

Federal Court



Cour fédérale

**Date: 20100902**

**Docket: IMM-6360-09**

**Citation: 2010 FC 872**

**Ottawa, Ontario, September 2, 2010**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**MARIA CECILIA COLLANTES LINGAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Maria Cecilia Collantes Lingad is a citizen of the Philippines who applied for a Canadian work permit through the Live-in Caregiver Program. Her application was refused as a visa officer was not satisfied that she had sufficient knowledge and skills to adequately provide care without supervision.

[2] Ms. Lingad seeks judicial review of the visa officer's decision, asserting that the visa officer erred by drawing improper inferences as to whether she could perform the work required as a live-in

caregiver. Despite the capable submissions of Ms. Lingad's counsel, she has not persuaded me that the officer's decision was unreasonable. Consequently, the application will be dismissed.

### **Analysis**

[3] During her interview, the visa officer asked Ms. Lingad a series of questions as to how she would handle a variety of situations. The answers provided by Ms. Lingad were recorded in the officer's Computer Assisted Immigration Processing System (or "CAIPS") notes.

[4] Ms. Lingad argues that the record of her answers contained in the CAIPS notes is incomplete, and she has provided an affidavit detailing the more fulsome answers that she says that she provided during her interview. The visa officer has also provided an affidavit confirming that the answers provided by Ms. Lingad were properly recorded in the CAIPS notes. Neither affiant was cross-examined on their affidavit.

[5] Both affidavits were sworn several months after Ms. Lingad's interview with the visa officer. There is no suggestion in her affidavit that Ms. Lingad kept contemporaneous notes of the answers that she provided at her interview. Moreover, the quality of her recollection is called into question by the fact that her affidavit makes no reference to one of the five skill-testing questions that she was asked.

[6] Insofar as the reliability of the evidence contained in the visa officer's affidavit is concerned, the approximately five months between the interview and the swearing of the visa officer's

affidavit, the officer undoubtedly dealt with many other visa applications. This would inevitably have had a negative impact on the officer's ability to recollect the specifics of Ms. Lingad's interview.

[7] Because the CAIPS notes were recorded contemporaneously with Ms. Lingad's interview, they are, in my view, the most reliable record of what actually transpired during that interview.

[8] The onus is on applicants to demonstrate that they meet the requirements of the *Immigration and Refugee Protection Regulations*. The five questions posed by the visa officer were clearly intended to assess Ms. Lingad's ability to safely care for the elderly individual who was to be entrusted to her care in Canada.

[9] The evaluation of a candidate's qualifications and ability to perform the work in question is squarely within the expertise of the visa officer. While Ms. Lingad had successfully completed a caregiver training program, the visa officer found that the answers she provided during her interview were inadequate and incomplete. Ms. Lingad has not persuaded me that this finding is outside the range of possible acceptable outcomes which are defensible in light of the facts and the law: *Dunsmuir* at paragraph 47, and *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at para. 59.

[10] Indeed, the additional responses contained in Ms. Lingad's affidavit simply highlight some of the deficiencies in the answers that she provided in the course of her interview.

[11] The officer also did not err in failing to consider the fact that Ms. Lingad would be working with a housekeeper in assessing whether she had sufficient knowledge and skill to adequately provide care, given that the definition of “live-in caregiver” is someone who is able to provide “childcare, senior home support care or care of the disabled without supervision ...”: *Immigration and Refugee Protection Regulations*, s. 2.

### **Conclusion**

[12] For these reasons, the application for judicial review is dismissed.

### **Certification**

[13] Neither party has suggested a question for certification, and none arises here.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6360-09

**STYLE OF CAUSE:** MARIA CECILIA COLLANTES LINGAD v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 31, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Mactavish J.

**DATED:** September 2, 2010

**APPEARANCES:**

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FOR THE RESPONDENT

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