Federal Court  Cour fédérale

Date: 20170908

Docket: IMM-728-17

Citation: 2017 FC 811

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 8, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

ELIO LEBLANC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Immigration Appeal Division (IAD) dated January 26, 2017, dismissing the appeal of an immigration officer's refusal to issue a permanent resident visa to a Haitian girl whom the applicant sought to sponsor as his daughter. Following genetic (DNA) testing, the officer found that the applicant was not the girl's

biological father, and therefore that she was not a member of the family class and was not eligible for the visa sought.

[2] The IAD noted in a letter to the applicant dated November 1, 2016, that [TRANSLATION] "according to section 65 of the [*Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA)], the IAD cannot consider humanitarian and compassionate grounds if it has decided that [the girl in question] is not a member of the family class based on her relationship with the sponsor." The child must satisfy the definition of a "dependent child" within the meaning of section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. To do so, she must be either the biological child or the adopted child of the applicant. The IAD noted that this did not appear to be the case, and that the appeal was likely to be dismissed.

[3] In response, the applicant submitted that the child in question has always been considered his daughter and that the revelation that the applicant is not her biological father would cause her emotional shock. The applicant submitted that the IAD should rule that the child is a member of the family class and take humanitarian and compassionate grounds into consideration.

[4] The IAD subsequently refused the appeal (without a hearing) given that the child did not satisfy the definition of a "dependent child", and therefore that the immigration officer did not have jurisdiction to consider humanitarian and compassionate grounds. That refusal is the impugned decision.

[5] The applicant is seeking an order granting him a hearing before the IAD. In his factum, the applicant reiterates some of the arguments that he raised before the IAD and submits that the IAD had given him a legitimate expectation to be heard orally and in person, despite section 65 of the IRPA. In his oral submissions, the applicant introduced a new argument. He notes that the child's birth certificate states that the applicant is the father, as established by a Haitian tribunal. The applicant is asking the Court to find that there is a presumption that the birth certificate's content is valid.

[6] With regard to the birth certificate, even if I recognize the presumption sought by the applicant, I must also recognize that the result of the DNA test (which was not challenged) rebuts this presumption. The evidence is conclusive that the girl in question is not the applicant's biological or adopted child.

[7] There seems to be no doubt that the girl does not satisfy the definition of a "dependent child". There also seems to be no doubt that the girl is not a member of the family class defined in section 117 of the IRPR, and therefore that the IAD was correct not to consider humanitarian and compassionate grounds.

[8] I now turn to the issue of the applicant's legitimate expectation to be heard orally and in person before the IAD. The Supreme Court of Canada stated the following in *C.U.P.E. v. Ontario (Minister of Labour),* 2003 SCC 29 at paragraph 131:

> The doctrine of legitimate expectation is "an extension of the rules of natural justice and procedural fairness": *Reference re Canada Assistance Plan (B.C.),* [1991] 2 S.C.R. 525, at p. 557. It looks to the conduct of a Minister or other public authority in the exercise

> of a discretionary power including established practices, conduct or representations that can be characterized as clear, unambiguous and unqualified, that has induced in the complainants (here the unions) a reasonable expectation that they will retain a benefit or be consulted before a contrary decision is taken. To be "legitimate", such expectations must not conflict with a statutory duty. See: *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170; *Baker*, above; *Mount Sinai*, above, at para. 29; Brown and Evans, above, at para. 7:2431. Where the conditions for its application are satisfied, the Court may grant appropriate procedural remedies to respond to the "legitimate" expectation.

[9] I concur with the respondent's argument that the outcome of this application for judicial review is inevitable, and therefore that it is unnecessary to conduct a hearing: *Phung v. Canada (Citizenship and Immigration)*, 2012 FC 585 at paragraphs 20 and 21. I also agree with the respondent regarding the fact that the IAD never indicated that it would necessarily hold a hearing. Therefore, the applicant had no legitimate expectation in that regard.

[10] Furthermore, it is important to note that subsection 25(1) of the *Immigration Appeal Division Rules*, SOR/2002-230, expressly provides for the possibility that a hearing will not take place before the IAD, "if this would not be unfair to any party and there is no need for the oral testimony of a witness." For the foregoing reasons, I am satisfied that the absence of an oral hearing before the IAD was not unfair and that there was no need for the oral testimony of a witness.

JUDGMENT in IMM-728-17

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to reflect the correct respondent, namely the Minister of Citizenship and Immigration;

2. The application is dismissed;

3. There is no serious question of general importance to be certified.

"George R. Locke"
Judge

Certified true translation
This 12th day of August 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-728-17
STYLE OF CAUSE:	ELIO LEBLANC v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	AUGUST 28, 2017
JUDGMENT AND REASONS:	LOCKE J.
DATED:	SEPTEMBER 8, 2017

APPEARANCES:

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