



Date: 20121121

Docket: IMM-1876-12

Citation: 2012 FC 1342

Ottawa, Ontario, November 21, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MARIBEL CABUCANA DACUMA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Maribel Cabucana Dacuma, came to Canada from the Philippines in 2002 as a live-in caregiver. Prior to her arrival she started to live with Carlo Pangilinan Canlas whom she married on April 12, 2007. Ms. Dacuma has been a permanent resident of Canada since June 2005. In November 2008, Ms. Dacuma submitted a sponsorship application for her husband.

[2] Delay in receiving certain information from Ms. Dacuma regarding her application resulted in the need for the medical examination Mr. Canlas underwent in October 2008 to be

updated. On June 16, 2010, after Mr. Canlas was interviewed, medical instructions were mailed to him outlining this requirement.

[3] Unfortunately for Ms. Dacuma, Mr. Canlas' subsequent inaction shows that he was not interested in submitting to another medical examination which was required in order that her sponsorship application be assessed.

[4] On June 28, 2010, an officer phoned Mr. Canlas to follow up on the medical instructions. Mr. Canlas acknowledged receiving the June 16, 2010, letter and said that he would report for a medical examination the next day, but he did not.

[5] On August 12, 2010, the officer phoned Mr. Canlas to inquire about his compliance with the medical instructions. Mr. Canlas said that he was scheduled to be examined on August 16, 2010, and that he did not attend an August 2, 2010, appointment because he was too busy.

[6] On October 16, 2010, one of many inquiries into the applicant's sponsorship application was made by the constituency office of Ms. Dacuma's federal Member of Parliament, presumably at Ms. Dacuma's behest. The message from the constituency office stated that Mr. Canlas had attended his medical examination on August 16, 2010, and requested a status update on the file. After searching and concluding that no medical examination had been received, an officer followed up with Mr. Canlas' designated medical examiner to get to the bottom of the matter.

[7] On November 25, 2010, St. Luke's Medical Center replied that it had no record of any examination of Mr. Canlas on August 16, 2010, but did confirm his previous October 2008 examination and a subsequent chest and pulmonary evaluation in April 2009.

[8] On December 16, 2010, an officer phoned Mr. Canlas' landline, which was no longer active, and then his cell phone three times. There was no answer. The following exchange between the Board and Ms. Dacuma sheds light on why Mr. Canlas did not answer his phone:

Counsel for Respondent [...] They could never get a hold him, why? He never answered his phone.

Mrs. Dacuma Yeah, because it shows there.

Counsel for Respondent I'm sorry?

Mrs. Dacuma Because when someone calls, he knows who is in the phone.

Counsel for Respondent So, he didn't want to answer the visa officer's call. Okay.

[9] On December 22, 2010, the officer made one of many replies to the applicant's constituency office, explaining that no record of any examination had been received and that the designated medical examiner could not confirm having examined Mr. Canlas in August 2010.

[10] On January 13, 2011, a final notice was sent to Mr. Canlas, giving him 45 days to comply with the medical instructions. As of March 8, 2011, no response had been received from Mr. Canlas. Notwithstanding, the officer did not immediately deny Mr. Canlas' application, as one might reasonably have expected him or her to do.

[11] At around the same time, it appears that Ms. Dacuma attempted to take matters into her own hands. She travelled to Manila to physically accompany, one might say force, her husband to attend a medical examination. Unfortunately, when they attended together on March 25, 2011, the examiner would not accept a downloaded version of a certain form. Ms. Dacuma, highly motivated and intent on seeing her husband medically examined, picked up an original copy of this form from the Canadian Embassy in Manila on March 29, 2011. Regrettably for her, it appears that she had to return to Canada before her husband could attend the medical examination. She left it for him to do alone and again he failed to attend.

[12] On May 17, 2011, an officer decided to verify if Mr. Canlas had actually followed through with the medical instructions. The following entry dated June 10, 2011, is from the CAIPS notes:

Called and spoke with sponsor on 26May11. Per notes abv, tried contacting subj thru numbers on file to ffup on meds of applicant. Was not able to speak with subj, called spr instead. Spoke w/ spr thru numbers on file. Asked spr about subj's meds. Spr seemed hesitant to answer. Asked spr again. Spr said that subj has not complied with meds yet. Asked spr if subj has plans to comply with meds. Spr requested that we just talk to subj thru [phone number]. Tried contacting subj, subj is not picking up and we will just talk to her instead. Ask spr again if subj plans on complying with the meds. Spr asked if we could send subj a letter advising such. Informed spr that we already sent a letter and that this is the third time that we will be following up on subj's meds. Asked spr again if subj plans on complying with meds. Spr said that subj felt that nothing was happening with his application and that subk seemed to be less interested. Spr added that subj found it tedious to do the re-meds. Asked spr if subj seems interested to comply with the meds. Spr said that subj will do the meds he's just too busy with work that is why he cant comply with the meds. Advised spr that the medical examination will only take one day and medical instructions were given to him in March. Spr reiterated that subj is busy with work. Advised spr that we will be noting all the information. Spr understood.

[13] The officer decided on June 10, 2011, to close Mr. Canlas' file and on July 19, 2011, sent the refusal letter. Ms. Dacuma appealed the officer's decision to the Immigration Division of the Immigration and Refugee Board.

[14] The Board held a hearing on February 1, 2012, issuing written reasons the following day. Ms. Dacuma was not represented. Ms. Dacuma was seeking humanitarian and compassionate ("H&C") relief under section 67(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Board first noted that there were no children whose interests had to be considered and it then summarized the events, as set out above, that led to the officer's refusal. The Board noted that the failure to provide the medical examination information had been Mr. Canlas' fault completely. It found that little evidence of hardship had been presented, and dismissed the appeal.

[15] Ms. Dacuma submits that the Board "failed to observe the principle of natural justice, procedural fairness or other procedure that it was required by law to observe" in three respects: (1) It did not take into account that Mr. Canlas was in the midst of completing the retake medical exam; (2) it failed to consider that the initial delay, which caused the currency of the first medical examination to lapse, was caused by the officer; and (3) the officer was inflexible in providing more time for Mr. Canlas to "be able" to complete his examination. None of these submissions have merit.

[16] The submission that the Board did not take into account that Mr. Canlas was “in the midst” of completing the retake medical exam relies on the correctness of a date noted by the Board – August 16, 2011 – despite the fact that Ms. Dacuma must clearly understand that the date was written in error. The date referred to in the decision is to the thwarted second examination which took place on March 25, 2011; a date before, not after, the sponsorship application was refused. In any case, this wrongly-copied date was not relied upon by the Board in its reasons. More importantly, nothing in the record shows that Mr. Canlas was “in the midst” of completing a second medical examination. On the contrary, the evidence was quite clear that Mr. Canlas could not be bothered to attend another medical examination. The only evidence the Board had was given by Ms. Dacuma at the hearing that her husband “now wants to do his medical.”

[17] It is simply not true that the initial delay and the lapsing of the medical information were caused by the officer. The record shows that Ms. Dacuma did not reply with the requested information as to the solemnization of the marriage for some time and it was this delay which resulted in the lapsing of the previous medical examination. Ms. Dacuma provided this information only in March 2010 after the officer had requested it initially on February 9, 2009, and followed up with subsequent reminders in June 2009, November 2009, and January 2010.

[18] It is also simply untrue that the officer was inflexible in providing more time for Mr. Canlas to complete his medical examination. The Board noted at the hearing that it had “never seen a more compassionate visa officer.” Based on my review of the file, the number of times the officer attempted to contact Mr. Canlas, and the numerous extensions of time provided to

obtain the required medical information, I agree with the characterization made by respondent's counsel at the hearing that the officer "bent over backwards" for these applicants.

[19] Also without merit is Ms. Dacuma's submission that the Board made an unreasonable finding that there were insufficient H&C factors to grant her appeal. The only factor in her favour was family reunification. However, her husband, in refusing to undergo the examination despite the indulgences shown him, appears less anxious to be reunited with his wife in Canada than she does.

[20] The Board's conclusion that it "refuses to help the appellant and thereby the applicant when the applicant will not help himself and do that which is required to acquire permanent residence in Canada [emphasis added]" is unassailable. Unfortunately for Ms. Dacuma, her situation is directly attributable to nothing other than her husband's refusal to take the medical examination. Her application must be dismissed.

[21] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1876-12

STYLE OF CAUSE: MARIBEL CABUCANA DACUMA v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 1, 2012

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

DATED: November 21, 2012

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