

Federal Court



Cour fédérale

**Date: 20150916**

**Docket: IMM-3174-14**

**Citation: 2015 FC 1079**

**Ottawa, September 16, 2015**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**MOHAMMAD SHAKIBA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Respondent has moved in writing for an Order allowing the underlying application for judicial review and remitting the matter for redetermination on the merits. The Respondent now concedes that the decision-maker “committed a reviewable error” such that the matter should be redetermined (see paras 6 and 7 of the Respondent’s Memorandum).

[2] It is of some significance that the disposition now proposed by the Respondent is entirely consistent with the Applicant's claim to relief set out in his Notice of Application which was for "an order quashing the decision" and "remitting the matter back for a redetermination by a different Officer". This was also the relief requested in the Applicant's Memorandum of Fact and Law (see para 48).

[3] The Applicant now opposes the granting of the relief he initially sought and argues for a directed judgment based on the lengthy delay in the processing of his visa application.

[4] I have considerable sympathy for the Applicant's concern about the Respondent's delays in processing his application. There is nothing in the record before me that would justify a delay as long as this one, particularly when one considers the thinness of the decision-maker's analysis of the evidence in the record.

[5] Nevertheless, this is not a situation where the Court would ever consider directing the Respondent to issue a visa. There are evidentiary issues that need to be assessed and determined. There is also nothing in the record sufficient to overcome the admonition of the Federal Court of Appeal in *Dass v Canada*, [1996] 2 FCR 410 at para 24, 1996 CanLII 4029 (FCA), that an applicant for a visa is entitled to an order that a decision be taken but not a specific decision.

[6] In this situation, there is no basis for the Court to determine that the Applicant meets all of the requirements for admissibility to Canada. That is a matter solely for determination by the

Respondent based on the application of current evidence to the present requirements for the admissibility.

[7] The Respondent's motion is accordingly allowed. The decision under review is quashed with the matter to be redetermined on the merits by a different decision-maker. I would urge the Respondent to prioritize the redetermination of the Applicant's application. There is no obvious reason why, once the application is perfected, the matter cannot be resolved within the following three months.

[8] In the absence of any evidence of oppression or bad faith conduct, this is not a case where an award of costs would be justified, particularly in the face of the Respondent's success on this motion.

[9] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the motion is allowed.

**THIS COURT'S FURTHER JUDGMENT is that** the decision herein under review is set aside with the matter to be redetermined on the merits by a different decision-maker.

"R.L. Barnes"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3174-14

**STYLE OF CAUSE:** MOHAMMAD SHAKIBA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO  
RULE 369 OF THE *FEDERAL COURTS RULES***

**JUDGMENT AND REASONS:** BARNES J.

**DATED:** SEPTEMBER 16, 2015

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FOR THE RESPONDENT

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