



Date: 20130912

Docket: IMM-11016-12

Citation: 2013 FC 941

Ottawa, Ontario, September 12, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**VICTOR MANUEL DE MELO SILVA,
SANDRA DE JESUS RODRIGUES CABRAL**

Applicants

and

MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] To arrive as a tourist in Canada and to assert that one is here to stay, and, even without status, to establish oneself is not a ticket to regularization of status. The present case brings to light applicants who seek an exemption from in-land criteria on humanitarian and compassionate [H&C] considerations for reasons, based on circumstances, incompatible with such exemption.

[2] The Applicants have circumvented Canada's immigration laws. The female Applicant has been in Canada since 1995; she only had status for one year, from March 2007 until March 2008.

The male Applicant has been in Canada since April 2002. He too has had status for only one of three years, also, March 2007 to March 2008.

[3] The Applicants have worked in Canada without status since 1995 and 2002 respectively with only one year in which their status was legal. (In total, the male Applicant has been in Canada for ten years, the female Applicant for seventeen years; all of which were without status except for one year.)

[4] The Applicants now have two young Canadian born children who have been fully exposed to and integrated in both the English and Portuguese languages; the family has a culturally friend-established and family framework that morally supports it. The family now owns a house, has made extensive renovations, adding value to their property. Numerous trips to Portugal have kept ties with family members in Portugal.

[5] The family does provide for itself financially; the children are well adapted, one child in school and both children in a church setting; nevertheless, arriving in a country (in such circumstances both in regard to their country of origin, Portugal and to Canada), and establishing a family, home and employment, without status cannot become a substitute for the regularization of status through legislatively approved lines of procedure.

[6] The H&C grounds constitute a discretionary remedy, not suitable for the simple disregard of legislation; thus, the present case, is one, that is without compliance to requirements as set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The jurisprudence brought forward

in *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125, [2002] 4 FC 358, demonstrates these principles even under the old legislation.

[7] When no unusual hardship emerges from the total picture of a family within its setting: background, employment, settlement and upbringing of children, no exemption to the legislation is warranted.

[8] The number of years spent in Canada, in and of themselves, under illegal circumstances, in respect of the immigration law is not a reason to reward such behaviour.

[9] The Applicants have not shown unusual and undeserved or disproportionate hardship to justify exemption (*Ahmad v Canada (Minister of Citizenship and Immigration)*, 2008 FC 646 at para 49).

[10] The Officer is aware that living in Canada offers certain advantages but is not obliged to demonstrate with reasons, whether the best interests of the children would favour remaining in Canada, if evidence brought forward by the Applicants, themselves, is clearly self-evident, and, is, but, based on an ultimate standard of living advantages, stemming simply from establishment in Canada, rather than any demonstrated unusual and undeserved or disproportionate hardship elsewhere; the file demonstrates that no unusual hardship would ensue upon removal. The children are Canadian citizens; and, are and will be entitled to live in Canada (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, 2010 1 FCR 360).

[11] The integrity of the immigration system needs nothing less than an acknowledgment, recognition and understanding that the immigration laws of Canada cannot be flaunted in a situation where applicants by their continued illegal presence simply signal: I came, I established myself and I am staying. Such disregard of the immigration system would make it bereft of integrity, that cannot be accepted, and, is, thus, unacceptable, and, therefore, inappropriate for H&C considerations.

[12] The decision of the Immigration Officer with its reasoning does not warrant any conclusion other than that it is reasonable on the very face of the record.

[13] For all of the above reasons, the Applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicants' application for judicial review be dismissed with no question of general importance for certification.

Obiter

It would appear that, due to the background of this family, immigration to Canada would be a viable and favoured option for the Applicants for which to apply once in Portugal, that, through established immigration procedures would show a regard for the integrity of the immigration system of Canada and its decision-making process through established legislation.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: VICTOR MANUEL DE MELO SILVA, SANDRA DE
JESUS RODRIGUES CABRAL v MINISTER OF
CITIZENSHIP & IMMIGRATION

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