

Federal Court



Cour fédérale

Date: 20111124

Docket: IMM-2766-11

Citation: 2011 FC 1362

Toronto, Ontario, November 24, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ROMAN MOLEV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns the rejection of the Applicant's application for permanent residence under the Federal Investor program. The application was refused on the basis of the Applicant's perceived failure to prove a single fact in a highly complex evidentiary scenario.

[2] The Applicant is a Russian citizen who is registered sole owner of a business and, in support of his application, has stated his net worth to be approximately \$ 1,000,000 CAD. The Applicant's wife, also a citizen of Russia, was included in the application as a dependent.

[3] Subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR 2002-207 (2010), defines an investor as a foreign national who has business experience, a legally obtained minimum net worth of at least \$800, 000, and who indicates in writing that he or she intends to make, or has already made, an investment. The Visa Officer in the present case defined “net worth” in the following way:

Subsection 88(1) of the Regulations defines “net worth” as, in respect of the foreign national and their spouse or common-law partner, the fair market value of all their assets minus the fair market value of all their liabilities.

(Application Record, p.7)

The following list of documents supplied by the Applicant in support of his application discloses the complexity of the financial evidence produced:

- Application for permanent residence;
- Diplomas for the Applicant and his wife;
- Reference letter for Applicant;
- Explanatory note from Applicant regarding his net worth;
- Certificate of state registration of right for wife’s apartment (Lenina prospect, 9-3);
- Transcript from the register of the self-regulating society of appraisers,
- Appraisal report,
- Certificate of state registration of rights for Applicant’s plot of land (Sadovaya Street, 16);
- Certificates of state registration of rights for the house on aim plot of land;
- Appraisal report;
- Sales agreement (Sadovaya Street, 16);
- Loan agreement;
- Letter from Regiobank regarding Applicant’s mortgage loan;
- Applicant’s certificate of registration as a tax payer (without translation);
- Certificate of registration of Applicant as an entrepreneur (without translation);
- Staff list for Applicant’s business (2009);
- Staff list for Applicant’s business (2008);

- Balance of account (January 2009 — October 2009);
- Balance of account (August 2007— January 2008);
- Balance of account (October 2006— February 2010);
- List of goods register in storage for the period of January 1,2010 to February 24, 2010;
- Financial highlights for 2009;
- Tax declaration for third quarter of 2009;
- Tax declaration for second quarter of 2009;
- Register of data of individuals income for 2008;
- Tax declaration for 2008;
- Tax declaration for 2007;
- Tax declarations for first through fourth quarters of 2006;
- Register of data of individuals income for 2006;
- Certificate from Regiobank advising that loan of 38 million roubles that Applicant took from bank on October 30, 2006 was fully repaid on August 26, 2009;
- Certificate from Regiobank advising that Applicant has had an account with them since October 13, 2006;
- Lease contract for non-residential premises.

(Application Record, CAIPS Note p. 9)

The Visa Officer's reason for rejecting the Applicant's application is expressed in the decision letter presently under review:

You have not satisfied me that you have a legally obtained minimum net worth of at least \$800,000 because you have not provided documentary evidence to support the stated net worth of your business.

(Application Record, p. 7)

[4] I find that the key issue for determination is whether the Visa Officer was required to give the Applicant a reasonable opportunity to establish that the evidence submitted proves the fact found to be so important. The Applicant argues that the decision breached the duty of procedural fairness by failing to adhere the Guidelines expressed in the CIC Overseas Processing Manual OP9 at paragraphs 5.15 and 11.2:

When the officer has concerns about eligibility or admissibility, the applicant must be given a fair opportunity to correct or contradict those concerns. The applicant must be given an opportunity to rebut the content of any negative provincial assessment that may influence the final decision.

[...]

When the veracity of the documentation is in doubt, the officer should first request further documentation.

[5] Indeed, following receipt of the Visa Officer's decision, then Counsel for the Applicant made a request to the Visa Officer to re-open the decision to allow the Applicant an opportunity to meet the Visa Officer's concern. This request was denied.

[6] Given the complexity of the evidence, it is understandable why the Visa Officer was in doubt. In my opinion, the Visa Officer's failure to resolve the doubt by following the Guidelines constitutes a breach in the duty of fairness owed to the Applicant. As a result I find that the decision under review was rendered in reviewable error.

ORDER

THIS COURT ORDERS that the decision is set aside and the matter is referred back for redetermination.

There is no question to certify.

"Douglas R. Campbell"
Judge

Federal Court



Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2766-11

STYLE OF CAUSE: ROMAN MOLEV v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 23, 2011

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: NOVEMBER 24, 2011

APPEARANCES:

Krassina Kostadinov FOR THE APPLICANT

Nimanthika Kaneira FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario