Federal Court  Cour fédérale

Date: 20120709

Docket: IMM-4143-11

Citation: 2012 FC 864

Ottawa, Ontario, July 9, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SADHU SINGH BAJWA, KULWANT KAUR BAJWA AND GURPREET SINGH BAJWA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of an immigration officer of the Family Class and Refugee Unit of the Canadian High Commission in New Delhi, India (the officer), dated April 28, 2011, refusing to extend the validity of the permanent resident visa of the principal applicant, Gurpreet Singh Bajwa.

[2] The applicants request that the officer's decision be quashed and the matter be remitted for redetermination by a different officer.

Background

[3] The principal applicant, Gurpreet Singh Bajwa, is a citizen of India. He is the youngest child of the other applicants: Sadhu Singh Bajwa (father) and Kulwant Kaur Bajwa (mother). This couple also has two other children: Harpreet Kaur, who lives in England and Amarjit Kaur Mann, who lives in Canada with her family.

[4] Amarjit Kaur Mann and her husband sponsored her parents' immigration to Canada. The principal applicant was included as a dependent of his parents. All three applicants were issued Canadian visas on June 24, 2010. All three visas expired on December 31, 2010.

[5] On June 18, 2010, the principal applicant was arrested and detained on charges of kidnap and assault of Manmeet Kaur, a woman that he had been in a relationship with. Manmeet Kaur's family allegedly wanted the principal applicant to marry her and bring her to Canada. When he refused, they had charges laid against him.

[6] While the principal applicant was detained, his parents realized that his visa would expire before his trial was held. Therefore, in November 2010, they travelled to the High Commission in New Delhi to request an extension. On their first visit, the office was closed. On their second visit,

they were informed at the reception desk that it was not possible to extend visas and that they were not permitted to speak with a visa officer.

[7] With the expiration of their visas looming, the principal applicant's parents left India and arrived in Canada on December 27, 2010.

[8] The applicant's trial was held on March 9, 2011. At the trial, the accusers withdrew their allegations. The principal applicant was acquitted of all charges and released the same day. In its decision, the Court stated that:

> 16. […] Since the prosecutrix / complainant Manmeet Kaur and her father Sukhdev Singh have not supported the prosecution version therefore there is not even an iota of evidence on the record to connect the accused Gurpreet Singh with commission of offence under Section 376, 342, 506 IPC [Indian Penal Code]. […]
>
> 17. In view of the aforesaid discussion it is held that the prosecution has miserably failed to prove its case beyond shadow of reasonable doubt. As such accused Gurpreet Singh stands acquitted of the charges framed against him under Sections 376, 342, 506 IPC. […]

[9] In Canada, the principal applicant's family retained legal counsel. On April 18, 2011, they made a formal request for an extension of the principal applicant's visa. With the request, they included copies of the Court judgment acquitting the principal applicant and an updated police clearance for him.

Officer's Decision

[10] In an email dated April 28, 2011, the officer denied the applicants' request to extend the principal applicant's visa. The officer stated that it was not possible to reopen the file.

[11] The officer indicated that he had reviewed the detailed information that had been submitted and found it unfortunate that the principal applicant was unable to accompany his parents due to the false charges against him. However, as the principal applicant's parents were now permanent residents, they could now apply to sponsor their son as a dependent under the family class category.

Issues

[12] The applicants submit the following points at issue:

1. Did the officer err in failing to exercise jurisdiction?
2. Was the decision unlawfully made, in that the officer breached the duty of fairness by failing to provide adequate reasons?
3. Was the decision so unreasonable having regard to the evidence properly before the officer so as to amount to an error of law?

[13] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the officer err in failing to exercise jurisdiction or in fettering his discretion?
3. Did the officer deny the applicants procedural fairness?

4. Should this application be dismissed because the applicants are not coming to Court with clean hands?

Applicants' Written Submissions

[14] The applicants submit that questions of jurisdiction and procedural fairness are reviewable on a correctness standard. The applicants acknowledge that the exercise of discretion is normally subject to a reasonableness standard. However, they submit that the issues raised in this case are jurisdictional, which attract a correctness standard.

[15] The applicants submit that the officer refused to extend the principal applicant's visa because the Citizenship and Immigration Canada (CIC)'s Operations Manual OP-1 Procedures (the OP-1 Manual) only authorized extensions in one limited instance. The principal applicant needed an extension for a different reason. The officer therefore concluded that it was not possible to extend the visa. This error can be characterized in two ways. Either the officer committed an error of jurisdiction by refusing to exercise jurisdiction or the officer fettered his discretion by limiting its exercise to the example provided in the OP-1 Manual.

[16] The applicants submit that there is nothing in the Act or the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) that speaks to the extension or expiry of a permanent resident visa. The OP-1 Manual does state that permanent resident visas are not to be extended. However, it also provides an exception to this rule where applicants receive visas less than two months before their expiry.

[17] The applicants infer from the information given to the principal applicant's parents at the High Commission in New Delhi and the officer's refusal to extend the visa on the basis that it was not possible, that the officer believed that there was no jurisdiction to extend a visa. The applicants submit that this is an error of jurisdiction because an officer has discretion to revisit the issuance of a visa. This is an administrative decision that is not governed by the principles of finality that govern Court judgments. The applicants submit that this Court has held that where circumstances come to light that call for an officer to consider them, the officer can reconsider visa issuance and extensions thereof.

[18] Further, if the officer was acting on the belief that the policy in the OP-1 Manual prohibited him from extending the visa, this was an error. These policies are guidelines and are not to be treated as mandatory law. Where an officer abides strictly to the guidelines without considering the particular facts of a case, they unlawfully fetter their discretion. In this case, the applicants submit that the officer did not refuse the extension on the basis of the merits of the case but rather on the basis that the visa had been issued in a timely fashion prior to its expiry and it could therefore not be extended.

[19] The applicants also submit that the officer merely provided a conclusion, without any supporting explanation or analysis. This did not constitute adequate reasons. The inadequacy of the reasons is exacerbated by the fact that this decision was critical to the future of the applicants as a cohesive family. As the principal applicant is now over the age of 22, he no longer qualifies as a dependent of his parents and can thus not be sponsored by them, as was suggested by the officer. This limitation was included in the submissions that were before the officer when he rendered his

decision. By ignoring this evidence, the officer did not fully appreciate the importance of the extension to the family. It was unreasonable for the officer to come to a conclusion without regard to the evidence before him.

Respondent's Written Submissions

[20] The respondent submits that in determining the applicable standard of review it is important to bear in mind that the legislation does not expressly permit a visa officer to extend the time limit on expired permanent resident visas or to restore expired visas. In the absence of such clear legislative intent, the visa officer's discretion is very limited. As such, a review of the exercise of this discretion should be made against the reasonableness standard. Similarly, as recently stated by the Supreme Court, the adequacy of reasons is not a stand-alone basis for quashing a decision and any challenge to the reasoning or result of a decision should also be made within the reasonableness analysis.

[21] The respondent submits that once a visa expires, it becomes void. Although the legislation expressly permits extensions or restorations in certain circumstances, there are no legislative provisions authorizing a restoration of an expired permanent resident visa. Similarly, the OP-1 Manual states that the validity of a permanent resident visa may not be extended and the cover letter attached to the visas sent to the applicant also stated that the visa could not be extended.

[22] The respondent submits that a close examination of the factual and legislative context reveals that the decision is reasonable. In support, the respondent highlights the following:

The visa had its maximum validity when received by the applicants;

The visa was null and void for almost five months when the request to extend its validity was made;

The legislation does not expressly permit extension or restoration of a visa;

The OP-1 Manual does identify a circumstance where extension may be granted; and

The officer's decision that the principal applicant's case was not similar to that circumstance deserves deference.

[23] The respondent submits that the officer did not reject the request without thought or study. Rather, the officer reviewed the detailed information submitted and determined that the case did not warrant reopening. As the officer was free to exercise his limited discretion, the decision to refuse to reopen the file was within the range of possible acceptable outcomes.

[24] Further, rather than being rejected out of hand, the request was substantively considered. The respondent submits that the applicants are merely equating a negative decision with a refusal to exercise discretion. In addition, the respondent submits that the officer did not decline jurisdiction by deciding the case in accordance with the OP-1 Manual as that was exactly what the applicants had requested. The officer simply did not agree with the applicants' reading of the OP-1 Manual. As this administrative guidance contemplates persons who had insufficient notice of their visa, the respondent submits that the officer's reading of the OP-1 Manual was reasonable.

[25] The respondent also submits that the decision was reasonable as the request for extension was based on material facts that should have been disclosed before the principal applicant obtained

landing. Section 51 of the Regulations requires foreign nationals holding permanent resident visas to report any changes with their family situation. Similarly, the cover letter accompanying the visas clearly stated that any criminal charges or convictions had to be reported prior to departure for Canada. The applicants did not abide to these requirements in their correspondence with the officer (during the processing of their application) or in their visit to the High Commission.

[26] The respondent submits that the reasons were adequate. The content of the duty of procedural fairness in decisions of visa officers is at the low end of the spectrum. This is particularly true where the decision under review is a request to have a file reopened. The reasons show that the officer considered the applicant's submissions and determined that the request could not be granted. As such, the reasons permit this Court to understand why the officer made his decision and to determine whether the officer's conclusion is within the range of acceptable outcomes.

[27] Finally, the respondent submits that this Court should dismiss the applicants' application or refuse to grant the remedy sought because they are not coming to Court with clean hands due to their failure to make a timely disclosure of the charges. By failing to make timely disclosure of the principal applicant's criminal charges, the applicants effectively misled immigration authorities.

Applicants' Written Reply

[28] The applicants criticize the respondent's assertion that the lack of explicit statutory authority to extend the validity of a visa indicates that the discretion is very limited. Rather, the exercise of discretion depends on the context and can be broad where equitable factors are considered.

[29] The applicants submit that they are not merely equating a negative decision with a refusal to exercise jurisdiction. The officer did not say that he reviewed the facts and decided not to exercise his discretion. Rather, he said it was not possible to reopen the file, thereby indicating that he did not have the authority to do so. As such, it was a refusal to exercise jurisdiction, not a decision on the merits.

[30] The applicants also submit that the requirements of fairness are not based solely on the character of the decision maker or the location of the applicant, but are also based on the interests at stake. In this case, the officer's decision has resulted in the youngest member of the family being left behind in India. The decision is therefore significant to the applicants and their family, thereby warranting greater procedural fairness.

Analysis and Decision

[31] **Issue 1**

What is the appropriate standard of review?

The parties disagree on the appropriate standard of review. However, this disagreement pertains primarily to the classification of the issues that arise on this application. The applicants argue that the main issue pertains to jurisdiction, whereas the respondent submits that this application is nothing more than an assessment of the officer's exercise of discretion. The evaluation of these separate issues is presented further below. Here, the question is limited to what the appropriate standard of review is for the different issues.

[32] Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[33] Subsection 11(1) of the Act requires foreign nationals who wish to reside permanently in Canada to apply for and obtain visas before coming to Canada. It is established law that the standard of review for visa officers' assessment under this provision is reasonableness (see *Kumarasekaram v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1311, [2010] FCJ No 1625 at paragraph 8; and *Sellappha v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1379, [2011] FCJ No 1690 at paragraph 33).

[34] Similarly, in a recent decision, the Supreme Court of Canada explained that where reasons are issued, the reasoning contained therein is reviewable on a reasonableness standard. As explained by Madam Justice Abella in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at paragraph 22:

> It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there are reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis. [emphasis added]

[35] In reviewing the officer's decision on the standard of reasonableness, the Court should not intervene unless the officer came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No

12 at paragraph 59). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraphs 59 and 61).

[36] Conversely, as stated by the respondent, issues of true jurisdiction are reviewable on a correctness standard. These questions are narrow and "arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter" (see *Dunsmuir* above, at paragraph 59). Similarly, issues pertaining to the fettering of discretion are reviewable on a correctness standard (see *Canada (Minister of Citizenship and Immigration) v Thamotharem*, 2007 FCA 198, [2007] FCJ No 734 at paragraph 33). No deference is owed to the officer on these issues (see *Dunsmuir* above, at paragraph 50).

[37] **Issue 2**

Did the officer err in failing to exercise jurisdiction or in fettering his discretion?

The applicants submit that the issues they raise pertain to the officer's understanding of its jurisdiction in extending permanent resident visas. The applicants submit that the officer committed an error of jurisdiction by either refusing to exercise jurisdiction or by fettering his discretion by limiting his exercise to the example provided in the OP-1 Manual.

[38] The assessment of the applicants' arguments necessitates a review of visa officers' jurisdiction as provided in the Act and the Regulations. Subsection 6(1) of the Act empowers the Minister to designate persons as officers to carry out any purpose of any provision of the Act and requires the Minister to specify the powers and duties of the officers so designated.

[39] Foreign nationals may not enter Canada to remain on a permanent basis without first obtaining a permanent resident visa (section 6 of the Regulations). Officers may issue this visa if they are satisfied that the foreign national is not inadmissible and meets the requirements of the Act (subsection 11(1) of the Act). There are no explicit provisions in either the Act or the Regulations that state whether or not visa officers may extend or renew permanent residence visas. Under the Procedures for Visa Issuance section of the Regulations (Part 4, Division 1), the sole restriction on officers issuing visas is that visas "shall not be issued to a foreign national who is subject to an unenforced removal order" (section 25 of the Regulations).

[40] As indicated, there is no direction provided in the Act or Regulations on time limits or extensions of expired permanent residence visas. However, the OP-1 Manual, which is intended to provide general processing guidelines to help officers meet the objectives of immigration policy, does include direction on extending the validity of visas (section 5.28). This section clearly states that:

> The validity of a permanent resident visa may not be extended. Nor can replacement visas be issued with a new validity date. If foreign nationals do not use their visas, they must make a new application for a permanent residence visa.

[41] One exception is provided under section 5.28 of the OP-1 Manual:

> Sometimes, due to factors beyond their control, applicants receive visas that are valid for less than two months. If they cannot travel before their visas expire, officers should update whichever requirement (e.g., medical) was used to set the visa validity. When a new validity date has been obtained, a new visa will be issued.

[42] It is difficult to determine the reason for the officer's denial of the principal applicant's visa extension request from the reasons, which merely state:

> We regret to advise you that it will not be possible to re-open our file and extend the visa of Gurpreet Singh at this time.

[43] The officer's affidavit, sworn on November 14, 2011, offers little further clarification. However, on cross-examination, the officer explained that he deemed it not possible to reopen the file and extend the visa based on the standard office procedure, as provided in the OP-1 Manual. As such, the officer's decision raises a question on whether the OP-1 Manual unduly fetters visa officers' discretion to determine for themselves, case-by-case, whether to extend the validity of visas.

[44] The OP-1 Manual is a guideline, not law. As such, it can enable an agency to deal with a problem comprehensively and proactively, rather than incrementally and reactively on a case by case basis (see *Thamotharem* above, at paragraph 55). It can also be of assistance to the Court because guidelines may validly influence a decision maker's conduct and may therefore help in assessing whether a decision is reasonable or not (see *Thamotharem* above, at paragraph 59). However, guidelines are not binding on the Minister and they cannot fetter the discretion of an officer (see *Lee v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1152, [2008] FCJ No 1632 at paragraph 29). As explained by the Federal Court of Appeal in *Thamotharem* above:

> 62. Nonetheless, while agencies may issue guidelines or policy statements to structure the exercise of statutory discretion in order to enhance consistency, administrative decision-makers may not apply them as if they were law. Thus, a decision made solely by reference to the mandatory prescription of a guideline, despite a request to deviate from it in the light of the particular facts, may be set aside, on

> the ground that the decision-maker's exercise of discretion was unlawfully fettered […]
>
> […]
>
> 78. […] the fact that a guideline is intended to establish how discretion will normally be exercised is not enough to make it an unlawful fetter, as long as it does not preclude the possibility that the decision-maker may deviate from normal practice in the light of particular facts […] [emphasis in original]

[45] Based on this judicial guidance, I do find that the officer fettered his discretion in denying the applicants' request for a visa extension. The guideline provided in the OP-1 Manual uses mandatory language ("The validity of a permanent resident visa may not be extended" [emphasis added]). Aside from the narrow exception where visas are valid for less than two months, the guideline precludes the possibility that the officer may deviate from normal practice in the light of the particular facts of a case such as this one. No such limitation is provided in the Act or the Regulations.

[46] The issue of the fettering of discretion is reviewable on a correctness standard and therefore little deference is owed to the officer. As the officer relied on guidelines rather than statutory limitations, I find that he fettered his discretion and incorrectly determined that the principal applicant's file could not be reopened. The particular facts of this case necessitate deviation from the normal practice prescribed by the standard office procedure in the OP-1 Manual.

[47] This finding also finds support in the decision of *Kheiri v Canada (Minister of Citizenship and Immigration)*, 193 FTR 112, [2000] FCJ No 1383. In *Kheiri* above, Mr. Justice Allen Linden held that "a Visa Officer may re-open a Visa Hearing to extend the date of its effectiveness if it is

felt to be in the interest of justice to do in unusual circumstances" (at paragraph 8). The unique circumstances of this case, namely, the false charges against the principal applicant and his separation from his family, suggests that this is a perfect situation for extending a visa in the interest of justice.

[48] **Issue 3**

Did the officer deny the applicants procedural fairness?

The applicants also criticize the officer's reasons and submit that the lack of explanation or analysis supporting the officer's conclusion was a breach of procedural fairness.

[49] As stated above, the question of the adequacy of reasons was recently reviewed by the Supreme Court of Canada. Madam Justice Abella explained that the "adequacy" of reasons is not a stand alone basis for quashing a decision. Rather, "reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (see *Nurses' Union* above, at paragraph 14). The *Dunsmuir* criteria will be met "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (see *Nurses' Union* above, at paragraph 16). In *Nurses' Union* above, the reasons were upheld because they "showed that the arbitrator was alive to the question at issue and came to a result well within the range of reasonable outcomes" (at paragraph 26).

[50] In this case, the officer's reasons are very brief. The officer merely states that it will not be possible to reopen the file and extend the visa "at this time". Further, as the principal applicant's

parents are landed, the officer states that they can apply to sponsor their son as a dependent. As stated by the respondent, this fails to take into account the age of the principal applicant which prohibits his parents from sponsoring him as their dependent.

[51] The problem with these reasons is that they do not allow this Court to understand why the officer made its decision. As stated above, it was not until the officer was cross-examined that it was confirmed that his decision was based on the standard office procedure outlined in the OP-1 Manual. Based on the decision alone, it is not possible to determine whether the conclusion is within the range of acceptable outcomes. I therefore find that although the content of the duty of procedural fairness in decisions made by visa officers is generally at the low end of the spectrum, the decision in this case contained inadequate reasons which denied the applicants procedural fairness.

[52] **Issue 4**

Should this application be dismissed because the applicants are not coming to Court with clean hands?

Finally, the respondent submits that this application should be dismissed because the applicants have not come to Court with clean hands. In support, the respondent refers to section 51 of the Regulations that requires foreign nationals holding permanent resident visas to inform officers of material facts, relevant to the issuance of their visa, that have changed since the visa was issued or that were not divulged when it was issued.

[53] In this case, the respondent submits that the charges made against the principal applicant in India constituted material facts and these were not divulged by his parents on their arrival and examination in Canada.

[54] Information becomes material when it is both relevant and affects the process undertaken or the final decision (see *Koo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 931, [2008] FCJ No 1152 at paragraph 19). In this case, the information on the charges against the principal applicant was relevant to and could have affected the final decision on his own permanent residency application. However, it was less relevant to his parent's applications.

[55] The officer did not refer in his decision to either section 51 of the Regulations or the applicants' failure to mention the charges against the principal applicant at an earlier time. There is therefore no reason to believe that the officer rendered his decision on this basis. Although it would have been preferable for the applicants to disclose the charges at an earlier time, I find that there was sufficient evidence of them having attempted to do so in November 2010 (when they visited the High Commission); it was not material to the principal applicant's own permanent residence application and there was nothing in the decision to suggest the failure to disclose impacted the officer's decision.

[56] In summary and recalling that one of the main objectives of the Act is to see families reunited in Canada (paragraph 3(1)(d)), I find that the officer erred in his analysis of the principal applicant's application for an extension of his permanent resident visa. In the particular facts of this case, the officer fettered his discretion by relying on the OP-1 Manual in refusing to consider

extending the principal applicant's visa. The officer's decision was also inadequate to allow this Court to fully understand his underlying reasons. Finally, although the applicants should have disclosed the charges against the principal applicant at an earlier time, I do not find this was a material fact that led to the officer's decision. The decision should therefore be set aside and remitted for redetermination by another officer.

[57] The applicants requested that questions relating to discretion and lack of clean hands be certified if I based my decision on these points. My decision is not based on these points, hence, I need not entertain these questions for certification. The respondent did not wish to submit any question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be allowed and the matter referred to a different officer for redetermination.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

3. (1) The objectives of this Act with respect to immigration are	3. (1) En matière d'immigration, la présente loi a pour objet :
. . .	. . .
(d) to see that families are reunited in Canada; . . .	d) de veiller à la réunification des familles au Canada; . . .
6. (1) The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated.	6. (1) Le ministre désigne, individuellement ou par catégorie, les personnes qu'il charge, à titre d'agent, de l'application de tout ou partie des dispositions de la présente loi et précise les attributions attachées à leurs fonctions.
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

Immigration and Refugee Protection Regulations, SOR/2002-227

6. A foreign national may not enter Canada to remain on a permanent basis without first obtaining a permanent resident visa.	6. L'étranger ne peut entrer au Canada pour s'y établir en permanence que s'il a préalablement obtenu un visa de résident permanent.

25. A visa shall not be issued to a foreign national who is subject to an unenforced removal order.

25. L'étranger ne peut se voir délivrer de visa s'il est sous le coup d'une mesure de renvoi qui n'a pas été exécutée.

51. A foreign national who holds a permanent resident visa and is seeking to become a permanent resident must, at the time of their examination,

51. L'étranger titulaire d'un visa de résident permanent qui cherche à devenir un résident permanent doit, lors du contrôle :

(a) inform the officer if

a) le cas échéant, faire part à l'agent de ce qui suit :

(i) the foreign national has become a spouse or common-law partner or has ceased to be a spouse, common-law partner or conjugal partner after the visa was issued, or

(i) il est devenu un époux ou conjoint de fait ou il a cessé d'être un époux, un conjoint de fait ou un partenaire conjugal après la délivrance du visa,

(ii) material facts relevant to the issuance of the visa have changed since the visa was issued or were not divulged when it was issued; and

(ii) tout fait important influant sur la délivrance du visa qui a changé depuis la délivrance ou n'a pas été révélé au moment de celle-ci;

(b) establish that they and their family members, whether accompanying or not, meet the requirements of the Act and these Regulations.

b) établir que lui et les membres de sa famille, qu'ils l'accompagnent ou non, satisfont aux exigences de la Loi et du présent règlement.

FEDERAL COURT

SOLICITORS OF RECORD

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