

Federal Court



Cour fédérale

Date: 20150130

Docket: IMM-4184-14

Citation: 2015 FC 123

Vancouver, British Columbia, January 30, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MARIA MARGERIE TUTOR LACHICA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Reasons given orally on January 29, 2015)

[1] The Applicant, Maria Margerie Tutor Lachica, seeks judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision of a visa officer [the Officer] at the Canadian Embassy in the Philippines. The decision is dated March 27, 2014, and it refused the Applicant's application for a temporary resident visa [the Decision].

I. Background

[2] The Applicant is a veterinarian in the Philippines. She has operated a veterinary clinic and pet supply service in Manila since 2004. Evidence of her current business permits was before the Officer. There is no issue that hers is a *bona fide* business.

[3] The Applicant's sister and her sister's husband are Canadian permanent residents who live in Saskatoon in their own home.

[4] The Applicant's sister has recently been very ill. Her husband describes her situation as follows in his affidavit of February 25, 2014 [the Affidavit]:

My wife is going through a particularly difficult time, she had her first surgery (Craniotomy) May 8, 2013, had a Caesarean Section last August 16, 2013 and still recovering from her Embolization Surgery last November 20, 2013 whilst taking care of our 5 month old son. He was born on August 16, 2013.

[5] There is no issue that these medical procedures were performed and that, following two serious operations, the Applicant's sister is looking after a toddler. In his Affidavit, the sister's husband also describes the purpose of the Applicant's visit in the following terms:

My wife and sister in law are very close, we decided to invite her to come and visit us especially my wife still recovering from her last surgery and spend more time with her sister. I believe that it would help my wife for her fast recovery if she sees her sister for a short while.

II. The Notes and the Decision

[6] The Decision states that the concern about why the Applicant will not return to the Philippines is her family ties in Canada and in her country of residence. However, the Global Case Management System (GCMS) notes [the Notes] do not mention family ties. Instead, they read as follows:

Assessed on papers. PA previously refused TRV x 3 – declared. PA is seeking to visit her sister in Canada – PA’s brother-in-law has provided an affidavit in which he states his wife is close with PA and they wish for her to come stay while she is still recovering from surgery Nov20/13. PA still have not submitted a letter from doctors confirming that she is in need of care. PA has provided documentation in support of her business, however, not substantial enough to ensure her return. Based on all documentation before me, I am not satisfied that PA meets the requirements of R179 and would return to Canada after her authorized period of stay. Refused.

(My emphasis)

III. Discussion

[7] I have the following observations on the Notes:

- There is no evidence in the Notes that the Officer asked the Applicant for a supplementary letter from a doctor indicating that her sister is in need of “care”;
- It appears that the Officer is frustrated by the absence of the letter. This frustration appears to colour the Officer’s approach to the visa request.

- The Officer appears to have misunderstood the purpose of the visit. There is no evidence that the Applicant was going to provide her sister with care in the medical sense. Rather, the visit was intended to lift her sister's spirits and provide help with the baby.
- The Officer gives no reason why the documents showing that the Applicant has an established business in Manila are not substantial enough to suggest that she will return to the Philippines.
- Finally, the Officer speaks of the Applicant's return to Canada rather than the Philippines. This is not a typo. It is an error which suggests that proper attention was not given to this application. Indeed, the references in the Notes to care and a letter from a doctor suggest that the Officer may have confused this application with one from another file.

[8] It is also of note that the Decision makes no reference to any of the topics discussed in the Notes. Rather, as mentioned above, it gives the Applicant's family ties in Canada and in the Philippines as the reason for concluding that the Applicant will not leave Canada when her visa expires. However, the visa application shows that the Applicant has a sister in Manila. This is not mentioned in the Notes.

IV. Conclusion

[9] For all these reasons, I have concluded that the Decision is unreasonable. The application for judicial review will be allowed and the Applicant's current application for a visa is to be

reconsidered by a different visa officer on an expedited basis. The Applicant may submit additional material in support of her application if so advised.

V. Certified Question

[10] No question was suggested for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The Applicant's current application for a temporary resident visa is to be reconsidered by a different visa officer on an expedited basis. The Applicant may submit additional material if so advised.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4184-14

STYLE OF CAUSE: MARIA MARGERIE TUTOR LACHICA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS: SIMPSON J.

DATED: JANUARY 30, 2015

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