

Federal Court



Cour fédérale

Date: 20191105

Docket: IMM-2093-19

Citation: 2019 FC 1387

Ottawa, Ontario, November 5, 2019

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

VAN NHUT VO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review concerns a decision of the Immigration Appeal Division [IAD] dismissing a sponsorship appeal. The central arguments raised relate to counsel incompetence and translation errors.

II. Background

[2] Mr. Vo, a Vietnamese citizen, is married to a Vietnamese woman. His first spousal sponsorship application was denied in 2015. That refusal was not appealed. A year later, he filed another application. It too was denied, but this time was appealed to the IAD.

[3] The IAD denied the appeal noting the numerous and important inconsistencies between Vo and his wife's evidence. These included inconsistencies on whether and when there was a marriage proposal, lack of knowledge about Vo's first wife and his children, and other such issues.

[4] In this judicial review, Vo argued on the basis of (i) his former counsel's incompetence and (ii) the interpreter's incompetence. He does not challenge the reasonableness of the appeal decision except in regard to these natural justice issues.

[5] At the hearing the Respondent sought to produce the Law Society of Ontario's decision confirming that former counsel was not guilty of professional misconduct. The Court accepted the decision as proper evidence – in fact, it should have been produced by Vo or his counsel. As an officer of the Court, counsel owed a duty of candor to the Court. The Applicant is not free to hide material facts from the Court. However, the Court did not accept an affidavit which went beyond the Law Society decision.

III. Analysis

A. *Standard of Review*

[6] It is beyond doubt now that this type of breach of procedural fairness must be assessed anew and on the basis of correctness.

B. *Incompetence of former counsel*

[7] The gist of Vo's contention is that former counsel did not put in evidence documents which Vo's immigration consultant was given, nor address credibility issues, and further that counsel failed to ask questions on redirect or make argument in reply.

[8] Much of Vo's case, other than issues of redirect and reply, turned on the dichotomy between what the consultant had and what counsel used.

[9] The gap in Vo's case is that there is no evidence from the consultant on this matter. Vo hired the consultant and while the consultant gave an affidavit on the motion to adduce the Law Society decision, he gave no affidavit on this matter. Therefore, Vo has not made out his case on the failure to adduce evidence.

[10] On the matter of redirect and reply, Vo has not shown that these matters of professional judgment were instances of such incompetence as to deny him a fair hearing. There are many

possible reasons why a counsel would not ask questions on a particular case in redirect or make submissions in reply.

C. *Translator Incompetence*

[11] Vo's allegation of incompetence has not been made out. Aside from some instances of confusion about which person was being referred to – a matter often arising in English or French proceedings - all Vo could offer were some notes from a purported translator in Vietnam.

[12] Vo failed to produce an affidavit of any type from a translator much less an affidavit which details the alleged translation errors. Vo had the transcript and production of an affidavit from a Canadian based translator should have been produced.

[13] The Court notes that even if the errors Vo said occurred, they are not significant enough to make the hearing unfair.

[14] In conclusion, on both issues of procedural fairness, there is insufficient evidence upon which to conclude that a breach of procedural fairness occurred.

IV. Conclusion

[15] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-2093-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2093-19

STYLE OF CAUSE: VAN NHUT VO v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 28, 2019

JUDGMENT AND REASONS: PHELAN J.

DATED: NOVEMBER 5, 2019

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