

**Date: 20080227**

**Docket: A-102-07**

**Citation: 2008 FCA 77**

**CORAM: DÉCARY J.A.  
LÉTOURNEAU J.A.  
SHARLOW J.A.**

**BETWEEN:**

**CARLOS AUGUSTO AGUILAR ESPINO  
ANA AGUILAR GONZALEZ  
CARLOS ALEXANDER AGUILAR GONZALEZ  
JESSE ANTONIO AGUILAR GONZALEZ**

**Appellants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

Heard at Winnipeg, Manitoba, on February 27, 2008.

Judgment delivered from the Bench at Winnipeg, Manitoba, on February 27, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

**Date: 20080227**

**Docket: A-102-07**

**Citation: 2008 FCA 77**

**CORAM: DÉCARY J.A.  
LÉTOURNEAU J.A.  
SHARLOW J.A.**

**BETWEEN:**

**CARLOS AUGUSTO AGUILAR ESPINO  
ANA AGUILAR GONZALEZ  
CARLOS ALEXANDER AGUILAR GONZALEZ  
JESSE ANTONIO AGUILAR GONZALEZ**

**Appellants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Winnipeg, Manitoba, on February 27, 2008)**

**SHARLOW J.A.**

[1] This is an appeal of the decision of Justice Dawson (2007 FC 74) dismissing the appellants' application for judicial review of the decision of an immigration officer who rejected their application under section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, for relief on humanitarian and compassionate grounds from the requirement to apply for permanent residence from outside Canada.

[2] The appeal challenges the provisions of a policy manual which, among other things, sets out a two-step process to be followed by immigration officers in assessing applications such as the one in issue in this case. Justice Dawson rejected those challenges, giving detailed and well stated reasons. We agree with her conclusions, substantially for the reasons she gave.

[3] The certified questions are as follows:

1. Is the Minister legally entitled to fragment an application under section 25 of the *Immigration and Refugee Protection Act* into a two-step assessment, the first step being an assessment whether individual humanitarian and compassionate circumstances are sufficient to warrant an exemption from subsections 11(1) and 20(1) of the Act and the second step being a determination whether the person is inadmissible?

Answer: The two-step process set out in the policy manual, which was followed by the immigration officer in this case, is lawful and consistent with the provisions of the *Immigration and Refugee Protection Act*.

2. Is the Minister obliged, when considering an application under section 25 of the Act, to weigh or balance the degree of compelling humanitarian and compassionate circumstances on which the individual relies against the nature and extent of the legal obstacle to admissibility?

Answer: We are not persuaded that this issue arises in this case, because as we read the decision of the immigration officer, consideration was given

to this point. On the facts of this case, the only legal obstacle was the absence of a visa. The existence of that obstacle is common to all applications under section 25.

[4] The appellant also argues that the immigration officer erred in failing to take into account “public policy considerations”. Justice Dawson said, and we agree, that this issue does not arise on the record in this case.

[5] This appeal will be dismissed.

---

“K. Sharlow”

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-102-07

**(APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED JANUARY 25, 2007, DOCKET NO. IMM-7202-05)**

**STYLE OF CAUSE:** CARLOS AUGUSTO AGUILAR  
ESPINO ET AL v. MCI

**PLACE OF HEARING:** Winnipeg, MB

**DATE OF HEARING:** February 27, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** Décary, Létourneau, Sharlow JJ.A.

**DELIVERED FROM THE BENCH BY:** Sharlow, J.A.

**APPEARANCES:**

Mr. David Matas  
Ms. Aliyah Rahaman

FOR THE APPELLANT  
FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

David Matas, Barrister & Solicitor  
Winnipeg, MB

FOR THE APPELLANT

John H. Sims, Q.C.,  
Deputy Attorney General of Canada – Ottawa, ON

FOR THE RESPONDENT