Date: 20090416

Docket: IMM-2692-08

Citation: 2009 FC 377

Ottawa, Ontario, this 16th day of April 2009

Before: The Honourable Mr. Justice Pinard

BETWEEN:

STEPAN LYLAK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), of an immigration officer's decision, dated June 3, 2008, regarding the applicant's humanitarian and compassionate ("H&C") application.

[2] The applicant submits that the immigration officer committed a reviewable error in the assessment of his inland H&C application.

[3] Immigration officers exercising the powers conferred on them by section 25 of the Act are owed considerable deference (*Baker v. Canada (M.C.I.)*, [1999] 2 S.C.R. 817, at paragraph 62). Their decisions should not be disturbed unless they are unreasonable (*Rai v. Canada (M.C.I.)*, [2007] F.C.J. No. 12 (T.D.) (QL), 2007 FC 12, 305 F.T.R. 135, 154 A.C.W.S. (3d) 932, at paragraphs 32 and 33).

[4] Before me, the applicant leveraged four arguments in support of his position. First, the applicant argued that the officer failed to consider the psychological hardship of leaving behind his position in the Ukrainian Catholic Church, which had become a "core part of his religious and personal identity".

[5] Second, the applicant claimed the officer erred in her assessment of his relationship with his aunt, by failing to take due account of the affidavits sworn by her attesting to its details.

[6] Third, the applicant contended that there was a denial of natural justice in so far as the officer did not express any problem with an "illegible" medical note prior to making a decision, and thus did not provide an opportunity for the applicant to respond with more satisfactory evidence.

[7] Finally, the applicant claimed that the officer ignored the financial hardship that he would suffer as a 55-year-old man who had lived outside his country of origin for ten years. Moreover, the officer is said to have unfairly and improperly discounted the applicant's financial establishment in Canada, simply because there was a removal order in effect during the period of his employment.

[8] After reviewing the record, I am concerned that the immigration officer failed to treat adequately the question of the applicant's establishment, in particular his apparently deep involvement with his community. The officer recognizes the applicant has strong ties to the Ukrainian community in Toronto, and particularly to the Ukrainian Catholic community, writing at page 3 of her decision:

> The applicant is a deacon and serves the community through his church, Holy Protection of the Mother of God Ukrainian Catholic Church. I note letters from the church and its parishioners expressing their support for the applicant and their concern about the viability of their church if the applicant were to leave Canada.

[9] These statements are not followed by analysis, but rather by speculation that the applicant is now "eligible to apply for permanent residence from outside Canada through the economic class". While this may or may not be true, it does not address the issue of his establishment in Canada, and the hardship that might consequently be engendered were he obliged to apply from abroad. I note, for instance, a letter in the record from Nina Chyz, Administrator for the Assumption of the Blessed Virgin Mary Church, dated September 4, 2003, wherein she writes:

> To the parish and the community the work performed by STEPAN LYLAK is indispensable. STEPAN has performed all his duties with great professionalism, displaying good judgment, dependability and a willingness to work with others.
>
> The Church of the Assumption of the Blessed Virgin Mary is in need of a deacon and cantor who is familiar with the Byzantine rites, is fluent in the written and spoken Ukrainian language and has extensive knowledge of Church music.
>
> Since STEPAN LYLAK meets all the requirements of our Church it is recommended that he be allowed to remain and continue to perform his indispensable duties at our Parish. His services are urgently required.

[10] Similarly, a letter from Stephen Chmilar of the Ukrainian Catholic Eparchy of Toronto discloses:

> Our Church is suffering from a decline in attendance as a result of aging population and lack of spiritual guidance given to parishioners in small communities. Deacon Stepan has been an intricial [*sic*] member of this parish and has contributed over the past several years to help this parish grow. In addition, Deacon Stepan volunteers his time assisting elderly members of this parish community. His removal from Canada would seriously affect the viability of our parish in Guelph.

[11] These letters suggest a degree of integration that warranted treatment in the immigration officer's reasons. Failure to duly consider this aspect of his establishment, in my view, amounts to an error on the part of the officer.

[12] I also find that the officer's statements that there was before her insufficient evidence regarding the relationship between the applicant and his aunt in no clear way take account of affidavits submitted by the aunt, Irena Jarish. In an affidavit sworn by her October 21, 2004, Mrs. Jarish writes that she is "a widow; my husband passed away in 1990. I do not have any children and I have no other family members in Canada". Later, at paragraph 10, she adds:

> Today, Stepan is a son to me. He is the only person I can rely on in Canada. He takes me to the Doctor when I need assistance. I have skin problems that cause rashes and itches, and he massages and treats them. He washes my hair, he irons my clothes, he cooks for me, and generally helps me with anything which I require.

[13] At paragraph 13, she continues: “On Monday, October 24, 2004 I have to go for minor surgery and Stepan will be there with me. I have no one else to take me there, and to look after me during that whole procedure”.

[14] Similar statements are found in her affidavit of May 30, 2007, where she also explains that she suffers from “serious arthritis” that hinders her from shopping for herself, walking or standing for any length of time. She also writes that “[w]ithout Stepan, I will be forced to move into a Retirement home, as I will not be able to care for myself”. Reading these submissions, it is not easy to determine on what basis the officer concluded, without further explanation, that there was “insufficient” evidence of their relationship, her condition, and her dependence.

[15] Overall, I find that the officer’s reasons provide an inadequate foundation for the findings they support. This is not a comment on the merits of Mr. Lylak’s application, but rather on an officer’s duty to address material evidence in the record in such a way that the decision rendered has the hallmarks of reasonableness – namely, “justification, transparency and intelligibility” (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 47).

[16] For all the above reasons, the application for judicial review is granted and the matter is sent back for re-determination by a different immigration officer, with a view to an expedient result given that the initial application was made more than five years ago.

JUDGMENT

The application for judicial review is granted. The immigration officer's negative decision, dated June 3, 2008, regarding the applicant's humanitarian and compassionate application is dismissed and the matter is sent back for re-determination by a different immigration officer, with a view to an expedient result given that the initial application was made more than five years ago.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2692-08
STYLE OF CAUSE:	STEPAN LYLAK v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 9, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	April 16, 2009

APPEARANCES:

Mr. Joseph R. Young	FOR THE APPLICANT
Mr. Neal Samson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Joseph R. Young Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT