OTTAWA, Ontario, May 20, 2009

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

KATTIA CASTRO VILLALTA

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1]   It is no secret that spouses, from time to time, have disagreements of varying duration and

intensity. Spouses in the midst of a sponsorship application under Part 7 (Division 2) of the

Immigration and Refugee Protection Regulations SOR/2002-227 are certainly not immune from the

travails facing all married couples.

[2]   The applicant and her sponsoring spouse were asked to report for an interview with an

Immigration Officer. This interview was scheduled for July 14, 2008. As part of the interview, the

applicant was asked to bring a number of tax documents.

[3]   In the days leading up to the interview, the applicant and her sponsoring spouse appear to have experienced some discord in their relationship. This was due, at least in part, to disagreements over the readiness of certain documents that were to be presented at the interview. The marital difficulties appear to have resulted in the sponsoring spouse "storming" out of the marital home.

[4]   The applicant and her spouse appear to have resolved their disagreement by agreeing to seek a postponement of the July 14th, 2008 interview. The applicant attended the interview accompanied by a legal assistant from the law firm that was representing her at the time.

[5]   According to the affidavits of the applicant and the legal assistant accompanying her, the applicant attempted to have the interview postponed. However, the officer, suspicious that the sponsoring spouse was not present, made inquiries and concluded that the sponsorship had "dissolved".

[6]   After making these inquiries, the officer, who was aware of the existence of a warrant against the applicant (which had been stayed pending her sponsorship application), notified the Canadian Border Services Agency (CBSA) of his intention to deny the sponsorship so that CBSA could execute the warrant. A refusal of the sponsorship application was issued almost immediately thereafter.

[7]   On the facts of this case, I am of the view that the applicant was denied procedural fairness. It is the <u>uncontradicted evidence of the applicant and the legal assistant who accompanied her</u> that a postponement of the interview was requested. Rather than focus on the legitimacy of that request, the officer seems to have zeroed in on the marital discord that the applicant and her spouse were experiencing.

[8]   Nothing in the record suggests that officer gave any consideration to the request for a postponement. Reasonable requests for a postponement should not, generally speaking, be refused (see *Bhajan v. Canada* (1996), 34 Imm.L.R. (2d) 189) and, if refused, clear reasons for such refusal should be given.

[9]   In sum, the officer did not afford the applicant procedural fairness. A reasonable postponement to allow the applicant and her sponsor to prepare the requested documents and to settle their difficulties would have been appropriate. As such, the decision of the officer dated July 14, 2008 shall be set aside and the applicant and her sponsoring spouse shall be given a new interview date before a different officer.

[10]   No question of general importance was submitted for certification.

<u>JUDGMENT</u>

THIS COURT ORDERS AND ADJUDGES that this judicial review application is

granted and the matter is hereby returned for a new hearing before a different officer.

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"Max M. Teitelbaum"
Deputy Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3207-08

STYLE OF CAUSE: KATTIA CASTRO VILLALTA v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 12, 2009

REASONS FOR JUDGMENT: TEITELBAUM D.J.

DATED: May 20, 2009

APPEARANCES:

Mr. Peter G. Ivanyi   FOR THE APPLICANT

Mr. Gordon Lee   FOR THE RESPONDENT

SOLICITORS OF RECORD:

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