Federal Court  Cour fédérale

Date: 20090720

Docket: IMM-5476-08

Citation: 2009 FC 734

Ottawa, Ontario, July 20, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

JOSIE BIANAN AOANAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the *Act*), of the decision of L. Kim, Immigration Officer, Case Processing Centre, Citizenship and Immigration Canada, Vegreville, Alberta, rendered on November 27, 2008, dismissing the applicant's application for permanent residence under the Live-In Caregiver Class.

[2] The applicant is a citizen of the Philippines. Her application for permanent residence under the Live-In Caregiver Class was refused because she failed to meet the statutory requirements set out under the *Act*. More particularly, the applicant was not able to demonstrate that she had worked as a live-in caregiver for the cumulative period of at least two years within the three years immediately following her entry into Canada, as required by the *Act* and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *Regulations*).

[3] Having carefully reviewed the evidence and the decision given by the Immigration Officer, and having considered the oral and written representations by counsel for the applicant and for the respondent, I have come to the conclusion that this application ought to be dismissed, for the following reasons.

THE FACTS

[4] The applicant left the Philippines in1990 for Hong Kong to begin working as a domestic helper. She had lived in Hong Kong for 13 years when she left to come to Canada in 2003. She decided to come to Canada because it was not possible for her to gain any permanent status in Hong Kong.

[5] She hired an employment agency in Hong Kong to obtain a job offer for her in Canada and to assist her in obtaining her work permit. Having obtained a work permit, she was set to leave for Canada when she learned from the employment agency that her prospective employer no longer needed her services. She nevertheless decided to come to Canada, having been informed by the

employment agency that a new employer would be waiting for her in Canada and that all of the necessary paperwork would be done for her in Canada.

[6] The applicant entered Canada on October 13, 2003. In her affidavit, the applicant claimed that she was picked up at the airport by Mr. Tam, for whom she worked as a live-in caregiver after she received a new work permit, allegedly in April 2004.

[7] The applicant alleges that she started working for Mr. Tam as of April 2004, but that he would not allow her to indicate that she worked in April and May 2004 when she applied for permanent residency as he did not pay his taxes for this period. For the same reason, he did not indicate work for that period when he issued her record of employment.

[8] The applicant also claimed that she was made to sign two separate contracts by Mr. Tam. One said that she was working regular hours and that she would be paid overtime. This was the contract that would be used in dealing with the government of Canada. He also made her sign a separate contract, which stated that she agreed to work longer hours and not be paid overtime. Indeed, the applicant said that she worked for 6 days per week, 14 hours per day.

[9] Her contract with the Tams finally was terminated in September 2004. In the letter confirming the termination of her employment, Mr. Tam indicates that the applicant was dismissed because she was planning to attend Saturday courses, and that this would conflict with her working schedule. Ms. Aonan disputes this version, saying that she was willing to not attend school as she needed to work.

[10] The applicant then went to a different employment agency, which found her a job and arranged for a new work permit to be issued. This permit was valid from January 20, 2005, and the applicant remained in the employ of her new family until June 30, 2005. She then found a new employer as a live-in caregiver in September 2005, and has worked there until the present.

[11] On February 14, 2007, the applicant submitted an in-land application for permanent resident under the Live-In Caregiver Class. By letter dated September 18, 2007, Canada Immigration informed the applicant that it appeared she did not have sufficient authorized time working to qualify for landing under the Live-In Caregiver Program. The applicant's then counsel sent in submissions on the applicant's behalf, conceding that she was 2 months short of the 2 years required under the Program, but asking for an exemption under s. 25 of the *Act* (humanitarian and compassionate considerations).

[12] By letter dated January 15, 2008, Canada Immigration informed the applicant that she failed to comply with the requirements of the live-in care program because she had accumulated only 22 months of the 24 months required in a 36-month period. In addition, the immigration officer noted that humanitarian and compassionate factors were considered but were found to be insufficient to waive the requirements of s. 113(d) of the *Regulations*. The applicant sought judicial review of that decision. Leave was granted, as a result of which the respondent consented to a redetermination.

[13] In this new application, the applicant has submitted new documents, including the above mentioned side agreement that Mr. Tam have made her sign. She also submitted new arguments,

going both to the humanitarian grounds and to the length of time she has worked as a live-in caregiver.

[14] Notwithstanding that evidence, the applicant's second application for permanent residence under the Live-In Caregiver Class was refused on November 27, 2008.

THE IMPUGNED DECISION

[15] The most salient remarks from the Officer's notes indicate the following:

- The new submissions reflect basically the same information found in the first application, except that the new representative now indicates that the agency in Hong Kong told the client they had a new employer and would arrange a new work permit for her;

- The client indicates she commenced employment on April of 2004, but the employer would not allow her to indicate that she worked for him prior to June as he failed to submit tax deductions;

- The representative states that the H&C factors are the abuse of days and hours worked and the wages paid by Mr. Tam, which violates the labour code. While this is an unfortunate situation, it does not overturn the fact that she must meet the requirements outlined in s. 113(1)(d) of the *Regulations*;

- It is unfortunate that the first employer withdrew his employment 3 days prior to her departure for Canada, but it raises the question whether the applicant misrepresented herself a the Port of Entry, by not informing the Officer that her employer no longer required her services, which may have resulted in her being rejected at the border;

- The information provided does indicate that Mr. Tam appears to have abused the applicant by making her work longer hours and more days then allowed by the labour code, and underpaid her. While this is a very unfortunate situation the applicant found herself in, this does not relieve the applicant from meeting the requirement of having to work 24 months within 36 months of entry into Canada;

- In the submissions made since the original decision, only then is it stated that the applicant actually commenced employment with Mr. Tam in April 2004 but he would not allow her to indicate that she had worked for him until June 2004. There is no documentation to support this statement and this was only brought up after her application was refused; and

- If the applicant chooses, she can return to the Philippines and apply to return to Canada to restart the Live-In Caregiver Program.

[16] After considering all the factors surrounding Mrs. Aoanan's application for permanent residence as a live-in caregiver, the Officer found that there were insufficient H&C grounds that justify the waiver of the requirements outlined in s. 113(1) of the *Regulations*. He also found that the applicant will not suffer any undue and disproportionate hardship by having to leave Canada.

ISSUES

[17] The applicant raised a number of issues, which can be fairly summarized in the following three questions:

a) Did the Officer err in finding that the applicant did not provide persuasive evidence that she worked at least two years within the three years required under s. 113(1)(d) of the *Act*?

b) Did the Officer breach a principle of natural justice in failing to conduct an oral interview of the applicant?

c) Did the Officer fail to reasonably consider the humanitarian factors, or in not issuing adequate reasons for his decision?

THE LEGISLATIVE FRAMEWORK

[18] The relevant provisions regarding the Live-In Caregiver Program and H&C requests are set out below. Work permits and temporary resident visas are issued under the live-in caregiver program in the following circumstances:

Work permits — requirements	Permis de travail : exigences
112. A work permit shall not be issued to a foreign national who seeks to enter Canada as a live-in caregiver unless they	**112.** Le permis de travail ne peut être délivré à l'étranger qui cherche à entrer au Canada au titre de la catégorie des aides familiaux que si l'étranger se conforme aux exigences suivantes :
(*a*) applied for a work permit as a live-in caregiver before entering Canada;	*a*) il a fait une demande de permis de travail à titre d'aide familial avant d'entrer au Canada;
(*b*) have successfully completed a course of study that is equivalent to the successful completion of secondary school in Canada;	*b*) il a terminé avec succès des études d'un niveau équivalent à des études secondaires terminées avec succès au Canada;
(*c*) have the following training or experience, in a field or occupation related to the employment for which the work permit is sought, namely,	*c*) il a la formation ou l'expérience ci-après dans un domaine ou une catégorie d'emploi lié au travail pour lequel le permis de travail est demandé :
(i) successful completion of six months of full-time training in a classroom setting, or	(i) une formation à temps plein de six mois en salle de classe, terminée avec succès,
(ii) completion of one year of full-time paid employment, including at least six months of continuous employment with one employer, in such a field or occupation within the three years immediately before the	(ii) une année d'emploi rémunéré à temps plein — dont au moins six mois d'emploi continu auprès d'un même employeur — dans ce

day on which they submit an application for a work permit;

(*d*) have the ability to speak, read and listen to English or French at a level sufficient to communicate effectively in an unsupervised setting; and

(*e*) have an employment contract with their future employer.

domaine ou cette catégorie d'emploi au cours des trois années précédant la date de présentation de la demande de permis de travail;

d) il peut parler, lire et écouter l'anglais ou le français suffisamment pour communiquer de façon efficace dans une situation non supervisée;

e) il a conclu un contrat d'emploi avec son futur employeur.

TEMPORARY RESIDENT VISA

Issuance

179. An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

(*a*) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;

(*b*) will leave Canada by the end of the period authorized for their stay under Division 2;

(*c*) holds a passport or other document that they may use to enter the country that issued it or another country;

VISA DE RÉSIDENT TEMPORAIRE

Délivrance

179. L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;

(*d*) meets the requirements applicable to that class;

(*e*) is not inadmissible; and

(*f*) meets the requirements of section 30.

d) il se conforme aux exigences applicables à cette catégorie;

e) il n’est pas interdit de territoire;

f) il satisfait aux exigences prévues à l’article 30.

HOLDERS OF TEMPORARY RESIDENT VISAS

TITULAIRE DE VISA DE RÉSIDENT TEMPORAIRE

Authorization

Autorisation

180. A foreign national is not authorized to enter and remain in Canada as a temporary resident unless, following an examination, it is established that the foreign national and their accompanying family members

(*a*) met the requirements for issuance of their temporary resident visa at the time it was issued; and

(*b*) continue to meet these requirements at the time of the examination on entry into Canada.

180. L’étranger n’est pas autorisé à entrer au Canada et à y séjourner comme résident temporaire à moins que, à l’issue d’un contrôle, les éléments suivants ne soient établis à son égard ainsi qu’à celui des membres de sa famille qui l’accompagnent :

a) ils satisfaisaient, à la délivrance du visa de résident temporaire, aux exigences préalables à celle-ci;

b) ils satisfont toujours à ces exigences lors de leur contrôle d’arrivée.

[19] The requirements for membership in the Live-In Caregiver Class, and thus for permanent resident status, are set out in s. 113 of the *Regulations*, which provides as follows:

Permanent residence	Statut de résident permanent
113. (1) A foreign national becomes a member of the live-in caregiver class if	**113.** (1) L'étranger fait partie de la catégorie des aides familiaux si les exigences suivantes sont satisfaites :
(*a*) they have submitted an application to remain in Canada as a permanent resident;	*a*) il a fait une demande de séjour au Canada à titre de résident permanent;
(*b*) they are a temporary resident;	*b*) il est résident temporaire;
(*c*) they hold a work permit as a live-in caregiver;	*c*) il est titulaire d'un permis de travail à titre d'aide familial;
(*d*) they entered Canada as a live-in caregiver and, for a cumulative period of at least two years within the three years immediately following their entry,	*d*) il est entré au Canada à titre d'aide familial et, au cours des trois ans suivant son entrée, il a, durant au moins deux ans :
(i) resided in a private household in Canada, and	(i) d'une part, habité dans une résidence privée au Canada,
(ii) provided child care, senior home support care or care of a disabled person in that household without supervision;	(ii) d'autre part, fourni sans supervision, dans cette résidence, des soins à domicile à un enfant ou à une personne âgée ou handicapée;
(*e*) they are not, and none of their family members are, the subject of an enforceable removal order or an admissibility hearing under the Act or an appeal or application for judicial review arising from such a hearing;	*e*) ni lui ni les membres de sa famille ne font l'objet d'une mesure de renvoi exécutoire ou d'une enquête aux termes de la Loi, ni d'un appel ou d'une demande de contrôle judiciaire à la suite d'une telle enquête;

(*f*) they did not enter Canada as a live-in caregiver as a result of a misrepresentation concerning their education, training or experience; and	*f*) son entrée au Canada en qualité d'aide familial ne résulte pas de fausses déclarations portant sur ses études, sa formation ou son expérience;
(*g*) where they intend to reside in the Province of Quebec, the competent authority of that Province is of the opinion that they meet the selection criteria of the Province.	*g*) dans le cas où l'étranger cherche à s'établir dans la province de Québec, les autorités compétentes de cette province sont d'avis qu'il répond aux critères de sélection de celle-ci.
Calculation	Calcul
(2) The cumulative period referred to in paragraph (1)(*d*) may be in respect of more than one employer or household and need not be without interruption, but may not be in respect of more than one employer or household at a time.	(2) Les deux ans visés à l'alinéa (1)*d*) peuvent être passés au service de plus d'un employeur ou dans plus d'une résidence dès lors qu'ils ne le sont pas simultanément

[20] Subsection 25(1) of the *Act* also provides that the Minister of Citizenship and Immigration has the discretionary power to facilitate the admission of a person in Canada, or to exempt him/her from any applicable criteria or obligation of the *Act*, if the Minister is of the opinion that such an exemption or facilitation is justified by reason of humanitarian and compassionate considerations relating to the person.

ANALYSIS

[21] The applicant's admissibility to Canada raises mixed questions of fact and law, as the Officer had to apply the relevant provisions of the *Act* and of the *Regulations* to the applicant's particular situation. These questions are typically reviewed against the standard of reasonableness: see, for ex., *Cagampang* v. *The Minister of Public Safety and Emergency Preparedness,* 2008 FC 1184. Accordingly, they deserve a high degree of deference; this Court will intervene only if the decision challenged does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* v. *New Brunswick,* 2008 SCC 9, at para. 47.

[22] As for questions pertaining to natural justice, they do not attract a standard of review analysis. These issues must be assessed on a standard of correctness, and reviewing courts will step in once it is determined that an error has been committed: *A.G. Canada* v. *Sketchley,* 2005 FCA 404.

[23] Turning now to the first issue identified above, the applicant submits that the Officer failed to grasp and understand the new arguments submitted in the second application with respect to requirement set out in s. 113(1)(d) of the *Regulations*. Not only had the applicant provided evidence that she had worked two additional months (April and May 2004), but she had also put forward evidence that she had been forced to work 84 hours a week from June to September 2004, which amounted to the equivalent of 7.5 months (on a basis of a 48 hour work week), or 3.5 months more than she had previously been credited for.

[24] The Officer addressed these arguments and rejected them. As to the first of these arguments, he noted that that there is no documentation to support that claim, and that it was only brought up after her application was rejected. Indeed, the handwritten employment contract the applicant relies on was actually signed on May 26, 2004 and refers to a period of employment from June 2004. It is true that in the opening paragraph of that contract, the period of employment is described as being "May 01-04 to May 01-05:". But in the three paragraphs that follow, there is a correction to the period of employment and "May" is crossed and replaced by "June". Moreover, the affidavit of the applicant is problematic in this respect; as already mentioned, it mentions that she was picked up at the airport by Mr. Tam, for whom she allegedly started to work only six months later.

[25] It was entirely open to the Officer to indicate that there was no documentation to support the allegation that she was employed from April 2004, especially since this allegation was only brought up after the permanent resident application was refused the first time. It was also entirely open to the Officer to consider the work history the applicant submitted on her original application, which indicated periods of unemployment from October 2003 to June 2004. Moreover, her record of employment, issued by the Government of Canada, indicated that her employment commenced on June 01, 2004, not April 01, 2004.

[26] Chapter IP 04, *Processing Live-In Caregivers in Canada*, of the Department of Citizenship and Immigration manual, outlines at s. 9.5 acceptable evidence of two-year employment, which includes a letter from the current employer showing the start date and confirming the applicant's status as being currently employed, record of earnings under *Employment Insurance Regulations*,

statement of earnings, record of wages and deductions sent to Canada Customs and Revenue Agency.

[27] All the documents filed by the applicant confirmed that she started to work for Mr. Tam at the beginning of June 2004. The only evidence to the contrary was the contract which the applicant was apparently forced to sign negating the agreement that would be disclosed to the government. Yet, there is no explanation as to why the applicant still felt compelled to indicate she had not worked in April and May 2004 when she applied for permanent residence, as she was not employed by Mr. Tam anymore.

[28] As for the argument based on the number of hours worked, it suffers from the same flaws. Not only is it inconsistent with the record of employment issued by the Government of Canada, but the claim of the applicant is totally unsubstantiated. Immigration manual IP 4, *Processing Live-In Caregivers in Canada* further indicates that employment standards are regulated by the provinces. Each province has different employment standards. Under the Ontario *Employment Standards Act 2000*, S.O. 2000, ch. 41, ss. 1, 84, 96-97, there are no set hours of work per day or per week for full-time employment of live-in caregivers.

[29] If the applicant felt that her employer was mistreating her or that her working conditions contravened the *Employment Standards Act*, she could have filed a complaint with the Ontario Ministry within two years of the alleged contravention. I realize that persons like the applicant are often vulnerable, ignorant of the legal remedies they may have recourse to, and often have little means. But the applicant was represented both on her first and on her second application; yet, there

is no evidence that the applicant filed any complaint with the Ontario Ministry, or with any other government authority. This could certainly have substantiated her claim. In the absence of any such evidence, it was not open to the Officer to go behind a record of employment issued by the Government of Canada.

[30] Be that as it may, counsel for the applicant cited no authority for the proposition that to meet the requirement of a cumulative period of at least two years within the three years immediately following her entry into Canada, the Officer should have credited her extra days and months of employment resulting from the number of hours the applicant claims she worked each day for Mr. Tam in excess of normal daily hours. The *Regulations* speak of a period of time, not of hours worked. Had it been intended to take into consideration the number of hours worked, the *Regulations* could have been framed accordingly, as is the case, for example, in the *Employment Insurance Regulations*, SOR/96-332.

[31] Counsel for the applicant argued that the Officer should have conducted an oral interview and provided the applicant with an opportunity to present her case and respond to his concerns. In my view, this argument has no merit.

[32] The assessment of whether the applicant met the requirements for permanent residence under the live-in caregiver program was largely administrative, involving the assessment of the sufficiency of documentary evidence and not an assessment of personal credibility. The record of employment, an official government document, indicated that the applicant started work on June 1,

2004. Her original permanent resident application form and employment contract indicated the same. The applicant simply failed to provide sufficient proof of employment from April 1, 2004.

[33] This is not a case where the credibility of the applicant was at the core of the decision challenged, or where the story of the applicant could only be assessed through an interview, as is the case when the *bona fides* of a marriage is questioned. The applicant had every opportunity to submit the documentation required, and she failed to do so. An interview can not make up for a lack of documentation.

[34] Finally, counsel for the applicant argued that the Officer erred in relying on the test of undue hardship to reject the applicant's request for exemption of s. 113(1)(d) of the *Regulations* on humanitarian and compassionate grounds. It is submitted that the test applied by the Officer of unusual and undeserved or disproportionate hardship is most appropriate in situations in which an applicant without status in Canada seeks an exemption from the requirement to obtain a visa before entering into Canada. According to the applicant, when the issue is whether compelling H&C considerations justify the exemption from the two-year requirement in s. 113, the more appropriate standard should be that set out by the Immigration Appeal Board in *Chirwa* v. *Canada (Minister of Manpower and Immigration)* (1970), 4 I.A.C. 338. In other words, the Officer should have considered whether the applicant's circumstances "would excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another."

[35] Under s. 25(1) of the *Act*, the respondent and his delegates are authorized to grant a foreign national permanent resident status or an exemption from any applicable criteria or obligation of the *Act* if they are of the opinion that it is justified by humanitarian and compassionate considerations. The H&C process is not designed to eliminate hardship but to provide relief for unusual and undeserved or disproportionate hardship.

[36] In the present case, the Immigration Officer considered the totality of the evidence to determine whether there were sufficient grounds to justify a waiver of the requirements of s. 113(1)(d) of the *Regulations*. After considering all the factors surrounding the application, the Officer concluded that it was her opinion that there were insufficient H&C grounds that justified the waiver of the requirements set out under the *Regulations*.

[37] The Officer understood there were sympathetic aspects to the applicant's case, including, for example, how she was treated by her original agency in Hong Kong, the unfortunate way that her first employer withdrew an employment offer, and the abuse from Mr. Tam, her former employer. The Officer also noted that the applicant regularly attended church, where she is an active member, had taken first aid and computer courses, had done her best to integrate into society, and assisted family members in Canada and abroad.

[38] The Officer also considered the applicant's submissions that if she was refused, she would have to return to the Philippines and would have difficulties finding work, sufficient to pay for her father's care, and that she and her husband delayed having children until she was granted permanent resident status. The Officer also noted, among other things, that the applicant could return to the

Philippines and apply to return to Canada to restart the Live-In Caregiver Program. In the context of these submissions the Officer also found that the Applicant would not suffer any undue and disproportionate hardship by having to leave Canada.

[39] The *Chirwa* and similar Immigration Appeal Division cases are decisions made by that tribunal exercising discretion in the context of ss. 65 and 67 of the *Act*, provisions that do not directly relate to the s. 25 discretion: see *Lim* v. *Canada (Minister of Citizenship and Immigration)*, 2002 FCT 956, at paras. 16-17; *Long Dang* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 290, at paras. 14,18; *Rizvi* v. *Canada (Minister of Citizenship and Immigration)*, 2009 FC 296, at paras. 14-15.

[40] In *Espino* v. *Canada (Minister of Citizenship and Immigration)*, (2007 FC 74, at paras. 44-45), Madame Justice Dawson noted that in principle a foreign national does not have access to the IAD, except in the limited situation where they had a permanent resident visa but have not been landed. The IAD is given jurisdiction by s. 63 of the *Act* to deal with administrative appeals brought by Canadian citizens, permanent residents and persons who, at least initially, have been determined to meet the selection criteria for admission and who have obtained a permanent resident visa. Citizens and permanent residents are entitled to appeal to the IAD for special relief from matters affecting their inadmissibility or the inadmissibility of sponsored family members.

[41] Finally, I am of the view that the reasons provided by the Officer were adequate. While the duty of fairness requires that reasons be given by a decision-maker, the Supreme Court recognized in *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 that this

requirement must be applied with flexibility and that the special nature of agency decision-making must be considered in evaluating the reasons requirement. In the present case, the decision-maker was not a tribunal but an officer dealing with a request for an exemption under the law. She acknowledged the special circumstances of the applicant and the sympathetic factors of her circumstances. But at the end of the day, she found against the applicant.

[42] The applicant argues that more weight should have been given to the affidavit and to the contract she was forced to enter into with Mr. Tam. But this goes to the weight to be given to the arguments and to the evidence submitted. The Officer's discretionary authority includes the right to assign weight to particular facts or to make determinations regarding documentary evidence, and it is not the role of this Court to substitute its own discretion for that of the Officer. The Officer considered all relevant factors in the circumstances of the applicant's case, and her decision is entitled to a high degree of deference.

[43] For all of these reasons, and despite the fact that the applicant's plight is eminently sympathetic, this application for judicial review must be dismissed. Counsel for the applicant agrees that this case does not raise any question of general importance for certification, and none is stated.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the present application for judicial review be dismissed. No question of general importance is certified.

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5476-08
STYLE OF CAUSE:	JOSIE BIANAN AOANAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, ONTARIO
DATE OF HEARING:	June 22, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	de Montigny, J.
DATED:	July 20, 2009

APPEARANCES:

Mr. Ronald Poulton	FOR THE APPLICANT
Ms. Leena Jaakkimainen	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Poulton Law Professional Corporation Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT