

Federal Court



Cour fédérale

Date: 20180327

Docket: IMM-4365-17

Citation: 2018 FC 345

Vancouver, British Columbia, March 27, 2018

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

ODNOO ANDRYEI

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

Heard at Vancouver, British Columbia, on March 26, 2018.

Judgment delivered from the Bench at Vancouver, British Columbia, on March 26, 2018.

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act* [Act] of the decision of a visa officer at the office of the Consulate General of Canada in Hong Kong (the Consular office). In the decision dated August 16, 2017, the officer concluded the Applicant's son, Altan-Od Odnoo [Altan] does not qualify for

permanent residency in Canada because the Applicant failed to produce documents that attest to her sole guardianship over Altan and her right to remove him permanently from his homeland of Mongolia, without the permission of his biological father.

[2] The Applicant is a citizen of Mongolia. In January 2015 she left Mongolia and entered Canada where she successfully claimed refugee status. She is now a permanent resident of Canada and resides here. Her ten year old son Altan, who remained in Mongolia when she (the Applicant) fled to Canada, sought to enter Canada as a permanent resident.

[3] The Visa Officer cannot be faulted in any way with respect to the degree of procedural fairness displayed toward the Applicant up to the impugned circumstances which occurred in August 2017. Until that time, the Officer afforded the Applicant several opportunities to provide the requested documentation related to her custody of Altan and his right to emigrate from Mongolia without the consent of his biological father.

[4] Following several exchanges between the Visa Officer and the Applicant, the Officer provided the Applicant with a letter dated July 31, 2017 providing her a further 30 days to submit the requested documentation regarding custody of Altan and his right to immigrate to Canada.

[5] In August 2017, the Applicant submitted a letter of reference dated August 7, 2017, issued by the governor of the Bayanzurkh District Khoroo Number 3, as well as a written legal opinion issued by a Mongolian lawyer, Davaatseren Battumir, both of which purportedly confirmed her custody rights over Altan. The letter of reference confirmed the Applicant is a

legal guardian of Altan, and the legal opinion certified that the Applicant is the sole legal guardian of Altan in accordance with the laws of Mongolia. Two days after receiving these documents, the Visa Officer rendered the impugned decision of August 16, 2017. He was not satisfied the Applicant had provided reliable evidence that she has a legal right to remove Altan permanently from Mongolia for immigration purposes without seeking permission from Altan's biological father. The application was rejected.

[6] Immediately upon receiving that news, the Applicant responded to the Visa Officer via email, through which she stated that she thought she had until the end of August, namely 30 days from the July 31, 2017 letter, to provide the documents requested. The Officer responded on August 21, 2017, indicating that a final decision had been made and there was nothing further that would take place from the Visa Office.

[7] Because I conclude that the Visa Officer breached the duty of procedural fairness by rendering his decision fourteen days prior to the deadline set by him, I need not discuss the reasonableness of the officer's decision.

[8] The standard of review to be applied in determining whether a decision-maker has respected the duty of procedural fairness is that of correctness: *Mission Institution v Khela*, 2014 SCC 24, *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, and, of course, *Dunsmuir v New Brunswick*, 2008 SCC 9.

[9] The Applicant contends the Officer breached the duty of procedural fairness by rendering a decision prior to the deadline of August 30, 2017. I agree. I am satisfied the Applicant had a legitimate expectation the decision would not be made until August 30, 2017 and that she could file materials prior to that date or up to that date. This approach is consistent with that adopted by this Court in *Avouampo v Canada (Minister of Citizenship and Immigration)* 2014 FC 1239. This legitimate expectation generates a procedural fairness obligation on the part of the decision-maker to respect the deadline imposed by him.

[10] I would allow the Application for Judicial Review and remit the matter for redetermination by a different visa officer, all without costs. The Applicant has requested I impose a deadline within which the visa officer is required to consider this matter. I respectfully decline that request.

[11] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the Application for Judicial Review is allowed without costs. The matter is remitted for redetermination by a different visa officer. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4365-17

STYLE OF CAUSE: ODNOO ANDRYEI v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MARCH 26, 2018

JUDGMENT AND REASONS: BELL J.

DATED: MARCH 27, 2018

APPEARANCES:

Robert J. Hughes FOR THE APPLICANT

Brett J. Nash FOR THE RESPONDENT

SOLICITORS OF RECORD:

Out/Law Immigration Legal Services FOR THE APPLICANT
New Westminster, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia