

Federal Court



Cour fédérale

**Date: 20191119**

**Docket: IMM-5578-18**

**Citation: 2019 FC 1449**

**Ottawa, Ontario, November 19, 2019**

**PRESENT: Mr. Justice James W. O'Reilly**

**BETWEEN:**

**FRANCIS GUEVARRA**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2003, Mr Francis Guevarra and his spouse, Ms Anariza Hidalgo, were married in a civil ceremony in the Philippines. They did not disclose their marriage to their families. Ms Hidalgo left the Philippines to work as a live-in caregiver in Canada and became a permanent resident in 2006. She did not mention her marriage in her permanent residence application because she did not want her family to find out about it.

[2] In 2007, Ms Hidalgo gave birth to a son in Canada. She then began trying to sponsor Mr Guevarra for permanent residence. Her application was twice refused because of her previous failure to disclose her marriage (pursuant to s 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227; see Annex). On her third application, Ms Hidalgo asked for an exemption based on humanitarian and compassionate grounds (H&C), primarily, the best interests of her son.

[3] The officer who reviewed the third sponsorship application noted that Ms Hidalgo had had numerous chances to disclose her marriage but had failed to do so. The officer also observed that the purposes of s 117(9)(d) are to ensure that no one gains an advantage by withholding information, and to prevent misrepresentation. With respect to the child, the officer found that it would be in his best interests to be with both of his parents. However, the officer concluded that those interests had to be balanced against Ms Hidalgo's decision not to be truthful about her marital status. The officer dismissed Ms Hidalgo's application.

[4] Mr Gueverra seeks to quash the officer's decision. He argues that the officer's response to the non-disclosure and the officer's assessment of the child's best interests were both unreasonable.

[5] I can find no basis for overturning the officer's decision. The officer properly considered Ms Hidalgo's non-disclosure and the best interests of the child. I must, therefore, dismiss this application for judicial review.

[6] There are two issues:

1. Was the officer's consideration of Ms Hidalgo's non-disclosure unreasonable?
2. Did the officer assess the child's best interests unreasonably?

II. Issue One – Was the officer's consideration of Ms Hidalgo's non-disclosure unreasonable?

[7] Mr Guevarra argues that the officer gave undue consideration to his wife's non-disclosure. He points out that she gained nothing from failing to disclose her marriage because it was irrelevant to her permanent residence application.

[8] I disagree. The officer reasonably considered the significance of the non-disclosure. Had Ms Hidalgo disclosed her marital status, it may have led to inquiries about the admissibility of Mr Guevarra, which could have had an impact on her application. She gained an advantage by avoiding those inquiries. While she maintains that no grounds for inadmissibility would have been found in respect of Mr. Guevarra, that is not a valid basis for excusing her from the consequences of non-disclosure.

III. Issue Two – Did the officer assess the child's best interests unreasonably?

[9] Mr Guevarra submits that the officer made three errors: the officer applied the wrong test, ignored relevant evidence, and "visited the sins of the parents on the child."

[10] On the first point, Mr Guevarra maintains that the officer wrongly assessed the child's best interests on a hardship test. I disagree.

[11] In response to evidence relating to the child's health, the officer observed that less favourable conditions in the Philippines did not necessarily amount to hardship or negate the child's best interests. I do not read the officer's reasons as requiring proof of hardship. The officer had already found that the best interests of the child lay in permitting him to reside with both parents, and went on to consider the potential impact of a negative decision on those best interests. The officer's approach was appropriate in the circumstances.

[12] On the second point, Mr Guevarra argues that the officer concluded, despite evidence to the contrary, that her son could be reunited with Mr Guevarra in the Philippines. In fact, he says, the evidence shows that he works on cruise ships and does not have strong ties to the Philippines. As a result, the family has had few reunions. Mr. Guevarra also maintains that the officer overlooked evidence showing that her son suffers from severe eczema.

[13] I disagree. The officer recognized that the child does not live in the Philippines and considered the likelihood of his remaining in Canada with his mother, with visits to his father taking place both in-person and through technology. The officer was aware that Mr. Guevarra sometimes worked on cruise ships, but noted that the family had spent a month together in the Philippines in 2011. The officer also considered the evidence relating to the child's health and documentary evidence about the conditions in the Philippines. The officer did not overlook any evidence.

[14] On the third point, Mr Guevarra suggests that the officer, having concluded that the child's interests would be best served by allowing him to reside with both parents, went on to

deny the H&C exemption because of Ms Hidalgo's failure to disclose her marital status. This amounts, in his view, to punishing the son for her omission.

[15] I disagree. Ms Hidalgo's non-disclosure was relevant to the officer's assessment of H&C factors (*Kisana v Canada (MCI)*, 2009 FCA 189 at para 27). To weigh it in an H&C request does not amount to any punishment of the child. The officer emphasized this point, stating that "the child is in no way at fault for what has transpired".

[16] I find, therefore, that the officer's analysis was not unreasonable.

#### IV. Conclusion and Disposition

[17] I find that the officer made no reviewable errors in the assessment of Ms Hidalgo's request for an H&C exemption. Accordingly, I must dismiss Mr Guevarra's application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-5578-18**

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

No question of general importance is stated.

"James W. O'Reilly"

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Judge

## ANNEX

*Immigration and Refugee  
Protection Regulations,  
SOR/2002-227*

*Règlement sur l'immigration et  
la protection des réfugiés,  
DORS/2002-227*

## Excluded relationships

## Restrictions

**117** (9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if

**117**(9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :

...

[...]

(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

d) sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5578-18

**STYLE OF CAUSE:** FRANCIS GUEVARRA v THE MINISTER OF  
IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MAY 30, 2019

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** NOVEMBER 19, 2019

**APPEARANCES:**

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