Date: 20080908

Docket: IMM-5337-07

Citation: 2008 FC 997

Ottawa, Ontario, the 8th day of September 2008

Present: The Honourable Mr. Justice Blanchard

BETWEEN:

ALFREDO ERICK JORDAN TONDELLI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Facts

[1] On May 19, 2005, the applicant, Alfredo Erick Jordan Tondelli, made an application for permanent residence in Canada, which was supported by an application for sponsorship by his spouse, Josée Marie Louise St-Martin, a Canadian citizen.

[2] On October 20, 2005, a certificate of selection of Quebec was issued to the applicant and he was advised on November 24, 2006 that his application for permanent residence could be heard and a final decision had not yet been made.

[3] On February 1, 2007, the applicant and Ms. Martin separated and she had the petition for divorce served on the applicant on February 28, 2007.

[4] On November 7, 2007, the Processing Centre received from Ms. St-Martin a withdrawal of her sponsorship application for the applicant.

[5] On November 27, 2007, an immigration officer refused the applicant's application for permanent residence in the spouse or common-law partner in Canada class. The decision rendered by the officer is the subject of this application for judicial review.

II. Issue

[6] The only issue is whether the immigration officer committed a procedural error or a breach of the rules of natural justice in not allowing the applicant to submit his observations following Ms. St-Martin's withdrawal of her application for sponsorship.

III. Analysis

[7] A letter from Citizenship and Immigration Canada (CIC) dated November 24 sent to the applicant specified the following:

> [TRANSLATION]
>
> Your application for permanent residence in the spouse or common-law partner in Canada class has been accepted. However, a final decision will not be made as long as you have not met all the other requirements for obtaining this status. [Emphasis added.]

[8] Therefore, contrary to the applicant's written submissions, it is clear that a final decision was not made on the application for sponsorship. The evidence on record shows that the immigration officer's negative decision was rendered on November 27, 2007 owing to the applicant's failure to meet the requirements under section 124(*c*) of the *Immigration and Refugee Protection Regulations* (the Regulations). Under that section, to be part of the spouse or common-law partner in Canada class, an applicant must show that he is the subject of an application for sponsorship. Section 126 of the Regulations provides that a decision shall not be made on an application for permanent residence by a foreign national as a member of the spouse or common-law partner in Canada class if the sponsor withdraws their sponsorship application in respect of that foreign national.

[9] In this case, it is clear that Ms. St-Martin had withdrawn her application for sponsorship of the applicant. In refusing the applicant's application for permanent residence, the immigration officer rendered a decision that is in compliance with the Regulations. In these circumstances, he did not have the discretion to rule on the application. Therefore, the immigration officer did not err in accepting the withdrawal of the application for sponsorship and in refusing to rule on the application for permanent residence.

[10] Secondly, the applicant submitted that the immigration officer erred in omitting to forward to the applicant correspondence from his spouse requesting the withdrawal of the sponsorship application. In my opinion, this omission is not in any way a breach of the principles of natural justice and of procedural fairness for the following reasons. The sponsorship application depends on the intention of the person making it and the applicant in this application for judicial review has no control over it. Under the *Immigration and Refugee Protection Act* (the Act) and the Regulations, an immigration officer is not required to notify an applicant of the withdrawal of sponsorship and to give him the chance to make submissions before rendering a decision. In addition, the Act and Regulations do not provide for any recourse to contest such an application for the withdrawal of sponsorship. Considering the withdrawal of sponsorship, the immigration officer could not render a decision on the application (section 126 of the Regulations). Thus he had no choice but to dismiss the application for permanence residence. Therefore, even if it has been shown that the applicant was not notified of the application for the withdrawal of sponsorship, he did not sustain any prejudice. Any additional submissions by the applicant would not have had any effect because they could not have changed the effects of a voluntary withdrawal of sponsorship.

IV. Conclusion

[11] I am of the opinion that the immigration officer did not err in making his decision. Intervention by this Court is not warranted. Therefore, the application for judicial review will be dismissed.

[12] The parties did not suggest the certification of a serious question of general importance within the meaning of paragraph 74(*d*) of the Act. I am satisfied that such a question is not raised in this case. Therefore, no question will be certified.

JUDGMENT

THE COURT ORDERS AND DECIDES that

1. The application for judicial review is dismissed.

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

"Edmond P. Blanchard"
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5337-07
STYLE OF CAUSE:	ALFREDO ERICK JORDAN TONDELLI v. MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	August 27, 2008
REASONS FOR JUDGMENT AND JUDGMENT BY:	The Honourable Mr. Justice Blanchard
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APPEARANCES:

Anthony Karkar 514-223-0427 514-223-0344 fax	FOR THE APPLICANT
Simone Truong 514-496-4070 514-496-7876 fax	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Anthony Karkar Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT