

Federal Court



Cour fédérale

Date: 20230228

Docket: IMM-5746-20

Citation: 2023 FC 281

Ottawa, Ontario, February 28, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

VANESSA MIJARES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Approximately six years ago, the Applicant, Vanessa Mijares (“Ms. Mijares”), applied for permanent residence through the Alberta Provincial Nominee Program for skilled workers (“PR Application”). Her application was approved in 2019. During an interview at a port of entry in 2019, a Canada Border Services Agency [CBSA] officer questioned Ms. Mijares about a person who was accompanying her to the interview. Ms. Mijares explained that they were in a

relationship and planned to marry in a few weeks. Because Ms. Mijares's PR Application said that she was single, the CBSA officer issued a section 44 report for misrepresentation, cancelled Ms. Mijares's Confirmation of Permanent Residence, and issued an exclusion order against her. Ms. Mijares left Canada and returned to the Philippines. Ms. Mijares's relationship with her partner broke down and they did not get married.

[2] Ms. Mijares challenged the exclusion order against her and the decision to cancel her Confirmation of Permanent Residence in this Court. The Minister of Citizenship and Immigration agreed to a redetermination of her PR Application and Ms. Mijares discontinued her application for judicial review.

[3] On redetermination, the PR Application was refused by an officer at Immigration, Refugees and Citizenship Canada [IRCC] ("the Officer") on November 26, 2020. The basis of the refusal was that Ms. Mijares had not complied with subsection 16(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* because she failed to provide the documents requested of her by the Officer. Ms. Mijares is challenging that refusal in this judicial review.

[4] Ms. Mijares appeared before me from the Philippines. She was no longer represented by counsel. Her former counsel no longer practices law and his legal practice is under a custodianship order. The lawyer who retained carriage of Ms. Mijares's file under the custodianship order advised Ms. Mijares that he did not practice immigration law and obtained an order from this Court removing himself as counsel of record in this matter.

[5] The key issue on judicial review is whether it was fair in all the circumstances for the Officer to refuse Ms. Mijares's application for permanent residence because of her failure to provide the requested documents (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The Certified Tribunal Record produced by IRCC does not contain all of the documents that Ms. Mijares filed in response to the Officer's request; nor does the Officer mention these documents in their reasons. Taking into account the circumstances of this case, including that not all the documents filed were in the Officer's record, the complex history of this case, and Ms. Mijares's confusion about the Officer's request given the breakdown of the relationship, I find that the Officer's decision was not procedurally fair. Therefore, the matter has to be sent back to be redetermined.

[6] Based on the reasons below, the application for judicial review is granted.

II. Background

[7] Ms. Mijares is a citizen of the Philippines. She came to Canada in 2014. In August 2017, Ms. Mijares applied for permanent residence through the Alberta Provincial Nominee Program for skilled workers. She stated on the application forms that she was single and had not previously been married or in a common-law relationship. In January 2019, her PR Application was approved and she was then issued a Confirmation of Permanent Residence. She presented herself at the Port of Entry in Carway, Alberta for her permanent residence interview. According to the CBSA officer's notes, during this interview, Ms. Mijares disclosed that she was in a relationship with the person who accompanied her to the interview and that they were planning to get married in approximately two weeks.

[8] Ms. Mijares alleges that there was no interpreter present during the interview. Ms. Mijares has said that she did not fully understand what transpired at the interview nor the declaration that she signed at the end of the interview. The CBSA officer issued a section 44 report for misrepresentation, cancelled Ms. Mijares's Confirmation of Permanent Residence, and issued her an exclusion order. Shortly after, Ms. Mijares ended her relationship and, because of the exclusion order, returned to the Philippines on March 13, 2019.

[9] Ms. Mijares sought judicial review of the decision to cancel her Confirmation of Permanent Residence and the decision to issue an exclusion order. After Ms. Mijares had already returned to the Philippines, the Minister agreed to set aside the decision made by the CBSA officer to cancel Ms. Mijares's Confirmation of Permanent Residence and remit the PR Application to an officer at IRCC for redetermination.

III. Analysis

[10] On November 26, 2020, the Officer refused Ms. Mijares's PR Application. The Officer explains in their reasons that Ms. Mijares was asked to provide a number of documents on November 28, 2019, but that none were provided. This is inaccurate. On December 20, 2019, Ms. Mijares submitted an IRCC Web Form asking where she should submit her documents and advising that she had attached four documents to the Web Form. She received on December 28, 2019 an email from IRCC confirming that these four document attachments were received. This IRCC email, which is in the Applicant's Application Record, is not in the Certified Tribunal Record; nor was I able to locate all of the documents listed in the email and accepted as filed by IRCC.

[11] I do not find that this is a case where Ms. Mijares is making a “bare assertion” that a document has been provided (*El Dor v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1406 at para 32). I find Ms. Mijares’s version of events supported by the record. There is also no mention of this set of documents in the Officer’s reasons. I am not satisfied that the Officer made their decision with the benefit of all of the evidence that Ms. Mijares submitted.

[12] I acknowledge that the Officer may still have refused the PR Application based on the lack of information regarding Ms. Mijares’s alleged “spousal” relationship, even if they did review the missing documents. I have carefully considered this issue. In my view, a redetermination remains the fair remedy because of the interests at stake, the history of this case, and the nature of the request for documents.

[13] There are significant interests at stake in this PR Application for Ms. Mijares. Ms. Mijares’s PR Application was approved after she was able to obtain a provincial nomination, following working as a Food Counter Attendant and then a Food Service Supervisor in Canada for a number of years. She explained to me at the hearing that she was the “breadwinner” of the family and, after what happened at the port of entry in Canada, she had now “lost everything.”

[14] It appears to me that Ms. Mijares was genuinely confused by the nature of the request for documents relating to her alleged spouse. Ms. Mijares, who was responding to the Officer’s request without legal assistance, understood that because she did not have a spouse she need not need fill out the questions relating to a spouse nor submit medicals or police certificates for her spouse. On redetermination, she provided an updated family information form that listed her

marital status as single and indicated “N/A” on the statutory declaration of a common law union. She was not asked anything further about these assertions; the PR Application was refused because Ms. Mijares did not provide the requested documents relating to her spouse.

[15] Ms. Mijares should be given an opportunity to address any remaining concerns about her former relationship. These concerns should be put clearly to her. The application for judicial review is allowed and sent back to a different officer to be redetermined. Neither party raised a question for certification and I agree that none arises.

JUDGMENT IN IMM-5746-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The matter is sent back to a different decision maker for redetermination; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5746-20

STYLE OF CAUSE: VANESSA MIJARES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 7, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: FEBRUARY 28, 2023

APPEARANCES:

Vanessa Mijares

FOR THE APPLICANT,
ON HER OWN BEHALF

Maria Green

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Edmonton, Alberta

FOR THE RESPONDENT