

Date: 20081222

Docket: IMM-2040-08

Citation: 2008 FC 1400

Ottawa, Ontario, December 22, 2008

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ERROL GEORGE VEITCH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Errol George Veitch challenging a decision by the Respondent denying his claim under s. 25 of the *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27 (IRPA) for Humanitarian and Compassionate (H&C) relief. Mr. Veitch asserts that he was denied the opportunity to provide sufficient evidence of his Canadian establishment because of the failure of the decision-maker (Officer) to “properly advise” him about what was required. He also claims that because he responded to the Officer’s request for supplementary employment information, a reasonable expectation arose that nothing further would be required from him.

I. Background

[2] Mr. Veitch is a citizen of Jamaica. He is 63 years old and apparently suffers from Parkinson's disease. Mr. Veitch claims to have entered Canada in 1977 but he deposes in his affidavit that he has no exact recollection of how he came to be here.

[3] Initially Mr. Veitch's application for H&C relief contained almost no meaningful information about the nature and extent of his establishment in Canada. Because of the deficiencies in the application, the Officer requested further employment particulars for the preceding ten years including the names of employers and the nature of his work. For any periods of unemployment Mr. Veitch was asked to provide his addresses. Mr. Veitch took almost a year to respond and, when he did, he provided only vague references to periods of employment and unemployment and an incomplete listing of his addresses in the Toronto region after 1995. The only substantive basis for relief contained in Mr. Veitch's application is found in the following brief passage:

As I mentioned, I have lived in Canada for approximately 30 years now. My life is here in Canada. I have worked steadily through the past several years with some limited times of unemployment. I am now in my 60's and I have not known any other country except Canada for a very long time. Canada is my home.

I have never been in trouble in Canada and I have tried to be a good citizen for the past 30 years.

[4] Mr. Veitch provided almost nothing in the way of third party information to verify the nature or the extent of his Canadian establishment over the time he claimed to be living here. He

produced no references from past employers, friends, acquaintances or service providers. He offered no income tax or Canada Pension Plan records and, notwithstanding the possible significance of his claimed health problem, he provided no medical records.

II. The Decision under Review

[5] The Officer rejected Mr. Veitch's application for the following reasons:

The applicant's humanitarian and compassionate grounds are based on: Establishment and lack of ties elsewhere.

In making my decision in this case I reviewed the submissions made by the subject the last dated received 21 January 2008. I also reviewed information available on the Foss system.

The subject has provided no evidence of his presence in Canada for the period he states he has resided. He has provided no evidence of how he is supported. He states that he now receives social assistance. Immigration records show that he applied for assistance in 2005. The subject is divorced and has three children in USA. He provides no details of the children, ages etc and has provided only a copy of his divorce from Ivy Veitch. No address is listed for him on the Judgment. It is not clear how he received a copy.

I am not satisfied based on information before me that the subject has lived continuously in Canada and that he is established here to a degree that having to return to Jamaica would cause an excessive, undeserved or disproportionate hardship.

I have considered all information regarding this application as a whole. Having reviewed and considered the grounds the applicants have forwarded as grounds for an exemption, I do not find they constitute an unusual and undeserved or disproportionate hardships. Therefore, I am not satisfied that sufficient humanitarian and compassionate grounds exist to approve this exemption request.

III. Issue:

[6] Did the Officer breach the duty of fairness or create a reasonable expectation that the information submitted by Mr. Veitch would be sufficient to meet the requirements for H&C relief?

IV. Analysis

[7] I am not convinced that the circumstances of this case are distinguishable from cases like *Irias v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1321, [2003] F.C.J. No. 1717, *Tahir v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 1354, 159 F.T.R. 109 and *El Doukhi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1464, [2006] F.C.J. No. 1843. In *Irias*, Justice Paul Rouleau dealt with the same argument raised here and dismissed it on the following basis:

20 I now turn to the final issue in this case, that is the applicant's allegation that the Immigration Officer's decision was not fair and breached natural justice, as she based her decision on a lack of information that she did not request from the applicant.

21 As mentioned, the Immigration Officer requested that the applicant provide updated information, and specifically asked for a written explanation of who the applicant was living with prior to arriving in Canada. In reply, the applicant submits that the Immigration Officer clearly had questions about other matters, to which she did not request clarification from the applicant. Specifically, regarding whether both the applicant's son and wife were currently employed, and what the applicant's age had to do with the hardship she claimed she would face if she returned to Nicaragua.

22 The respondent submits that the onus is on the applicant to provide the decision maker with all of the pertinent information in an application. The fact that the applicant did not explain what her age had to do with her application, and that her daughter-in-law's

employment status was unclear, did not place a burden on the Immigration Officer to contact the applicant in order to obtain this information.

23 I cannot agree with this position of the applicant. As was stated by Heald D.J. in *Patel v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 54 (F.C.C.):

The applicant submits that he is entitled to have all relevant evidence considered on a humanitarian and compassionate application. I agree with that submission. However, the onus in this respect lies with the applicant. It is his responsibility to bring to the visa officer's attention any evidence relevant to humanitarian and compassionate considerations.

24 The onus of providing all relevant evidence considered on an H&C application clearly lies with the applicant, in accordance with section 5.25 of the Manual and the statement by Heald D.J. in the *Patel* case. I agree with the respondent's suggestion that an insufficient submission on the part of an applicant does not result in an onus on an immigration officer to elicit further information.

25 In this case, the applicant was given the opportunity to provide information about her situation in support of her application, and the Immigration Officer even asked the applicant to provide further information. Thus, I cannot conclude that the Immigration Officer erred in not making a second request for additional information from the applicant.

I agree with the above analysis and would add that, in this case, Mr. Veitch's application for relief was so deficient that its rejection was inevitable. No reasonable person could expect a favourable response given the sparse and incomplete information that Mr. Veitch supplied in proof of his Canadian establishment. Furthermore, there is nothing in Mr. Veitch's affidavit which even suggests that he was confused or misled about what might be required to support his application. For whatever reason, Mr. Veitch did not take this matter seriously and he cannot now claim to have been unfairly treated by the Respondent.

[8] I would add, in conclusion, that there may well be a compelling case here for H&C relief. Mr. Veitch may have come to Canada in 1977 or thereabouts, but he provided insufficient information to establish his continuous residency in Canada after that time. He has family in the United States and he may well have been in that country for extended periods of time. Mr. Veitch has a Social Insurance Number and he probably worked in Canada for periods of time over the last 25 years or so. He is getting on in years and his health is apparently compromised. He appears to have little, if any, connection to Jamaica. Beyond these sparse details the record discloses little else about his establishment in Canada and, as I have already noted, the denial of H&C relief on this record is entirely understandable and reasonable.

[9] Counsel for Mr. Veitch indicated that a further H&C application is now contemplated. Hopefully he will be able to submit the kind of comprehensive H&C application that is required for his claim for relief to be appropriately and fully considered. With the assistance of his present counsel he can probably accurately reconstruct the details of his history in Canada and obtain information from third parties to corroborate much of his personal history. Government and employment records may still be available and presumably third party references and attestations to his life in Canada can be obtained. Presumably he also has access to relevant medical information which may support his claim to H&C relief.

V. Conclusion

[10] As noted above, this application for judicial review must be dismissed. Neither party proposed a certified question and no question of general importance arises.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

“ R. L. Barnes ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2040-08

STYLE OF CAUSE: ERROL GEORGE VEITCH v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: December 17, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** BARNES, J.

DATED: December 22, 2008

APPEARANCES:

Janice Joyce Lepiten FOR THE APPLICANT

Tessa Anne Kroeker FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mississauga Community Legal Service
Mississauga, Ontario FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada
Department of Justice
Toronto, Ontario FOR THE RESPONDENT