Federal Court of Appeal | Cour d'appel fédérale

Date: 20131104

Docket: A-1-13

Citation: 2013 FCA 257

CORAM: **BLAIS C.J.**
SHARLOW J.A.
STRATAS J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

JAMES JOSEPH LAWRENCE

Respondent

Heard at Toronto, Ontario, on November 4, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on November 4, 2013.

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on November 4, 2013).

SHARLOW J.A.

[1] The respondent James Joseph Lawrence applied for permanent residence in Canada pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, but his application was denied by an immigration officer. Mr. Lawrence applied for judicial review of the officer's decision. That application was heard by Justice Mosley, who allowed the application and set aside the decision (2012 FC 1523). The Minister of Citizenship and Immigration now appeals to this Court.

[2] The facts are undisputed. They are summarized in paragraphs 2 to 5 of Justice Mosley's reasons, which are reproduced here:

> [2] When the applicant and his family underwent their mandatory medical exams, the physician noted that the applicant's son had developmental delay and moderate learning difficulties. When this was noticed in the applicant's file, the Medical Assessment Unit at the Canadian High Commission in London requested further details. These were provided, and on April 26, 2010 Dr. Sylvain Bertrand, the Medical Officer in London, recorded his opinion that the boy, aged 15 at the time, was medically inadmissible.
>
> [3] The average cost threshold for social services for an average Canadian child at that time was $5,143 per year. Dr. Bertrand assessed that the boy would require services amounting to between $98,500 and $126,500 over five years rather than the $25,715 average cost over five years. This was communicated to the applicant in a letter from the Visa Officer in London, Ms. Valerie Feldman, dated April 29, 2010.
>
> [4] In response, the applicant provided a mitigation plan including personal financial information, letters of support promising financial or equivalent assistance, and evidence of contact with two Toronto area private schools. He did not dispute the medical diagnosis or the assessed cost of the required services.
>
> [5] The Visa Officer did not send the applicant's plan to the Medical Officer for evaluation but assessed it herself. The Officer stated in her reasons that "The information in the submission is not medical (they do not contest the medical diagnosis) therefore this submission does not need to be reviewed by the medical officer." On September 14, 2011, the application was refused.

[3] Justice Mosley concluded that the officer was obliged as a matter of law to refer Mr. Lawrence's response to the fairness letter to the medical officer for consideration. That conclusion was based on the principle that where an applicant for permanent residence has a health condition, the medical officer must assess the likely demands of that condition on Canada's social services, taking into account both medical and non-medical factors: *Hilewitz v. Canada (Minister of Citizenship and Immigration)*; *De Jong v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, [2005] 2 SCR 706.

[4] We agree with Justice Mosley that, on the correct interpretation of the statutory scheme, it is the medical officer alone who must determine the medical condition of the applicant, the financial burden of that medical condition on publicly funded social services and, most importantly for this case, whether any mitigation plan submitted by the applicant will provide appropriate treatment for the medical condition while reducing the burden on publicly funded social services.

[5] The medical officer cannot be relieved of the responsibility to assess a mitigation plan. Therefore, a mitigation plan submitted by an applicant raising matters that may fall within the mandate of the medical officer (as explained in *Hilewitz*) must be referred to the medical officer for assessment and decision, whether or not the applicant disputes the medical officer's initial medical opinions or cost estimates.

[6] For that reason, we will dismiss the appeal. Justice Mosley certified the following question under subsection 74(d) of the Act as a serious question of general importance:

> When a principal applicant in a response to a fairness letter does not dispute the medical diagnosis or medical prognosis or the cost estimates to provide social services is there an obligation on the immigration officer to refer the response to the medical officer for consideration and decision?

We will answer the certified question as follows:

> When a principal applicant in response to a fairness letter submits a proposal to mitigate the costs of publicly funded social services, and the proposal raises matters that may fall within the mandate of the medical officer (as explained in *Hilewitz v. Canada (Minister of Citizenship and Immigration)*; *De Jong v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, [2005] 2 SCR 706), that proposal must be submitted to the medical officer for consideration even if the applicant does not dispute any of the medical officer's initial conclusions.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-1-13

(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE MOSLEY OF THE FEDERAL COURT OF CANADA DATED DECEMBER 20, 2012, DOCKET NO. IMM-8494-11)

STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. JAMES JOSEPH LAWRENCE
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 4, 2013
REASONS FOR JUDGMENT OF THE COURT BY:	BLAIS C.J. SHARLOW J.A. STRATAS J.A.
DELIVERED FROM THE BENCH BY:	SHARLOW J.A.

APPEARANCES:

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