

Date: 20081103

Docket: IMM-2951-07

Citation: 2008 FC 1225

Calgary, Alberta, November 3, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

HOI TRONG DAO and DUNG NGOC NGUYEN

Applicants

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a decision of a Visa Officer who refused each of the Applicants' application for a multiple entry visa to Canada from Viet Nam. At the time the applications were made the Applicants' two sons were in Canada on Temporary Resident Visas and the Applicants wished to visit their eldest son who was ill.

[2] The substance of the Visa Officer's decision of May 22, 2007 reads as follows:

Both sons in CDa appear to have history of MOCs and AFLs in Cda. Youngest son is on his 2nd relnship after sponsorship was withdrawn in 1st one. Sprship just received on his 2nd relnship. Eldest son divorced shortly after gaining PR status.

AM not satisfied that these applicants are credible and am not satisfied that they are bona fide temp residents.

However, there is a possible medical situation with eldest son. Will call and advise that one of them will be allowed to go visit son on a TRP. They can choose which parent goes. Then pay TRP fee and photo submission.

(Tribunal Record, p. 2)

[3] Counsel for the Applicants argues that the decision is made in reviewable error because it does not comply with Citizenship and Immigration Canada's guidelines dated February 24, 2006 for rendering a decision on a Temporary Resident Visa application (*OP11*). The critical elements of *OP11* relied upon to substantiate this argument are as follows:

5. Departmental Policy

5.10 *Canadian Human Rights Act* and temporary resident examinations

[...]

Officers should document their decision in their case notes, ensuring that the applicant was assessed as an individual.

14. Procedure: Refusals

[...]

Officers should ensure that case notes in CAIPS are complete and accurate. They should:

- outline the circumstances of the application;
- outline the process followed in coming to or making the decision;
- note the presence and identity of an interpreter, if applicable;
- take into account any representations made by interested persons (or counsel) and make note of the nature and content of these representations; and
- detail the reasons for the refusal. [Emphasis added]

I agree with this argument.

[4] It is apparent from the substance of the decision as quoted above that a grave suspicion about the conduct of the applicants' sons lead to a negative credibility finding with respect to the applicants, which in turn, led to a rejection of their applications. I find that, to be fair the Applicants and to comply with *OP 11*, it was necessary for the Visa Officer to specifically state the evidentiary link between the suspicion of the sons and the *bona fides* of the Applicants. The Visa Officer failed to document this required decision-making step, and as a result, I find that the negative credibility finding is made in reviewable error because it is unsupported by the evidence.

[5] While it is true that, for humanitarian and compassionate reasons, the Visa Officer was prepared to grant a visa to one of the Applicants, this fact does not cleanse the decision under review from manifest reviewable error.

ORDER

THIS COURT ORDERS that:

Accordingly, I set aside the decision under review and refer the matter back for redetermination by a different visa officer on the evidence which exists at the time of the redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2951-07

STYLE OF CAUSE: *Hoi Trong Dao and Dung Ngoc Nguyen
and MCI*

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: November 3, 2008

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: November 3, 2008

APPEARANCES:

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