Federal Court Cour fédérale

Date: 2018~~0222~~0301

Docket: IMM-3355-17

Citation: 2018 FC 213

Ottawa, Ontario, ~~February 23~~ March 1, 2018

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

X.Y.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

[1] The Applicant is a 34 year old single Ethiopian woman who came to Canada in 2013, and, subsequent to her arrival, learned two things: (i) that she is HIV positive; (ii) that her mother – her only remaining immediate family – had passed away in Ethiopia. She now faces the prospect of returning to Ethiopia, unless she can establish humanitarian and compassionate (H&C) grounds to consider her application from within Canada. The Applicant's case is coming before this Court for the second time, and for the second time her application will be granted.

[2] This is an application for judicial review of the decision to refuse the Applicant's application for permanent residence on H&C grounds. The Applicant had based her claim for H&C consideration pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*] on the hardship she would face upon return to Ethiopia due to her HIV status, as well as the hardship of separation from her close friends and family in Canada in view of the fact that she had no remaining immediate family members in Ethiopia.

[3] A Senior Immigration Officer (the Officer) ~~of the Immigration Appeal Division (IAD)~~ refused her application, and this refusal gave rise to this application for judicial review. For the reasons set out below, I am granting this application.

I. Background

[4] The Applicant came to Canada from Ethiopia in February 2013 and she applied for refugee status based on her fear of persecution and risk based on her political opinion. Although she had learned of her HIV diagnosis in the course of the medical tests she underwent during the refugee process, she did not disclose it during her refugee proceeding. Her evidence is that she experienced shock and shame as a result of learning that she is HIV positive, and that she did not disclose it because of fear that others in the Ethiopian community would learn of her HIV status and would shun her because of it. Her refugee claim was rejected in April 2013 on the grounds of identity and credibility.

[5] In December 2014 the Applicant submitted her first application for permanent residence based on H&C grounds, and this was based on her fear of returning to Ethiopia as an HIV positive woman. This claim was refused in March 2015. In May 2015 the Applicant submitted a

pre-removal risk assessment (PRAA) application, and in July 2015 she submitted a second H&C application based on hardship due to her HIV status, the fact that she had no immediate family members in Ethiopia, and her establishment in Canada. Both the PRRA and the second H&C application were refused in July 2016.

[6] This Court set aside the H&C decision in December 2016 and remitted the case back for redetermination by a different officer. In January 2017 the Applicant submitted further information to support her application. The Officer dismissed the application in July 2017 for reasons which will be elaborated below.

II. Issues

[7] There are three issues in this case:

A. Did the Officer apply the wrong test to determine whether the Applicant's HIV status might pose a hardship?

B. Is the decision unreasonable because the Officer ignored key evidence which contradicted the result?

C. Is the decision unreasonable because the Officer did not undertake an H&C approach to the Applicant's unique circumstances?

III. Analysis

[8] The standard of review in regard to H&C decisions is reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18.

A. *Did the Officer apply the wrong test to determine whether the Applicant's HIV status might pose a hardship?*

[9] The Applicant argues that the Officer erred in finding that there was a low likelihood that she would be identified as HIV positive, since she had been diagnosed in Canada and had no immediate family members living in Ethiopia. The Officer noted that the evidence showed that a small number of unauthorized disclosures by medical professionals had occurred, and concluded that the Applicant's fears of such disclosure were speculative. The Applicant argues that the Officer was essentially saying that the Applicant could "hide" her HIV status, and therefore did not need to fear discrimination or violence because of it.

[10] In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, the Supreme Court of Canada established the analytical framework for the question of fear of discrimination in the H&C analysis:

> [56] …applicants need only show that they would likely be affected by adverse conditions such as discrimination. Evidence of discrimination experienced by others who share the applicant's identity is therefore clearly relevant under s. 25(1), whether or not the applicant has evidence of being personally targeted, and reasonable inferences can be drawn from those experiences...

[11] This Court has dealt with this question on several occasions. In *Sheikh v Canada (Citizenship and Immigration)*, 2014 FC 264 [*Sheikh*], Justice Russel Zinn overturned a decision which had found that Mr. Sheikh's fears of religious persecution in Pakistan due to his marriage to a Christian Pakistani woman were not well-founded since "there was no 'serious possibility of such persecution befalling' him because it was unlikely that this would be disclosed by those who knew him or by his family in Pakistan" (para 7). Justice Zinn ruled that this was an error:

> [14] … [I]t is irrelevant how likely or unlikely it is that the facts on which the persecution is based, would become known to the agents of persecution. In fact, any analysis on the part of the Board on this question would largely be an exercise in speculation, absent a finding on the evidence that it would never become known. It is also easy to imagine situations where there may be grave consequences for people with certain immutable characteristics, but who may not be easily discovered (homosexuals in Uganda for example). Are those claimants any less entitled to protection because the Board speculates that there is a low probability of that characteristic being discovered? This Court has consistently said that such individuals are entitled to protection if they prove that their subjective fear of persecution is objectively affirmed by showing that persecution is a real risk if their identity becomes known.

[12] Similarly, in *Isesele v Canada (Citizenship and Immigration)*, 2017 FC 222 [*Isesele*], Justice Anne Marie McDonald overturned a decision rejecting an application for H&C consideration for a young woman from Nigeria based on the hardship she would experience because of her sexual orientation, where that decision was based partly on the finding that she could "maintain a low profile about her sexual orientation" (para 9). Justice McDonald ruled:

> [14] It is clear from these remarks that the Officer is implying that as long as Ms. Isesele keeps her bisexuality private, she can avoid discrimination. However, this Court has held that requiring a woman to hide her relationship with another woman in order to avoid punishment, could be a serious interference with basic human rights, and therefore amount to persecution (*Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)*, 2004 FC 282 (CanLII) at para 29).
>
> [15] Additionally, it was unreasonable for the Officer to assume that Ms. Isesele would not face discrimination and hardship, as long as she maintained a low profile and refrained from engaging in any public behaviour or expression that might indicate that she is a member of the LGBTQ community. The Officer needed to consider what would happen if Ms. Isesele's identity were to be discovered in Nigeria, and not whether it is likely that it would not be discovered (see *Sheikh v Canada (Citizenship and Immigration)*, 2014 FC 264 (CanLII) at paras 10 and 14).

[13] Applying this to the facts of the case before me, I find that the Officer has committed a similar error. The Officer notes the evidence of stigma and discrimination in Ethiopia against persons who are HIV positive, about which I will say more below, and goes on:

> I have reviewed the report in its' [*sic*] entirety and note reference to a significant proportion of people living with HIV (PLHIV) tend to keep their HIV status secret from their children in the family, community leaders, religious leaders, work colleagues, friends and neighbours. In this regard I note that the applicant was diagnosed with HIV following her arrival in Canada. I further note that in light of the applicant's reference to a lack of familial or other ties to Ethiopia, I have insufficient evidence to indicate the disclosure of such diagnosis to individuals in the applicant's native-land or to indicate how individuals would learn of her medical situation. In this regard it is difficult to understand how the applicant would be identifiable as a target and be vulnerable to discrimination or exposure to violence based on her HIV diagnosis.

[14] I find that this is precisely the error that was identified in *Sheikh* and *Isesele*. The question of whether the Applicant's HIV status would be discovered constitutes a significant consideration for the Officer in denying the H&C application; that constitutes a reversible error. I also agree with the Applicant's assertion that it is virtually impossible to discern whether this faulty reasoning tainted the rest of the Officer's analysis of the hardship faced by the Applicant.

B. *Is the decision unreasonable?*

[15] The Applicant advances two primary arguments to support the conclusion that the Officer's decision is unreasonable: (i) that the decision-maker erred by ignoring evidence which contradicted the result; and (ii) that the decision-maker erred in assessing the Applicant's degree of establishment in Canada. I will deal with each argument in turn.

(1) Did the Officer ignore evidence which contradicted the result?

[16] The Applicant argues that the decision is unreasonable because the Officer ignores persuasive evidence on two key points: (i) regarding the risk of physical violence or harassment to individuals who are HIV positive in Ethiopia, and (ii) regarding the adequacy of legal protections as well as redress and support mechanisms. The Applicant argues that the Officer had a duty to explain why this evidence is rejected, and that the failure to explain this renders the decision unintelligible, and therefore unreasonable.

[17] This Court has found that H&C decisions are highly discretionary, and deserving of considerable deference. I would adopt the statement of the law by Justice Henry Brown in *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27:

> [2] The Court is not asked to, nor may it, reweigh the evidence. Judicial review is not an opportunity to re-litigate the case below, nor is it in any way a trial *de novo*. The over-arching consideration is not whether the decision below is right or wrong, but whether it is reasonable or unreasonable. The key question is whether the Decision falls within the range of outcomes that is defensible on the facts and the law.
>
> [3] In enacting section 25 of the *IRPA*, Parliament gave the Minister of Citizenship and Immigration the authority and responsibility to apply the correct legal standard and to reach a decision in H&C matters that is reasonable, as defined by the Supreme Court of Canada in *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9 (SCC) [*Dunsmuir*]. The Minister has delegated this authority to H&C Officers so that they may make such decisions on his behalf. According to the jurisprudence, both the Minister and his delegated Officer(s) have an exceptional and highly discretionary authority in this regard. Their authority deserves considerable deference by the Court.

[18] Although decision-makers are generally presumed to have considered all of the evidence tendered properly before them, this Court has found that a decision which appears to cite only the evidence which supports the conclusion reached, while not addressing directly contradictory evidence, may be found to be unreasonable. The often-cited statement of this is from *Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, 157 FTR 35, 1998 CanLII 8667 (FC) [*Cepeda-Gutierrez*]:

> [17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[19] The question here is whether the decision-maker erred in regard to the evidence which contradicted the result which he or she reached in this case. It is necessary to refer to the decision itself in some detail on this point. Since I conclude that the two issues are intertwined in the decision, I will outline the evidence on each issue and then analyze them together.

[20] On the risk of violence, the decision notes that fear of a risk of violence cannot be considered in an H&C decision, since it is properly considered under ss. 96 or 97 of *IRPA*. The Officer properly finds, however, that such risks can be assessed in the H&C analysis in the

context of considering the hardship which a return to a country of origin would impose on an applicant. On this, the decision states:

> In this regard, I have reviewed counsel's submissions which indicate that HIV can be a risk factor for violence in Ethiopia. Counsel states that the rates of violence and harassment are higher in Addis Ababa than in many rural areas and cites the HIV Stigma Index wherein 19% of respondents in Addis Ababa reported that they had experienced physical harassment due to their HIV status within the past year. The survey also reported that more women were assaulted than men. I note that the applicant resided in Addis Ababa prior to her arrival in Canada.

[21] The decision goes on to consider the risk of disclosure, addressed above in these reasons. It continues with a reference to claims advanced by the Applicant that she feared that she would be subjected to severe anti-HIV stigma and discrimination, as well as reproductive coercion including coerced sterilization, abortion and birth control. The decision then cites the following evidence:

> The following was observed from the 2016 Unites States of America Human Rights Report on Ethiopia (US DOS report):
>
> > *HIV and AIDS Social Stigma*
> >
> > Societal stigma and discrimination against persons with or affected by HIV/AIDS continued in the areas of education, employment, and community integration. Persons with or affected by HIV/AIDS reported difficulty accessing various services. Despite the abundance of anecdotal information, there were no statistics on the scale of the problem.
>
> However, this country information does not indicate any extension to violence.

[22] The decision then summarizes other evidence on the nature and scope of discrimination against HIV positive persons. The Officer states that "…I accept that there is some societal

discrimination against PLHIV...” and notes that there is evidence that the government has taken steps to alleviate this problem (I will say more on this below). In the concluding part of the decision, the Officer states:

> I have considered the evidence pertaining to the treatment of PLHIV residing in Ethiopia and the applicant’s personal situation. I acknowledge that the applicant may face some discrimination. I also acknowledge the aforementioned support systems for PLHIV’s and the availability of legal redress, and find that the existence of such avenues distracts from the weight I afford with respect to discriminatory treatment as a PLHIV.

[23] On the issue of evidence regarding legal protections and other support mechanisms, the following is the key passage from the decision:

> As previously noted I accept that there is some societal discrimination against PLHIV and have considered the applicant’s personal profile of a single woman without family support. I observe counsel’s recent submissions noting that the recourses in Ethiopia are not meaningful and will not alleviate the hardship that the applicant would suffer due to the discriminatory practices. Nonetheless, I am also cognizant of documentary evidence indicative of initiatives taken by the Ethiopian government, with the assistance of foreign donors, to take steps to treat, assist and accommodate people with HIV/AIDS and decrease social stigma and discrimination. Ethiopia has laws and regulations that protect PLHIV against discrimination. These include both general non-discrimination provisions and provisions that specifically mention HIV in relation to schooling, housing, employment and healthcare. Mandatory HIV testing for employment is strictly prohibited in the country’s labor law… Governmental sectors and Non-Governmental Organizations (NGO’s) have been working hard to support implementation of these laws and regulations (e.g. Ethiopian Human Rights Commission, Federal Ministry of Labor and Social Affairs, Federal Ministry of Women’s Affairs, Ethiopian Women Lawyers Association, Women’s Coalition, women’s PLHIV network and others). The Ethiopian Women Lawyers Association provides free legal services to PLHIV, and there are programs to reduce HIV-related stigma and discrimination, and to raise awareness amongst PLHIV concerning their rights.

[24] The Applicant argues that the decision should be overturned because the Officer does not engage with the evidence regarding the risk of violence, or with the evidence showing that the legal protections in Ethiopia are not effective, and the NGOs cannot offer meaningful assistance because of drastic restrictions on their activities imposed by the government.

[25] On the risk of violence, the decision does refer to the key evidence, contained in a comprehensive HIV Stigma Index, which indicates that 19% of HIV positive respondents in Addis Ababa had indicated that they had experienced physical harassment, while 31% had been verbally insulted, harassed and/or threatened. The Officer goes on, however, to refer to a more recent US DOS Report, and then states "this country information does not indicate any extension to violence." I agree with the Respondent that this statement is in reference to the US DOS Report, and is not a more general commentary on the risk of violence in Ethiopia. I find, however, the complete absence of any discussion regarding the evidence of widespread violence and harassment of HIV positive individuals, in the city to which the Applicant would return, to fall exactly within the *Cepeda-Gutierrez* doctrine.

[26] The evidence showed that, in a comprehensive survey of HIV positive individuals in Ethiopia, nearly one in five respondents in Addis Ababa said they had experienced physical harassment due to their HIV status in the past year. More recent evidence from the US DOS Report was referred to by the Officer, but no explanation was provided as to how the totality of this evidence translated into a conclusion that the Applicant "may face some discrimination" if she returned to Ethiopia. In the face of the evidence of widespread risk of violence, it was incumbent on the Officer to offer some indication of an engagement with this evidence. In saying

this, I am not re-weighing the evidence or directing a particular conclusion; I am simply finding that some explanation is required.

[27] I reach a similar conclusion regarding the evidence relating to the adequacy of legal protections as well as redress and support mechanisms. On this issue there was evidence that an Ethiopian government report had admitted that its workplace policy preventing discrimination against people living with HIV has "weak enforcement". There was also evidence that the Ethiopian government had taken measures to cut funding and restrict the activities of the NGOs that the Officer referred to, and in particular that the Ethiopian Women Lawyer's Network had been forced to reduce its staff by 70% due to funding reductions.

[28] I find that it was an error for the Officer not to make any reference to this specific evidence. Again, I am not proscribing a particular result in relation to the effectiveness of legal protections or redress and support mechanisms for HIV positive individuals in Ethiopia. However, the Officer failed to indicate how any of this evidence was weighed in reaching the conclusion on the H&C decision, and, absent any indication that the Officer engaged with this evidence, it is not possible to find that the decision is truly based on a fair consideration of all of the relevant evidence. Based on the reasoning set out in *Cepeda-Gutierrez*, I find this to be a reversible error.

(2) Did the Officer err in assessing the degree of establishment in Canada?

[29] The Applicant argues that the Officer committed an error in assessing the degree of establishment in Canada, and cites the decision of Justice Donald Rennie in *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 [*Lauture*], in support of this argument. In that case,

Justice Rennie found that an officer had erred in assessing establishment in Canada as part of the H&C analysis:

> [21] In the present case, the Officer concluded that the applicants' "engagement in society is remarkable" and that the relations they had formed with their community were significant. However, despite this conclusion the Officer did not weigh the establishment factor in the applicants' favour, and instead dismissed the factor on the basis that community involvement also may occur in Haiti. This is not a proper application of the establishment factor.
>
> …
>
> [23] Instead of assessing whether the applicants would be able to volunteer and attend church in Haiti, the Officer should have assessed the applicants' evidence of employment, volunteer work, and integration in their community in Canada. The Officer then should have considered whether this factor favours the application, is neutral, or weighs against the application.
>
> [24] The analytical error here was also considered in *Sosi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1300 (CanLII). There, the officer had stated:
>
> > The applicants have demonstrated a very high level of establishment in Canada in a short period of time; however, while establishment is an important factor in assessing hardship it is not the only factor to be considered. <u>The industriousness of this family also tends to demonstrate a high level of ability to re-integrate back into Kenyan society, especially when considering the prospect of them being reunited with their remaining children on their return.</u> [emphasis added]
>
> [25] The Court held this to be an unreasonableness analysis and at para 18 wrote:
>
> > In my opinion, the use of the conclusion that the applicants are well established in Canada is perverse because it takes the existence of a factor set out in IP 5 as a consideration militating towards granting humanitarian and compassionate relief and uses it to do just the opposite. Obviously, the proven establishment of the applicants in Canada

> should work in their favour because there is absolutely no way of knowing whether the personal abilities they used to create this establishment can be used in Kenya to accomplish the same thing.

[26] In other words, an analysis of the applicants' degree of establishment should not be based on whether or not they can carry on similar activities in Haiti. Under the analysis adopted, the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed. My colleague Justice Russel Zinn made the point well in *Sebbe v The Minister of Citizenship and Immigration*, 2012 FC 813 (CanLII) at para 21:

> …However, what is required is an analysis and assessment of the degree of establishment of these applicants and how it weighs in favour of granting an exemption. The Officer must not merely discount what they have done by crediting the Canadian immigration and refugee system for having given them the time to do these things without giving credit for the initiatives they undertook. The Officer must also examine whether the disruption of that establishment weighs in favour of granting the exemption.

[Emphasis at para 24, above, added by Justice Rennie.]

[30] In this case, the Applicant points to the following passage from the decision in support of her argument that the Officer committed the same error as found in the decisions cited above:

> I have insufficient evidence to indicate why the applicant could not re-connect with former friends or possible business acquaintances. In the alternative, I note that the applicant presents as a resourceful, independent, and hard-working individual and find such skills could reasonably assist her with the re-integration process if she returns to her native-land where she was born and educated and is familiar with the culture.
>
> I have considered that the applicant may face some hardship in returning to Ethiopia and starting over again. I have also weighed this against her demonstrated ability to be financially self-sufficient and independent, the fact that she was born and raised in

> Ethiopia, speaks the local language, and her own relative modest level of establishment.

[31] In a separate passage, the Officer makes a similar finding in relation to the capacity of the Applicant to create a social support network of friends:

> I further note that in light of the applicant's demonstrated ability to develop friendships in Canada, I have little information to indicate why she could not do the same in Ethiopia or re-connect with old friends.

[32] The Respondent argues that the *Lauture* case does not apply because it was based on a finding that the degree of establishment in Canada was "remarkable", and here there was no such finding. The Respondent submits that the Officer is required to weigh both the degree of establishment in Canada, as well as the individual's capacity to adapt to life in their country of origin, and that it was not an error to do so in this case, citing an unreported decision of Justice Simon Fothergill in *Ageyman v Canada (Citizenship and Immigration)* (June 18, 2015), Court File No IMM-7704-14. I agree with the Respondent that it is not an error for the Officer to consider both the degree of establishment in Canada, and, separately, the capacity of the individual to adapt to life in their country of origin. Both can form part of the hardship analysis integral to the H&C determination. However, these analyses must be kept separate and distinct; that is the teaching from *Lauture* and the cases cited therein. I find that this was not done by the Officer here. The analysis of these two separate and distinct considerations runs together such that it is impossible to determine, in the end, what factors the Officer weighed in favour of the Applicant on the question of establishment, and how these were assessed in relation to the separate consideration of the hardships she would face in adapting to life in Ethiopia.

[33] One final and important consideration here relates to the fact that, since her arrival in Canada, the Applicant has been diagnosed as HIV positive. I find that the additional hardships she would face upon her return to Ethiopia as an HIV positive single woman were not sufficiently analyzed by the Officer. On this point, the decision of Justice Anne Mactavish in *Mings-Edwards v Canada (Citizenship and Immigration)*, 2011 FC 90 [*Mings-Edwards*], is instructive. In that case, the Court held:

> [12] While Ms. Mings-Edwards may previously have been able to support herself while living in Jamaica, she did so *before* she became HIV+. Ms. Mings-Edwards may also have been able to lead a healthy, active and self-supporting life, but she has done so *in Canada*, not in Jamaica, where employment discrimination against those who are HIV+ is pervasive. Nowhere does the Officer consider the impact that the change in her HIV status will have for Ms. Mings-Edwards's ability to support herself in Jamaica, or whether the difficulties that she may encounter in this regard amount to an unusual, undeserved or disproportionate hardship.
>
> …
>
> [14] The more fundamental problem with the decision is that nowhere in the analysis does the Officer ever really come to grips with, or evaluate the hardship that Ms. Mings-Edwards would face in returning to a society where she would be exposed to pervasive discrimination and societal stigma as a result of her status as an HIV+ woman.
>
> [Emphasis in original.]

[34] The Respondent argues that this decision should be limited to its particular facts, and cites *Ambassa v Canada (Citizenship and Immigration)*, 2012 FC 158 [*Ambassa*] in support of this. While I agree that *Mings-Edwards* and *Ambassa* are relevant authorities on this question, I find that the facts of the case before me resemble more closely the situation in *Mings-Edwards*. There is evidence of widespread stigma, discrimination and violence against HIV positive

individuals in Ethiopia, and clear evidence that women – in particular single women – suffer more than men. The Applicant was diagnosed with HIV when she came to Canada. The Officer does not analyze clearly how this change in her situation would impact the hardship associated with her return as a single woman, with no immediate family in Ethiopia. I find that the analysis of this particular point is absent, and this is another badge of the unreasonableness of this decision.

C. *Is the decision unreasonable because the Officer did not undertake an H&C approach to the applicant's unique circumstances?*

[35] In view of my findings on the first two issues, it is not necessary for me to deal with this issue.

IV. Conclusion

[36] For the reasons above, I am granting this application for judicial review. The case is remitted back ~~to the IAD~~ for consideration by a different ~~panel~~ Immigration Officer. No serious question of law of general importance was raised by the parties for certification, and I find that none arises in this case.

AMENDED JUDGMENT in IMM-3355-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The case is remitted back ~~to the IAD~~ for consideration by a different ~~panel~~ Immigration Officer.

2. No question for certification arises from this case.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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