

Date: 20071211

Docket: IMM-309-07

Citation: 2007 FC 1299

Ottawa, Ontario, December 11, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ROBERT TABANIAG BARO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A panel of the Immigration and Refugee Board found Mr. Robert Tabaniag Baro, a citizen of the Philippines, to be inadmissible to Canada on the basis that he had misrepresented or withheld material facts from immigration authorities when his spouse, a Canadian resident, sponsored his application for permanent residence. In particular, the Board concluded that Mr. Baro had failed to disclose his true marital history.

[2] Mr. Baro admits that he had a previous marriage. He says he became estranged from his spouse and then, having lost touch with her entirely, obtained a declaration from a court in the Philippines presuming her to be dead. Mr. Baro did not mention these facts to Canadian

immigration officials. However, his second wife notified authorities after she learned, on a visit to the Philippines, that Mr. Baro's first wife had reappeared.

[3] Mr. Baro appealed the Board's finding to the Immigration Appeal Division (IAD), but the IAD upheld the Board's decision. Mr. Baro submits that the IAD's decision was unsupported by the evidence before it. He asks me to order a new hearing before a different panel.

I. Issues

1. Was the IAD's decision supported by the evidence?
2. Was the IAD's decision not to grant Mr. Baro humanitarian and compassionate relief unreasonable?

II. Analysis

1. *Was the IAD's decision supported by the evidence?*

(a) Factual Background

[4] In 1992, Mr. Baro married Elizabeth Gandeza in Lagakilang, Philippines. After the wedding, Ms. Gandeza went back to her job as a domestic worker in Hong Kong while Mr. Baro

remained in the Philippines. Mr. Baro claims that he did not have Ms. Gandeza's coordinates in Hong Kong and, as a result, lost contact with her over the ensuing years.

[5] During Ms. Gandeza's absence, Mr. Baro maintained a friendship with Ms. Letitia Tuzon. In 1997, they made plans to marry. In March 1998, Mr. Baro obtained a court order recognizing that Ms. Gandeza was presumed to be deceased. The following month, Mr. Baro and Ms. Tuzon married. Ms. Tuzon left the Philippines and became a permanent resident of Canada.

[6] In 1999, Mr. Baro applied for permanent residence in Canada, sponsored by Ms. Tuzon. Canadian authorities in Manila asked him for a "marriage check". In particular, they asked him to provide a certificate from the National Statistics Office in the Philippines, which maintains a registry of marriages. Mr. Baro obtained the certificate but it contained no reference to his prior marriage to Ms. Gandeza. Mr. Baro did not tell Canadian officials that he was previously married or that he had obtain an order of presumptive death in relation to his first wife.

[7] In 2000, Mr. Baro joined Ms. Tuzon in Canada. However, when Ms. Tuzon visited the Philippines in 2002, she found out about Mr. Baro's first marriage and discovered that Ms. Gandeza was very much alive. Ms. Tuzon alerted Canadian immigration authorities to the fact that Mr. Baro had not been forthcoming in his application for permanent residence, which set in motion the proceedings before the Board and the IAD. In both proceedings, the Minister alleged that Mr. Baro had misrepresented or failed to disclose a material fact, namely, his marital history.

(b) The Decisions of the Board and the IAD

[8] The Board concluded that the Minister's allegation was well-founded and, therefore, that Mr. Baro was inadmissible to Canada. It found that Canadian officials had requested a "marriage check" in the form of a certificate from the National Statistics Office. In providing a certificate indicating that no marriage was registered in his name, Mr. Baro had misrepresented the facts. Further, by omitting to mention the existence of an order recognizing that his first wife was presumed dead, Mr. Baro had failed to disclose a material fact. At a minimum, immigration officials would have wanted to know more about the circumstances surrounding his first marriage, but Mr. Baro had succeeded in foreclosing that area of inquiry. In doing so, he may have induced an error in the administration of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), contrary to s. 40(1)(a) (see Annex).

[9] Mr. Baro appealed to the IAD, which upheld the Board's decision. The IAD found that Mr. Baro knew that the certificate, which contained no reference to his first marriage, was inaccurate. It concluded that Mr. Baro had been asked to confirm his marital status and, by supplying a document he knew to be incorrect, he misrepresented a relevant fact. The IAD referred to Mr. Baro's testimony before the Board and rejected the contention that Mr. Baro was unaware of the contents of the certificate until after he arrived in Canada. Accordingly, unlike the Board, the IAD made a negative credibility finding against Mr. Baro on the basis that his evidence was inconsistent on this point. Further, the IAD found that Mr. Baro, by omitting to mention his first marriage and the order of presumptive death, had failed to disclose material facts.

(c) Did the IAD err?

[10] I can overturn the IAD's decision only if I find that it was unreasonable.

[11] Mr. Baro says that the IAD made a clear error when it concluded that his testimony was not credible. Before the IAD, Mr. Baro had claimed that he took the certificate in a sealed envelope to the Canadian Embassy and only found out what the certificate said much later. Accordingly, Mr. Baro submits that the IAD erred when it found that he had submitted the certificate knowing it to be inaccurate. Although he had testified before the Board that he was surprised that it did not mention his first marriage, he had never said that he was aware of its contents before he submitted it.

[12] I have reviewed Mr. Baro's testimony and cannot find any contradiction within it. Accordingly, I can see no basis for the IAD's conclusion that Mr. Baro had knowingly supplied inaccurate information or the corresponding negative credibility assessment.

[13] However, as mentioned, the Board also found that Mr. Baro had failed to disclose material information when he omitted to mention his marital history. This conclusion is unaffected by the Board's erroneous finding that Mr. Baro had knowingly misled Canadian authorities. On this point, Mr. Baro argues that his conduct should not result in a finding of inadmissibility since he was never specifically asked about his marital history. Accordingly, he was under no duty to inform Canadian authorities of his previous marriage or the circumstances surrounding its dissolution. Further, Mr. Baro submits that his previous marriage was not relevant to his application for permanent residence

and his failure to disclose it could not have induced an error in the administration of the Act because his second marriage was clearly valid.

[14] The Minister contends that the application form Mr. Baro submitted in Manila specifically requests applicants to provide their marital history. However, that form is not in evidence before me; Mr. Baro's file has been destroyed. The question, therefore, is whether Mr. Baro had a duty to disclose his marital history in the circumstances even in the absence of a specific request from Canadian authorities.

[15] Under s. 40(1)(a) of IRPA, a person is inadmissible to Canada if he or she "withholds material facts relating to a relevant matter that induces or could induce an error in the administration" of the Act. In general terms, an applicant for permanent residence has a "duty of candour" which requires disclosure of material facts. This duty extends to variations in his or her personal circumstances, including a change of marital status: *Mohammed v. Canada (Minister of Citizenship and Immigration)*, [1997] 3 F.C. 299 (F.C.T.D.) (QL). Even an innocent failure to provide material information can result in a finding of inadmissibility; for example, an applicant who fails to include all of her children in her application may be inadmissible: *Bickin v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No.1495 (F.C.T.D.) (QL). An exception arises where applicants can show that they honestly and reasonably believed that they were not withholding material information: *Medel v. Canada (Minister of Employment and Immigration)*, [1990] 2 F.C. 345, [1990] F.C.J. No. 318 (F.C.A.) (QL).

[16] An applicant's marital history is clearly relevant to an application for permanent residence based on a spousal sponsorship. Canadian officials will want to ensure that the union is genuine and the applicant's marital background is a valid factor for them to take into account: *Quizon.v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1076 (F.C.T.D.) (QL).

[17] Of course, applicants cannot be expected to anticipate the kinds of information that immigration officials might be interested in receiving. As the IAD noted here, "there is no onus on the person to disclose all information that might possibly be relevant". One must look at the surrounding circumstances to decide whether the applicant has failed to comply with s. 40(1)(a).

[18] Here, the Canadian officials who were responsible for processing Mr. Baro's application for permanent residence, based on a spousal sponsorship, asked him for a "marriage check". Obviously, this request alerted Mr. Baro to the fact that those officials wanted to know if he had been married before. In my view, in these circumstances, Mr. Baro was obliged to disclose his marital history. True, he complied with the request for an official certificate of marriage registration. However, his compliance with that request did not absolve him of the obligation to divulge his previous marriage and the steps he took to have his first wife presumed dead. Mr. Baro could not have reasonably believed that he was not withholding material information.

[19] In my view, therefore, given the evidence before it, the IAD did not err when it found that Mr. Baro had failed to comply with s. 40(1)(a).

2. *Was the IAD's decision not to grant Mr. Baro humanitarian and compassionate relief unreasonable?*

[20] Mr. Baro argued that the IAD erred in failing to grant his appeal on humanitarian and compassionate grounds. He conceded that this point was not being asserted strenuously.

[21] The IAD reviewed many factors relating to Mr. Baro's circumstances and those of his family members. However, Mr. Baro submits that the IAD failed to take adequate account of the effect on Mr. Baro's parents if he were to be sent back to the Philippines (where his parents reside) and could no longer remit to them a portion of his Canadian earnings. Any salary he earned in the Philippines would be lower than his Canadian wages.

[22] The IAD did consider Mr. Baro's parents' situation. It found that Mr. Baro could find employment in the Philippines and continue to assist his parents. In the absence of any evidence of the parents' actual financial needs, the IAD could not assess the degree of their dependency on Mr. Baro.

[23] I can find nothing unreasonable about the IAD's conclusion.

III. Disposition

[24] Based on the foregoing, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27

Misrepresentation

Faussees déclarations

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-309-07

STYLE OF CAUSE: ROBERT TABANIAG BARO v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, B.C.

DATE OF HEARING: July 18, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: December 11, 2007

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