

Federal Court



Cour fédérale

Date: 20120502

Docket: IMM-3764-11

Citation: 2012 FC 507

Ottawa, Ontario, May 2, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

NESTOR DIAZ OVALLE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Nestor Diaz Ovalle, a citizen of Panama, applied for permanent residence in Canada as a skilled worker. Mr. Ovalle is HIV positive.

[2] A visa officer at the Canadian Embassy in Guatemala concluded that Mr. Ovalle was inadmissible to Canada on medical grounds; that is, he might cause excessive demands on Canadian

health services. Mr. Ovalle argues that the officer failed to consider his detailed plan for managing his medical expenses, according to which he would receive medication at no cost from a charitable organization. In any case, he also had health coverage with his prospective Canadian employer that would cover the cost of medication, if necessary.

[3] The officer's decision, according to Mr. Ovalle, was unreasonable. I agree. The officer did not appear to give any consideration to Mr. Ovalle's submissions relating to his medical expenses. Accordingly, I must allow this application for judicial review and order another officer to reconsider Mr. Ovalle's application for permanent residence.

[4] The sole issue is whether the officer's decision was unreasonable.

II. The Officer's Decision

[5] The officer relied on the opinion of a medical doctor who expressed a concern that Mr. Ovalle would need ongoing treatment with anti-retroviral drugs and close monitoring. The officer sought Mr. Ovalle's input on that issue and gave him a chance to submit a plan to offset the demand that he might impose on Canadian services.

[6] In response, Mr. Ovalle provided the following information:

- His doctor stated that he had been given anti-retroviral treatment since 2001 and had responded well. If this treatment continued, he would likely enjoy good health for the next 5 to 10 years.
- A non-profit organization called “Aid for AIDS International” had been providing medication to Mr. Ovalle at no cost since April 2009. It was willing to continue to do so permanently, even if he moved to Canada.
- Mr. Ovalle’s prospective Canadian employer stated that he would be covered under the firm’s health care plan for at least \$1500 per year.
- Mr. Ovalle agreed to assume responsibility for the social services he would require in Canada, and would not look to the federal or provincial government to fund those services.
- The estimated cost of Mr. Ovalle’s medication was about \$1500 per month, or \$18,000 per year.
- The Maple Leaf Medical Clinic in Toronto concluded that Mr. Ovalle should have a life expectancy similar to someone who is HIV negative. He would require 2 or 3 clinic visits a year, but his demands on public health would be minimal.

[7] The officer forwarded this information to a medical officer who noted that Mr. Ovalle's diagnosis and prognosis had not changed. The officer relied on that opinion to conclude that Mr. Ovalle was inadmissible to Canada on medical grounds (*Immigration and Refugee Protection Act*, SC 2001, c 27, s 38(1)(c) – see Annex).

III. Was the Officer's Decision Unreasonable?

[8] The Minister argues that the officer's decision was reasonable, given that it was based on the evidence before him. That evidence did not displace the officer's concern about the magnitude of Canadian health resources that Mr. Ovalle would require.

[9] I disagree. While the officer had detailed information before him about the medication Mr. Ovalle would require, its cost, and his ability to meet that cost, the officer merely reiterated the medical officer's opinion that Mr. Ovalle's diagnosis and prognosis had not changed. But neither the prognosis nor the diagnosis was the issue. There was no dispute about that. The issue was whether Mr. Ovalle would impose an excessive demand on Canadian resources. The officer did not address that issue in his reasons. It is not possible, therefore, to understand the basis for his conclusion that Mr. Ovalle's plan was not satisfactory.

[10] Accordingly, the officer's decision was unreasonable.

IV. Conclusion and Disposition

[11] The officer did not explain why, given his detailed plan to cover the cost of his medication, Mr. Ovalle remained medically inadmissible to Canada. Therefore, his conclusion was unreasonable. I must, therefore, allow this application for judicial review and order another officer to reconsider Mr. Ovalle's application. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back for reconsideration by another officer.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Immigration and Refugee Protection Act, SC 2001, c 27, s 38(1)(c)

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Health grounds

38. (1) A foreign national is inadmissible on health grounds if their health condition

...

(c) might reasonably be expected to cause excessive demand on health or social services.

Motifs sanitaires

38. (1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement un danger pour la santé ou la sécurité publiques ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3764-11

STYLE OF CAUSE: NESTOR DIAZ OVALLE
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 12, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: May 2, 2012

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