IMM-396-97

BETWEEN:

ARDIE QUIZON,

Applicant,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

REED J.

The applicant seeks to have a decision of the Appeal Division of the Immigration and Refugee Board ("IAD") set aside. That decision dismissed the applicant's appeal of a deportation order. The order was issued against him because he was found to be a person described in paragraph 27(2)(e) of the *Immigration Act*, a person who:

> was granted landing by reason of possession of a false or improperly obtained passport, visa or other document pertaining to his admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or by any other person;
>
> (underlining added)

The applicant was admitted to Canada as a landed immigrant, as a member of a family class. He married a resident of Canada, Leonila Paraton, in the Philippines, in June of 1990. They had been communicating by telephone and letter for the previous year. She returned to Canada and on October 1, 1990, filed a request to sponsor the applicant for landing. On January 23, 1991, the applicant applied to be admitted as a permanent resident to Canada. Before he was issued an immigrant visa and granted landing he entered into a ceremony of marriage with another woman, Maria

Nena Solas. This occurred on April 29, 1991. The marriage took place before a judge in the Philippines and was duly registered. The applicant alleges that he took part in this marriage ceremony under duress. He and Ms. Solas had renewed their acquaintance. Cousins of Ms. Solas found the applicant and Ms. Solas in bed together and forced him to marry her. He did not disclose this second "marriage" to immigration officials when he obtained his immigration visa on August 19, 1991, or when he entered Canada on September 11, 1991.

At that time, a person was not inadmissible to Canada on the ground that he had committed a criminal offence outside of Canada. A conviction had to have been obtained.[1] Had the events of April 29, 1991, been disclosed to immigration officials, the evidence shows that this would have caused them to investigate the *bona fides* of the marriage to Leonila Paraton, to investigate whether it had been entered into primarily for immigration purposes. The visa officer in Manila states that had he known about the second "marriage" he would not have issued the applicant a visa.

The applicant did not answer any question untruthfully either in Manila or on entry into Canada. Thus, he did not offend subsection 9(3) or 12(4) of the *Immigration Act*.[2] He simply did not volunteer any information concerning the "marriage" of April 29, 1991. Section 12 of the *Immigration Regulations, 1978* deems certain questions to have been asked at the port of entry.[3] That section deals

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1.Compare *Immigration Act*, R.S.C. 1985, c. I-2, s. 19(1) and *An Act to amend the Immigration Act and to amend other Acts in consequence thereof*, R.S.C. 1985, c. 28 (4th Supp.) s. 11 proclaimed in force February 1, 1994.

2.9(3)Every person shall answer truthfully all questions put to that person by a visa officer and shall produce such documentation as may be required by the visa officer for the purpose of establishing that his admission would not be contrary to this Act or the regulations.

12(4)Every person shall answer truthfully all questions put to that person by an immigration officer at an examination ..

3.12. An immigrant who has been issued a visa and who appears before an immigration officer at a port of entry for examination pursuant to subsection 12(1) of the Act is required
(*a*)if his marital status has changed since the visa was issued to him, or
(*b*)if any other facts relevant to the issuance of the visa have changed since the visa was issued to him or were not disclosed at the time of issue thereof,
to establish that at the time of the examination
(*c*) the immigrant and the immigrant's dependants ...
. . . .
meet the requirements of the Act, the Regulations ... including the requirements for the issuance of the visa.

with changed circumstances (e.g. marital status) between the time of the issuance of a visa and the date of entry into Canada. Subsection (b) also imposes an obligation to disclose "facts relevant to the issuance of the visa [that] were not disclosed at the time of the issue thereof".

Item 31 of the application form (IMM8-08-89), which the applicant filed for permanent resident status, states that the applicant understands that any concealment of a material fact may result in his permanent exclusion from Canada.

Counsel for the applicant argues that the decisions of both the adjudicator and the IAD proceeded on the assumption that the second marriage had some independent legal validity and the applicant could not be expected to guess that a void second "marriage" was material to his immigration to Canada as the spouse of Leonila Paraton. The second "marriage" was void under the law of the Philippines, as it would be under the law of Canada.

The adjudicator appears to have proceeded on the assumption that the second "marriage" had some validity that had to be vacated by an administrative decision or court order; the IAD did not. The essence of the latter's decision is found in the following text of the reasons for decision:

> Counsel for the appellant entered the relevant sections of the "Civil Code of the Philippines" into evidence, the relevant sections of which refer to a bigamous marriage as being "void from the beginning". In his testimony, the appellant referred to a letter received from the Philippines consulate which evidently confirms this. Counsel argues that because the appellant's marriage to Maria Nena Solas was void ab initio, there was in effect no marriage. If there was no marriage, the fact that the appellant did not disclose the non existent marriage to immigration authorities does not amount to a misrepresentation.
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> The Supreme Court of Canada in Brooks[1] characterizes as a misrepresentation "untruths or misleading answers" which have "the effect of foreclosing or averting further inquiries, even if those inquiries might not have turned up any independent ground of deportation". The Federal Court of Appeal in the Medel[2] case, held that immigration claimants owe a positive duty of candor to disclose information which could reasonably and objectively be said to be relevant. Can the fact that the appellant entered into a second marriage after the marriage to his sponsor and shortly before a visa was issued to him be considered relevant? Could the fact of this second marriage be considered a material fact which, if disclosed, might have lead the immigration authorities to make further inquiries?

> I find that the fact that the appellant entered into a marriage in a civil ceremony which complied with all of the formalities of marriage and which was duly registered as such, is a material fact which should have been disclosed both to the visa officer and the immigration officer at the port of entry. Had the immigration authorities known of the second marriage of the appellant to Maria Nena Solas, they may have decided to investigate the bona fides of the relationship between the appellant and his sponsor, Leonila Paraton, they would have had the opportunity to make inquiries as to whether bigamy is a criminal act in the Philippines (it was at the time of the Brooks decision, as this was referred to in that case), as it is in Canada, for marriages which take place in Canada, they could have looked into the legality of both or either the first or second marriage in the Philippines. All of these avenues of inquiry were closed off because the appellant failed to disclose the existence of his second marriage entered into while his first marriage subsisted.
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> Before me, the appellant stated that he failed to disclose his second marriage to the immigration authorities firstly, because he was not asked whether he was married to anyone else, and secondly because he had consulted a lawyer who advised him that the second marriage was of no force and effect. If the appellant did consult a lawyer, which he denied doing at the inquiry before the adjudicator, he could have advised the immigration authorities of this fact, together with the fact of his second marriage. This would have allowed the immigration officials an opportunity to research the law concerning bigamous marriages in the Philippines and ascertain whether the appellant's second marriage would have an effect of his admissibility into Canada.

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[1] M.M.I. v. Brooks, [1974] S.C.R. 850.
[2] Medel v. M.E.I., [1990] 2 F.C. 345; 10 Imm. L.R. (2d) 274 (C.A.)

> Because of his failure to disclose a material fact, I find the appellant to be a person described in section 27(1)(e) of the *Act*. I therefore find the removal order made against him to be valid in law.

The test to be applied on judicial review is whether the decision maker:

(*a*) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
(*b*) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
(*c*) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
(*d*) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
(*e*) acted, or failed to act, by reason of fraud or perjured evidence; or
(*f*) acted in any other way that was contrary to law.[4]

I cannot so characterize the decision under review.

4.S. 18.1(4), *Federal Court Act*, R.S.C. 1985, c. F-7, as amended.

It is my understanding that counsel wish to address the possible certification of a question for appeal. If a question for certification is to be proposed counsel should inform the Registry before the close of business on August 21, 1997.

OTTAWA, Ontario.
August 15, 1997.

Judge