

Federal Court



Cour fédérale

Date: 20140815

Docket: IMM-5871-13

Citation: 2014 FC 802

Ottawa, Ontario, August 15, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

JUSTINA MUTINDA MULLU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of the denial of the Applicant's Temporary Resident Visa [TRV] based upon a claim of legitimate expectation. A visa officer [Officer] found that the Applicant was not a *bona fide* visitor and the Officer was not persuaded that the Applicant would leave at the end of her authorized stay.

II. Background

[2] The Applicant, a citizen of Kenya, came to Canada in 2005 and subsequently applied for a permanent resident visa in the “family” class. Her daughter sponsored her.

[3] A different visa officer responsible for the permanent resident application determined that the Applicant was inadmissible to Canada under s 38(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because she was HIV positive, required anti-retroviral medication and therefore might reasonably be expected to cause excessive demand on health services.

[4] The appeal of that decision to the Immigration Appeal Division [IAD] was unsuccessful and leave was denied.

[5] The IAD decision referred to the past visitor’s visa obtained by the Applicant. The most pertinent quote relied on by the Applicant is paragraph 45 thereof:

The applicant can continue to enter Canada by way of visitor’s visas.

[6] On May 13, 2013, the Applicant applied for an extension of her TRV. The extension was refused by the Officer and is the foundation of this judicial review.

III. Analysis

[7] The allegation that the Officer breached procedural fairness by not honouring the Applicant's legitimate expectation attracts a correctness standard of review (*Dhillon v Canada (Minister of Citizenship and Immigration)*, 2009 FC 614, 347 FTR 24).

[8] The legitimate expectation argument is based on the notion that the IAD made a representation to the Applicant that future extensions of TRVs would be granted.

[9] In *Grewal v Canada (Minister of Citizenship and Immigration)*, 2014 FC 454, 240 ACWS (3d) 437, at paragraph 11, I summarized the principles of legitimate expectation:

- the legitimate expectation may arise from some conduct of the decision-maker or some other relevant actor.
- the practice or conduct said to give rise to the reasonable expectation must be clear, unambiguous and unqualified, meaning to the level that had they been made in the context of a private law contract, they would be sufficiently certain to be capable of enforcement.
- a legitimate expectation may arise where a public authority or agency:
 - has made representations about the procedure it will follow in making a particular decision;
 - has consistently adhered to certain procedural practices in the past in making such a decision;
 - has made representations with respect to a substantive result to an individual; or
 - has created administrative rules of procedure or a procedure on which the agency had voluntarily embarked in a particular instance.

- legitimate expectations cannot give rise to substantive rights, only procedural remedies.

[10] The IAD statement cannot be read as a promise that all extensions of TRVs would be granted. Moreover, the IAD would not have authority to make such a commitment. The IAD statement, based on the Applicant's evidence of no past problem with extensions, does not rise to the level of "clear, unambiguous and unqualified" necessary for a reasonable expectation.

[11] Lastly, the Applicant is relying on legitimate expectation in respect of the substantive right to a TRV extension and not, as the principle of legitimate expectation is restricted to, a procedural right.

IV. Conclusion

[12] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5871-13

STYLE OF CAUSE: JUSTINA MUTINDA MULLU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: MAY 13, 2014

JUDGMENT AND REASONS: PHELAN J.

DATED: AUGUST 15, 2014

APPEARANCES:

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