

Federal Court



Cour fédérale

Date: 20140717

Docket: IMM-6525-13

Citation: 2014 FC 703

Montréal, Quebec, July 17, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ANTONY ROUTHLEDGE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] A lack of diligence in respecting properly given instructions, as required by the legal framework of the immigration system, can lead to a denial of consideration.

II. Introduction

[2] This is an application for judicial review brought forth under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of a decision by an Immigration Officer of the Case Processing Centre [CPC] in Vegreville, Alberta, dated June 18, 2013.

III. Background

[3] The Applicant, Mr. Antony Routhledge, is a citizen of the United Kingdom. Prior to coming to Canada he lived in Zambia and South Africa.

[4] In 2005, he had a daughter, Kristin, with a common-law spouse, Mrs. Lynette Meyer, in South Africa. The couple eventually separated and the Applicant began a relationship with Ms. Melanie Boudreau, a Canadian woman working in South Africa.

[5] The Applicant traveled with Ms. Boudreau to Canada for a visit, and, in 2009, she sponsored him for landing in the Spouse and Common-law Partners in Canada Class. In his application for permanent residence, the Applicant listed his daughter Kristin, who resides in South Africa, as a non-accompanying family member.

[6] As part of the application process, the Applicant and his daughter were both required to undergo a medical examination to determine their medical admissibility into Canada. The

Applicant was examined by a designated doctor in northern Quebec, and his ex-spouse brought their daughter for an examination by a doctor in Cape Town, South Africa.

[7] The Applicant's daughter's medical report was subsequently rejected by the CPC as it had not been prepared by a designated doctor. The Applicant was asked to provide a new medical report for his daughter from a designated doctor in South Africa.

[8] On March 15, 2012, the Applicant requested that his daughter be exempted from having to undergo a medical examination as he claimed his ex-spouse was not willing to bring her to be re-examined by another doctor. This request was denied.

[9] On June 11, 2012, the Applicant's daughter was examined by another doctor, this time in Hartenbos, Mussel Bay, South Africa. The medical report was again rejected by the CPC as it had not been completed by a designated doctor.

[10] On May 25, 2013, the Applicant wrote to the CPC informing them of his wish to exclude his daughter from his application.

[11] On June 18, 2013, the Respondent wrote to the Applicant that his daughter could not be excluded from the application and that failure to comply with the requirement to have her examined by a designated doctor could result in the refusal of the application. The Applicant was given a further 3 months to comply with the requirement.

[12] On September 19, 2013, the Officer refused the Applicant's application for permanent residence as he had failed to comply with the requirement.

IV. Decision under Review

[13] In his letter dated June 18, 2013, the Officer denied the Applicant's request to remove his daughter from his application for permanent residence, indicating the following:

Regulation 72(1)(e)(i) states a foreign national in Canada becomes a permanent resident if, following an examination, it is established that they and their family members, whether accompanying or not, are not inadmissible.

As you have not been able to provide documentary evidence that your child(ren) are in the sole custody of another person, examination for the following family member(s) must continue:

Kristin Jaqueline Routledge DOB 2005 April 14.

...

For your daughter Kristin: Immigration legislation requires that all applicants for permanent residence **and their family members complete medical examinations. The examination must be conducted by one of the panel physicians**...

...

You have requested that we remove your dependant Kristin Jaqueline Routledge from your application for permanent residence. After careful consideration of the circumstances your request has been denied. The family member you have listed on your application is required to undergo the Immigration examination. Failure to comply with our instructions may result in your application for permanent residence being refused.

(Certified Tribunal Record [CTR] at pp 83-84.)

V. Issue

[14] Did the Officer breach his duty of procedural fairness by failing to provide adequate reasons for his decision?

VI. Relevant Legislative Provisions

[15] Subsection 42(a) of the IRPA is also relevant in this matter:

42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

(a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or

(b) they are an accompanying family member of an inadmissible person.

42. Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants :

a) l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas;

b) accompagner, pour un membre de sa famille, un interdit de territoire.

[16] Paragraph 72(1)(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 is also relevant in this matter:

72. (1) A foreign national in Canada becomes a permanent resident if, following an examination, it is established that

...

(e) except in the case of a

72. (1) L'étranger au Canada devient résident permanent si, à l'issue d'un contrôle, les éléments suivants sont établis :

[...]

e) sauf dans le cas de

foreign national who has submitted a document accepted under subsection 178(2) or of a member of the protected temporary residents class,

(i) they and their family members, whether accompanying or not, are not inadmissible,

l'étranger ayant fourni un document qui a été accepté aux termes du paragraphe 178(2) ou de l'étranger qui fait partie de la catégorie des résidents temporaires protégés :

(i) ni lui ni les membres de sa famille — qu'ils l'accompagnent ou non — ne sont interdits de territoire,

VII. Standard of Review

[17] It is well established that the issue of the adequacy of reasons is assessed in reviewing the reasonableness of the decision as a whole (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

VIII. Analysis

[18] The Applicant submits that the Officer breached his duty of procedural fairness by failing to explain why his request for an exemption from a medical examination for his daughter was denied, and by failing to demonstrate he assessed the matter on a case-by-case basis.

[19] In the Court's view, the Applicant's arguments that the Officer breached his duty of procedural fairness may be disposed of in a summary way as the Supreme Court of Canada has clearly established that the inadequacy of reasons given by a decision-maker does not give rise to a breach provided some reasons are given.

[20] In *Newfoundland and Labrador Nurses' Union*, above, Justice Rosalie Silberman Abella stated:

[20] Procedural fairness ... can be easily disposed of here. *Baker* stands for the proposition that “in certain circumstances”, the duty of procedural fairness will require “some form of reasons” for a decision (para 43). It did not say that reasons were always required, and it did not say that the quality of those reasons is a question of procedural fairness... [Emphasis added.]

[21] In this case, while the decision letter itself may be brief, it is clear from the record that the Applicant was repeatedly made aware of the requirements of the law to have his daughter examined by a designated doctor and the consequences for failing to do so (CTR at p 87); however, the Applicant repeatedly demonstrated a lack of diligence in respecting the proper procedures. Despite having been warned several times about the procedural requirements of the Regulations, the Applicant proceeded to have his daughter examined by non-designated doctors. After two attempts at obtaining a medical report from non-designated doctors, the Applicant finally requested that his daughter be exempt from having to undergo any further medical examination. Subsequent to a reading of the entire file, the Applicant provided no adequate documentation demonstrating that his daughter was in fact unable to undergo further medical examinations or that his ex-spouse refused to take her to the examinations. In his request for an exemption, the Applicant simply stated that his ex-spouse refused to take his daughter for a further examination. The Court cannot accept that the Officer's denial of the exemption comes as a surprise to the Applicant or that it is unclear as to why the Officer decided as he did.

[22] The Applicant was the author of his own misfortune in this matter, and the Court is satisfied that there was no breach of procedural fairness on the part of the Officer.

IX. Conclusion

[23] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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