

Date: 20080918

Docket: IMM-1218-08

Citation: 2008 FC 1048

Toronto, Ontario, September 18, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DIONYSIA ALEXANDER
NICHOLI ALEXANDER
CRAIG COE**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] At the conclusion of the hearing of this application for judicial review, I indicated that I would be allowing the application and quashing the decision under review. These are my brief reasons for so doing.

[2] This is an application for judicial review of a pre-removal risk assessment (PRRA) officer's decision dated January 30, 2008, refusing to grant the Applicant's application for permanent residence based on humanitarian and compassionate (H&C) grounds.

[3] The principal applicant in this matter, Ms. Dionysia Alexander, is a citizen of St. Lucia. She is the mother and designated representative of the minor applicants, Nicholi Alexander and Craig Coe, both of whom were born in St. Lucia.

[4] Ms. Alexander entered Canada in 1999. In 2001, she married Mr. Marvin Henry, a landed immigrant, with whom she has two children who are not party to this application.

[5] Ms. Alexander's initial request to be permitted, on H&C grounds, to file an inland application for permanent residence, was approved on January 29, 2003. That request was supported by a sponsorship undertaking from her husband.

[6] The next year, after Ms. Alexander left her husband, allegedly on account of domestic abuse, she took steps to inform Citizenship and Immigration Canada that she had severed relations with her would-be sponsor, and that she wished to add her son Craig Coe to her application for permanent residence.

[7] Citizenship and Immigration Canada subsequently advised Ms. Alexander, in a letter dated November 3, 2004, that it had become aware that she and her family were in receipt of welfare, and that permanent residence could not be granted unless she were self-supporting. She was requested to submit proof of employment upon starting work. Also, various documents were requested in relation to the request to add her son Craig Coe to the application.

[8] This request for information was reiterated by letter dated February 3rd 2005, and again by letter dated May 3rd 2005, the latter stating that a decision would be made on the existing file if no new information were received within 30 days.

[9] In response, Parkdale Community Legal Services, on behalf of Ms. Alexander, wrote a letter to Citizenship and Immigration Canada dated June 1, 2005, explaining that Ms. Alexander was unable to work due to family hardship and medical conditions. The letter requested that her permanent residence application be evaluated with reference to section 13.10 of the IP-5 Guidelines, which directs immigration officers to be sensitive to situations of spousal abuse.

[10] Less than a week later, Ms. Alexander was notified by Citizenship and Immigration Canada that that her application for permanent residence had been refused in accordance with subsection 39 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 on grounds of inadmissibility for financial reasons. That decision was subsequently quashed by this Court, with the consent of both parties. In fact, the Order of Justice Hughes which issued April 4, 2006 in this regard was drafted by the Respondent and approved by the Applicant.

[11] Subsequently, Ms. Alexander filed submissions through her then-counsel in support of her H&C application. The H&C grounds invoked by Ms. Alexander included her special circumstances as a victim of domestic violence, the best interests of her children, her degree of establishment in Canada, and the various hardships she would face in St. Lucia.

[12] The H&C exemption from the requirements of section 39 of the Act was denied in the decision under review. In that decision the officer writes:

The 2006 judicial review of the applicant's previously refused H&C decision resulted in a Federal Court Order for the applicant's H&C factors to be weighed against her inadmissibility under Section 39 of the Act. However, in this assessment of the application, I do not find that the applicant's H&C factors meet the test of unusual and undeserved or disproportionate hardship, so as to allow her application for permanent residence to be processed in Canada. As her application for permanent residence will not be processed in Canada, *her inadmissibility under Section 39 of the Act need not be assessed in this application.* (emphasis added)

[13] In spite of the submissions of counsel for the Respondent, I can only conclude that the officer failed to comply with the Order of Justice Hughes. Specifically, the officer failed to comply with paragraph 4 of his Order which reads as follows:

The Applicant's humanitarian and compassionate factors will be weighed against the finding of inadmissibility pursuant to section 39 of the *Immigration and Refugee Protection Act* to determine whether the application for permanent residence may be granted in accordance with section 25 of the *Immigration and Refugee Protection Act*.

[14] Accordingly, the decision of the officer cannot stand and must be remitted back for redetermination by an officer other than the officer, whose decision was set aside by Justice Hughes, and the officer, whose decision I have set aside.

[15] The officer assigned to make the redetermination is specifically directed to comply with the Order of Justice Hughes which issued April 4, 2006.

[16] Neither party proposed any question for certification and there is no question certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed;
2. No question is certified; and
3. The Applicants' application is remitted back for redetermination in accordance with the Order of Justice Hughes by an officer other than the officer whose decision was set aside by Justice Hughes in his Order which was issued on April 4, 2006 and the officer whose decision is set aside by this Order.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1218-08

STYLE OF CAUSE: DIONYSIA ALEXANDER NICHOLI ALEXANDER
CRAIG COE v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 17, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Zinn J.

DATED: September 18, 2008

APPEARANCES:

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