

Date: 20081002

Docket: IMM-781-08

Citation: 2008 FC 1107

Toronto, Ontario, October 2, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ELAINE EWERS-BAPTISTE,
GLENROY BAPTISTE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the Minister's refusal of an application for permanent resident status under the spouse or common-law partner in Canada class. The decision was communicated to the applicants by letters dated December 28, 2007.

[2] Glenroy Baptiste, the principal applicant and a national of St. Vincent, married Elaine Ewers-Baptiste, a Canadian citizen, on January 12, 2006. In March 2006, Ms. Ewers-Baptiste applied to sponsor her husband's application for permanent residence and submitted a sponsorship

undertaking to the Respondent. Mr. Baptiste followed up with the permanent residence application in March of 2006.

[3] By letter dated November 23, the Respondent informed Ms. Ewers-Baptiste of its discovery that Mr. Baptiste had been in receipt of social assistance from January 2005 up until the 31st of May, 2006. The letter goes on to state that if Mr. Baptiste was receiving social assistance on the day upon which the sponsorship undertaking was filed, or at any time thereafter prior to a final decision on the application for permanent residence, pursuant to s. 133(1)(b) of the *Immigration and Refugee Protection Regulations*, Ms. Ewers-Baptiste would be ineligible as a sponsor and the application might be refused. Accordingly, she was instructed to submit information and documents demonstrating that she met the eligibility requirements to sponsor her husband.

[4] In response to this letter, the applicants submitted numerous documents to the Respondent, including a marriage certificate, banking documents, a copy of a Notice of Assessment for 2006, all under cover of letter dated December 12, 2007. On the subject of Mr. Baptiste's receipt of social assistance, Ms. Ewers-Baptiste wrote as follows:

The information you have from social services is correct in that Glenroy had received assistance while his application for refugee status was being processed. Glenroy continued to have funds deposited to an account that is now closed and had moved from the address he had given social services. ...

I will pay social services back as I am sponsoring Glenroy and am capable of doing so. I have been and intend to fulfill my responsibilities as a sponsor. Glenroy stopped the assistance in May 2006 and closed the account. This was definitely an error on his part, I won't say he forgot the money was coming in but rather that he

paid no attention to it until we discussed the account at CIBC and the funds he had in it. Since Glenroy had moved from the address that social services (sic) he was not receiving any mail from Social Services and simply let the funds get deposited.

Once we discussed the account, and I having worked for Social Services in the past, I immediately told Glenroy to call Social Services and stop the assistance.

[5] By letter dated December 28, 2007, the Respondent informed Mr. Baptiste that his wife's sponsorship application had been refused on account of his receipt of social assistance between the date of the sponsorship application and May 31, 2006. Accordingly, he was not "the subject of a sponsorship application" and did not qualify as a member of the spouse or common-law partner in Canada class within the terms of subsection 124(c) of the *Immigration and Refugee Protection Regulations*; his application for permanent residence under that class was refused.

[6] The Immigration Officer's notes to file in relation to the Baptiste application include the following observations which can be taken to express the reasons. After noting that Glenroy Baptiste was in receipt of social assistance until the end of May 2006 whereas the sponsorship undertaking was received in the first week of March 2006, the officer writes:

THE SPONSOR STATES THAT SHE WILL REPAY SOCIAL SERVICES. HER STATEMENT TO THIS EFFECT IS DATED 12DEC2007, HOWEVER, SHE INDICATES THAT SHE WAS AWARE OF GLENROY RECEIVING SOCIAL ASSISTANCE AS FAR BACK AS MAY'06, YET THERE IS NO INDICATION THAT SHE HAS TAKEN ANY STEPS TO MAKE ARRANGEMENTS WITH SOCIAL SERVICES TO REPAY THE FUNDS. THEREFORE, THE SPONSORSHIP APPLICATION IS REFUSED.

[7] There matters stood. The applicants submitted that the officer's decision on the sponsorship application was unreasonable and sought this Court's intervention.

[8] At the commencement of the hearing, counsel for the Minister informed the Court that the applicants had filed a second sponsorship application on January 28, 2008 and that it had been approved in principle on June 18, 2008. The only issue preventing its final approval was receipt of proof from the applicants that a former criminal charge against Mr. Baptiste was withdrawn. Ms. Ewers-Baptiste assures us that it will soon be obtained. Given the timing of this new application, the issue of the social assistance payments and repayments is thankfully not an issue.

[9] I say "thankfully not an issue" because Ms. Ewers-Baptiste, since December 2007, has been unable to convince the bureaucrats at Social Services to accept the approximately \$2100 in overpayment. She finds herself in a Catch 22. Social Services informed her that they would not accept the overpayment until the sponsorship was approved and the first sponsorship application could not be approved without proof of repayment. If I had jurisdiction, I would direct Social Services to accept a cheque from Ms. Baptist for this overpayment. As I do not have such jurisdiction, I wish to make it clear to those in charge of such overpayments, that their actions have had a direct and negative impact on the lives of two residents of Ontario. It would shock the sensibilities of the taxpayers of Ontario that those in charge of overpayments, to date, have refused to accept a voluntary reimbursement of a social assistance overpayment.

[10] In any event, counsel for the Minister submitted that this application ought to be dismissed on the basis of mootness. A court may decline to decide a case which raises merely a hypothetical or abstract question. A judicial review application is moot when a decision will not have the effect of resolving the controversy that affects the rights or potential rights of a party: *Higgins v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 516.

[11] In light of the new spousal application, I am of the view that it is not in the interest of justice to decide this case – it is moot. If the application is denied, it will have no impact on resolving the rights of the applicants as they are the subject of a second application that has been accepted and approved in principle by the Minister. If it is allowed, the officer to whom it is referred will be called upon to make the same decision as the officer in the new application and by that time the second application may well have been finally determined. At that point any decision in the original application will have no impact.

[12] For these reasons, the application is dismissed, without considering its merits.

[13] The Court notes that the Minister took nearly two years to make a decision on the first spousal application. The applicants have been married more than two and one-half years and have a child. It would be appropriate for the Minister to give some priority to this new application and render a decision as soon as possible after the applicants provide proof of the clean criminal record of Mr. Baptiste.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application is dismissed.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-781-08

STYLE OF CAUSE: *ELAINE EWERS-BAPTISTE, GLENROY BAPTISTE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 2, 2008

REASONS FOR JUDGMENT AND JUDGMENT: ZINN J.

DATED: OCTOBER 2, 2008

APPEARANCES:

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FOR THE RESPONDENT

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