Federal Court  Cour fédérale

Date: 20210827

Docket: IMM-6652-19

Citation: 2021 FC 891

Ottawa, Ontario, August 27, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

DAVID ALFONZO BLANCO CARRERO

Applicant

and

THE MINISTER OF CITIZENSHP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The within application for judicial review was originally heard by me on February 25, 2021. On March 1, 2021, I issued a judgment and reasons in which I allowed the application for judicial review and requested the parties provide further submissions on, among others, the appropriate remedy and costs. That decision is reported as *Carrero v. Canada (Citizenship and Immigration)* 2021 FC 188, [2021] F.C.J No. 213. I need not repeat the facts and issues in these reasons.

[2] In my order of March 1, 2021, in addition to inviting further written submissions from the parties, I invited them to attempt to resolve the matter, or at least some of the issues, without further recourse to the courts. The parties provided written submissions and advised the court they were unable to agree upon a remedy. The Court held a further hearing, via the zoom platform, on May 31, 2021.

I. Directed Verdict

[3] The Applicant requests a directed verdict. I am not satisfied such a remedy is appropriate in the circumstances. Based upon that set out in paragraphs 4 to 6 below, I am not satisfied there is only one possible outcome on the evidence and that returning the matter to the administrative decision maker would be pointless. (*Canada (Citizenship and Immigration) v. Tennant*, 2019 FCA 206, 436 DLR (4th) 155; *Canada (Attorney General) v. Allard*, 2018 FCA 85, [2018] FCJ No 473)

[4] Following the filing of the Applicant's application for permanent residence and before the application was finally disposed of, the Province of Québec enacted *An Act to increase Québec's socio-economic prosperity and adequately meet labour market needs through successful immigrant integration*, 1st Sess, 42nd Leg. Québec, 2019 (assented to 16 June 2019) ["Bill 9"]. Significantly, that enactment included an amendment that resulted in the cancellation of a backlog of existing applications for a *Certificat de sélection du Québec* (CSQ) under the Regular Skilled Worker Program.

[5] The acquisition of a CSQ is a necessary step in the Canadian immigration process if one intends to settle in Québec (s. 9(1)*b*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 and s. 86(2)*b*) of *the Immigration and Refugee Protection Regulations*, SOR/2002-227). The Applicant contends that the Province of Québec canceled and deleted his CSQ in error. He says the new legislative provision was never intended to capture his application.

[6] There is no evidence before me that the Applicant challenged the decision of the Province of Québec to delete his CSQ. I do not have the jurisdiction to rule on that issue, it being a matter properly within the jurisdiction of the Cour supérieure du Québec (s. 33 of the *Code of Civil Procedure*, CQLR c C-25.01 and *Min c. Procureure générale du Québec (Ministère de l'Immigration, de la Diversité et de l'Inclusion)*, 2018 QCCS 15, [2018] J.Q. no 21 at para 1). Furthermore, the Applicant has not filed a notice of constitutional question as contemplated by Rule 69 of the *Federal Courts Rules*, SOR/98-106 challenging the right of the Province of Québec to enact Bill 9. Legislation is presumed to be constitutionally valid until established otherwise (*R. v. Sharpe*, 2001 SCC 2, [2001] 1 SCR 45 at para 33; *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 SCR 453 at para 81; *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 SCR 810 at para 25).

[7] Finally, with respect to the application of Bill 9, the Applicant contends that the Court should apply the Québec law in place at the time of the filing of his application for permanent resident status and not at the time the application was ultimately determined. I disagree with that contention. The jurisprudence is clear that applications of this nature are considered under the rules prevailing at the time the application is reviewed and the determination is made. (*Austria v.*

Canada (Citizenship and Immigration), 2014 FCA 191, [2015] 3 FCR 346 at para 76; *Tabingo v. Canada*, 2013 FC 377, [2014] 4 FCR 150 at paras 44 and 50; *Gill v. Canada (M.C.I.)* 2012 FC 1522, [2014] 2 FCR 442 at para 44; and, *McAllister v. Canada (M.C.I.*, 1996 4030 (FC), [1996] 2 FC 190).

[8] While I am not prepared to issue a directed verdict, it is important to point out that the Respondent, in demonstrating the fair play required of the Crown, proposed a solution to what I earlier referred to as the bureaucratic nightmare in which the Applicant finds himself. Counsel for the Respondent invites the Court to include the following language in any eventual order:

> When the Applicant provides: a) a valid CSQ to the Visa office and, b) updated criminality checks documents, for the Applicant and his daughter, the Applicant will have 60 days to provide further submissions and the Visa office undertakes to render a decision within 120 days following reception of these submissions. Furthermore, to give time to adduce a CSQ, the application will be held in abeyance by the Visa office until August 1, 2022. Finally, unless new concerns regarding eligibility and/or admissibility are identified, the application will not be denied for this reason.

[9] The current security and human or international rights violations assessments are passed and valid up to and including April 2023 and the medical documents for both the Applicant and his daughter are valid until March 2022. I find the proposal from the Respondent as communicated by Mr. Latulippe to be reasonable in that it avoids the necessity of the Applicant undergoing further security checks related to his political past in Colombia and forces the Visa office to respond within 120 days following receipt of further materials from the Applicant.

II. Costs

[10] The Applicant seeks costs assessed on a solicitor-client basis. Pursuant to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules,* SOR/93-22 the Court may award costs for special reasons. Special reasons normally arise where a party has unnecessarily or unreasonably prolonged the proceedings or where a party has acted in a manner that is unfair, oppressive, improper or actuated by bad faith (*Johnson v. Canada (M.C.I.)* 2005 FC 1262, [2005] FCJ No 1523 at para. 26). In *Ndungu v. Canada (Citizenship and Immigration),* 2011 FCA 208, [2011] FCJ No 933 at para 7, the Court provided a non-exhaustive list of examples in which special reasons exist. Included in that list are the following:

> i. an immigration official engages in conduct that is misleading or abusive (*Sandhu v. Canada (Minister of Citizenship and Immigration*), 2006 FC 941); *Said v. Canada (Minister of Citizenship and Immigration),* [1999] F.C.J. No. 663 (FCA));
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> ii. an immigration official issues a decision only after an unreasonable and unjustified delay (*Nalbandian v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1128; *Doe v. Canada (Minister of Citizenship and Immigration*), 2006 FC 535; *Jaballah v. Canada (Minister of Citizenship and Immigration),* 2003 FC 1182);

I most recently awarded costs in *Zheng v. Canada (Immigration, Refugees and Citizenship),* 2021 FC 616, [2021] F.C.J. No. 648.

[11] The Applicant is a citizen of Venezuela. He arrived in Montréal, Québec in May of 2008 as a temporary resident holding a position of diplomatic representative for Venezuela to the International Civil Aviation Organization. In 2010, he was granted a CSQ and thereafter applied for permanent residence under the province of Québec's Skilled Worker program with his then common-law partner and daughter. On June 3, 2011, he received written confirmation that Immigration, Refugees and Citizenship Canada ("IRCC") had received his application.

[12] Between 2012 and 2017, the Applicant underwent medical and criminal record screenings at the request of IRCC. This led to a series of examinations and interviews conducted by various representatives of the Canadian Security Intelligence Services, the Royal Canadian Mountain Police and the Canadian Border Services Agency ("CBSA").

[13] The Applicant retained legal counsel in 2017. On October 23, 2017, the Applicant filed several requests to access his personal information with IRCC and the CBSA. The file revealed that the agents had concerns about the Applicant's military service in Venezuela, his potential involvement in the political coup that took place in 1992 and his employment at the General Sectoral Directorate of Intelligence and Prevention Services in Venezuela between 2003 and 2005. Despite the issues raised by the agents, IRCC was satisfied with the Applicant's detailed explanations.

[14] While the delays seem exceedingly long, I understand that where security screening involves potential involvement in criminality or potential war crimes, delays can be extensive. The situation in Colombia leading up to and immediately following the Applicant's application for permanent residency no doubt required an extra degree of study and investigation.

[15] I note that delays of nine (9) years and 11 years, respectively, did not attract directed verdicts or orders for mandamus in *Seyoboka v. Canada (M.C.I.)*, 2005 FC 1290, [2005] FCJ No 1611 and *Bhatia v. Canada (M.C.I.)* 2005 FC 1244. (See also, *Mazarei v. Canada (Citizenship and Immigration)*, 2014 FC 322, [2014] F.C.J. No. 338; *Jia v. Canada (Citizenship and Immigration*), 2014 FC 596, [2015] 3 FCR 143; *Kun v. Canada (Citizenship and Immigration)*,

2014 FC 90, [2014] F.C.J. No. 81, where delays of 4, 5 and 7 years, respectively, did not attract mandamus). In the present case, the investigation and background checks effectively spanned a period of approximately six (6) years, from mid-2011 to mid-2017. Given the existing jurisprudence of this Court, I am not prepared to conclude the delay, up to and including mid-2017, was unreasonable.

[16] In April 2018, the CPC-Ottawa Processing Center transferred the Applicant's application for permanent resident status to the Canadian Visa Office located in Mexico, for further review. There is no explanation for the delay between mid-2017 and April, 2018 for the transfer of the file. This review by the Mexican visa office resulted in further delays and several errors. The errors included an erroneous conclusion that the Applicant's daughter had been refused a CSQ for financial reasons and an erroneous conclusion the Applicant did not intend to settle in Québec. I am satisfied the delays in processing the application post mid-2017 until the present time were unreasonable. I am also of the view the erroneous conclusions regarding the daughter's CSQ refusal and the Applicant's proposed settlement were unfair.

[17] Unnecessary delays almost always have consequences, some serious, some less serious. In the circumstances of this case, the consequences are huge, serious and ongoing. They have taken a tremendous toll on the Applicant and his daughter. He had a CSQ in hand. He had background checks and medical checks in hand. There is no reason, other than the change in Québec legislation, why the Applicant should not now be a permanent resident, or perhaps a citizen, of Canada. The unnecessary delays also led to substantially higher legal fees than would otherwise have been required for the Applicant.

[18] The Applicant seeks costs on a solicitor-client basis. Solicitor-client costs are awarded only on rare occasions, for example where a party has displayed reprehensible, scandalous or outrageous conduct, or when reasons of public interest justify the making of such an order (*Young v. Young*, 1993 SCC 34, [1993] 4 SCR 3, at page 134; *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice)* 2005 SCC 44, [2005] 2 SCR 286 at para 132; *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 SCR 453 at para 67). The terms “reprehensible”, “scandalous” and “outrageous” were defined in *Microsoft Corp. v. 9038-3746 Quebec Inc*., 2007 FC 659, [2007] FCJ No 896 at para. 16:

> Reprehensible" behaviour is that deserving of censure or rebuke; blameworthy. "Scandalous" comes from scandal which may describe a person, thing, event or circumstance causing general public outrage or indignation. Among other things, "outrageous" behaviour is deeply shocking, unacceptable, immoral and offensive.

[19] Solicitor-client costs may also be appropriate in cases where a party’s actions are dismissive towards the proceedings at hand, or when a party has committed an inexcusable violation of the opposite party’s rights, particularly those resulting in substantially higher legal fees than would otherwise have been required. *(Louis Vuitton Malletier S.A. v. Singga Enterprises (Canada) Inc*., 2011 FC 776, [2013] 1 FCR 413 at para 184).

[20] I have considered carefully whether I should award solicitor client costs. I am satisfied that the Respondent has displayed reprehensible conduct. Two (2) years of the delay are unexplained and led to serious consequences. During those two (2) years, the law of Québec changed to the detriment of the Applicant and his daughter. The Respondent knew or ought to have known the Québec law was, in 2019, in the process of being amended. The Respondent

knew or ought to have known that many, if not all, of its clients, including the Applicant, who intended to settle in Québec, would be negatively impacted by those amendments. Given the close collaboration that is required between the Province of Québec and the Government of Canada on matters of immigration, I consider it highly inappropriate and reprehensible that the Respondent failed to take steps to ensure its clients, such as the Applicant, had their matters attended to without delay. I am not suggesting applications for permanent resident status in Québec should have been fast-tracked in the face of potential changes to legislation. However, they should have been processed in a reasonable manner, without unnecessary and unexplained delays. In the event I had before me any evidence the government of Canada collaborated with the government of Québec to delay such applications until Bill 9 came into force, the outcome of this judicial review would be much different. Such evidence, if it existed, would speak to the total failure of the Québec government and the Canadian government to treat people fairly, according to existing law.

[21] The Applicant requests solicitor-client costs in the amount of $62,793.24. That amount is supported by way of affidavit evidence from the Applicant. I find the amounts to be reasonably incurred. However, some of the amounts relate to work provided before the unnecessary delays and errors of 2017, 2018 and 2019. As a result, I have reduced the amount of solicitor client costs by 752.95 from the amount claimed. The Applicant will be awarded costs on a solicitor-client basis in the amount of $62,040.29 payable forthwith by the Respondent.

[22] I close with this observation. Since on or about May 21, 2021, after Mr. Latulippe was appointed counsel for the Respondent, this matter has progressed well. Mr. Latulippe’s

assistance in proposing a partial with-prejudice resolution, and the Respondent's offer that it be included as part of this Court's order, were of great assistance to the Court. I thank both counsel for their excellent presentations to the Court. Their clients have been ably represented in a very challenging situation involving inter-governmental affairs.

JUDGMENT in IMM-6652-19

THIS COURT'S JUDGMENT is that:

1. The order allowing the application for judicial review is confirmed;
2. The order quashing the decision of the visa officer made on September 3, 2019 is confirmed;
3. The application for permanent resident status is remitted to a different Visa officer for re-determinaton;
4. Upon the Applicant providing: a) a valid CSQ to the Visa office and, b) updated criminality check documents, for the Applicant and his daughter, the Applicant will have 60 days to provide further submissions and the Visa office shall render a decision within 120 days following reception of those submissions. Furthermore, to provide an opportunity to adduce a CSQ, the application is to be held in abeyance by the Visa office until August 1, 2022 or such other date as this Court may order. Unless new concerns regarding eligibility and/or admissibility are identified, the application will not be denied for this reason;
5. The Applicant is awarded solicitor-client costs, in the amount of $62,040.29 to be paid by the Respondent forthwith; and
6. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DATED:	AUGUST 27, 2021

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Me Michel Pépin	FOR THE RESPONDENT

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