| Federal Court |  | Cour fédérale |
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**Date: 20090918**

**Docket: IMM-4668-08**
**IMM-4669-08**
**IMM-4670-08**
**IMM-4675-08**
**IMM-4722-08**

**Citation: 2009 FC 938**

**Vancouver, British Columbia, September 18, 2009**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**Docket: IMM-4668-08**

**RICO BAYLON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**BETWEEN:**

**Docket: IMM-4669-08**

**JOHN CARREON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**BETWEEN:**

**Docket: IMM-4670-08**

**JUAN DASTAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**BETWEEN:**

**Docket: IMM-4675-08**

**GLEN FUENTES**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**BETWEEN:**

**Docket: IMM-4722-08**

**ROMUALDO C. BAYLON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR ORDER AND ORDER

[1] The applicants are young citizens of the Philippines. They are part of a group of approximately 40 persons who applied for a Temporary Resident Visa in order to come and work

at a fish processing plant in Richmond, British Columbia. Their applications were refused in decisions dated August 11, August 13, and September 17, 2008, because they did not convince the Visa Officers that they would leave Canada at the end of their visas' terms. They are now seeking judicial review of the officers' decisions.

[2] I indicated at the end of the hearing that I would grant the application for judicial review in file IMM-4668-08, deny it in files IMM-4722-08 and IMM-4675-08, and reserved my decision in files IMM-4669-08 and IMM-4670-08. I have now come to the conclusion that the application for judicial review should be granted in file IMM-4670-08 and denied in file IMM-4669-08. These are my reasons for so finding.

[3] While each of these files turns on its own facts and must accordingly be dealt with separately, they also raise common issues and bring into play the same legal principles. For that reason, they were heard together and will be dealt with in a single set of reasons, with the appropriate distinctions to be made in response to each individual's own circumstances. A copy of these reasons will accordingly be placed in each of the five files to which they relate.

## I. The Facts

[4] As previously mentioned, all of the applicants are citizens of the Philippines who received a two-year job offer from Gran Hale Fisheries, a fish processing plant in British Columbia. Their tasks would be to cut, clean, and pack fish and other seafood products. The applicants' hourly wage

would be $12, which is a lot more than their salary in the Philippines. They all received a positive Labour Market Opinion from Service Canada.

[5] Mr. **Rico Baylon** (file IMM-4668-08) was born in 1984. His elderly parents and most of his family members reside in the Philippines. He is unmarried, has no children or dependants. His grandparents and one of his aunts live near Vancouver. He has a college degree and worked in the Philippines as sales representative at Motorparts Unlimited in Camarines from January to December 2007, where his salary was the equivalent of $75 a month.

[6] Mr. **John Carreon** (file IMM-4669-09) was born in 1984. He has elderly parents, siblings, and a fiancée in the Philippines. He worked as a collection agent for Executive Village in Lucena City from May 2003 to December 2007. His monthly salary was equivalent to an amount between $315 and $340.

[7] Mr. **Juan Dastas** (IMM-4670-08) was born in 1970. He has a wife and three children in his home country. One of his aunts lives near Vancouver. He worked in the Philippines as a utility worker at 4 NA Alas Trading since January 2004. His salary was approximately $150 a month. He filed a letter from his former employer stating that he will be hired back upon his return.

[8] Mr. **Glen Fuentes** (IMM-4675-08) was born in 1981. He is unmarried, and has no children or dependants. He worked as a janitor at NC Miguel-Fuentes Optical from 2000 to 2002 and as a filing clerk at Selective Security Services since 2002. His salary was equivalent to approximately

$240 a month. He claims to have completed a bachelor's degree in Agricultural Engineering in 2007 at Isabella State University.

[9] Finally, Mr. **Romualdo C. Baylon** (IMM-4722-08) was born in 1978. His father, three siblings, and a grandfather live in Canada; his mother is deceased. One of his two siblings still remaining in the Philippines is also seeking a work visa for a job with the same employer. He declared that he has worked as a sales representative for Kenrich Distributor Co. from 1999 to 2000, as a sales associate at Phil Gear Int'l Inc. from October 2000 to March 2001 and as a sales executive at Kumbawa Sales Marketing from May to October 2007. At the time of filing his visa application, his salary was equivalent to approximately $150 a month.

II. The Decision under Review

[10] The decisions in these five visa applications were made by three different Visa Officers. They all refused the work permit visas on the ground that they were not satisfied that the applicants would leave Canada at the end of the authorized period, pursuant to subsections 20(1)b) of the *Immigration and Refugee Protection Act* and 200(1)b) of the *Immigration and Refugee Protection Regulations*. They came to that conclusion essentially because of the applicants' weak economic ties with their country of origin.

[11] The standard letter sent to each of the applicants provides very little in terms of an explanation for the decision reached. It merely checks the box stating: "You have not satisfied me that you will leave Canada by the end of the period authorized for your stay because you have not

demonstrated ties that would satisfy me of your intention to return." The CAIPS notes, however, are a little more detailed. These notes are also supplemented by an affidavit sworn by each Visa Officer elaborating on the reasons for their decisions. I will now briefly summarize these reasons for each of the applicants.

[12] With respect to Mr. **Rico Baylon**, the Visa Officer first noted that he did not indicate that his brother was filing a similar application. She also expressed doubt as to his recent employment, as the applicant did not provide any employment certification in support of it. In her view, his employment prospects in his country appear uncertain as his only work experience is in salesmanship while he has a college degree in criminology; indeed, she added that the applicant did not seem to be working at the time he filed his application. The Officer also stressed that he is unmarried, is not in a common-law relationship with anybody, and has no children. The applicant and his brother gave each other's address in their application forms, and his declared address is ten hours away by road from the site of his declared employment. For all of these reasons, she was not satisfied that the applicant has strong incentives to leave Canada at the end of his authorized stay.

[13] As for Mr. **John Carreon**, the Officer was similarly not convinced that he had strong incentive to leave Canada at the end of his authorized stay, for the following reasons. First, he is unmarried, has no common-law relationship and no children. He also has an aunt living in Canada. His salary in the Philippines is low for someone with a college education, and he has held the same low-skilled position for five years without any advancement, which demonstrates weak economic

ties with the Philippines. Moreover, there is a concern with the credibility of his work experience, as his declared address residence is four to five hours away from where he allegedly works.

[14] Mr. **Juan Dastas** was also found not to be established in the Philippines for a variety of reasons. Although he is married with three dependent children, there is a significant gap in his employment history (from 1994 to 2004). He has little education, a low monthly salary, a low skilled job, and he twice failed the English class in high school. In her affidavit, the Visa Officer also notes that "…it is not uncommon in the Philippines for one or both parents to work overseas for long periods of time, sometimes several years. In the Filipino culture, the presence of family members is not a strong pull factor." She considered that his expected income and his close relatives in Canada are strong pull factors that would increase the incentive to remain in Canada, especially since it is also uncertain whether he would find employment upon return.

[15] Mr. **Glen Fuentes**' application was rejected on the basis of many factors. First of all, he has never been married and has no dependents. His employment certificate for his job at NC Miguel-Fuentes Optical was not of the normal official format, did not have usual contact information, and the signatory bears the same surname as the applicant. Therefore, the Visa Officer questioned the reliability of this document. The applicant's other employment certificate was also not of the normal official format: it had no date of issue, and was signed by the General Manager and not a human resource officer. The Officer was of the view that it could also have been generated from a home computer. She also found not credible that such a small business would be able to guarantee the same job after two years. The applicant also declared that between 2002 and 2007, he had been

working full time in Cainta, Rizal, as well as studying full time in Echague, Isabella. But the two cities are at least an eight-hour bus ride away from each other. The Visa Officer added that the applicant had weak economic ties with the Philippines. His salary is low for someone with a college education. He continued working in an unrelated low-skilled position after his graduation. He wants to leave this position for another low-skilled unrelated position in Canada with a substantial increase of income. This experience will not provide him with greater skills, nor will it improve his employability upon his return. His weak economic establishment in the Philippines therefore decreases the incentives for him to depart from Canada at the end of his authorized stay.

[16] Finally, Mr. **Romualdo C. Baylon**'s application was also rejected because of his extremely weak ties to the Philippines. He has never been married, and has no children or dependents. The Visa Officer stressed that of the eight family members listed only two siblings remained in the Philippines, one of whom also seeks to come to Canada to work for the same employer. Moreover, the applicant was unemployed for the nine months immediately preceding his application and has only been employed for a period of six months since 2001. In his affidavit, the Visa Officer also stressed that the applicant spent seven years in post-secondary educational institutions but did not complete the degree requirements of any discipline he studied. He has therefore not forged any economic stability, nor has he displayed any propensity for manual labour.

III. Issue

[17] The only issue to be determined in all five cases is whether the Visa Officers erred in coming to the conclusion that none of the applicants fulfilled the requirements for the temporary

resident work permit visa they had applied for. More particularly, this Court is called upon to assess the reasonableness of the Visa Officers' finding that the applicants have not established that they would be leaving Canada at the end of the period authorized for their stay.

IV. The Statutory Framework

[18] A foreign national seeking to enter Canada must establish that they meet the requirements of the *Immigration and Refugee Protection Act* (S.C. 2001, s. 27, s. 11(1)). Section 20(1)b) of the Act sets out the obligation to be fulfilled by a foreign national who wishes to enter Canada:

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| **20.** (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, | **20.** (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver : |
| (*a*) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and | *a*) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence; |
| (*b*) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay. | *b*) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée. |

[19] The worker class is a class of temporary residents and is described in Part 11 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227). In order to obtain a work permit, a foreign national must, *inter alia*, establish both of the following conditions:

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| **200.** (1) Subject to subsections (2) and (3), an officer shall issue a work permit to a foreign national if, following an examination, it is established that | **200.** (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis : |
| […] | […] |
| (*b*) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9; | *b*) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9; |
| (*c*) the foreign national | *c*) il se trouve dans l'une des situations suivantes : |
| […] | […] |
| (iii) has been offered employment and an officer has determined under section 203 that the offer is genuine and that the employment is likely to result in a neutral or positive effect on the labour market in Canada; | (iii) il s'est vu présenter une offre d'emploi et l'agent a, en application de l'article 203, conclu que cette offre est authentique et que l'exécution du travail par l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien; |

[20] According to the policy guideline of Temporary Foreign Worker Guidelines dated April 21, 2008, the Low-Skilled Pilot Project has been designed to fill the shortage of low-skilled workers by permitting the hiring of low-skilled workers from overseas. The rationale for that policy is spelled out in the following terms:

> At present, Canada is experiencing a period of dramatic change in the labour market. The increased demand for higher-skilled workers has left a void in one sector of the labour market and has led employers to seek workers outside of the traditional labour markets. The Low-Skilled Pilot Project is a labour-market-driven risk-management strategy aimed at filling this void by permitting the hiring of low-skilled workers from overseas. When assessing LSP applications, officers are to be mindful of the compelling policy objectives addressed by this pilot project and to balance potential risks against the very real benefits to the Canadian economy.

[21] According to that policy, the assessment of an application requires answering two basic questions: “does the applicant intend to do the job and do they have the ability to do the job?” This is not in question in any of the five files we are here dealing with.

[22] More relevant for our purposes is the reminder that visa officers must also ensure compliance with section 200(1) of the Regulations. The oolicy states the following in that respect:

> Section 200(1) of the Regulations provides that a visa officer shall issue a work permit to a foreign national if, following examination, it is established that (among other things) the foreign national will leave Canada by the end of the period authorized for their stay. The standard of proof in this regard is the civil standard of “balance of probabilities” or “more likely to than not”.

[23] It is with this framework in mind that I now turn to the review of the Visa Officers’ decisions in the five files that are the subject of the current proceedings.

V. Analysis

[24] A visa officer’s assessment of the application for a work permit involves an exercise of statutory discretion which should be given a high degree of deference. Therefore, the appropriate standard of review of a visa officer’s decision is that of reasonableness. This is indeed the standard that previous jurisprudence of this Court has applied to the review of such decisions: see *Choi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 577; *Angeles v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 744. Accordingly, the Court ought to defer to a visa officer’s decision if his or her findings are justified, transparent and intelligible, and fall within the

range of possible outcomes given the evidence as a whole: *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47.

[25] Assessing first the decision reached in the case of Mr. **Rico Baylon**, it was alleged that the Visa Officer's appraisal of his work permit application was unreasonable because that officer ignored relevant evidence. I agree with the respondent that the onus was on Mr. Baylon to satisfy the Visa Officer that he would depart Canada at the end of the period authorized for any temporary work in Canada. In assessing whether the applicant had discharged this onus, the Visa Officer was entitled to examine the totality of circumstances relating to his case. The extent of the applicant's financial and other ties to Philippines, his age, family circumstances and employment were all relevant factors for the Visa Officer to consider. Whether an applicant has an incentive to remain in Canada and local conditions in the applicant's home country are parts of the broader picture that a visa officer ought to consider in assessing whether an applicant will leave Canada at the end of the period authorized for any temporary stay. Moreover, the weight to be assigned to the factors was a matter for the Visa Officer's discretion, and is not a basis for judicial review.

[26] That being said, the Visa Officer overlooked an important piece of evidence. Both in his CAIPS notes and in his affidavit, the Visa Officer mentions that Mr. Baylon did not provide documentary evidence to support his declared employment. Yet Mr. Baylon refers to a letter of his employer in his statement to the Visa Officer, and the Tribunal Record contains a certificate of employment attached to the applicant's statement. Not only does this certificate confirm that

Mr. Baylon has been an employee of Motorparts Unlimited from January to December 2007, but it also states that a position would still be available to him “anytime he desired to.”

[27] At the hearing, counsel for the respondent conceded that this was an important omission, to the extent that the lack of an employment certificate and the limited employment prospects of the applicant appear to have been important factors in the decision of the Visa Officer to refuse his application for a temporary work permit. On that basis, counsel for the respondent also agreed that this application for judicial review should be granted. Accordingly, this matter shall be referred back for reconsideration by a different visa officer.

[28] As for Mr. **Glen Fuentes** and Mr. **Romualdo C. Baylon**, I have concluded that their applications for judicial review are without merit. In both of these cases, I am satisfied that the Officers considered all the evidence provided. They weighed the various facts and simply came to a different conclusion from that which the applicants would have preferred. They did not ignore the employment offer, the family situation, or the work experience of the applicants. The Officers also relied on the general employment situation in the Philippines, which is part of the general context that an officer examining work visa applications has to take into account. The Officers then drew inferences from all this information and came to their conclusions. I can find nothing unreasonable in their assessment, bearing in mind that the onus was on the applicants to prove they will leave Canada at the expiration of their work visa.

[29] Turning then to the application of Mr. **John Carreon**, I have not been persuaded that the Visa Officer's decision does not fall within the range of possible outcomes on the basis of the evidence that was before him. Mr. Carreon's personal ties to the Philippines are very weak since he has never been married, has no children, and is not in a common-law relationship. The fact that he earns a low salary, even for Philippines' standards, should not be held against him since this is an inevitable consequence of being a low-skilled worker. The Visa Officer noted, however, that his employment progression and prospects are limited, considering that he has held the same low-skilled position for five years (the Visa Officer mistakenly wrote eight years) without any advancement. While I may have come to a different conclusion, this is not the test to be applied. It was not unreasonable to conclude, as the Visa Officer did, that leaving his occupation to work in another low-skilled job in Canada unrelated to his education (a college degree in computer science) but with a substantial difference in his expected income, and the presence of a relative in Canada, would increase the applicant's incentives to remain in Canada after his authorized stay here. This conclusion is somewhat strengthened by the credibility issue with respect to his declared work experience. The applicant's declared residential address is apparently four to five hours away from his workplace. While the Visa Officer decided not to pursue verification of this issue because it would not have changed the outcome of his assessment, it is nevertheless a factor that plays against Mr. Carreon in this application for judicial review.

[30] Finally, I turn to the case of Mr. **Juan Dastas**. This is a more difficult case, because the personal circumstances of the applicant bring it closer to the line. Despite the high degree of deference owed to the Visa Officer, I have nevertheless come to the conclusion (albeit with much

hesitation) that it was unreasonable to find that it is more likely than not that Mr. Juan Dastas will not go back to the Philippines at the end of his authorized stay in Canada. I have come to this conclusion for the following reasons.

[31] First, Mr. Dastas has a wife, three children and four siblings in the Philippines. While I appreciate that leaving parents behind is no guarantee that a person will go back to his homeland (especially when that person is 39-years-old), the same cannot be said when the persons left behind are a wife and three young children. This should clearly be a strong “pull” factor, in the absence of any evidence tending to show that the marriage is falling apart and/or that the children are no longer dependents of their parents. No such evidence was before the Officer.

[32] As for the applicant’s economic ties, the Officer noted that his monthly salary is very low. As previously mentioned, I do not think this factor should be held against Mr. Dastas, as it is in the nature of things for low-skilled workers. More troubling is the fact that there is a ten-year gap in Mr. Dastas employment history (he did not declare any employment between 1994 and 2004). This, coupled with the applicant’s low level of education, would tend to demonstrate narrow employment prospects in the Philippines. On the other hand, Mr. Dastas has been steadily employed for the last four years, and he declared in his written statement to the Visa Officer that his current employer was offering him a job upon his return to the Philippines (that letter was not part of the Tribunal Record but was included in the Applicant’s Record). Moreover, as counsel for the applicant contended, Mr. Dastas must have been working during that ten-year period to sustain his family, since his wife appears to be staying home.

[33] In her affidavit, the Visa Officer states that leaving family behind is not a strong incentive to return to the Philippines, as “it is not uncommon in the Philippines for one or both parents to work overseas for long periods of time, sometimes totaling several years.” She adds: “In fact, over a million Filipinos every year reside and work abroad, most of them in low-skilled occupations. Separation from close family members due to overseas work is accepted and common place.”

[34] This extraneous evidence is unsupported and undocumented, and in any event irrelevant. I accept that local conditions in the applicant’s home country can be part of the broader picture which the Visa Officer ought to consider in assessing whether an applicant will leave Canada at the end of the period authorized for any temporary stay. But the mere fact that many low-skilled workers from the Philippines work overseas does not, in and of itself, mean that they overstay their authorized work permit, let alone that they live illegally in other countries. Oversimplified generalizations cannot and should not form the basis of what must always be an individualized assessment based on the particular circumstances of each individual. For all of these reasons, I am of the view that this application for judicial review should be granted.

## ORDER

**THIS COURT ORDERS that:**

- the applications for judicial review in file numbers IMM-4668-08 and IMM-4670-08 are granted, and these files are to be remitted back to a different visa officer to be reconsidered;
- the applications for judicial review in file numbers IMM-4669-08, IMM-4675-08 and IMM-4722-08 are dismissed.

"Yves de Montigny"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKETS:** | IMM-4668-08<br>IMM-4669-08<br>IMM-4670-08<br>IMM-4675-08<br>IMM-4722-08 |
| **STYLE OF CAUSE:** | RICO BAYLON v. MCI<br>JOHN CARREON v. MCI<br>JUAN DASTAS v. MCI<br>GLEN FUENTES v. MCI<br>ROMUALDO C. BAYLON v. MCI |
| **PLACE OF HEARING:** | Vancouver, BC |
| **DATES OF HEARING:** | September 15, 16 & 17, 2009 |
| **REASONS FOR ORDER AND ORDER:** | DE MONTIGNY J. |
| **DATED:** | September 18, 2009 |

**APPEARANCES:**

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| Mr. Sumandeep Singh | FOR THE APPLICANTS |
| Mr. Edward Burnet | FOR THE RESPONDENT |

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