

Federal Court



Cour fédérale

**Date: 20101103**

**Docket: IMM-1558-10**

**Citation: 2010 FC 1076**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Montréal, Quebec, November 3, 2010**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**ROBERTO MANCILLA REYNOSO**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of an immigration officer's decision, dated March 1, 2010, rejecting the applicant's family class application for permanent residence which he filed as a member of his spouse's family.

## **FACTS**

[2] The applicant is a Mexican citizen. He arrived in Canada on September 20, 2004, and claimed refugee protection, alleging that that he feared persecution for being homosexual. His refugee protection claim was rejected by the Immigration and Refugee Board (the IRB), and his application for judicial review of that decision was dismissed by the Federal Court.

[3] On February 4, 2006, the applicant married Angel Colorado Hernandez, a Mexican citizen, who was determined to be a person in need of protection in Canada on September 2, 2005.

[4] On January 10, 2006, Mr. Hernandez filed an application for permanent residence.

[5] On December 6, 2006, the applicant, as Mr. Hernandez's spouse, filed an application for permanent residence in Canada as a member of the family class.

[6] On March 1, 2010, Mr. Hernandez's application for permanent residence was rejected because he was found to be inadmissible on grounds of serious criminality after having been convicted on three counts of assault with a weapon.

[7] Consequently, the application of the applicant, having being included as a family member (spouse) of Mr. Hernandez, was also rejected.

[8] That is the decision being challenged before this Court.

[9] In rejecting the applicant's application for permanent residence, did the officer commit an error warranting the intervention of this Court?

## ANALYSIS

[10] Mr. Hernandez, who is the principal applicant in the context of the applications for permanent residence (APR), was determined to be a person in need of protection, and his APR was filed under subsection 21(2) of the IRPA:

### Protected person

(2) Except in the case of a person described in subsection 112(3) or a person who is a member of a prescribed class of persons, a person whose application for protection has been finally determined by the Board to be a Convention refugee or to be a person in need of protection, or a person whose application for protection has been allowed by the Minister, becomes, subject to any federal-provincial agreement referred to in subsection 9(1), a permanent resident if the officer is satisfied that they have made their application in accordance with the regulations and that they are not inadmissible on any ground referred to in section 34 or 35, subsection 36(1) or section 37 or 38.  
(Emphasis added)

### Personne protégée

(2) Sous réserve d'un accord fédéro-provincial visé au paragraphe 9(1), devient résident permanent la personne à laquelle la qualité de réfugié ou celle de personne à protéger a été reconnue en dernier ressort par la Commission ou celle dont la demande de protection a été acceptée par le ministre - sauf dans le cas d'une personne visée au paragraphe 112(3) ou qui fait partie d'une catégorie réglementaire - dont l'agent constate qu'elle a présenté sa demande en conformité avec les règlements et qu'elle n'est pas interdite de territoire pour l'un des motifs visés aux articles 34 ou 35, au paragraphe 36(1) ou aux articles 37 ou 38.

[11] This provision therefore requires that the person applying for permanent residence must not be inadmissible. Subparagraph 72(1)(e)(i) of the *Immigration and Refugee Protection Regulations* (IRPR) reiterates that requirement.

[12] However, in August 2006, Mr. Hernandez was found guilty of three counts of assault under paragraph 267(a) of the *Criminal Code* and was liable to imprisonment for a term not exceeding 10 years. Following those convictions, Mr. Hernandez was inadmissible on grounds of serious criminality in accordance with paragraph 36(1)(c) of the IRPA:

**Serious criminality**

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

...

**Grande criminalité**

36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

(...)

[13] The applicant filed his APR as a family member of Mr. Hernandez. Unlike the principal applicant, Mr. Hernandez, the applicant is not inadmissible on grounds of serious criminality. However, since Mr. Hernandez's application for permanent residence was rejected, so necessarily was that of the applicant. It is clear that the outcome of his application depended on Mr. Hernandez's application (see *Kuhathasan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 457, at paragraph 13). Therefore, the officer's decision is consistent with the legislation and the case law.

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

**JUDGMENT**

The application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

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Judge

Certified true translation  
Sarah Burns

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

**DOCKET:** IMM-1558-10

**STYLE OF CAUSE:** ROBERTO MANCILLA REYNOSO v. M.C.I.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 2, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** TREMBLAY-LAMER J.

**DATED:** November 3, 2010

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Christine Bernard FOR THE RESPONDENT

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