Date: 20090129

Docket: IMM-3177-08

Citation: 2009 FC 89

Ottawa, Ontario, January 29, 2009

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

JEAN WILMARC SAGESSE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by an immigration officer, dated June 30, 2008, refusing the application for permanent residence on humanitarian or compassionate grounds (H&C) submitted by Jean Wilmarc Sagesse pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27.

[2] Jean Wilmarc Sagesse (the applicant) is a citizen of Haiti. His spouse, Marthine Clervoix, resides in the United States with their son.

[3] The applicant argued first that the immigration officer breached her duty of fairness when updating his file. He submitted that he could not argue his case fully because the officer did not give him the opportunity to provide the documents missing from his file. He referred to the following provision in the manual for immigration officers responsible for immigrant applications in Canada made on humanitarian or compassionate grounds (IP 5):

> 11.1 Procedural fairness
> Officers must follow procedural fairness in making their decisions.
> Officers should:
> - carefully consider all the information before them;
> - inform the applicant when considering outside information, giving the applicant a chance to respond;
> - request any additional information needed;
> - weigh all the facts according to their degree of importance;
> - separate facts which favour a finding of hardship from those that do not;
> - consider the objectives of the Act; and
> - make complete file notes (see Section 9.1).
>
> [Emphasis added.]

[4] The applicant also referred to Section 17.1 of the IP 5 manual, entitled “Obtaining further information for decision”. However, this provision concerns the actions for obtaining such information and not the obligation to obtain it.

[5] According to Section 11.1, cited above, an officer must “request any additional information needed”. In the case at bar, the applicant, during the update done by telephone, proposed filing the birth certificate of his son and his marriage certificate. However, neither his son nor his spouse was mentioned in his refugee claim. Moreover, they do not reside in Canada. It is therefore difficult to understand how this could be “needed” information. In addition, the reasons why his application was refused have nothing to do with the status of his son or of his spouse.

[6] As for the missing documents supporting his degree of establishment (bank statements, income tax returns, etc.), I cannot accept the applicant's argument. The documents provided by the applicant, that is, the letters from employers in the United States, were submitted to show that he was "employable", which is not a humanitarian or compassionate ground, and do not serve as evidence of his current establishment in Canada. Apart from the applicant's simple statement in his application that he is fully integrated into Canadian society and his degree of establishment is "above average", there is very little in the file to support his position. It seems to me that the missing documents were not purely supplementary; they were the most basic documents needed to establish that aspect of his application. Consequently, I do not find that the officer breached her duty of procedural fairness.

[7] The applicant also took issue with the immigration officer for not having assessed the degree of his establishment in Canada correctly. However, he made no serious argument in that regard. Moreover, I see nothing in the officer's decision that would indicate that her assessment of the applicant's degree of establishment was incorrect.

[8] Finally, the applicant argued that the immigration officer erred in not making any reference to the interests of the child.

[9] The applicant's initial application did not refer in any way to his relationship with his spouse or his son. Moreover, his spouse and son do not live in Canada, but rather in the United States. When updating his file, the officer learned merely that, from time to time, they visited the applicant

in Canada. It should be pointed that it is the applicant who has the burden of proving the basis of an H&C application. If the applicant does not provide enough information to support his or her statements, the officer is entitled to find that these statements have no basis. In the circumstances, I am far from being satisfied that the officer did not exercise her discretion in a reasonable manner.

[10] All in all, after reviewing the file, I agree with the respondent that the applicant did not provide sufficient documentation with his H&C application. The decision at issue seems reasonable to me, and the immigration officer can certainly not be criticized for the lack of evidence before her.

[11] For all of these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision by an immigration officer, dated June 30, 2008, refusing the application for permanent residence on humanitarian or compassionate grounds submitted by Jean Wilmarc Sagesse pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, is dismissed.

"Yvon Pinard"

Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3177-08
STYLE OF CAUSE:	JEAN WILMARC SAGESSE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 20, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	PINARD J.
DATED:	January 29, 2009

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