Federal Court  Cour fédérale

Date: 20131212

Docket: IMM-1121-13

Citation: 2013 FC 1246

Ottawa, Ontario, December 12, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

ERNIE SORIANO TRINIDAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is a judicial review of a decision whereby the Applicant's application for permanent residence on H&C grounds was denied. The decision was based on the Applicant not being a member of the family class and the absence of sufficient H&C considerations to warrant an exemption from the applicable immigration criteria.

II. BACKGROUND

[2] The Applicant is a citizen and resident of the Philippines. His wife [Sponsor], who is also of the Philippines, is a permanent resident of Canada and is the source of the application to sponsor the Applicant.

[3] When the Sponsor applied for permanent residence in 2006, she and the Applicant were not yet married. She did not declare the Applicant as a common law spouse. When she became a permanent resident in 2009, she did not disclose that she had married the Applicant in the intervening period.

[4] Subsection 117(9)*(d)* of the *Immigration and Refugee Regulations*, SOR/2002-227 [Regulations], specifies that a foreign national cannot be a member of the family class where the sponsor has not declared that person a member of the family at the time of the permanent resident application.

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.

[5] The Sponsor filed an application to sponsor the Applicant as a member of the family class. That application was denied in March 2011.

[6] In December 2011 the Sponsor filed another sponsorship application and requested an exemption from subsection 117(9)*(d)* of the Regulations on H&C grounds.

[7] In this second application, in addition to some documents on H&C matters, the Sponsor submitted a psychological assessment purporting to give reasons for the failure to declare her marriage – low cognitive capacity and poor problem-solving abilities.

[8] The Officer concluded that the only new evidence was the psychological report. The Officer did not accept the psychologist's report as an adequate explanation because the Sponsor had successfully navigated the Canadian immigration system on her own without counsel. This is not consistent with low cognitive capacity or poor problem-solving abilities.

[9] The Officer also dismissed a claim of the need for frequent travel since the Sponsor had not done much of that. The Officer noted that the Sponsor had failed to advise Citizenship and Immigration Canada of her marital status on three occasions.

[10] The Officer also held that the objective of family reunification cannot supersede the basic requirements of compliance with immigration law. This finding addressed the Sponsor's claim that the policy of "*de facto*" family member should be followed so that the Applicant could fall within the family member class.

III. ANALYSIS

[11] The Applicant did not strongly dispute the Officer's conclusion that the Sponsor's ability to navigate the immigration system undermined any suggestion of mental ability. Nor does the Applicant dispute the finding of failure to notify immigration authorities of her marriage. These were sensible concessions as there was no chance of success on these grounds.

[12] The Applicant does argue that (a) the Officer erred in finding no new evidence other than the psychological report and (b) the Officer failed to consider hardship.

[13] On the first point, a repetition of the same type of evidence as used in the first H&C application is not "new" evidence. The Applicant failed to show what was "new" about this evidence.

[14] On the issue of hardship, the Officer did deal with the Sponsor's failure to disclose but did so because the Applicant raised it. It is hardly grounds to criticize the Officer for responding to submissions made and not going off to look for some other H&C grounds not claimed. The Officer addressed the hardship claimed by the Applicant.

[15] The claim for "*de facto* family member" is misplaced. The Applicant was a family member – the problem is that he was not declared such when the Sponsor made her permanent resident application. The Applicant cannot avoid that fact by now skirting his legal status as a member of the

Sponsor's family by asserting that he has become a "*de facto*" member after the Sponsor's permanent residence application was approved.

IV. CONCLUSION

[16] I can find no reason to disturb the decision as it was reasonable in accordance with the applicable standard of review.

[17] Therefore, this judicial review will be dismissed.

JUDGMENT

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

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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