

Federal Court



Cour fédérale

Date: 20150317

Docket: IMM-1328-14

Citation: 2015 FC 341

Calgary, Alberta, March 17, 2015

PRESENT: THE CHIEF JUSTICE

BETWEEN:

Ivan ABARCA NAVA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Reasons delivered orally in Calgary on March 17, 2015)

[1] The standard of review applicable to the procedural fairness issue that the Applicant, Mr. Abarca, has raised is correctness.

[2] As recognized by the both parties, the standard of review applicable to the second issue that Mr. Abarca has raised is reasonableness.

[3] I am satisfied that the Officer's failure to respond more quickly to the requests of Mr. Abarca and his spouse for an expeditious processing of their joint application did not violate their right to procedural fairness.

[4] The circumstances of Mr. Abarca's wife were undoubtedly very serious and trying and it would obviously have been preferable for the Officer to have responded much sooner to their requests for an expeditious processing of their application. However, the delay of approximately five months in responding to those requests did not amount to a breach of procedural fairness.

[5] There was nothing which obliged the officer to give the applicants priority over other applicants, some of whom may well have also had humanitarian and compassionate circumstances warranting urgent attention.

[6] I do not accept Mr. Abarca's assertion that the Officer's decision was unreasonable by virtue of an insufficient degree of empathy and compassion reflected therein.

[7] The Officer explicitly stated that she was "sympathetic to the Applicant's current plight." She reiterated her sympathy again later in her decision. Elsewhere, she recognized the suffering of Mr. Abarca's spouse and the likelihood that he has "suffered a significant emotional loss in the passing of his spouse."

[8] I am unable to agree with the suggestion that the Officer discounted this significant emotional loss or the circumstances that kept Mr. Abarca in Canada.

[9] The Officer reasonably noted that the bulk of the submissions in the application were focused on the circumstances of Mr. Abarca's spouse, who was the principal applicant prior to her passing. The Officer correctly observed that those submissions relating to his spouse were rendered moot by her passing.

[10] In addition, the Officer noted that very little information was included about Mr. Abarca in the application. I have confirmed that there was in fact very little in the Certified Tribunal Record relating to him. What there was essentially concerned his establishment in Canada over the four years that he has been here, which was considered by the Officer.

[11] It was reasonably open to the Officer to conclude that Mr. Abarca had not demonstrated that the considerations he had raised would result in an unusual and undeserved or disproportionate hardship if he had to apply for permanent residence from outside Canada.

[12] In reaching this conclusion, the Officer also noted that, subsequent to the death of his spouse, no additional submissions were made on Mr. Abarca's behalf.

[13] I am satisfied that the Officer's conclusion, and the process by which it was reached, were "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47).

[14] There was a rational and not unreasonable foundation for the Officer's decision. Therefore, pursuant to the Supreme Court of Canada's teachings in cases such as *Alberta*

(Information and Privacy Commissioner) v Alberta Teachers' Association 2011 SCC 61, at para 53, and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at paras 13 and 16, this Court will not interfere with that decision.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

“Paul S. Crampton”

Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1328-14

STYLE OF CAUSE: IVAN ABARCA NAVA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MARCH 17, 2015

JUDGMENT AND REASONS: CRAMPTON C.J.

DATED: MARCH 17, 2015

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