

Federal Court



Cour fédérale

Date: 20140625

Docket: IMM-2766-13

Citation: 2014 FC 617

Ottawa, Ontario, June 25, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

DURGA KUMARI SHAPKOTA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Reasons delivered orally in Toronto on June 19, 2014)

[1] Durga Kumari Shapkota [the Applicant] has made an application for judicial review of a decision of an Immigration Officer [the Officer], dated January 21, 2013 in which the Officer concluded that the Applicant and her adopted daughter, Susmita Shapkota [Susmita] do not meet the requirements for a permanent resident visa because the Applicant submitted a fraudulent birth certificate which untruthfully states that Susmita is her biological child when, in fact,

Susmita is her niece. This application was made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, [the Act].

[2] The Applicant's husband [the Husband] is a successful refugee claimant from Nepal. He submitted an application for permanent residence in Canada and named his wife and three children in Nepal as his dependants. At the same time, the Applicant submitted her application for permanent residence to the Canadian High Commission in New Delhi. She also listed the three children and provided a birth certificate for Susmita [the Misrepresentation]. However, after the Officer asked for DNA testing to establish the parentage of the children, the Husband informed the Officer that, contrary to her birth certificate which states that she was "born to" his wife, Susmita was in fact not their child. Rather, she is the child of the Husband's brother. The Applicant and her Husband took Susmita into their home when she was three months old because her father was unable to support her.

I. The Decision

[3] The Officer said that the Applicant had contravened subsection 16(1) of the Act which provides:

16.(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

16.(1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[4] In view of the Misrepresentation, the Applicant and Susmita were denied permanent residence pursuant to subsection 11(1) of the Act which says:

11.(1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the *regulations*. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

11.(1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

II. The Issues

[5] Issue 1: Is the Decision, under subsection 11(1) of the Act, a finding of inadmissibility which the Officer was not entitled to make under subsection 21(2) of the Act?

[6] Issue 2: Does subsection 16(1) apply on the facts of this case?

III. Discussion and Conclusions

[7] Issue 1: In my view, the Decision clearly shows that it was the Applicant's failure to meet the requirements of subsection 16(1) of the Act and not inadmissibility which caused the denial of her application under subsection 11(1).

[8] The law is clear that failure to meet the requirements of the Act is an independent ground for refusing an application for permanent residence, see (*Ramalingam v. Canada (Minister of*

Citizenship and Immigration) 2011 FC 278, *Mescallado v. Canada (Minister of Citizenship and Immigration)* 2011 FC 462).

[9] Issue 2: The Applicant is only caught by subsection 16(1) if she provides untruthful information in answer to a question put to her. The application form for permanent residence “puts” questions to an Applicant. The question on the form asked for a listing of both adopted and natural children. The form does not specify that only legally adopted children can be listed. Accordingly, the Applicant, who says that Susmita was “traditionally” adopted in Nepal may not have been untruthful when she filled in the form.

[10] However, the Applicant elected to expand her answer by submitting the fraudulent birth certificate and, at that point, in my view, her answer to a question “put “to her became untruthful. Accordingly, subsection 16(1) applied.

IV. Certification

[11] No question was posed for certification.

JUDGMENT

THIS COURT ORDERS that this application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2766-13

STYLE OF CAUSE: DURGA SHUMARI SHAPKOTA v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 19, 2014

ORDER AND REASONS : SIMPSON J.

DATED: JUNE 25, 2014

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