

Federal Court



Cour fédérale

Date: 20170606

Docket: IMM-4139-16

Citation: 2017 FC 551

Vancouver, British Columbia, June 6, 2017

PRESENT: The Honourable Mr. Justice Barnes

Docket: IMM-4139-16

BETWEEN:

IRINA VASILYEVA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This case raises a single issue of procedural fairness. The question posed by the application is whether it was incumbent on the visa officer to advise the Applicant of his concerns about the authenticity of her husband's tendered Russian military record of service [service book].

[2] The Applicant was seeking permanent residency in Canada. Her spouse's Russian military service was obviously relevant to the application and the visa officer requested his service book by email dated August 24, 2015. The Applicant provided a copy of her husband's service book issued in 1992, which was received on September 22, 2015. The dating of this record raised a fresh concern as can be seen from the visa officer's file notes dated May 12, 2016:

- Spouse: career in the Soviet military as an officer. Spouse submitted translated copy of military book: spouse served apparently 10 years, 1982-1992, attending military college for 5 years and then serving as a senior lieutenant in Saint Petersburg: spouse appears to have had no promotions despite formal military education and lengthy service. Spouse's military booklet was issued in 1992, at the end of his service: this is highly unusual as his Soviet military booklet should have been issued when he was 18 years old (circa 1981), when he would have been called to register for mandatory military service; he should definitely have been issued a military booklet at the beginning of his military career service in 1982. NB that the 1992 copy of the military booklet submitted does not indicate that it is a replacement or a duplicate. Original Military Booklet from 1981/1982, Detailed Military History table and Security Screening Required

[3] Because of the above concern, the visa officer requested, within 60 days, the "original military book (confirming your service in the army from 1982 to 1992) and completed, attached form regarding your service in the army along with all details". A few days later, a more detailed request was sent in the following form:

This is a follow-up message to our email dated 12 May 2016.

Please note that a copy of Vladimir Serdyuk's military book is already on file; however, this military book was issued in 1992, at the end of Vladimir Serdyuk's military career. In addition to the documentation requested in our 12 May 2016 email, please submit a certified translated copy of Vladimir Serdyuk's military book that was issued to him in either 1981-1982, when he turned 18 and began his military service. If Vladimir Serdyuk does not have a

military book issued in 1981-1982, please provide a detailed explanation as to why he does not have a military book dating from the beginning of his military service.

Please comply with our request within 60 days, otherwise your application for permanent residence in Canada will be assessed based on the documentation on file and may be refused.

[4] It appears from the record that the Applicant either failed to provide all of the additional requested information within the time required or, possibly, that information somehow went astray. From the record, it is not possible to tell.

[5] What happened next is the crux of the matter at hand. Instead of simply rejecting the application for failing to perfect the record, the visa officer identified an entirely new problem. He expressed a concern about the authenticity of the service book that had been submitted. This concern is reflected in the following passage from the visa officer's file notes:

On 02 June 2016, applicant submitted an explanation letter, the original military book issued in 1992, and a Details of Military Service table. I note that the military book looks brand new (no wrinkles, folds or wear & tear) even though it was issued 24 years ago. I also note that the corners of the military book submitted are not die-cut (as one would expect with a government-issued booklet) but rather appear to have been round-cut with scissors. These two factors call into question its authenticity.

[6] Without informing the Applicant of the above credibility concern, the visa officer proceeded to refuse the application. This decision prompted a request for reconsideration which was also rejected.

[7] The Applicant contends that the visa officer's failure to advise her of his concerns about the authenticity of the service book was a breach of procedural fairness. The Respondent argues that this issue is a "red herring" because the true basis for the decision was the Applicant's failure to provide the corroborating evidence requested by the visa officer.

[8] I am of the view that there was a breach of procedural fairness in this case requiring the matter to be redetermined on the merits. Notwithstanding Mr. Nash's forceful arguments, it is not possible on the record to know the extent to which the decision was influenced by the credibility/authenticity concerns expressed in the visa officer's file notes.

[9] In the result, the benefit of the doubt goes to the Applicant. She should have been given the opportunity to address the concern and the failure to extend that opportunity is a breach of procedural fairness: see *Mursalim v. Canada (Citizenship and Immigration)*, 2016 FC 264 at paras 22-24, [2016] FCJ No 235 (QL).

[10] For the foregoing reasons, this application is allowed. The matter is to be redetermined on the merits by a different decision-maker.

[11] Neither party proposed a certified question and no issue of general importance arises on the record.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted and the matter shall be sent back for redetermination on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4139-16

STYLE OF CAUSE: IRINA VASILYEVA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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