

Federal Court



Cour fédérale

Date: 20130109

Docket: IMM-3164-12

Citation: 2013 FC 16

Toronto, Ontario, January 9, 2013

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

KEVIN DONALD STORDOCK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a decision of an Officer of the Case Processing Centre, Vegreville, Alberta, of Citizenship and Immigration Canada dated 15 March 2012, wherein the Applicant's request for an extension of his Temporary Resident Permit was not granted.

[2] The Applicant is a citizen of the United States of America. He committed a number of offences related to driving and possession of marijuana in that country. He accumulated a number of fines, which remained unpaid for a number of years. In February 2006, he met a woman who was a

Canadian citizen. He married her in the United States in February 2008. The couple have a daughter who is now four years old. The wife and daughter live in Canada; while the Applicant, until the events at issue here, resided in the United States, where he would be visited periodically by his wife and daughter.

[3] The Applicant visited Canada for one day on December 21, 2006. One week later, he attempted to re-enter Canada and was refused entry due to criminal inadmissibility. In December 2008, the Applicant paid his outstanding fines. In February 2009, his wife submitted a spousal sponsorship application, which remains outstanding, since the Applicant will remain criminally inadmissible at least until December, 2013.

[4] The Applicant was issued a Temporary Resident Permit, valid from 29 June 2011 to 05 July 2011. The intent, as stated by the Applicant, was so as to attend his brother-in-law's wedding in Canada. Nonetheless, the Applicant has never left Canada.

[5] The Applicant has sought to extend his Temporary Resident Permit for an indeterminate length of time until his wife's spousal sponsorship application is determined. His request states, in part:

Now that I am with my family, I cannot bear to part ways. Please allow me to be with my wife in (sic) daughter in Canada until such time as my PR is granted.

[6] It is important to note that no evidence was submitted to reflect the impact, positive or negative, that the Applicant's presence in Canada has on his daughter. There is only rhetoric in the Applicant's lawyer's letters.

[7] The Applicant's request for an extension of his Temporary Resident Permit has been denied. The letter sent to the Applicant does not provide reasons; however, the CAIPS notes, which can be considered as reasons, conclude as follows:

HE WAS ISSUED A TEMPORARY RESIDENT PERMIT AT THE DOUGLAS PORT OF ENTRY, VALID FROM 29 JUNE 2011 TO 05 JULY 2011,

BASED ON HIS STATED INTENT OF ATTENDING HIS BROTHER-IN-LAWS WEDDING, HE WOULD LIKE TO EXTEND HIS STAY IN CANADA, STATING NOW THAT I AM WITH MY FAMILY I CANNOT BEAR TO PART WAYS.

I NOTE THAT THE NORMAL COURSE OF AN OVERSEAS FCI SPONSORSHIP REQUIRES A SEPARATION, AND THAT THIS SEPARATION WAS PROLONGED DUE TO THE APPLICANTS MULTIPLE CONVICTIONS OVER A PERIOD OF NINE YEARS AND DELAYS IN COMPLETING SENTENCE, AGAIN FOR NINE YEARS. HIS PRESENCE IN CANADA IS NOT REQUIRED FOR THE FAMILY TO SPEND TIME TOGETHER AS HIS WIFE HAS SHOWN HER WILLINGNESS TO TRAVEL TO THE USA. I AM NOT OF THE OPINION THAT A TEMPORARY RESIDENT PERMIT IS JUSTIFIED IN THE CIRCUMSTANCES. THIS APPLICATION IS REFUSED. JT-S

[8] Applicant's Counsel has raised several issues, which can be reduced to two:

- Did the Officer ignore the Applicant's evidence or fail to explain in the reasons why the evidence was not accepted?

- Did the Officer fail to consider the best interests of the child?

[9] As to the first issue, it must be remembered that Temporary Resident Permits are highly discretionary permits, which may be cancelled at any time as provided in section 24 of the *Immigration and Refugee Protection Act* (IRPA), SC 2001, c. 27. An Applicant is required to demonstrate “compelling reasons” why such a Permit should be granted (*Farhat v Canada (MCI)*, 2006 FC 1275). Similarly, in seeking an extension; particularly in cases such as this where the Applicant has simply overstayed the limit of his Permit, the Applicant must demonstrate “compelling reasons” for an extension. In the present case, the Applicant simply has not done so. The reasons given in the CAIPS notes are sufficient having regard to the Supreme Court decision in *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. Given the scant information provided by the Applicant, the decision is certainly within the bounds of reasonableness having regard to *Dunsmuir v New Brunswick*, 2008 SCC 9.

[10] As to the second issue, best interests of the child, there is only the Applicant’s statement as set out above that *he* would like to be with his child. The rest is his lawyer’s rhetoric. Even if the Officer were obliged to consider the best interests of the child, there is nothing in the record that could reasonably enable the Officer to do so.

[11] In any event, as to this issue, there is simply no requirement in IRPA that an Officer, in considering a Temporary Resident Permit, is required to consider the best interests of a child; unlike, for instance, a humanitarian and compassionate application. Even if best interests of a child could somehow come into play in considering “compelling reasons” to grant or extend a Temporary

Resident Permit, there simply is little or nothing in the present record that would permit an Officer to do so. As in *Farhat, supra*, it was not unreasonable for the Officer not to consider the best interests of the child.

[12] Therefore, the application is dismissed. I find no basis for certifying a question.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3164-12

STYLE OF CAUSE: KEVIN DONALD STORDOCK v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 9, 2013

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

DATED: January 9, 2013

APPEARANCES:

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