

Federal Court



Cour fédérale

**Date: 20090603**

**Docket: IMM-5459-08**

**Citation: 2009 FC 571**

**Toronto, Ontario, June 3, 2009**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**ANITA DELA CRUZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] In May 2007 the Immigration Division of the Immigration and Refugee Board found Ms. Cruz to be a permanent resident who is inadmissible for misrepresentation pursuant to s.40(1)(a) of the *IRPA*. As a result, Ms. Cruz applied to the Immigration Appeal Division (IAD) for discretionary humanitarian and compassionate relief from the inadmissibility decision pursuant to s.67(1)(c) of the *IRPA*. The IAD rejected her application; the present Application challenges that decision.

[2] The IAD found the undisputed underlying facts with respect to the inadmissibility decision are as follows:

The appellant was born in the Philippines on June 24, 1965. She was allowed entry into Canada on a work permit as a member of the “Live-in Caregiver” class on October 5, 2000. On January 12, 2002, during a visit to the Philippines, she married Rolando Dela Cruz. She then returned to Canada and applied for permanent residency on October 30, 2002, but she omitted to declare in her application that she was already married. She also indicated in that application her maiden name “Magtangob” instead of the family name Dela Cruz. She became a permanent resident on July 3, 2003 and did not disclose her marriage at that time, having landed under the name of Anita Buendia Magtangob. She did not indicate her marital status as “married” until she sponsored her husband on February 10, 2004.

(IAD Decision, p. 3)

[3] The IAD made the following finding with respect to Ms. Cruz’s explanation for failing to accurately declare her marital status:

In her testimony, the appellant recognized not declaring her marriage when she applied for permanent residency and regretted it. However, she attributed that omission to a common mistake of misunderstanding the question in the application, as she was thinking that the question only referred to her marital status when she arrived in Canada in 2000. She also stated that she asked a friend of Philippino origin, to help her fill in the forms.

(IAD Decision, p. 6)

With respect to this explanation, the IAD made the global negative credibility finding that Ms. Cruz’s testimony was not truthful and grounded the finding on a number of features of her written and oral testimony: she does not have any problem with the English language; she did not withhold the change in her marital status only once, but rather on multiple occasions and in different parts of the application for permanent residency; although already married, in her

permanent residency forms she used her maiden name and did not start using her married name until she sponsored her husband; and only upon appealing to the IAD for humanitarian and compassionate relief did she withdraw her sponsorship of her husband. Based on these factors, the IAD concluded that Ms. Cruz deliberately withheld material facts in order to facilitate her establishment in Canada as a single person and to be able to sponsor her husband afterwards more easily. In addition, the IAD found that her real intention from the beginning was to hide her marriage until she became a permanent resident (IAD Decision, pp. 6-7).

[4] In reaching a conclusion on Ms. Cruz's application for humanitarian and compassionate consideration, the IAD placed primary weight on a finding that the misrepresentation was part of a scheme which lasted the time needed to obtain the permanent residency and was intended to circumvent the requirements of the *IRPA*. It is easy to understand how the reporting that Ms. Cruz made respecting her marital status would cause the IAD to be concerned about the quality of her explanation. However, I find that, to reach the bold conclusions voiced by the IAD, all caution and care was required to be taken in considering the evidence in its totality. In particular, in performing this obligation the IAD was required to give consideration to evidence which tends towards believing Ms. Cruz's explanation, as well as that which tends towards disbelieving it.

[5] A critical piece of evidence with respect to Ms. Cruz's mental ability was tendered to the IAD by her Counsel and advanced in closing argument as evidence which tends towards believing Ms. Cruz's explanation (Tribunal Record, p. 208). The evidence comes from Ms. Susan Pearl, Ms. Cruz's employer, and while it was not tendered as expert evidence, since it

comes from an observer who was a Special Aid teacher for over 25 years it required careful scrutiny and consideration:

A. I have to admit being a Special Aid teacher I was able to notice that Ms. Dela Cruz had problems. Probably in our system, she would have been diagnosed as learning disabled or a weak student. She does not comprehend what is asked of her and very often when she was in my employ, it took at least three or four, sometimes five and six times to be able to get an idea across. I had to pull through as many different ways to rephrase the same question. And then it would start all over again. It could have been the exact same thing and she wouldn't be able to carry it through to the next time.

Q. Any ideas as to how her English reading comprehension is?

A. It's poor. I've gone over things – Like we were talking about newspaper articles that we had – that I had read and things like that and she was totally off-base. She couldn't follow up what we had read or what we had discussed and did have problems with it.

Q. Do you think there is any reason she would have deliberately included inaccurate information in forms she would have filled out for Immigration?

A. I can't think of any and when she worked for me, she always was honest. Like lots of times when I've had people work for me if they'd break something they don't tell me. She was always honest; told me – even though she knew she could get into trouble, would tell me what she did wrong. So I can't see her purposely doing something wrong. It's just not her ethic.

(Tribunal Record, pp. 204-205)

In my opinion, the fact that the IAD did not take this evidence into consideration in reaching the negative credibility finding constitutes a significant fact finding error. As a result, I find that the decision rendered is unreasonable because it is not defensible in respect of the facts and law.

**ORDER**

Accordingly, the IAD's decision is set aside and the matter is referred back for re-determination before a differently constituted panel.

There is no question to certify.

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"Douglas R. Campbell"  
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5459-08

**STYLE OF CAUSE:** ANITA DELA CRUZ v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 2, 2009

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

**DATED:** JUNE 3, 2009

**APPEARANCES:**

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