

Federal Court



Cour fédérale

Date: 20211130

Docket: IMM-6239-20

Citation: 2021 FC 1322

St. John's, Newfoundland and Labrador, November 30, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

PATRICK ABAH EBIEGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] By a Notice of Motion filed on August 16, 2021, for consideration without personal appearance pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106, (the “Rules”), the Minister of Citizenship and Immigration (the “Respondent”) seeks the entry of judgment relative to the Application for Leave and Judicial Review filed by Mr. Patrick Abah Ebiega (the “Applicant”) on December 1, 2020.

[2] The Respondent's Notice of Motion is supported by the affidavit of Ms. Karen Mendonca, a paralegal employed with the Ontario Regional Office of the Federal Department of Justice.

[3] In her affidavit, Ms. Mendonca refers to the procedural history of the within Application for Leave and Judicial Review and a prior settlement offer made by the Respondent.

[4] The Applicant filed his Application for Leave and Judicial Review in respect of a decision made on September 29, 2020 by an Officer, refusing his application for a Temporary Resident Visa ("TRV") to visit Canada.

[5] By means of a letter dated April 1, 2021, the Respondent offered to settle the within proceeding and the related Application for Leave and Judicial Review in cause number IMM-742-21 on the basis that the two Application for Leave and Judicial Review be discontinued, the underlying decisions be set aside, that the two matters be remitted for re-determination by a different officer and the Applicant be given the opportunity to submit updated documentation relative to his applications, all without costs.

[6] The Applicant responded to the Respondent's Notice of Motion by filing a Motion Record. The Motion Record includes the Applicant's affidavits sworn on March 13, 2021 and on August 23, 2021, as well as the affidavit of Mr. Ernest Ihensekhien, sworn on August 26, 2021.

[7] In his affidavit sworn on March 13, 2021, the Applicant sets out the basis for his Application for Leave and Judicial Review in the within proceeding. The Applicant filed this affidavit in support of his Application for Leave and Judicial Review.

[8] In his affidavit sworn on August 23, 2021, the Applicant commented on his response to the settlement offer of April 9, 2021. He also provided his opinion that the Officer had committed “egregious” errors.

[9] Mr. Ihensekhien is an articling student employed in the office of Counsel for the Applicant. He attached to his affidavit a copy of a document that was referenced in the Applicant’s affidavit sworn on August 23, 2021.

[10] The Applicant also included a Memorandum of Fact and Law in his responding Motion Record. In this document, he set out the terms upon which he would be prepared to settle the within Application for Leave and Judicial Review, including the payment of his costs on a solicitor and client basis.

[11] The Respondent filed a Reply to the Applicant’s Motion Record. He rejected the Applicant’s proposed settlement terms and maintained his position that the Motion for Judgment should be granted, on the grounds that the settlement offer would afford the relief available to the Applicant should he succeed upon his Application for Leave and Judicial Review.

[12] The Respondent also addressed the Applicant's request for costs, noting that the Applicant did not seek costs as part of the relief sought in his Application for Leave and Judicial Review.

[13] I agree with the submissions of the Respondent.

[14] The Respondent acknowledges that the decision in issue in this proceeding was made in breach of procedural fairness and that accordingly, the decision should be set aside.

[15] Success upon an application for judicial review requires an applicant to show a reviewable error, either in the decision-making process or upon the merits of the application.

[16] In the present case, the Respondent acknowledges a reviewable error, that is a breach of procedural fairness by the Officer who made the decision.

[17] The entry of judgment in favour of the Applicant, without a hearing, gives him the "best" available outcome following any hearing.

[18] I note that Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, addresses the award of costs in matters arising under those Rules.

Rule 22 provides as follows:

No costs shall be awarded to or payable by any party in respect of an application for leave, an application for

Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de

judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[19] I am not persuaded that the Applicant has shown any “special reasons” that would justify the award of any costs in this matter, let alone the solicitor and client costs that he seeks.

[20] In the result, the Respondent’s Motion for Judgment is granted, the decision of the Officer made on September 29, 2020 is set aside and the matter is remitted to a different officer for re-determination. In the exercise of my discretion, there will be no Order as to costs.

ORDER in IMM-6239-20

THIS COURT'S ORDER is that the Motion of the Respondent is granted, the decision of the Officer made on September 29, 2020 is set aside and the matter is remitted to a different officer for re-determination. In the exercise of my discretion, there is no Order as to costs.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6239-20

STYLE OF CAUSE: PATRICK ABAH EBIEGA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: HENEGHAN J.

DATED: NOVEMBER 30, 2021

WRITTEN REPRESENTATIONS BY:

Kingsley I. Jesuorobo FOR THE APPLICANT

Nicole Rahaman FOR THE RESPONDENT

SOLICITORS OF RECORD:

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