Federal Court  Cour fédérale

Date: 20161007

Docket: IMM-1093-16

Citation: 2016 FC 1128

Vancouver, British Columbia, October 7, 2016

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MANOLITO ARROJO PALMERO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Palmero has a sympathetic case. On that we can all agree. The issue however is whether the decision of an officer to deny him a temporary resident permit was reasonable. In my opinion it was not.

[2] Mr. Palmero finds himself in an unfortunate situation because the email address he used to communicate with the authorities was hacked. He failed to promptly give notice of his new

email address. As a result he did not receive an email requesting further information regarding his application for a permanent resident visa. Consequently his application was dismissed. His request for reconsideration was also dismissed. Rightly or wrongly he did not seek leave and judicial review of those decisions. Rather, he asked for a temporary resident permit.

Section 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) allows an officer to issue such a permit to a foreign national who is either inadmissible or does not meet the requirements of the act. The officer was of the view that such a permit was not justified in the circumstances.

[3] Section 24(1) of the *IRPA* reads:

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

[4] Neither the Act nor the *Immigration and Refugee Protection Regulations*, SOR/2002-227 set out circumstances which may justify the issuance of such a permit.

I. Mr. Palmero's History in Canada

[5] Mr. Palmero, a Philippine national and a nurse, came to Canada in February 2009 as part of the Live-in Caregiver Program. After two years of authorized full-time employment, he was

entitled to apply for permanent resident status as a member of the live-in caregiver class. He made his application in 2013.

[6] Mr. Palmero is the sole provider for his wife and minor son who remain in the Philippines. His goal is to become a permanent resident of Canada and therefore be able to bring them here. A temporary resident permit, coupled with an open work permit, would allow him to reapply for permanent resident status, to sponsor his family and to continue to support them.

[7] This is the officer's decision in its entirety.

> [S]ubmissions indicate client entered Canada 16 February 2009 completed eligible employment 1, under the LCP program Applied for permanent residence which was refused for non compliance. Client had amended his email address and did not advise cic of the new contact information. Is now requesting a TRP and work permit in order to regularize his status in Canada as such a minor mistake would have grave results and is requesting time to salvage his PR application, and/or will be submitting an application for permanent residency under H&C grounds. Client's application was refused over a year ago. His work permit was refused 20 July 2015 (over 6 months ago). Indicates only $500 in funds (as of Oct 2015) Indicates some support from relatives in Canada. Client is married with family in Philippines. Client has met the requirements of R200(3)(g) and therefore cannot obtain another work permit at this time unless he meets those exemptions. There is no barrier for client to submit an H&C with no status. Client can return home and apply to the visa office for visa and documents to return to Canada. I am not of the opinion that a TRP is justified in this circumstance. Client has family in the Philippines, and has not worked since July 2015.

[8] Although the Act itself and the Regulations thereunder are silent as to the circumstances which would justify the issuance of a temporary resident visa, the Government has published

"Temporary Resident Permits (TRPs): Eligibility and Assessment" which contains policy, procedures and guidance.

[9] The Guideline goes on to state that a temporary resident permit is issued at the discretion of the delegated authority who will determine if the need for the:

- Foreign national to enter or remain in Canada is compelling; and
- Foreign national's presence in Canada outweighs any risk to Canadians or Canadian society.

[10] The Minister concedes that Mr. Palmero poses no risk to Canadians. He has been completely law-abiding. As noted by the visa officer, he has not worked since his work permit expired. It is not that he is inadmissible. It is simply that he ran afoul of the requirements of the Act by not answering a request for information, a request which he never received.

[11] The decisions of this Court which deal with temporary resident permits largely turn on their own facts. For the most part they deal with individuals who, unlike Mr. Palmero, are inadmissible. In *Farhat v Canada (MCI)*, 2006 FC 1275, Mr. Justice Shore carried out a comprehensive review of the legislation and the guidelines then in force. Mr. Farhat was a convicted felon who applied for a temporary resident permit while outside Canada. His connection to Canada was his Canadian wife. Mr. Justice Shore did not disturb the visa officer's rejection of Mr. Farhat's application.

[12] It must be noted that the standard of review applicable at that time to what were considered highly discretionary decisions was patent unreasonableness. That standard of review

was abolished in 2008 in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9. The decision in this case is to be reviewed on the reasonableness standard.

[13] Although an application for a temporary resident permit is distinct from an application for permanent residence made from within Canada on humanitarian and compassionate grounds, there are parallels.

[14] As Mr. Justice Shore noted at paragraph 22 of *Farhat*:

> The objective of section 24 of IRPA is to soften the sometimes harsh consequences of the strict application of IRPA which surfaces in cases where there may be "compelling reasons" to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with IRPA. Basically, the TRPs allow officers to respond to exceptional circumstances while meeting Canada's social, humanitarian, and economic commitments. (Immigration Manual, c. OP 20, section 2; Exhibit "B" of Affidavit of Alexander Lukie; *Canada* (*Minister of Manpower and Immigration) v. Hardayal*, [1978] 1 S.C.R. 470 (QL).)

He went on to note that the holder of a temporary resident permit, unlike others, may apply for a work permit from within Canada and apply to become a permanent resident.

[15] In *Ali v Canada (MCI)*, 2008 FC 784, Mr. Justice Phelan focused on section 24 of *IRPA* itself which requires an officer to decide whether a permit is justified "in the circumstances", meaning relevant circumstances. No mention was made of Mr. Ali's minor child, and so judicial review was granted.

[16] The decision under review is unreasonable in a number of respects. The officer states that Mr. Palmero has family in the Philippines. That is true; but he is here and they are there because he needs to work to satisfy his obligation to support his family. He is 52 years of age and the only evidence in the record suggests it would be extremely difficult for him to find a job as a nurse in the Philippines.

[17] It was said that he could apply from within Canada for permanent resident status on humanitarian and compassionate grounds. That is true. What the officer does not say is that such an application would not permit him to work, that he would be subject to removal at any time and that even if successful, he would then have to make a fresh application to sponsor his family.

[18] A temporary resident permit with work permit would allow him to work and to reapply for a permanent resident visa. That application would include his wife and son.

[19] It was said that he could apply for a visa from the Philippines. Counsel thought the only feasible application would be one to return to Canada on humanitarian and compassionate grounds. This is a lengthy process.

[20] With respect to the officer's note that Mr. Palmero had family in the Philippines, he did not state that he had a minor son. According to Mr. Justice Phelan in *Ali*, above, this was a fatal error "in the circumstances". I agree.

[21] I am concerned that the Guidelines speak of “compelling reasons”, while the Act itself does not. Not only are guidelines not law, but they cannot go beyond the boundaries of the statute itself. In any event, there are compelling reasons in this case.

JUDGMENT

FOR REASONS GIVEN:

a) The application for judicial review is granted

b) The decision of Officer CW/T, Case Processing Centre, Vegreville, is set aside.

c) The matter is referred to another officer for redetermination.

d) There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1093-16
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APPEARANCES:

Natalie Drolet	FOR THE APPLICANT
Timothy Fairgrieve	FOR THE RESPONDENT

SOLICITORS OF RECORD:

West Coast Domestic Workers' Association Vancouver, British Columbia	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT