**

**JUDGMENT AND REASONS**

[1] Mr. Reinholz is a citizen of Poland and has been in Canada on a work permit since April, 2011. He applied for permanent residence status in Canada as a member of the Opportunities Ontario Provincial Nominee Program [PNP]. His application was denied, as the immigration Officer [the Officer] determined that he failed to submit all required documents pursuant to subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Specifically, the Officer found that Mr. Reinholz failed to have his non-accompanying dependent daughter submit to a medical examination.

[2] For the reasons that follow, I find that the Officer's decision was unreasonable.

Accordingly, this application for judicial review is granted. I decline to grant a directed verdict as requested by the Applicant.

#### I. Background

[3] Foreign nationals who seek to become a permanent resident of Canada, as well as their dependant family members (whether they are accompanying them or not) are required to undergo a medical examination pursuant to sections 23(b)(iii), 30(1)(a)(i) and 72(1)(e)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. Officers have the discretion to waive this requirement in exceptional circumstances.

[4] Prior to coming to Canada, Mr. Reinholz was married in Poland and he had a child with his former spouse. His daughter was born on November 3, 2005, and currently lives in Poland with her mother.

[5] Mr. Reinholz and his former spouse were divorced on October 30, 2006. By orders of the Courts in Poland, Mr. Reinholz and his former spouse were granted joint custody of their daughter who would thereafter reside exclusively with the mother.

[6] Although Mr. Reinholz admits that he would like his daughter to come to Canada, on November 9, 2011, he swore a statutory declaration acknowledging that he cannot sponsor his daughter to become a permanent resident of Canada. As Mr. Reinholz explained, he is unable to enforce the required medical examination upon his daughter, since her mother will not allow it and also prohibits her from coming to Canada.

[7] On July 27, 2016, Mr. Reinholz provided an affidavit which outlined the custody and access disputes, between him and his former spouse, over their daughter. This affidavit included several court orders from Poland, beginning in 2006 until 2016.

## II. Officer's Decision

[8] The Officer rejected Mr. Reinholz's application for permanent residence, because he failed to produce a completed medical examination for his non-accompanying dependent daughter. The Officer was not satisfied that there were sufficient extenuating circumstances warranting the granting of an exemption to the legislative requirements.

## III. Issue

[9] The only issue for determination is whether the Officer's decision is reasonable.

A. *Standard of Review*

[10] The decision of the Officer is reviewable against the standard of reasonableness (see *Rarama v Canada (Citizenship and Immigration)*, 2014 FC 60 [*Rarama*] at para 15; *Lhamo v Canada (Citizenship and Immigration)*, 2013 FC 692 at para 25.)

[11] A decision is reasonable when there is “justification, transparency and intelligibility within the decision-making process” and the actual decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

B. *Preliminary Issue*

[12] At the opening of the hearing, legal counsel for the Applicant confirmed that he would not be relying upon, nor arguing the constitutional issues which were raised in the Notice of Application. These Reasons will therefore not address those issues.

IV. Analysis

[13] Mr. Reinholz argues that it was an error for the Officer to state that he had chosen not to have his daughter medically examined. In the refusal letter, the Officer states:

“You were advised that you were required to have all your family members examined and that you cannot simply choose not to have them examined. You were further informed that if you were unable to meet this requirement, you must satisfy an officer that extenuating circumstances prevent you from doing so.”

[14] Mr. Reinholz argues that the Officer failed to consider the documentary evidence showing that his daughter was in the sole legal custody of his former spouse in Poland and that his daughter's mother refused to allow their daughter to undergo a medical examination. Additionally, his former spouse will not allow their daughter to visit Canada. Further, Mr. Reinholz claims that he has not had formal joint custody of his daughter since the Polish Court's Order of September 17, 2007, and that since the original Court Order of October 30, 2006, he has never had any form of legal custody.

[15] Mr. Reinholz argues that the Officer failed to consider both his statutory declaration and his affidavit, in which he states that because he is unable to have his daughter submit to a medical examination, due to her mother's refusal, he acknowledges that he cannot sponsor his daughter.

[16] The documentary evidence and the Polish Court's Orders showed that Mr. Reinholz has *de facto* very restricted rights with respect to his daughter: no custodial rights and very limited visitation rights that can only be exercised in the presence of his daughter's mother. However, while not saying so explicitly, the Officer assumed that by virtue of the words "joint custody" being used by the Polish Courts, Mr. Reinholz had the ability, or at least the right to insist, that his daughter undergo the required medical examination.

[17] In the refusal letter, the Officer relied solely on the Polish Court's reference to the phrase "joint custody" when he assessed Mr. Reinholz's rights towards his daughter. When interpreting

that phrase, the Officer disregarded relevant evidence, namely Mr. Reinholz's statutory declaration and affidavit.

[18] Similar to *Rarama*, although the Officer was not obligated to refer to every piece of evidence, failure to reference evidence that goes to the core issue on which the denial is based, can constitute an erroneous finding of fact (see *Hinzman v Canada (Citizenship and Immigration)*, 2010 FCA 177 at para 38). Here, while the Officer was not required to accept the statutory declaration or the affidavit as *de facto* evidence (see *Rarama* at para 26), the Officer should have noted, at the very least, why they were being disregarded. The decision is therefore unreasonable.

#### V. Conclusion

[19] As such, for the reasons outlined above, this judicial review is granted. The Applicant requests that this Court issue a directed verdict that the requirement for a medical examination be waived. I am not prepared to grant such an Order, however, I will direct that the Applicant is permitted to file additional evidence and will have his application reconsidered by a different immigration Officer.

**JUDGMENT**

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

1. The application for judicial review is granted. The decision of the Officer is set aside;
2. The Applicant has the right to file additional evidence and the matter is to be remitted for redetermination by a different officer;
3. No question of general importance is proposed by the parties and none arises;  
and
4. There will be no order as to costs.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-3730-16

**STYLE OF CAUSE:** WIKTOR ANTONI REINHOLZ v THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 14, 2017

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** FEBRUARY 24, 2017

**APPEARANCES:**

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