

Federal Court



Cour fédérale

Date: 20110216

Docket: IMM-3226-10

Citation: 2011 FC 184

Toronto, Ontario, February 16, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

CESAR ENRIQUE CARRILLO SEJO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Cesar Enrique Carrillo Seijo applied for permanent residence in Canada as a Federal Skilled Worker. The visa officer assessing the application had concerns that were not allayed by documents that he provided. The application was refused after Mr. Seijo and his spouse failed to attend an interview with the officer. Mr. Seijo says that he should have been interviewed by telephone, and

that the failure of the officer to accommodate him in this regard amounted to a denial of procedural fairness.

[2] For the reasons that follow, I am not persuaded that Mr. Seijo was denied procedural fairness in this matter. Consequently, the application for judicial review will be dismissed.

Background

[3] Mr. Seijo and his family are originally from Venezuela. They moved to the United States in 2000, and an asylum claim in that country was unsuccessful. Mr. Seijo applied for permanent residence in Canada under the Federal Skilled Worker program in February of 2009. The application was filed in the United States, but before the visa application could be assessed, the family moved to Canada and claimed refugee protection in this country.

[4] The officer had a number of concerns with respect to the application. As a consequence, the visa officer decided that a personal interview with Mr. Seijo and his spouse was necessary. A letter was sent to Mr. Seijo setting a date for the interview, which was to be held in Detroit.

[5] The visa officer also provided Mr. Seijo with a list identifying the additional documents that the officer needed to assess the application. The officer was very specific as to the type of US tax information she required, going so far as to provide Mr. Seijo with a sample IRS form to show precisely what was required.

[6] Mr. Seijo provided the officer with a number of documents, but did not provide the requested American tax information. Nor did he provide the officer with an explanation for his failure to comply with the officer's request.

[7] Because they were in this country as refugee claimants, Mr. Seijo and his spouse were unable to leave Canada in order to attend the interview with the visa officer in Detroit. Mr. Seijo asked to have the interview carried out by teleconference. The officer refused this request, advising that a decision would be made on the basis of the documentary record if the family did not attend the scheduled interview.

[8] Mr. Seijo and his wife did not attend the interview, and the visa officer subsequently refused the application for permanent residency. The officer was not satisfied that Mr. Seijo was not inadmissible or that he met the requirements of the *Immigration and Refugee Protection Act*. The officer was also not satisfied that Mr. Seijo had at least one year of continuous full-time or equivalent paid work experience in a qualifying occupation.

Analysis

[9] Mr. Seijo claims to have been denied procedural fairness in this matter. The task for this Court on judicial review is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 43.

[10] I am satisfied that the requirements of procedural fairness were met here.

[11] The onus is on an applicant to provide adequate and sufficient evidence to support his application: *Sharma v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 786, [2009] F.C.J. No. 910, at para. 8. Mr. Seijo failed to do so in this case, despite having been informed by the visa officer as to precisely what additional documentation was required. Moreover, no explanation was provided, either at the time of the application for permanent residency or in the course of this application for judicial review, for his failure to comply with the officer's request.

[12] Mr. Seijo acknowledges that a visa officer may reasonably insist upon a face-to-face interview where, for example, a visa application raises issues of credibility. However, he submits that this was not the case here, as the officer's only concern was with the vagueness of a job description. In these circumstances, Mr. Seijo says that the officer had a duty to facilitate the application by conducting a telephone interview.

[13] I do not agree with Mr. Seijo's characterization of the nature of the visa officer's concerns. It is evident from the CAIPS notes that the officer had a number of concerns with respect to the application, some of which can fairly be described as credibility concerns. Indeed, it is clear that the documentation that Mr. Seijo provided raised serious questions as to the veracity of the information contained in the original application.

[14] For example, the CAIPS notes refer to the fact that Mr. Seijo had identified his occupation between 2000 and 2006 as a "Supervisor" in his application for permanent residence. The officer observed that Mr. Seijo's 2001 tax return listed his occupation as "None", his 2002 tax return listed

his occupation as “Driver-Delivery”, his 2003 and 2004 tax returns listed his occupation as “Incorporated”, and his 2005 and 2006 tax returns listed his occupation as “Home Inspector”.

[15] The officer also had concerns with respect to Mr. Seijo’s admissibility, his education, the funds available to him for settlement in Canada and whether he had a qualifying relative in Canada.

[16] In light of these concerns, it was entirely within the officer’s discretion to insist upon a face-to-face interview. Mr. Seijo’s failure to provide the requested information or to attend at the interview meant that he failed to adduce adequate and sufficient evidence to support his application.

Conclusion

[17] For these reasons, the application for judicial review is dismissed.

Certification

[18] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3226-10

STYLE OF CAUSE: CESAR ENRIQUE CARRILLO SEJO v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 15, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH J.

DATED: February 16, 2011

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