

Federal Court



Cour fédérale

**Date: 20110506**

**Docket: IMM-5691-10**

**Citation: 2011 FC 523**

**Ottawa, Ontario, May 6, 2011**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**PASEUTH PATHOUMVIENG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Defendant**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr. Paseuth Pathoumvieng seeks to become a permanent resident of Canada. He requested an exemption, on humanitarian and compassionate grounds, from the usual requirement that applicants apply from outside Canada. He has been in Canada since 2005.

[2] An immigration officer assessed Mr. Pathoumvieng's application and denied it, finding that Mr. Pathoumvieng would not suffer unusual, undeserved or disproportionate hardship if he had to return to his country of origin, Laos, to make his application. Mr. Pathoumvieng argues that the officer made a serious error that resulted in a denial of procedural fairness. In his notes to file, the officer had erroneously observed that Mr. Pathoumvieng might have been working without a work permit given that he had been doing volunteer work as a janitor at his church. Mr. Pathoumvieng correctly points out that volunteer activities are not considered to be "work" as defined in the *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 2. No permit is needed to perform volunteer work.

[3] Mr. Pathoumvieng argues that he should have been given an opportunity to address the officer's concern. He submits that, without that opportunity, he was denied procedural fairness. He asks me to overturn the decision and order a reassessment by a different officer.

[4] I can find no basis, however, for overturning the officer's decision. The officer's reference to Mr. Pathoumvieng's volunteer work as a janitor was merely a parenthetical observation in the officer's notes. It did not figure in the actual decision except as a positive factor going to the degree to which Mr. Pathoumvieng had established himself in Canada. Therefore, I can find no breach of procedural fairness and must dismiss this application for judicial review.

[5] The sole issue is whether the officer's reference to Mr. Pathoumvieng's volunteer work as a janitor resulted in a breach of procedural fairness.

II. Did the officer breach the rules of procedural fairness?

[6] Under the heading “In Consideration - Factors”, the officer stated the following in his notes:

The applicant states that he does volunteer work at his brother’s church. The reference letter from his brother who is pastor of the church states the applicant volunteers doing janitor work (this may be considered as working without authorization – applicant does not have a work permit).

[7] Later, under the heading “Decision and Reasons – Establishment”, the officer stated:

The applicant states that he is volunteering as a janitor at his brother’s church and that he has assisted in fund raising for a local hospital . . . The applicant has likely established his place within the family unit and at his brother’s house and church.

[8] It appears to me that the officer ultimately considered Mr. Pathoumvieng’s volunteer work as a positive factor showing the degree to which he had become integrated into his family and community in Canada. While the officer dismissed Mr. Pathoumvieng’s application because of an absence of significant hardship, the possibility that Mr. Pathoumvieng had been working without a permit did not form part of the officer’s reasoning.

[9] Mr. Pathoumvieng maintains that the circumstances of his case are similar to those in *Skripnikov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 369 and *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284. In those cases, the Court overturned decisions by immigration officers who had made adverse factual findings without giving the applicant a chance to address the officer’s concerns.

[10] In *Skripnikov*, the applicants were a husband and wife who claimed to be grieving the death of their son and presented an application on humanitarian and compassionate grounds. The officer

was not satisfied that the applicants were the child's biological parents. Justice Sean Harrington found that the officer's failure to share his concern with the applicants was a breach of procedural fairness.

[11] In *Rukmangathan*, the applicant applied for permanent residence as a skilled worker in the area of computer programming. The officer who assessed the application concluded that the applicant's grades in certain courses were low, and believed that two of his educational credentials were unsatisfactory. Justice Richard Mosley found that the officer should have made the applicant aware of his concerns because they could easily have been cleared up. Because it was impossible to know whether the applicant would have succeeded in the absence of those concerns, Justice Mosley ordered a reassessment of the application by a different officer.

[12] In my view, in the cases cited by Mr. Pathoumvieng, the officers' concerns related to areas that were central to the applications in issue. That is not the situation here. The officer's remark relating to the possibility that Mr. Pathoumvieng might have been working without a permit was at the periphery of the application. It was not even an actual finding of fact. It was not mentioned at all in the officer's reasons. Therefore, the outcome would not, in my view, have been any different if the officer had provided Mr. Pathoumvieng with a chance to address any concern that the officer might have had on that point. I can find no breach of procedural fairness.

III. Conclusion and Disposition

[13] I can find no basis for Mr. Pathoumvieng's assertion that the officer treated him unfairly.

Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-5691-10

**STYLE OF CAUSE:** PASEUTH PATHOUMVIENG  
v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 21, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** May 6, 2011

**APPEARANCES:**

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Jane Stewart FOR THE RESPONDENT

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