Date: 20081204

Docket: IMM-860-08

Citation: 2008 FC 1350

Ottawa, Ontario, December 4, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

HOUSYVEL CESAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The facts of this case are simple. The Applicant was the subject of a spousal sponsorship application which was dismissed because the Applicant was inadmissible on the grounds of serious criminality as per paragraph 36(2)*(a)* of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). The Applicant, a failed refugee claimant, was convicted in June of 2006 of impaired driving pursuant to section 253A of the *Criminal Code*, R.S.C. 1985, c. C-46 (Criminal Code). This offence is punishable either on summary conviction or under indictment.

[2] The Applicant takes issue with the decision on two grounds. The first is that the Respondent failed to provide adequate reasons; the second is that the Respondent failed to provide the Applicant with an opportunity for an interview.

[3] The two errors are, in reality, alleged denials of procedural fairness. As such, they are subject to review on a standard of correctness (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[4] With respect to the first grounds, the adequacy of the reasons, the reasons provided were that the Applicant was inadmissible by virtue of a conviction on an indictable offence, and therefore the spousal sponsorship application must be dismissed.

[5] While the Applicant complains that the Respondent should have expanded upon the provisions of the Criminal Code and the IRPA, the reasons provided communicated precisely why the Applicant was inadmissible. There was no question that the conviction was applicable; and there was no question that, while the offence was both a summary conviction and an indictable offence, by virtue of the IRPA the conviction is deemed to be a conviction on an indictable offence.

[6] With respect to the second grounds, the Applicant relies on Citizenship and Immigration Canada's Inland Processing Manual for his argument that he was erroneously denied an opportunity for an interview.

[7] There was no obligation to grant an interview, and the Applicant's reliance on the Inland Processing Manual is entirely misplaced. The Manual is not law, and does not in this instance create any legitimate expectation with respect to the procedures to be followed. In any event, the language is permissive, and not mandatory, with respect to the granting of an interview.

[8] Of equal importance is that the interview would have served no purpose, as there were no questions or issues to be resolved. The Applicant was the person against whom the conviction was registered, there was no question that the conviction still stood, and no pardon had been issued. An interview was not mandatory, there was no need for an interview, and - consequently - there is no breach of the rules of procedural fairness.

[9] For these reasons, this judicial review will be dismissed. There is no question to be certified.

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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