Date: 20160525

Docket: IMM-5667-15

Citation: 2016 FC 569

Fredericton, New Brunswick, May 25, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

KAI ZHAN LIANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1]   The applicant, Kai Zhan Liang, seeks through counsel, Lawrence Wong, reconsideration of my decision made on March 24, 2016, in which I dismissed the applicant's application for leave and judicial review. The facts underpinning this request for reconsideration pursuant to Rule 397(1) of the *Federal Courts Rules* are somewhat bizarre.

[2]   In an affidavit in support of the reconsideration request, an associate in Mr. Wong's law firm deposes to having attended the Vancouver Registry Office, having taken pictures of the Court file and having concluded there was "no marking, sticky note, hand writing, bent corner, crease or any other discernible sign of them having been read". The affiant further deposes that he did not "find any signature of any Justice of the Federal Court". Curiously, the affiant states that "I did not see any physical sign of it being read". The original position of the applicant, denied at the oral hearing of this matter held on May 20, 2016, is that I did not read the file. Of course, if I did not do so, such conduct would have constituted a serious violation of my oath of office. At the hearing, Mr. Wong abandoned the contention that I had not read the file and simply asserted that the file had been placed in the "wrong pile". Essentially, Mr. Wong contended that the case was so meritorious that any reasonable judge would have granted leave and Registry staff must have placed a "leave granted" file in the "leave dismissed" pile. In essence, Mr. Wong contends either serious wrongdoing on the part of one of Her Majesty's justices or serious negligence on the part of the Registry staff.

[3]   The affidavit in support of the motion for reconsideration is lacking in several respects. First, it presumes a justice is going to mark up a copy of a file to which the public has access. Second, it seems to presume a justice will make markings on court documents rather than in a bench book. Third, it deposes to comments made by unnamed Registry staff regarding material apparently in my possession during consideration of the leave application. Those comments, in which it is asserted that Mr. Wong's associate observed and photographed the same file (pieces of paper) that I had in my possession during my deliberations, are inaccurate.

[4]   My sole purpose on a motion under Rule 397(1) of the *Federal Courts Rules* is to determine whether I overlooked anything. Such a motion does not serve as an appeal. Because of the seriousness of the allegations made by Mr. Wong, I consulted the Registry in Ottawa. As proof that his investigative techniques were inadequate and, in my view, inappropriate, I retrieved the actual order signed by me. The typed portion of the order reads "This application for leave and judicial review is hereby dismissed". Immediately above the typed portion, in my handwriting is found the date "24 Mar 2016". Immediately below the typed portion is found my signature "B. Richard Bell", which I personally placed on the document. Immediately below my signature, in my handwriting are found the word and initials "Justice FC"; this latter notation being an abbreviation for "Justice of the Federal Court".

[5]   Nothing was overlooked. Registry staff did not place the file in the 'wrong pile'. This motion for reconsideration is dismissed.

[6]   The respondent requests costs in the amount of $1000 assessed personally against counsel for the applicant, Mr. Wong. The respondent contends the motion lacks merit and in addition, constitutes an attack upon the "integrity of the Court and Registry staff and offends the principal of judicial immunity and deliberative secrecy". In his written submission, which constitutes a public document, Mr. Wong, an officer of the Court, states that a review of the "court file, the physical file covers and the actual files show there is no written record of physical trace that will give the appearance that the file has been reviewed by a judge". This public statement made by an officer of the Court is inaccurate. The hand written signature of a judge, the hand written

notation of the date and the identity of the Court constitute *prima facie* proof the file has been reviewed by a judge.

[7]   In the circumstances, I conclude that the attack upon the integrity of the Court, which is based upon speculation and innuendo and an inadequate verification at the Registry, constitute special circumstances under Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules (Immigration Rules)* for the making of an order of costs. For the reasons set out herein, I consider this proceeding to have been incurred improperly and without reasonable cause as contemplated by Rule 404(1) of the *Immigration Rules*. In the circumstances, I agree with counsel for the respondent that this is an appropriate case for the award of costs against the applicant (Rule 22) and a direction that the solicitor, Mr. Wong, personally pay the costs of the applicant as contemplated by Rule 404(1)(a) of the Immigration Rules.

<u>ORDER</u>

THIS COURT ORDERS that:

1. The motion is dismissed with costs payable forthwith by the applicant to the respondent in the amount of $1000;

2. Lawrence Wong, counsel for the applicant, is directed to personally pay the costs of the applicant;

3. No order is made pursuant to Rule 404(3) of the *Immigration Rules*.

<div align="right">
"B. Richard Bell"
Judge
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STYLE OF CAUSE:	KAI ZHAN LIANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING (HELD BY WAY OF TELECONFERENCE):	FREDERICTON, NEW BRUNSWICK
DATE OF HEARING:	MAY 20, 2016
ORDER AND REASONS:	BELL J.
DATED:	MAY 25, 2016

APPEARANCES:

Lawrence Wong	FOR THE APPLICANT
Timothy Fairgrieve Chantelle Coulson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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