

Date: 20091117

Docket: IMM-2176-09

Citation: 2009 FC 1176

Montréal, Quebec, November 17, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**GRACIELA SERRUDO
SEMPERTEGUI**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Immediately following the hearing I said that I would grant judicial review and outlined the reasons. Here they are in a somewhat expanded form.

[2] Ms. Sempertegui is a Bolivian national. She is in her twenties, unmarried and has no children, factors which played a role in the visa officer's decision to refuse to issue a temporary resident visa to allow her to take French courses in Montréal.

[3] Some seven or eight years ago, she was befriended by a Canadian woman who was in Bolivia on an educational assignment. In late 2006 that woman's brother and his wife needed live-in assistance for their three young children. Ms. Sempertegui was contacted and applied in early 2007 to come to Canada as a live-in caregiver. Her application for a work permit was refused because she was short of the one-year related work requirement set out in the regulations.

[4] This problem was overcome by the fall of 2008 and so a second application for a work permit was filed. In that instance she was rejected because she failed the language test, in her case French.

[5] This judicial review arises from a third application by Ms. Sempertegui, this time an application for a student permit in order to study French, with the admitted long term goal that if she is successful she will reapply for a work permit as a live-in caregiver.

[6] The visa officer gave two reasons for her refusal. First, she was not satisfied that the applicant had the financial wherewithal and, second, she was not satisfied that Ms. Sempertegui would leave Canada once her temporary resident visa expired. These two reasons were canvassed in considerable detail by the parties at the application for leave stage. It was only after leave was granted when the officer was required to produce the tribunal record that she realized that she had made a mistake. Apparently, there is a template which sets out five reasons why such an application may be refused. The visa officer only intended to give one reason, that being that she was not satisfied that Ms. Sempertegui would leave Canada on the expiry of her study permit. If nothing else, this shows a lack of attention to detail.

[7] Indeed, the officer's notes suggest that there may have been another reason. The officer was suspicious that Ms. Sempertegui would work here illegally while she was taking her French courses. Since the template also has an "other reasons" box, one must wonder if it was the officer's intention to list illegal work as an additional reason for refusing to issue a visa.

[8] Other than the fact that Ms. Sempertegui is a single woman in her 20s, no other reason was given to fuel the suspicion that she would not leave when her visa expired. While she may well have a dual intention, s. 22(2) of the *Immigration and Refugee Protection Act* specifically provides that that is no reason to reject an application.

[9] It is true that the burden is upon the applicant to satisfy the officer, but there are some officers who simply will not be satisfied, no matter what. Ms. Sempertegui has a widowed father and two sisters living in Bolivia. No mention was made of that in the CAIPS notes. The visa officer's suspicions were not based on reasonable inferences drawn from the known facts, and so the decision is unreasonable.

[10] Her ties to Bolivia were not plumbed. Nor was the fact that it has been amply demonstrated that Ms. Sempertegui, along with her sponsors, play by the rules. There is no objective basis for the decision.

ORDER

THIS COURT ORDERS that:

1. The judicial review is granted.
2. The matter is referred back to a new officer for redetermination.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2176-09

STYLE OF CAUSE: GRACIELA SERRUDO SEMPETERGUI v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 17, 2009

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: November 17, 2009

APPEARANCES:

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