

**Date: 20080221**

**Docket: IMM-1687-07**

**Citation: 2008 FC 236**

**Toronto, Ontario, February 21, 2008**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**HOW TIEM LEE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant Mr. Lee is an adult male citizen of Bangladesh. He applied for entry into Canada under a Permanent Resident Visa as an entrepreneur but was refused for medical inadmissibility under the provisions of subsection 38(1)(c) of the *Immigration and Refugee Protection Act*, S.C. 2001, c-27 as amended (IRPA). He was found to suffer medical conditions including kidney disease that may require dialysis in the next few years. The refusal to grant a permanent resident visa was upheld by Justice Campbell of this Court (2006 FC 1461). However, he determined that consideration should have been given to a request for a temporary resident permit and remitted the matter to be considered by another officer on that basis.

[2] The matter was further considered in respect of a request for a temporary resident permit. By letter dated May 7, 2003 from the Minister's official, the Applicant was advised that this application was refused. In the notes accompanying that letter the following Summary Conclusion appears:

*In my opinion the evidence does not support a finding that there are exceptional circumstances in this case that justify a recommendation to issue TRP to this applicant per A24(1). Whilst I believe Mr. Lee is a successful businessman, I do not believe that there is sufficient evidence to show that any economic benefits provided by Mr. Lee will outweigh the costs and strain that will likely be imposed on Canada's health system by his admission to Canada. A TRP is by definition a document to be issued in exceptional circumstances. It has not been established to my satisfaction that such circumstances exist in this case.*

[3] The Applicant is seeking judicial review of that decision. For the reasons that follow, I find that the Application is refused

[4] Justice Shore of this Court, a judge very experienced in matters dealing with the *Immigration and Refugee Protection Act*, S.C. 2001, c-27 as amended (IRPA), gave careful consideration to the issue of temporary resident permits (TRP) in his recent discussion in *Farhat v. Canada (MCI)*, 2006 FC 1275. He concluded in that respect that:

- in addition to being exceptional, the issuance of TRP's is highly discretionary (para. 15);
- a highly discretionary decision of this type is to be reviewed on the standard of patent unreasonableness (para. 17);

- the objective of the relevant out provisions 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, it allows officers to respond to exceptional circumstances while meeting Canada's social commitments (para. 22);
- before a IRP is issued, consideration must be given to the fact that TRP's grant their bearer more privileges than do visitor, student or work permits. A TRP bearer becomes a temporary resident after being examined upon entry to Canada, but may also be eligible for health or social services and can apply for a work or student permit from Canada. TRP's thus should be recommended and issued cautiously (paras. 23 and 24).

[5] In the circumstances of the present situation the Applicant Lee was refused a permanent permit for health reasons. In considering a temporary permit the Applicant's circumstances, namely that he resided outside Canada and wished to enter Canada in order to set up an entrepreneurial enterprise was balanced against the potential burden to Canada's health system. The permit was denied.

[6] The officer gave the Applicant a full and fair opportunity to submit his case. The officer fairly considered the relevant circumstances. The decision made is not patently unreasonable.

[7] Applicant's Counsel argues that the effect of section 65.1(d)(ii) of IRPA is to impose a requirement that a medical certificate be furnished before a temporary resident could become a permanent resident, thus providing a basis for considering, at that time, whether the Applicant continues to be medically unsuitable. Counsel argues that the Applicant should be admitted to Canada under a TRP then examined at a later time to determine if his condition becomes worse at which time the Applicant's health situation can be considered further.

[8] The Applicant's argument in its effect would be to remove or postpone a visa officer's discretion as to issuing a TRP where medical issues are under consideration and defer those issues to a later time. I do not find that such a process is contemplated by these provisions of IRPA. The officer has and retains a highly discretionary function as to issuing a TRP in the first place, including consideration and weighing of medical issues. Those issues or newly arising medical issues may come up again when considering a permanent permit and they are not removed when considering the matter in the first instance. In effect, they could be considered twice if necessary.

[9] The officer's decision was in law, correct, and the findings of fact and exercise of discretion was not patently unreasonable. There is no question for certification.

**JUDGMENT**

**For the Reasons given:**

**THIS COURT ADJUDGES that:**

1. The application is dismissed.
2. There is no question for certification.
3. There is no Order as to costs.

“Roger T. Hughes”

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Judge

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

**DOCKET:** IMM-1687-07

**STYLE OF CAUSE:** HOW TIEM LEE v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 21, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** HUGHES J.

**DATED:** FEBRUARY 21, 2008

**APPEARANCES:**

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