Date: 20080328

Docket: IMM-3087-07

Citation: 2008 FC 402

Ottawa, Ontario, March 28, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

NIEDZIELA, ANDRZEJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. OVERVIEW

[1] A visa officer determined that the Applicant's son could not be sponsored under the family class because the Applicant had not disclosed that he had a son during his landing in 1988. The officer's decision was upheld by the Immigration Appeal Division. This judicial review application

is based upon the treatment of the Applicant's father some 20 years ago, not on the basis of the son's application for a permanent resident's visa as a member of the family class.

II. FACTUAL BACKGROUND

[2] The Applicant, now a Canadian and Polish citizen, came to Canada in 1988. He had listed his wife and two daughters on his immigration application form. He did not list his son, born from an extra-marital affair.

[3] The Applicant admits that he did not include his son on the application form nor did he disclose his son's existence when he was interviewed in the presence of an interpreter.

[4] At the time of his landing in Canada in 1988 he was not examined. He now says that the failure to examine him at that time - and presumably the Applicant would have disclosed the existence of his son despite not having done so on two previous occasions - gives him the right to sponsor his son now.

III. ANALYSIS

[5] The Applicant hangs his argument on two pegs – albeit wobbly ones. The first - s. 117(9)(d) of the *Immigration and Refugee Protection Regulations* on which the visa officer relied - did not apply to s. 117(10) because the Applicant was not examined in 1988 at the time of landing. The

second and closely related basis is that he was denied procedural fairness at the time of his landing because he was not asked about his son.

[6] The relevant provisions of s. 117 read as follows:

117. (9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if	117. (9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
…	…
(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.	*d)* sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.
(10) Subject to subsection (11), paragraph (9)(d) does not apply in respect of a foreign national referred to in that paragraph who was not examined because an officer determined that they were not required by the Act or the former Act, as applicable, to be examined.	(10) Sous réserve du paragraphe (11), l'alinéa (9)*d)* ne s'applique pas à l'étranger qui y est visé et qui n'a pas fait l'objet d'un contrôle parce qu'un agent a décidé que le contrôle n'était pas exigé par la Loi ou l'ancienne loi, selon le cas.

[7] With respect to the first basis, the issue is not that the Applicant was not examined, it is that he had not disclosed. Given two opportunities, he failed to disclose the existence of his son. The Applicant now says that he would have done so if he had been examined. There are no grounds for upholding this thesis. Moreover, there is nothing which discloses the reason for, or even confirmation that, the Applicant was not being examined.

[8] A person filing an application has a general obligation to be truthful, particularly in respect of material facts. It is evident on this record that the Applicant was not sufficiently truthful. For his lack of truthfulness, these results have flowed.

[9] Therefore, there is no basis for concluding that there is a breach of procedural fairness, even if that allegation can be made in respect of a decision regarding the son and regarding a process which occurred 20 years ago.

IV. CONCLUSION

[10] Therefore, this judicial review will be dismissed. On the basis of these reasons, there is no issue for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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