Date: 20071003

Docket: IMM-5562-06

Citation: 2007 FC 1006

Toronto, Ontario, October 3, 2007

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

CHI FAT ALFRED LAW

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board (the "IAD) dated April 28, 2006, wherein the IAD upheld an immigration officer's inadmissibility determination.

[2] The applicant was granted permanent residency in Canada on August 6, 1997 with his wife and children. After landing, the applicant left Canada to attend to matters in Hong Kong.

[3] Since landing, the applicant has entered Canada on February 7, 2001 and January 6, 2005, and alleges that he would come to Canada once or twice a year and stay “a few months.”

[4] On January 6, 2005, an immigration officer found the applicant inadmissible, pursuant to s. 41(b) of the Act, given that there were grounds to believe he was a permanent resident who had failed to comply with the residency obligation of s. 28 of the Act requiring that a permanent resident be physically present in Canada for at least 730 days during the previous five-year period.

[5] The immigration officer also found there were insufficient humanitarian and compassionate grounds to justify the retention of the applicant’s permanent resident status.

[6] The applicant appealed the immigration officer’s decision on January 20, 2005.

[7] In a decision dated April 28, 2006, the IAD upheld the immigration officer’s decision and concluded that there were no humanitarian and compassionate considerations meriting special relief from the s.28 residency obligation.

[8] The IAD indicated that while the applicant had submitted a letter from his wife dated February 26, 2006, indicating that she had terminal cancer and that if the applicant were to lose his permanent resident status his children would be orphaned upon her death, she subsequently submitted a second letter on March 3, 2006 stating that she had provided the first letter under duress. The IAD found the wife’s second letter to be more credible. In the second letter, the

applicant's wife indicated that it was her parents who took care of her and her children, and that the applicant had never done so.

[9] At the hearing the applicant attempted to counter his wife's second letter by asserting that because of her illness, his wife was depressed, extremely negative, and irrational. However, he did not provide any medical evidence to substantiate this claim.

[10] The applicant filed an application for judicial review on October 13, 2006.

[11] The present case involves determining the content of the procedural rights to be afforded to an unrepresented party before the IAD. The applicant submits that the IAD violated principles of procedural fairness by failing to indicate to the self-represented applicant the possibilities of cross-examining the author of an adverse document. I disagree for the following reasons.

[12] As an administrative body, the IAD is master of its own procedure and therefore, this Court should be reticent to intervene in its procedural choices (*Aslani v. Canada (Minister of Citizenship and Immigration Canada)*, [2006] FC 351, [2006] F.C.J. No. 422 (QL), at para. 21). In *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560, at para. 16, Sopinka J. indicated:

> We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.

[13] In the case of the IAD, the Immigration and Appeal Division Rules grant broad and unfettered discretion in choosing the applicable procedure:

> […]
> 57. In the absence of a provision in these Rules dealing with a matter raised during an appeal, the Division may do whatever is necessary to deal with the matter.
> […]

[14] In determining the content of participatory rights, L'Heureux-Dubé J. noted in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (QL), at para. 21, that "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case." She went on to indicate at para. 22 "[…] that the purpose of the participatory rights contained within the duty of procedural fairness is to [provide] an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker."

[15] Thus, the IAD is to be shown much deference in its choice of procedure so long as that procedural choice permits those who are affected by its decision to present their case.

[16] Specifically, in the context of the procedural rights afforded to a self represented party, this Court has held that an administrative tribunal has no obligation to act as the attorney for a claimant who refused counsel, and that:

> […] it is not the obligation of the Board to "teach" the Applicant the law on a particular matter involving his or her claim. (*Ngyuen v. Canada (Minister of Citizenship and Immigration)*, [2005] FC 1001, [2005] F.C.J. No. 1244 (QL), at para. 17)

[17] However, while administrative tribunals are not required to act as counsel for unrepresented parties, they must still ensure that a fair hearing takes place. In *Nemeth v. Canada (Minister of Citizenship and Immigration)*, [2003] FCT 590, [2003] F.C.J. No. 776 (QL), at para. 13, O'Reilly J. asserted:

> […] But the Board's freedom to proceed in the absence of counsel obviously does not absolve it of the over-arching obligation to ensure a fair hearing. Indeed, the Board's obligations in situation where claimants are without legal representation may actually be more onerous because it cannot rely on counsel to protect their interests.

[18] It has also been recognized that an unrepresented party "[…] is entitled to every possible and reasonable leeway to present a case in its entirety and that strict and technical rules should be relaxed for unrepresented litigants […]" (*Soares v. Canada (Minister of Citizenship and Immigration)*, [2007] FC 190, [2007] F.C.J. No. 254 (QL), at para. 22).

[19] Therefore, it is evident that the specific content of procedural rights afforded to unrepresented parties is context-dependent. The paramount concern is ensuring a fair hearing where the unrepresented party will have the opportunity to fully present their case.

[20] In the present instance, the applicant was provided with a fair hearing and an opportunity to fully present his case. He was questioned on his wife's second letter and permitted to make explanations as to its content. The applicant indicated that his wife was sick, depressed, irrational, and under the persuasion of her own family. The IAD found the second letter more convincing than the applicant's explanations, as was open to it to conclude.

[21] Furthermore, concessions were in fact made to the applicant in order to permit him to present his case in a full and fair manner. He was permitted by the IAD to call two witnesses even though proper notice had not been given.

[22] Therefore, in my view, in the present context, the IAD had no obligation to indicate to the applicant the possibility of cross-examining the author of an adverse document.

[23] For these reasons, the application for judicial review of the Immigration Appeal Division decision is dismissed.

JUDGMENT

THIS COURT ORDERS that the application for judicial review of the Immigration Appeal Division decision is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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