Federal Court  Cour fédérale

Date: 20180518

Docket: IMM-4510-17

Citation: 2018 FC 527

Ottawa, Ontario, May 18, 2018

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

CHAO-MIN LIU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Taiwan, sought a temporary resident visa (i.e. a work permit) to permit him to work for A Plus Tools in Canada, a company in which he is also a one-third shareholder. The work permit was initially refused. The Respondent consented to the redetermination of the application and the Court so ordered. In October 2017, before the application for the work permit had been redetermined, the Applicant brought this Application

for Leave and for Judicial Review − specifically seeking *mandamus* to compel the Respondent to issue a decision with respect to his application for a work permit and to issue the permit.

[2] In the Application for Leave and for Judicial Review, the Applicant also requested other far- reaching declarations, including: that counsel for the Respondent is in breach of the *Department of Justice Act*, RSC 1985 c J2 [*Department of Justice Act*]; that the scope of a Visa officer's authority is limited to assessing the applicant and not the prospective employer; that the Temporary Foreign Worker Program Officer's finding that an employer is eligible to import a foreign worker is binding on the Visa Officer; and, that the Respondent's refusal to process a work permit within nine weeks is an actionable wrong arising from the deprivation of Canadian income. The Applicant also requested his costs.

[3] On February 1, 2018, with the Application for *mandamus* still pending, a Visa Officer redetermined the Applicant's application for the work permit, refusing it once again. The basis for the refusal was the lack of evidence with respect to the finances of A Plus Tools, which had been specifically and repeatedly requested of the Applicant. The Applicant has also brought an Application for Leave and for Judicial Review of the February 1, 2018 decision; however, that is not the decision under review today.

[4] The issues on this Application for Judicial Review, which primarily seeks *mandamus*, are whether the Application is moot given that the decision has been made, and whether the Court should exercise its discretion to consider the Application on its merits, despite that it is moot.

[5] For the reasons that follow, this Application is moot and there is no reason for the Court to exercise its discretion to consider the Application.

I. Background

[6] As counsel for the Applicant noted, the proceedings are “a mess”. As a result, some details of the Applicant’s saga in seeking his work permit are necessary.

[7] In October 2016, the Applicant applied for a temporary resident visa (i.e. work permit) in order to enter Canada. He has an offer of employment from A Plus Tools Canada Inc. (the Employer) as a Retail Trade Manager. The Applicant also holds a one third ownership interest in A Plus Tools. The Applicant’s Application was made pursuant to section197 and subparagraph 200(1)(c)(iii) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [*Regulations*]. Among other things, this process requires the Visa Officer to determine whether the job offer from the sponsoring employer is “genuine”, as set out in section 203 of the *Regulations*.

[8] The work permit was refused in December 2016. The Applicant sought judicial review of this decision (IMM-480-17). The Respondent consented to having the decision set aside and re-determined by a different Visa Officer and the Court so ordered, on May 11, 2017.

[9] In the meantime, the Applicant re-applied for the permit on February 19, 2017. In June 2017, the Applicant brought an Application for Leave and for Judicial Review, seeking

mandamus to compel the visa office to make a decision on that application (IMM-2825-17). Leave was denied on August 29, 2017.

[10] The GCMS notes indicate that on July 7, 2017, an Officer reviewed the Applicant's Application (as required by the Court's May 11, 2017 Order that the first application be reconsidered). The Officer noted that a Labour Market Impact Assessment (LMIA) — a report prepared by the Department of Employment and Social Development (ESD), which assesses the impact of an employment offer to a foreign national on the Canadian labour market —suggested that the Applicant met the recruitment criteria and had requisite work experience. However, the Officer noted the need for further evidence to establish the Applicant's work experience and to establish that the Employer has sufficient business income to fulfill its offer to the Applicant (given that the Applicant's salary would be nearly $50,000, and the Employer's " mid-year CPA report showed the net income was C$ 59,027…") On July 12, 2017, the Officer wrote to the Applicant requesting that he provide personal tax information, as well as: audited CPA Reports for A Plus Tools for 2015 and 2016; A Plus Tools Corporate Tax Records for 2015 and 2016; and, Tax information for the Directors and Shareholders of A Plus Tools' income for 2015 and 2016.

[11] On July 28, 2017, the Employer responded and provided unaudited financial statements for 2015 to 2017. The Officer reviewed the information and found it incomplete and unaudited, and generally insufficient to determine whether the Employer had sufficient income to support the Applicant.

[12] On September 5, 2017, the Officer sent a procedural fairness letter to the Applicant asking for the Employer's audited Certified Financial Records and certain tax records.

[13] The Applicant reacted by emailing counsel for the Department of Justice, who represented the Respondent, arguing, among other things, that the Respondent had exceeded its mandate, and did not have authority to assess the finances of Canadian employers.

[14] Despite his objections, the Applicant provided some additional information in a letter to the Visa Officer on September 18, 2017, but noted that the Employer did not have audited financial records.

[15] The Visa Officer sent a further procedural fairness letter, on September 26, 2017, expressing concerns that the Applicant had not fulfilled his obligation to "answer truthfully all questions put to [him]", pursuant to subsection16 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*], noting concerns about the financial records and other documents, and reiterating the need for complete, audited financial records from the Employer, as well as other tax information.

[16] The Applicant responded on September 26, 2017, repeating his objections to the authority of visa officers to assess Canadian employers. He also stated that his Employer would provide audited statements, but that the Respondent should pay for an accountant to prepare them.

[17] On October 25, 2017, the Applicant filed this Application for Leave and for Judicial Review. In his Notice of Application, he identified the decision under review as:

> the decision [of a Visa Officer]…on September 28, 2017, *refusing* to issue my work permit…despite knowing that I have been lawfully entitled to it since at least 7 December 2016, when it was unlawfully refused

[18] The Application for Leave and for Judicial Review seeks *mandamus* to compel the issuance of his work permit, as well as several other declarations as noted above.

[19] At that date, no decision had been made with respect to the application for the work permit as it was still under consideration pending the provision of the information requested.

[20] On February 1, 2018, the Visa Officer issued the decision rejecting the Applicant's application for the work permit, based on the Applicant's insufficient responses to their inquiries, and the insufficient evidence generally. The Officer noted, "…based on all available information on file, applicant has failed to comply with the request for aforementioned documents to examine the genuineness of the job offer. As such, I am not satisfied of the genuineness of the job offer."

[21] As noted, the February 1, 2018 refusal decision is the subject of a separate Application for Leave and for Judicial Review, filed by the Applicant on March 29, 2018 (IMM-1457-18).

II. The Issues

[22] In the Court's view, the key issue is whether this Application is moot, and if so, whether the Court should exercise its discretion to consider the merits of the Application.

[23] The Applicant also raised other issues in his written memoranda. At the leave stage, the Applicant focused on the refusal to decide upon his visa application, despite his view that he met all the requirements. He sought to compel the Respondent to issue the work permit; not simply to make a decision. He also sought declarations related to the proper role of visa officers in conducting an assessment under section 203 of the *Regulations*, the conduct of counsel for the Respondent, and other matters.

[24] The Applicant's further memorandum, after leave had been granted, focused on alleged errors leading to the February 1, 2018 decision (which is the subject of a separate application) and the relevance, if any, of the role of a disbarred lawyer who prepared the Applicant's affidavits and memoranda up until February 2018. The further memorandum does not address the various declarations sought by the Applicant in his leave materials.

[25] The Applicant now argues that at least one issue remains to be addressed because it continues to be the obstacle to the provision of his work permit: whether the Visa Officer is entitled to request audited financial statements given that ESD issued an LMIA which included an assessment of the financial viability of the employer.

[26] The Applicant also submits that the past involvement of a disbarred lawyer disadvantaged him and that he should have been alerted to the fact that his "consultant" was a disbarred lawyer by counsel for the Department of Justice who represent the Respondent. The Applicant adds that, as a victim of a disbarred lawyer, the Application should not be dismissed nor should he be penalized in costs.

[27] To summarize, the issues for the Court are:

- Whether this Application for Judicial Review seeking *mandamus* is moot;
- Whether the Court should exercise its discretion to consider the Application, even it if is moot, and to address the issue of the scope of the Visa Officer's authority to request financial documents;
- Whether, if the Court exercises its discretion to consider the Application, it should be dismissed due to the involvement of a disbarred lawyer in the preparation of the memoranda and affidavits; and,
- Whether costs should be awarded to the Applicant or to the Respondent.

III. The Standard of Review

[28] A Visa Officer's decision with respect to the Applicant's eligibility for a work permit, or other visa, requires the Officer to assess the application and the applicable law and exercise his or her discretion and is, therefore, reviewable on a reasonableness standard (*Obeta v Canada (Minister of Citizenship and Immigration*), 2012 FC 1542 at para 14, 424 FTR 191 [*Obeta*]).

[29] Issues of mootness are reviewed on the correctness standard (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 24, [2010] 2 FCR 311).

IV. The Applicant's Submissions

[30] With respect to the issue of *mandamus***,** the Applicant argued that he met all the requirements to qualify for his work permit and was, therefore, entitled to *mandamus* compelling the Respondent to issue the work permit.

[31] He argued that the government website indicates that an application would be processed within three weeks, yet his application had been outstanding for almost one year; and, that he had been found to be qualified. In his view, once qualified, the permit should have been issued. He asserted that he had a clear right to the work permit – given his understanding that he had been found "qualified" for a permit – and that the government had unreasonably delayed its issuance. His understanding that he had been found "qualified" for a permit arose from the positive LMIA, which had been prepared by ESD.

[32] The Applicant disputes the Respondent's position that this Application became moot on February 1, 2018, when his visa application was rejected. He notes that his request for *mandamus* was for the work permit to be issued and this has not happened. He sought:

> a *mandamus* order directing the respondent to issue the applicant a work permit within 60 days of disposition of this application unless an identified, authorized officer expresses in writing why he is inadmissible and grants a reasonable time to address the articulated concerns.

[33] The Applicant also argues that the past and current refusals of his work permit were not reasonable. He argues that Visa Officers have no authority to assess the financial status of an employer as part of a work permit application. He seeks a declaration that Visa Officers may not demand financial information from employers, and may not deny an application because that information has not been provided. He argues that the *Regulations* do not authorize Visa Officers to request audited financial statements to assess whether an offer of employment is genuine. He also argues that Visa Officers' should be bound to accept the determinations made by ESD officials in LMIAs. The Applicant submits that Visa Officers should have directed their concerns

regarding A Plus Tools finances to ESD, the Department which provided a positive LMIA. He continues to seek a declaration from the Court that this would be the proper course of action.

[34] At the hearing of this Application for Judicial Review, the Applicant, now represented by counsel, reiterated the arguments regarding the scope of the Visa Officer's role, noting that this is the recurring obstacle, and this must be resolved. The Applicant also argues that this is the "live issue" which requires the Court to exercise its discretion to hear the Application regardless of whether it is moot.

[35] The Applicant also argues that the September 26, 2017 procedural fairness letter, which the GCMS notes indicate was sent to the Employer, was actually sent to him. He argues that the Employer never received this letter – or any other letter – and that this constitutes a denial of procedural fairness. (However, the Court notes that the record indicates that both the Applicant and Employer responded and that the Applicant's states his address as c/o A Plus Tools on all his correspondence and other documents.)

[36] With respect to the role of the disbarred lawyer, the Applicant acknowledged, in his cross-examination on his affidavits in April, 2018, that he was assisted by Mr. Tim Leahy in the preparation of his Application and affidavits. He questions the relevance of Mr. Leahy's involvement to this proceeding. Alternatively, he argues that Mr. Leahy's involvement is not a reason for this Court to dismiss the Application for Judicial Review.

[37] The Applicant submits that Counsel for the Respondent should have recognized that the affidavits and memorandum were in the style used by Mr. Leahy and cautioned the Applicant that Mr. Leahy was a disbarred lawyer. The Applicant submits that more must be done to protect the public from unauthorized representatives. He suggests that he had no way of knowing Mr. Leahy's status as a lawyer or consultant and that, in some respects, he was disadvantaged by Mr. Leahy's approach.

[38] The Applicant's other arguments and requests for other far reaching relief in his written memorandum appear to be the creation of Mr. Leahy, including: a declaration holding that the Respondents' denial of his work permit constitutes an "actionable wrong"; and, that Counsel for the Department of Justice facilitated the unlawful conduct of the Visa Officer and in so doing breached sections 4 and 5 of the *Department of Justice Act*. These are no longer pursued.

[39] The Applicant continues to request costs as a result of the Respondent's actions, in the amount of $25,000 plus disbursements.

V. The Respondent's Submissions

[40] The Respondent submits that the Application for *mandamus* is moot due to the decision which was made on February 1, 2018, which rejected the Applicant's application for a work permit (*Naguluthas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1282, [2011] FCJ No 1565 (QL) [*Naguluthas*]). Moreover, the Applicant has filed an Application for Leave and for Judicial Review of the refusal decision. The Respondent points to the jurisprudence which establishes that a *mandamus* application becomes moot when the underlying decision is

rendered, whether it is favourable or not, and whether or not the Applicant sought *mandamus* to compel a particular outcome (*Farhadi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 926, [2014] FCJ No 959 (QL)).

[41] The Respondent submits that the Court should not exercise its discretion to consider the moot Application. The criteria from *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 1989 CanLII 123 [*Borowski*] have not been met, in particular, the "live issue" raised by the Applicant will not evade review as it will be addressed in the Application for Judicial Review of the February 1, 2018 decision.

[42] With respect to the Applicant's argument that the obstacle to the work permit must be resolved, the Respondent argues that it is best resolved on the Application for Judicial Review of the refusal decision. The Respondent, however, submits that the law is clear that the Visa Officer was entitled to verify the Applicant's employment offer, despite the positive LMIA from ESD. Visa Officers are the ultimate decision makers on visa applications, and they have the authority to assess the genuineness of offers (*Ghazeleh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1521 at paras 20-21, [2012] FCJ No 1604 (QL) [*Ghazeleh*]; *Pritchin v Canada (Minister of Citizenship and Immigration)*, 2014 FC 425, [2014] FCJ No 460 (QL)).

[43] The Respondent notes that the Applicant was contacted three times and asked to provide additional financial documents. The Applicant and the Employer responded, but did not provide the specific documents requested (i.e. the audited financial statements).

[44] The Respondent argues that in the event the Court considers the merits of this Application, despite it being moot, the Application should be dismissed because the Applicant's materials were prepared by an unauthorized representative. The Respondent argues that this Court has a duty to ensure that those who appear before it or draft pleadings for the purpose of asserting rights are officers of the Court, as required by subsections 11(1) and (3) of the *Federal Courts Act*, RSC 1985, c F7 and section 119 of the *Federal Courts Rules* (SOR/98-106). The Respondent submits that, where there is clear evidence that an unauthorized representative has been involved, this Court has not hesitated to dismiss applications (*Bouchair v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 96, [2001] FCJ No 242 (QL)). The Respondent submits that dismissal is appropriate and justified to dissuade litigants from relying on such unauthorized "consultants", in order to protect the integrity of the Court's process.

[45] The Respondent disputes the Applicant's submission that the Respondent was in some way "complicit" in permitting Mr. Leahy's involvement, because the Respondent only received confirmation of Mr. Leahy's involvement after the cross-examination.

[46] With respect to the issue of costs, the Respondent submits that there is no justification for costs to be ordered in favour of the Applicant.

[47] The Respondent submits that there are special circumstances justifying an award of costs against the Applicant. The Respondent argues that there is no reason for the Applicant to have pursued this Application given that a decision was made on February 1, 2018, for which the

Applicant has launched a separate Application for Leave and for Judicial Review. The Applicant's conduct has unnecessarily and unreasonably prolonged this litigation.

VI. The Application for Judicial Review is Moot and the Court will Not Exercise its Discretion to Hear the Application

[48] The leading case on mootness is *Borowski*. At page 353 the Court explains:

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot.

[49] The present Application is clearly moot. A decision was rendered on the Applicant's application for a work permit on February 1, 2018. No purpose would be served by ordering the Visa Officer to make a decision, as the decision has already been made. (This Court has reached the same conclusion on a number of occasions (*Bankole v Canada (Minister of Citizenship and Immigration)*, 2011 FC 372 at para 6, [2011] FCJ No 480 (QL), *Naguluthas* at para 2)

[50] The Applicant's position is that he sought more than just that a decision on his Application: he sought a positive decision, given his view that he met the legal requirements. Therefore, he submits that the Application is not moot.

[51] The Applicant's argument cannot succeed. As noted by Justice LeBlanc in *Farhadi v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 926, [2014] FCJ No 959 (QL), the writ of *mandamus* does not dictate a particular result, except in "very limited and exceptional circumstances" (at para 28):

> [28] *Mandamus* is an extraordinary, discretionary remedy and it is trite law that while it will be issued to compel the performance of a legal duty, it cannot dictate the result to be reached (*Singh v The Minister of Citizenship and immigration and Canada Border Services Agency*, 2010 FC 757, 372 FTR 40 at para 52; *Orr v Peerless Trout First Nation*, 2012 FC 590, 411 FTR 224 at para 25-26; *Kahlon v Canada (Minister of Employment and Immigration)*, [1986] 3 FC 386, [1986] FCJ No. 930 (QL) at para 3 (FCA)).
>
> [29] The only exception to the rule that mandamus cannot dictate the outcome of the exercise of a legal duty is when the only lawful exercise of that duty is the granting of the remedy sought. In other words, although the issuance of specific directions may sometimes be warranted on a mandamus application, this power will only be exercised "in very limited and exceptional circumstances", that is where there is only one possible result (*Singh*, above at para 52*; Lebon v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FCA 55, at para 14).
>
> [My emphasis]

[52] In the present case, there is not only one possible result. The determination of the application for a work permit is a discretionary decision. It is not for the Court to tell the Visa Officer how to assess the evidence provided and apply the law and regulations and how to exercise his or her discretion. The Applicant's asserted understanding that he was found "qualified" for a visa because he received a positive LMIA is misguided. The determination of whether to issue a visa is the sole responsibility of Visa Officers, pursuant to the *Regulations*.

[53] As noted by Justice Rennie, commenting on a related provision in the *Regulations*, in *Ghazeleh* at paras 20-21:

> [20] . . . A visa officer must be satisfied that the criteria specified in section 82 of the *Regulations* are met. Furthermore, in my view, HRSDC's opinion is just that, an opinion, it is not determinative of whether a visa should issue. The immigration officer is the ultimate decision maker.
>
> [21] It is true that HRSDC has a different mandate than that of a visa officer. Its specialization lies in the identification of deficiencies in the labour market and providing an opinion that the position is genuine. However, an immigration officer has the overriding discretion to refuse a visa, in appropriate circumstances. Indeed, it would be incumbent on a visa officer to do so if they became aware of facts or circumstances which questioned the legitimacy of the offer.

[54] The principles stated in *Ghazeleh* apply equally in the context of the assessments of work permits.

[55] The Applicant argues that even if the Application is moot, this Court should still consider whether the Visa Officer was bound to accept the determination of the ESD, which issued the positive LMIA, and whether Visa Officers have the authority to request financial information from employers.

[56] To determine whether the Court should exercise its jurisdiction, although the case is moot, the considerations set out in *Borowski* have been applied: whether an adversarial relationship continues to exist; whether judicial resources should be expended; and, whether the court should focus on its role as the adjudicative branch of government.

[57] In the present case, the adversarial relationship continues to exist but in the context of the separate Application for Leave and for Judicial Review of the refusal decision.

[58] With respect to the Applicant's submission that the same issue or obstacle has arisen in his past applications and should now be resolved, I am of the view that this issue will be addressed in the context of the Application for Leave and for Judicial Review of the refusal of the work permit. As noted at page 361 of *Borowski*:

> The mere fact, however, that a case raising the same point is likely to recur even frequently should not by itself be a reason for hearing an appeal which is moot. It is preferable to wait and determine the point in a genuine adversarial context unless the circumstances suggest that the dispute will have always disappeared before it is ultimately resolved.

[59] Judicial economy also strongly supports not exercising the Court's discretion. Similarly, the Court must respect its role in judicial review of the decision of an administrative decision-maker. In the present case, the applicant asks the Court to make declarations which exceed this role.

[60] I have not relied on the role of disbarred lawyer, Mr. Leahy, in the dismissal of the Application. The Application is dismissed because it is moot and there is no valid reason for the Court to exercise its jurisdiction to hear the Application.

VII. The Implications of the Involvement of a Disbarred Lawyer

[61] As noted at the hearing of this Application, I am very concerned about the content of the Applicant's affidavits and memoranda, which include outrageous and improper allegations

against the Visa Officer, the Respondent and this Court and which request relief that is completely unjustified.

[62] The Respondent's cross-examination of the Applicant revealed that the Applicant was not self-represented, rather his affidavits and memoranda were prepared by an unauthorized "consultant", who is a disbarred lawyer. However, the Applicant acknowledged that he had read the material and accepted its contents. The Applicant attested to his high command of English and it is assumed that he fully understood the contents of his documents. The Applicant is not blameless in the perpetuation of these proceedings, the nonsensical and insulting allegations made and the lecture to the Court to fulfill its obligations. Members of the bar could be sanctioned for such conduct.

[63] I agree that disbarred lawyers and unauthorized consultants do a disservice to the legal profession, to the persons they seek to represent and to the Court. I do not agree, however, that the Respondent, in the present circumstances, had any duty to alert the Applicant that his documents may have been prepared by Mr. Leahy. The Respondent cannot survey all documents from all litigants to identify those that are not up to the standards expected from members of the bar in good standing, nor can the Respondent act on a hunch and cast aspersions on an Applicant's submissions. Moreover, the Applicant held himself out as self-represented in his correspondence and in his Memoranda.

VIII. No Costs Are Awarded

[64] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, (SOR/93-22) provides that "[n]o costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders". Generally, costs are not awarded in immigration proceedings. The jurisprudence has established a fairly high threshold to establish "special reasons".

[65] In *Adewusi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 75 at para 23, 403 FTR 258, Justice Mactavish noted that the threshold for establishing special reasons to award costs is high and provided some examples from the jurisprudence where the threshold had been met. Such examples include where one party has acted in a manner that may be characterized as unfair, oppressive, improper or actuated by bad faith (*citing Manivannan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1392 at para 51, [2008] FCJ No 1754 (QL)) and where there is conduct that unnecessarily or unreasonably prolongs the proceedings (citing *John Doe v Canada (Minister of Citizenship and Immigration)*, 2006 FC 535, [2006] FCJ No 674 (QL); *Johnson v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262 at para 26, [2005] FCJ No 1523 (QL); and *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1154, [2002] FCJ No 1576 (QL)).

[66] More recently in *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594, [2017] FCJ No 616 (QL), Justice Southcott reiterated these same principles and examples, noting at para 40:

> [40] Special reasons that warrant an award of costs may exist if one party has engaged in conduct which is unfair, oppressive, improper or marked by bad faith, or has unnecessarily or unreasonably prolonged proceedings (see *Kargbo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 469, at para 19; *Johnson v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262, at paras 26-27). However, this Court has also held that errors on the part of a visa officer, absent bad faith, would not constitute special reasons for costs (see *Ndererehe v Canada (Minister of Citizenship & Immigration)*, 2007 FC 880; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 54).

[67] The Applicant submits he should be awarded costs because of the delay in processing his visa application, the Order for reconsideration of his application and the delay in the decision, the repeated obstacles which he submits exceed the scope of the Visa Officer's authority, and the resulting loss of income because he has not yet obtained a work permit. However, despite the Applicant's view, he is not "entitled" to a work permit as a right; he must satisfy the criteria for the issuance of a permit.

[68] There is no evidence of bad faith or other conduct which unnecessarily prolonged the Officer's decision. The Officer repeatedly asked for information which was not forthcoming. The Applicant should have been able to easily discern why the processing of his application was held up. The obstructionist approach taken by him via his own "consultant" likely contributed to the delay in the determination of his application.

[69] The circumstances do not meet the high threshold of special reasons to support an award of costs to the Applicant.

[70] With respect to whether the Applicant should be ordered to pay costs to the Respondent, I have considered that the Applicant pursued this application although he was clearly aware that the decision had been rendered. Although the Applicant now submits that the Application was necessary to highlight the obstacles he has faced, which in his view are not justified, the Application for Leave and for Judicial Review of the refusal decision is the proper forum to address these issues. Clearly, the Respondent and the Court have expended unnecessary resources with respect to this moot Application.

[71] I have also considered the highly inappropriate tone of the Applicant's memoranda and the rantings directed to the Visa Officers and public servants responsible for the administration of the Act, the Respondent and even the Court. There is no evidence to clearly determine whether the Applicant thought he was represented by a lawyer, while unaware of that lawyer's disbarred status, or whether the Applicant thought he was representing himself, with the assistance of a consultant. However, as noted, his documents reflect that he was self-represented. In either scenario, the Applicant read the documents, signed his affidavits, and acknowledged during cross-examination that he adopted and agreed with all the submissions. As a result, he was aware of the tone of the documents and should have realized that proceedings before this Court, or any Court, require civility.

[72] Although the circumstances would fall within the examples provided in the jurisprudence as "special reasons", I decline to award costs against the Applicant in the present case.

[73] Understandably, the Applicant seeks a resolution to his application for a work permit. However, the decision to issue such permits rests with Visa Officers who assess all the relevant information and apply the Act and Regulations. The Applicant has sought leave for judicial review of the February 1, 2018 decision which refused his work permit, which will be determined in due course.

[74] Going forward, the Applicant's current counsel, who was not responsible for the content of the earlier memoranda and affidavits, can take a fresh approach.

JUDGMENT in IMM-4510-17

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.
3. There is no Order with respect to Costs.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4510-17
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