

Federal Court



Cour fédérale

**Date: 20170207**

**Docket: IMM-1075-16**

**Citation: 2017 FC 145**

**Ottawa, Ontario, February 7, 2017**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**HELEN TORIBIO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Helen Toribio (the “Applicant”) seeks judicial review of the decision, dated February 25, 2016, of an Officer (the “Officer”) refusing her application for permanent residence, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), on the grounds that she had made a misrepresentation pertaining to her family situation and relationships.

[2] The Applicant is a citizen of the Philippines. She came to Canada in August 2007 as a Foreign Worker and went to Lloydminster, Alberta. On April 15, 2013, she submitted an application for permanent residence as a member of the Provincial Nominee Class. She listed Joselito Toribio her husband, and Angelo Toribio, her son, as accompanying dependents.

[3] In May, 2013, the Applicant began a romance with a man. At that time, she was still married but separated from her husband.

[4] By a “fairness letter” dated September 3, 2015, from an employee of Citizenship and Immigration Canada (“CIC”), the Applicant was informed that there was a concern that she had misrepresented her marital status. Specifically, questions were raised about the fact that the Applicant allowed her permanent residence application to continue, notwithstanding that she had begun a romantic relationship with another man in May, 2013. The Applicant did not request the removal of her spouse from her application until February, 2014.

[5] By letter dated October 2, 2015, the Applicant replied and advised that she considered her extra-marital relationship to be temporary and always intended to resume cohabitation with her husband and son.

[6] In the decision, the Officer found that the Applicant had misrepresented information about her marriage, in light of the submissions that her marriage had broken down in January 2013, prior to her application for permanent residence.

[7] In this application for judicial review, the Applicant argues that at the time of her permanent residence application, she did not consider her extra-marital affair to be permanent. She submits that she kept CIC informed about the change in her personal relationships, including her marriage, and did not misrepresent the facts.

[8] The Minister of Citizenship and Immigration (the “Respondent”) submits that the Officer’s decision is reasonable on the basis of the information submitted by the Applicant.

[9] A decision about misrepresentation is reviewable on the standard of reasonableness; see the decision in *Seraj v. Canada (Minister of Citizenship and Immigration)* (2016), 38 Imm. L.R. (4th) 242 (F.C.) at paragraph 11. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, a decision is reasonable when it is justifiable, intelligible and transparent, and “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[10] In my opinion, the Officer’s decision here does not meet that standard.

[11] The Applicant set out her personal circumstances, including the beginning of a romance while she was separated from her husband. That separation led to an application for divorce, that is a formal and legal end of her marriage.

[12] I agree with the Applicant’s submissions that she kept the Respondent informed about the changes in her personal life.

[13] The Officer's conclusion, about a misrepresentation in the face of the evidence submitted, is not reasonable.

[14] The decision is set aside and the matter remitted to another Officer for determination, there is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the decision is set aside and the matter remitted to another Officer for determination, there is no question for certification arising.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1075-16

**STYLE OF CAUSE:** HELEN TORIBIO v. MCI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 24, 2017

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** FEBRUARY 7, 2017

**APPEARANCES:**

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FOR THE RESPONDENT

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