

Federal Court



Cour fédérale

Date: 20150324

Docket: IMM-7397-13

Citation: 2015 FC 372

Toronto, Ontario, March 24, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

KANDIAH NADARAJAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

(Delivered Orally from the Bench in Toronto, Ontario on March 23, 2015)

[1] Kandiah Nadarajah (the Applicant) seeks judicial review of a Decision dated October 28, 2013 made by a Visa Officer (the Officer) wherein the Officer determined that the Applicant is inadmissible to Canada under section 39 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 the [IRPA] and therefore does not meet the eligibility requirements for permanent residence under the Permit Holder class (the Decision). The application is brought pursuant to section 72(1) of the IRPA.

[2] The Applicant is a 64 year-old citizen of Sri Lanka who has been in Canada with status for 13 years. He presently lives in a long term care facility. On April 26, 2013 he submitted an application for permanent residence (the Application) under the Permit Holder's class pursuant to section 65.1(1) of the IRPA Regulations (the Regulations).

[3] On June 24, 2013 the Officer performed a social services check to determine whether the Applicant had ever received social assistance. The response indicated that he received Ontario Works for three months from January to March 2013 and that, since September 1st, 2012, he has been receiving Ontario Disability Support Program [ODSP] payments. These are both forms of social assistance. As a result of this information the Officer sent the Applicant a letter (the Fairness Letter) on June 26, 2013 explaining that the Applicant appeared to be financially inadmissible under section 39 of the IRPA because he was currently receiving social assistance.

[4] On August 26, 2013 the Applicant's counsel responded to the Fairness Letter (the Response) by providing a 2012 Notice of Assessment (the Notice) as well as corresponding pay stubs which showed a combined income of \$56,985.00. Notably, the Response did not indicate that the Notice and the pay stubs were from the Applicant's daughter and her husband and did not suggest that they would assume the cost of the Applicant's care. Further, the Response did not deny the Officer's finding that the Applicant continued to receive ODSP.

[5] The Decision refusing the Applicant's application for permanent residence concluded as follows:

This documentation does not show that the [Applicant] is able or willing to support himself nor that he has made adequate

arrangements for his current support other than those that involve social assistance.

I. The Issues

[6] Against his background, there are two issues:

1. Is the Decision reasonable?
2. Was there a breach of the Applicant's right to procedural fairness?

II. Issue 1

[7] In my view, the Decision is reasonable. The Officer had evidence that the Applicant was receiving ongoing ODSP payments and the Response failed to deny that fact or show how, in future, the Applicant could live without that assistance.

III. Issue 2

[8] The Applicant says that the Officer had a duty to contact him on receipt of the Response to determine his relationship to the people whose income was given in the Response and to find out their intentions.

[9] In my view there was no duty to seek further information. The Officer's concerns did not involve credibility or extrinsic evidence. The simple fact is that the Response failed to address the Officer's concerns because insufficient evidence was provided to show that there was an ongoing plan for the Applicant's financial support that did not include ODSP.

IV. Certification

[10] No question was posed by either side for certification for appeal.

ORDER

THIS COURT ORDERS that the application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7397-13

STYLE OF CAUSE: KANDIAH NADARAJAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 23, 2015

ORDER AND REASONS: SIMPSON J.

DATED: MARCH 24, 2015

APPEARANCES:

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Manuel Mendelson FOR THE RESPONDENT

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