

Federal Court



Cour fédérale

**Date: 20140617**

**Docket: IMM-2225-13**

**Citation: 2014 FC 576**

**Toronto, Ontario, June 17, 2014**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**RICHARD PAUL SMIRAGLIA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**(Reasons given orally in Toronto on June 16, 2014.)**

[1] Pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, the applicant has applied for Judicial Review of a decision of an Immigration Officer (the Officer) dated March 8, 2013 refusing the applicant's application for permanent residence in the skilled worker class on the grounds that his dependant spouse, James Bradford Young, is medically inadmissible because he has the HIV virus and requires expensive antiviral medications which, it

is accepted, would cost in excess of the current threshold for demand on Canada's health system (the Decision).

I. Background

[2] Mr. Young is employed as a Music Technical Services Librarian at the University of Pennsylvania. In that capacity, he is covered by a lifetime employment-based insurance policy which covers all his prescription medications less co-payments of \$2000 per year (the Policy). It shows that the coverage is conditional on Mr. Young:

- Maintaining a permanent and valid street address in the United States of America
- Remaining eligible for Medicare

[3] On December 18, 2012 the Officer sent an e-mail asking for proof from Mr. Young's insurer that coverage would continue if he became a permanent resident of Canada and moved to live here on a permanent basis. The e-mail read as follows:

Mr. Young has provided information that indicates that a significant portion of the cost of his antiretroviral medications is currently, and may continue to be covered by this private insurance program. I have reviewed the insurance plan information provided. I do note that under the section "Prescription Drug Coverage Option", it indicates that, to maintain coverage, "all members must be medicare-eligible with a permanent and valid Street address In the US". Can you please provide proof from his insurer that Mr. Young will maintain his medical coverage if he becomes a permanent resident of Canada and moves here on a permanent basis?

[4] No proof from the insurer was provided. Instead Mr. Young's counsel wrote a letter, dated January 29, 2013, which said in part "We are unable to produce a letter from Mr. Young's

insurers indicating that the plan will continue to cover Mr. Young because they are unable to provide assurances that Mr. Young will maintain a U.S. street address.”

[5] The evidence about Mr. Young’s employment plans and its link to his insurance coverage was ambiguous. On one hand the Policy describes lifetime coverage. However, the letter from his counsel dated August 15, 2012 stated at page 4 that “Mr. Young actually has employee based coverage which he is able to maintain because he intends to maintain his current employment in Canada as a permanent resident.” However, in Annex A to that letter Mr. Young indicates that he will retire after moving to Canada and this is confirmed on the 3<sup>rd</sup> page of Dr. Tan’s letter of July 20, 2012, where he says of Mr. Young that “he is currently eligible to retire, which he intends to do upon returning to Canada.”

## II. The Decision

[6] The Officer’s negative decision said:

Our letter of December 18<sup>th</sup>, 2012 invited you to provide additional information or documents in response to your medical coverage. I have reviewed all the information provided carefully and I am not satisfied that your plan mitigates the excessive demand on Canadian health and social services. I have concerns that the medical plan provided by Mr. Young’s employer, which also implies that he will maintain employment in the United States, requires him to be a United States resident and maintain a U.S. address. I am not satisfied that by immigrating to Canada you will meet your medical insurer’s residency requirements, in fact they were not able to confirm in writing that Mr. Young will continue to be covered should he move away from the U.S., even if he intends to maintain his current employment as stated in your letter from August 15<sup>th</sup>, 2012. There is no objective evidence on file that confirms that Mr. Young will maintain his current employment and coverage in Canada.

[7] In my view the Decision shows that the Officer had two concerns:

- 1) Did coverage continue if Mr. Young moved to Canada even if he maintained a U.S. address? (the First Concern)
- 2) Did coverage continue if Mr. Young moved to Canada and did not maintain his current employment? (the Second Concern)

### III. The Issues

[8] Issue I: The applicant says that the Decision is unreasonable because the Policy requires a U.S. street address but does not state that actual residence or physical presence in the U.S. is required to maintain coverage.

[9] Issue II: The applicant says that the Officer failed to raise the Second Concern and provide an opportunity to address it. The applicant says this amounts to a failure of natural justice.

### IV. Decision and Conclusions

[10] I have concluded that it was reasonable for the Officer to require proof of continued coverage from the insurer. The fact that the Policy requires the insured to permanently maintain a valid street address in the U.S. does, in my view, raise the question of whether the insured's physical presence in the U.S. is required for continued coverage.

[11] The simple question the insurer could reasonably have answered was: On the assumption that he would maintain a U.S. street address, would Mr. Young maintain his coverage if he became a permanent resident of Canada and moved here to live on a permanent basis?

[12] However, there was no evidence that the insurer was asked this question. In my view, the failure to establish that continued coverage was possible was sufficient, without more, to support the reasonableness of the Decision.

[13] Issue II: The Officer's failure to specifically raise concerns about whether Mr. Young would have insurance coverage, if he did not continue his employment, is not a material issue because the Officer's First Concern was a sufficient basis for the Decision.

V. Certification

[14] No questions were posed for certification.

**ORDER**

**THIS COURT ORDERS** that the application is dismissed.

“Sandra J. Simpson”

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Judge

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

**DOCKET:** IMM-2225-13

**STYLE OF CAUSE:** RICHARD PAUL SMIRAGLIA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 16, 2014

**ORDER AND REASONS:** SIMPSON J.

**DATED:** JUNE 17, 2014

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