

Federal Court



Cour fédérale

Date: 20190116

**Dockets: IMM-3052-18
IMM-3053-18**

Citation: 2019 FC 61

Vancouver, British Columbia, January 16, 2019

PRESENT: The Honourable Mr. Justice Barnes

IMM-3052-18

BETWEEN:

CATHERINE JEAN EVA HARMAN

Applicant

and

**THE MINISTER OF IMMIGRATION
REFUGEE AND CITIZENSHIP CANADA**

Respondent

IMM-3053-18

AND BETWEEN:

KAMAL KARKI

Applicant

and

**THE MINISTER OF IMMIGRATION
REFUGEE AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

UPON hearing these applications at Vancouver, British Columbia, on January 9, 2019;

AND UPON hearing counsel for the parties and reviewing the materials filed;

AND UPON reserving decision;

AND UPON dismissing the applications for the following reasons:

[1] These are related applications for judicial review concerning a decision to refuse Ms. Harman's application to sponsor her spouse, Kamal Karki, and, following from that decision, a refusal to grant a work permit to Mr. Karki.

[2] It is common ground that the denial of a work permit to Mr. Karki was based on the fact that he had no status as a member of the spouse or common law in Canada class. Accordingly, if Ms. Harman's application fails, so too must Mr. Karki's.

[3] The sole issue in Ms. Harman's case concerns a finding by a visa officer that she was ineligible to sponsor Mr. Karki as her spouse because, at the lock-in date of her application on June 26, 2017, she was in receipt of social assistance benefits. The evidentiary basis for this finding was information received from the British Columbia Ministry of Housing and Social Development (Ministry) confirming that Ms. Harman was in receipt of social assistance benefits from May 2017 to July 2017. This information Ms. Harman now says was wrong and, had she been told, she could have corrected the visa officer's misapprehension of the facts.

[4] The fundamental weakness with Ms. Harman's argument is that she was well aware at the time of her application that receipt of social assistance benefits at the lock-in date would make her ineligible to sponsor Mr. Karki. This is clear from her signed declaration that she was not receiving benefits at the pertinent time (see CTR at page 59). Ms. Harman also knew that her application was likely to trigger an official enquiry concerning her social assistance history (see CTR at page 63).

[5] Whether Ms. Harman was in receipt of benefits at the lock-in date was a basic issue of eligibility and Ms. Harman was well aware of it. She also knew she had been on social assistance and that an enquiry about her status would be raised. It was her obligation to obtain any information necessary to confirm that she was not in receipt of social assistance benefits at the lock-in date. Her basic declaration to that effect was insufficient.

[6] The law is very clear that an administrative decision-maker has no obligation to inform an interested party about matters of basic eligibility or other concerns arising directly under the *Immigration and Refugee Protection Act* or its Regulations: see *Fouad v Canada*, 2012 FC 460 at paragraph 16, [2012] FCJ No 768 and the cases cited therein. The visa officer, therefore, had no duty to inform Ms. Harman about the results of his enquiry and to invite a further response. I also do not agree that the employment confirmation letter dated June 6, 2017 created a heightened duty of fairness. The fact that Ms. Harman had received an offer of employment does not preclude the possibility that she continued to receive social assistance benefits up to and beyond the lock-in date as reported to the visa officer by the Ministry.

[7] Even Ms. Harman's affidavit in this proceeding fails to state that she was not receiving social assistance benefits at the lock-in date. All she asserts is that she was "on social assistance

from May 17, 2017 to June 7, 2017". What she notably failed to address is whether she continued to receive social assistance benefits after June 7, 2017 and into July as indicated in the official reply from the Ministry. Indeed, the very careful tailoring of the language of Ms. Harman's affidavit and in her after-the-fact enquiry to the Ministry is concerning (see Mr. Karki's Record at page 39).

[8] For the foregoing reasons, Ms. Harman's application is dismissed. It follows from that finding that Mr. Karki's application is also dismissed.

[9] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT in IMM-3052-18 and IMM-3053-18

THIS COURT'S JUDGMENT is that these applications are dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3052-18

STYLE OF CAUSE: CATHERINE JEAN EVA HARMAN v THE MINISTER
OF IMMIGRATION REFUGEE AND CITIZENSHIP
CANADA

AND DOCKET: IMM-3053-18

STYLE OF CAUSE: KAMAL KARKI v THE MINISTER OF IMMIGRATION
REFUGEE AND CITIZENSHIP CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 9, 2019

JUDGMENT AND REASONS BARNES J.

DATED: JANUARY 16, 2019

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