Federal Court  Cour fédérale

Date: 20110621

Docket: IMM-4477-10

Citation: 2011 FC 737

Ottawa, Ontario, June 21, 2011

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

FLOR DEL RIO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant was refused an Authorization to Return to Canada (ARC) to attend her examination for discovery in her personal injury litigation commenced before her removal from Canada.

II. BACKGROUND

[2] The Applicant is a U.S. citizen and resident of Mexico. She had claimed refugee protection in early 2003 which was rejected in November 2003. She did not leave Canada immediately.

[3] In November 2004 the Applicant was involved in a serious car accident. She sued for compensation for the serious injuries she suffered.

[4] In August 2005 the Applicant filed a PRRA application which was denied on January 4, 2006. Her stay of removal was denied by this Court and she left Canada in February 2006.

[5] In June 2008 the Applicant applied for her ARC. As part of this process she filed a letter from her litigation counsel setting out that it was preferable to have the Applicant attend in Canada at the discoveries in her litigation.

[6] The key determination by the visa officer (Officer) was that the Applicant was inadmissible to Canada and that she had failed to establish sufficient reasons for her return to Canada.

III. ANALYSIS

[7] I adopt Justice Russell's analysis in *Umlani v Canada (Minister of Citizenship and Immigration),* 2008 FC 1373, in which he held that the standard of review of an ARC is reasonableness. I also accept Justice Russell's conclusion that ARC decisions are highly discretionary, fact-driven, require little in terms of reasons and justification and thus are subject to considerable deference.

It is trite law that breach of procedural fairness is assessed on a correctness standard and deference is not a relevant consideration.

[8] The legal process in Canada should not be frustrated by immigration issues except in the clearest situations; this is not one of those situations.

[9] The key factor in this matter is that of the Applicant's presence in Canada for her discoveries. While her counsel expressed a desire to have her present in Canada, his opinion alone is insufficient to assist the Applicant.

[10] There is no evidence of a compelling basis for her attendance in Canada. There is no Ontario court order or even a suggestion by a judge that her physical presence was necessary. There is no evidence that the alternatives to physical presence authorized by the Ontario Rules of Court were either canvassed much less found to be inadequate. As a U.S. citizen, discovery of the Applicant could presumably be conducted in the U.S. close to the Canadian border.

[11] There is no breach of fairness as the Applicant was informed of the substance of the DOJ advice as to Ontario discovery procedures and was given an opportunity to make submissions on that issue.

IV. CONCLUSION

[12] Therefore, this application for judicial review is dismissed. There is no question for certification.

JUDGMENT

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

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4477-10
STYLE OF CAUSE:	FLOR DEL RIO and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 6, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	Phelan J.
DATED:	June 21, 2011

APPEARANCES:

Mr. Max Berger	FOR THE APPLICANT
Mr. Martin Anderson Ms. Hillary Stephenson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MAX BERGER PROFESSIONAL LAW CORPORATION Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
MR. MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT