

Federal Court



Cour fédérale

Date: 20121207

Docket: IMM-8457-11

Citation: 2012 FC 1446

Ottawa, Ontario, December 7, 2012

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

DMYTRO AFANASYEV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

SUPPLEMENTARY REASONS FOR JUDGMENT AND JUDGMENT

[1] In my decision of October 31, 2012, I invited counsel for the Applicant to propose a certified question. He submitted the following:

Do locally engaged Immigration Officers meet the requirement of being a specialized administrative tribunal as contemplated by the Supreme Court of Canada and if not must a reviewing Court apply a heightened level of scrutiny due to this lack of specialized expertise?

[2] Counsel for the Respondent opposes this request saying that there is no basis in law to impose the correctness standard of review on an administrative decision of mixed fact and law. He

also makes the point that the issue raised would not be determinative because the decision was both correct and reasonable. I agree with this position. The standard of review that applies to this type of decision is not an issue of legal controversy. Numerous authorities from the Supreme Court of Canada on down have consistently held that administrative decision-makers, whatever their level of expertise, are entitled to deference on judicial review with respect to issues of fact and mixed fact and law. Deference is extended by applying the reasonableness standard of review. My decision also endorsed the Officer's finding in terms of its legal component. I agree with the Respondent that the proposed question, however answered, would not change the outcome and is not, therefore, determinative.

[3] In the result, no question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that no question will be certified in connection with the decision rendered on October 31, 2012.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8457-11

STYLE OF CAUSE: AFANASYEV v MCI

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: October 1, 2012

REASONS FOR JUDGMENT: BARNES J.

DATED: December 7, 2012

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