AUG 1 3 1997

Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

97 225 132

IMM-3845-96

BETWEEN:

SOLITA SAEZ HUNT

Applicant

- and -

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON, J.:

These reasons arise out of an application for judicial review of a decision of the Appeal Division of the Immigration and Refugee Board dismissing the Applicant's appeal from a visa officer's refusal of the applications for permanent residence of two of her sons, which applications were sponsored by the Applicant The decision is dated the 24th of June, 1996

The Applicant is a citizen of the Philippines and a permanent resident of Canada She came to Canada in 1992 under the sponsorship of her fiancé At the time she applied to come to Canada, she had three unmarried children living at home with her. All three were named in her application At her interview with a visa officer at the Canadian Embassy in Manila, she advised the visa officer that

at that time, only one of the three children would accompany her to Canada, with the other two to follow later.

The Applicant was advised in writing that the two unmarried children who would not then be accompanying her would have to be examined nonetheless When she arrived in Canada her Record of Landing was endorsed with a notation that two of her unmarried children had submitted applications for landing.

On the basis of the foregoing, the Applicant formed an understanding that her two unmarried children who remained in the Philippines had met all requirements to come to Canada and that all that would remain would be for them to update their medicals when the time came for them to come to Canada.

In January, 1994, the two sons who had remained behind submitted new applications for admission to Canada for permanent residence under the sponsorship of their mother On their application forms, they indicated that they " were suppose to go with our mother, Solita Hunt, and sister Janine Sol to Canada, but due to financial constraints, we were not able to " In the interval, the *Immigration Regulations*, 1978[1] were changed so that the concept "family class" was restricted to children less than 19 years of age and unmarried whereas, at the time the Applicant had applied to come to Canada, "family class" included children, regardless of age so long as they were still unmarried

In its reasons for decision, the Appeal Division wrote.

> Counsel submitted that because certain representations were made by the visa officer to the Appellant during her visa interview on September 5, 1991, that the Appellant was told her two sons would only have to undergo medical exams if she decided to sponsor them at a later date

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[1] S O R./78-172, as amended

> I think the issue here is that the visa officer has a statutory duty to apply the law and cannot exempt anyone from the application of the law However, a case could be made that if a visa officer's actions or statements cause an Applicant to act to their detriment - for example if an Applicant was attending an educational institution full time and was told by the visa officer to leave school, a case might be made that this would be contrary to the principles of natural justice because an Applicant acted on the statements of a visa officer and acted to their detriment - but such is not the case in this appeal

Counsel for the Applicant urged that the Appeal Division erred in determining that the Applicant herein did not act to her detriment on the basis of representations made to her I conclude that, whether or not the Applicant acted to her detriment, the Appeal Division made no error in dismissing the Applicant's appeal for lack of jurisdiction on the basis that the Applicant's two sons who remained in the Philippines did not meet the definition of "dependant" at the time they applied for landing in Canada and are not therefore members of the "family class"

Counsel for the Applicant urges me to conclude that the doctrine of legitimate expectation applies on the facts of this matter and on that basis the Applicant should be entitled to rely on what she considered to be an undertaking that her two unmarried sons would be able to follow her to Canada without difficulty if they continued to meet medical requirements Counsel urges that the Applicant honestly relied on what she considered to be an undertaking, to her detriment

The doctrine of legitimate expectation cannot create a substantive right, only a procedural one,[2] and I am satisfied the right sought here, is relief from a

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[2] See *Lidder* vs *Canada (Minister of Employment and Immigration)* [1992] 2 F C 621 (F C A), *Demirtas* vs *Canada (Minister of Employment and Immigration)* [1993] 1 F C 602 (F C A), *Gonsalves* vs *Canada (Minister of Citizenship and Immigration)*, May 9, 1997, Court File IMM-1992-96 (unreported), F C T D), and *Parmar vs The Minister of Citizenship and Immigration*, June 26, 1997, Court File IMM-1133-96 (unreported) (F C T D)

change in law, that is to say a change to the *Immigration Regulations*, 1978. Such relief would be substantive and not procedural.

In the result, this application for judicial review will be dismissed.

Neither counsel recommended certification of a question. No question will be certified

"Frederick E Gibson"

Judge

CALGARY, Alberta

July 23, 1997

FEDERAL COURT OF CANADA
TRIAL DIVISION

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REASONS FOR ORDER

FEDERAL COURT OF CANADA
TRIAL DIVISION

COURT FILE NO.: IMM-3845-96

STYLE OF CAUSE: SOLITA SAEZ HUNT
v. THE MINISTER OF CITIZENSHIP
& IMMIGRATION

PLACE OF HEARING: CALGARY, Alberta

DATE OF HEARING: July 22, 1997

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE GIBSON

DATED: July 23, 1997

APPEARANCES:

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Mr. B. Blain — for the Respondent

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