Federal Court  Cour fédérale

Date: 20230320

Docket: IMM-11480-22

Citation: 2023 FC 380

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 20, 2023

PRESENT: Associate Judge Mireille Tabib

BETWEEN

MANDEEP SINGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The applicant filed an application for leave and judicial review ("ALJR") under the *Federal Courts Citizenship, Immigration and Refugee Protection Regulations*, SOR/93-22 (the "FCCIRPR"). He was required to serve and file his record in order to perfect the application for leave by December 19, 2022, but failed to meet that deadline.

[2] On December 6, 2022, the Chief Justice of the Federal Court published a notice to the profession entitled "Deemed Discontinuance of Incomplete Applications for Leave and Judicial

Review in Proceedings under the Immigration and Refugee Protection Act" (the "Notice"). (The Notice was amended on December 22, 2022, to include applications for leave and judicial review pursuant to the *Citizenship Act*, but the essence of the Notice remains otherwise unchanged.) On the basis of this administrative practice, the applicant was deemed to have discontinued his ALJR pursuant to rule 165 of the *Federal Courts Rules*, SOR/98-106 (the "FC Rules") from the moment that he failed to perfect his application within the time limit prescribed by rule 10 of the FCCIRPR.

[3] This is a motion to revoke the deemed discontinuance, to reopen the proceeding and to obtain an extension of time to perfect the applicant's record.

[4] In these reasons, I will begin by reviewing the issues of the Notice's legal effect and of the factors, if any, that must be considered in order to revoke the deemed discontinuance. I will then review the factors that apply to extensions of time, as well as their relevance to the facts of this case.

I. The Notice

[5] The operative part of the Notice reads as follows:

As of the date of this Notice, applications pursuant to the Immigration and Refugee Protection Act and the Citizenship Act that remain unperfected following the expiry of the timelines in Rule 10 shall be deemed to have been discontinued by the Applicant, pursuant to	À compter de la date du présent avis, dans les demandes en vertu de la Loi sur l'immigration et la protection des réfugiés et de la Loi sur la Citoyenneté qui demeurent non complétées après l'expiration des délais prévus à la règle 10, le demandeur sera réputé s'être

Rule 165 of the Federal Courts Rules, without the need for formal notice by the Applicant or a Court Order. The Registry will provide notice to the parties by way of a recorded entry in the online docket on the Court website (Court Files).	désisté de la demande conformément à la règle 165 des Règles des Cours fédérales, sans qu'il ne soit nécessaire que le demandeur donne un avis officiel ou que la Cour rende une ordonnance. Le greffe avisera les parties par le biais d'une inscription enregistrée dans le plumitif en ligne sur le site Web de la Cour (Dossiers de la Cour).
If, pursuant to the new administrative practice described above, a proceeding is deemed to be discontinued in a file for which the Applicant intended to file a motion for an extension of time to perfect their record, a motion to revoke the deemed discontinuance, reopen the proceeding, and obtain an extension of time may instead be filed for consideration by the Court.	Si, conformément à la nouvelle pratique administrative décrite ci-dessus, une instance est considérée avoir fait l'objet d'un désistement dans un dossier pour lequel le demandeur avait l'intention de déposer une requête en prolongation de délai pour mettre son dossier en état, une requête en révocation du désistement réputé, en réouverture de l'instance et en prolongation de délai peut être déposée pour examen par la Cour.
[Emphasis added]	[Non souligné dans l'original]

[6] On January 30, 2023, the applicant brought an informal motion for an extension of time to serve and file his record. This motion did not mention the Notice and contained no conclusions aimed at revoking the deemed discontinuance or at reopening the proceeding. My colleague Associate Judge Steele issued a direction on February 2, 2023, refusing to consider the application as an informal motion and inviting the applicant to proceed by way of a formal motion and to include in that formal motion the appropriate submissions and conclusions. In order to guide the parties in their submissions, the direction also drew their attention to the

Court's recent decisions dealing with the interpretation and application of the Notice. These decisions, which were rendered by my colleague Associate Judge Duchesne, are *Abikan v Canada (Citizenship and Immigration)*, 2023 FC 149 and *Virk et al v Canada (Minister of Citizenship and Immigration)*, 2023 FC 143.

[7] In his written submissions, the applicant acknowledges *Abikan* and *Virk* but does not discuss their merits. The respondent elected not to intervene in the motion and to defer to the discretion of the Court. This is unfortunate given the novelty of the issue and its significance with respect to the outcomes of many similar motions that are pending before this Court. Nevertheless, it is important to take this case law into account in the analysis that follows.

[8] *Virk* is the first—and, to my knowledge, the only—decision that deals with the interpretation and effect of the Notice. In his analysis, my colleague considers the analytical framework that should be adopted and the factors that the Court should take into account in dealing with a motion to revoke the unintentional discontinuance imposed by the Notice. His analysis is rooted in the principles that apply to motions to revoke a voluntary discontinuance filed pursuant to rule 165, as established in *Philipos v Canada (Attorney General)*, 2016 FCA 79 and in several other decisions that have considered and applied it. He found that the standard that applies to the revocation of a voluntary discontinuance is the existence of an exceptional circumstance or of a fundamental event that causes the reversal of the decision to discontinue (*Virk* at para 32). However, considering that the deemed discontinuance imposed by the Notice operates automatically and in circumstances where the applicant has not expressed a positive intention to discontinue his or her application, the Associate Judge proposes a test that reformulates this standard to recognize that the deemed discontinuance does not stem from a

clearly stated intent to discontinue, but from the applicant's inaction (*Virk* at paras 33–34). He concludes as follows:

> [35] In my view, and subject to what follows later in these reasons, a party should only be relieved from the effects of a deemed discontinuance triggered by the litigant's inaction and the Deemed Discontinuance Practice in circumstances where they can establish that their inaction and failure to perfect their ALJR in a timely manner is the result of exceptional circumstances or fundamental event that affected their ability to perfect their ALJR when required notwithstanding that they were otherwise diligently taking the necessary steps to perfect their ALJR in time.

[9] He therefore proposes that motions to revoke a deemed discontinuance, to reopen the proceeding and to obtain an extension of time be determined based on a two-step analysis. The first step is to determine whether the motion contains evidence aimed at establishing that the ALJR was not perfected within the prescribed time limits as a result of exceptional circumstances or a fundamental event that affected the applicant's ability to meet the deadlines despite acting diligently. It is only if this first step is satisfied that the Court will consider the second step, namely, whether the applicant meets the test established to be granted an extension of time (*Virk* at para 42).

[10] *Abikan* does not expand on this analysis. Indeed, the motion to revoke the discontinuance had been brought prior to *Virk* and contained no evidence to satisfy the first step of the analysis set out in *Virk*. The Court having found that the applicant did not, in any event, meet the test applicable to the second step of the analysis, it determined that it was not necessary or appropriate to address the first step (*Abikan* at para 11).

[11] My colleague's analysis in *Virk* is rigorous and very thorough. Where I hesitate to follow him is with respect to the determination that the deemed discontinuance set out in the Notice has

the same effect as the voluntary discontinuance that is provided for under rule 165 (*Virk* at para 33). This finding assumes that the Notice can validly have the effect of determining or modifying the parties' procedural rights. However, I am of the opinion that this premise is incorrect.

[12] Nowhere in the *Federal Courts Act*, RSC 1985, c F-7 (the "FC Act"), the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "IRPA"), the *Citizenship Act*, RSC 1985 c C-29 (the "CA"), the FC Rules or the FCCIRPR is there a provision granting the Chief Justice of either of the two Federal Courts the authority to regulate the practice and procedure of these courts or to amend a rule set out in the FC Rules or the FCCIRPR. Section 46 of the FC Act, section 75 of the IRPA and section 22.3 of the CA confer this power on the Rules Committee established under section 45.1 of the FC Act. The FC Rules and the FCCIRPR grant the Court the authority, in the application of certain rules, to give procedural directions to the parties. This is the case for rules 53, 54, 318 and 385 of the FC Rules, to name only a few.

[13] Outside of these rules, general practice directions are occasionally issued by the Chief Justices of the Federal Courts. Whether they are called "Notices to the Parties and the Profession", "Practice Directions" or "Guidelines", I will use the term "Practice Directions" to refer to these notices and directions in these reasons.

[14] Practice Directions are sometimes intended to set forth administrative procedures to manage the information that the parties must provide to the Court, the conduct of hearings and the way in which the Registry must carry out certain procedures in order to facilitate the work of the Court. At times, they are used to notify the parties of how Chief Justices plan to exercise their

discretion in preparing hearing lists and allocating judicial resources. They can also inform the parties about the procedural practices recommended by the Court for the purposes of standardizing litigants' practices, or set out procedural protocols designed to facilitate the exercise of the rights provided under the rules, the preparation of hearings and the making of decisions.

[15] Practice Directions therefore play an important role in managing proceedings before the Court. For this reason, the parties must adhere to them to the extent possible. The Court must also take Practice Directions into account in the exercise of its discretion. Indeed, they can provide guidance and inform the Court in the determination of certain motions. For example, recommended practices and guidelines can help in assessing the reasonableness of parties' conduct.

[16] However, Practice Directions are not an exercise of the regulatory powers that are conferred by the legislation. Therefore, they should not be interpreted or applied as though they establish binding evidentiary rules or rules of practice (see, for example, the analysis in *Bayer Inc et al v Teva Canada Limited*, 2019 FC 1370 at paras 24–27 and 45–47).

[17] In equating the effect of the deemed discontinuance that is provided for in the Notice to the effect of the discontinuance set out in rule 165, as was done in *Virk*, the Notice is erroneously given the effect of a new procedural rule.

[18] It should be recalled that neither the FCCIRPR nor the FC Rules provide a mechanism establishing the presumption that a party who fails to complete a procedural step that is essential to the determination of the dispute has discontinued his or her proceeding. All of the mechanisms

that are expressly provided to put an end to a dispute after a party has failed to diligently continue proceedings or to observe certain time limits require the Court's judicial intervention and the issuance of an order. This is the case, in particular, for subrule 14(1) of the FCCIRPR and rules 167, 168, 210 and 380 to 382.4 of the FC Rules.

[19] Creating a new means of discontinuance or of mandatory termination of a proceeding that affects the parties' procedural rights and that is solely tied to the passage of time is so exorbitant of the scheme of the rules that it cannot be done by means of a Practice Direction. It would necessitate an amendment to the FC Rules or to the FCCIRPR, which did not occur.

[20] In light of the foregoing, the Notice should be interpreted so as to limit its effect to the achievement of its administrative objectives. The circumstances that led to the adoption of the Notice—and from which these objectives can be discerned—are set out as follows in the Notice's preamble:

The Court has seen a significant increase in the caseload in 2022 under the Immigration and Refugee Protection Act. There has also been a corresponding increase in the number of cases for which the Applicant has not perfected the Application for Leave within the prescribed time under Rule 10 of the Federal Courts Citizenship, Immigration and Refugee Protection Rules, effectively abandoning the proceeding.	La Cour a connu une augmentation significative de la charge de travail en 2022 en vertu de la Loi sur l'immigration et la protection des réfugiés. Il y a également eu une augmentation correspondante du nombre d'instances pour lesquelles le demandeur n'a pas mis en état la demande d'autorisation dans le délai prescrit par la règle 10 des Règles de la Cour fédérale en matière de citoyenneté, d'immigration et de protection des réfugiés, et a effectivement abandonné l'instance.
The long-standing practice of the Registry has been to wait a certain time for possible late requests to	La pratique de longue date du greffe a été d'attendre un certain temps pour les éventuelles demandes tardives de mise

perfect the Application for Leave and then, if the file remains unperfected, to refer these to the Court for dismissal by Order under Rule 14. However, this practice requires Registry staff to divert its limited resources to process large numbers of files for consideration by the Court. Staff must then process the resulting "leave dismissed" Order, including updates to the docket and follow-up steps related to confirmation of receipt by the parties.	en état de la demande d'autorisation, puis, si le dossier n'est toujours pas mis en état, de le renvoyer à la Cour pour qu'elle le rejette par ordonnance en vertu de la règle 14. Toutefois, cette pratique oblige le personnel du greffe à détourner ses ressources limitées pour traiter un grand nombre de dossiers pour examen par la Cour. Le personnel doit ensuite traiter l'ordonnance de rejet de l'autorisation qui en résulte, y compris les mises à jour du plumitif et les étapes de suivi liées à la confirmation de la réception par les parties.

[21] The Notice describes the heavy administrative burden that resulted from the Registry's previous practice, which was to refer applications for leave that had not been perfected to the Court for determination under rule 14 of the FCCIRPR, and to then process, record, send and follow up on the resulting dismissal orders. The objective of the Notice is therefore to reduce this administrative burden by modifying the Registry's practice. This objective is achieved by means of an administrative presumption of discontinuance. Given that the Registry considers the proceeding to have been discontinued, it is thus not referred to the Court for determination under rule 14 of the FCCIRPR. As a result, it is possible to give the Notice a purely administrative scope, which affects how the Registry processes files without affecting the parties' procedural rights. Indeed, this interpretation is in line with the wording of the Notice, which refers to "the new administrative practice described above", pursuant to which "a proceeding is deemed to be discontinued".

[22] In light of this, the Notice's recommendation that a motion that is brought following the operation of the deemed discontinuance should contain conclusions with respect to revoking the deemed discontinuance and reopening the proceeding does not imply that this recourse is distinct

from the motion for an extension of time. Rather, the inclusion of these conclusions in an order granting an extension of time makes it possible to regularize the keeping of the record from an administrative standpoint and is a purely formal and administrative matter.

[23] Therefore, I find that the application of the deemed discontinuance contemplated in the Notice does not modify the analytical framework applicable to a motion for an extension of time to perfect an ALJR. The Court must consider these motions as though they are simply motions for an extension of time. In the exercise of its discretion, the Court can take into account the issues addressed in the Notice as well as the particular circumstances applicable to ALJRs, but not as a condition precedent to obtaining relief. To the extent that the Court, applying the tests set out in the case law, finds that it is in the interests of justice to extend the time limits, conclusions relating to revoking the deemed discontinuance and reopening the proceeding will be included in the order to be issued as subsidiary provisions necessary to give effect to the extension.

[24] I will now consider the motion for an extension as presented.

II. The motion for an extension of time

A. *Facts and evidence*

[25] The facts surrounding the filing of the formal motion, as they appear in the Court file, are as follows.

[26] The applicant was required to serve and file his record no later than December 19, 2022. A message dated December 20, 2022, from the Registry to the applicant notified him that the service of the record to the respondent, which occurred on December 19, 2022, after 5 p.m., was only deemed effective on December 20, after the deadline. The Registry asked whether the applicant intended to bring a motion for an extension of time or whether he wanted the matter referred to the Court for direction.

[27] On January 30, 2023, the applicant brought an informal motion pursuant to the *Consolidated General Practice Guidelines* dated June 8, 2022. This motion explains that the employee who had been tasked with reviewing the applicant's record for grammatical and other typographical errors before sending it to the respondent and to the Court had transmitted the record outside the deadline at 10 p.m. on December 19, 2022, because he was under the impression that [TRANSLATION] "all federal records could be submitted by 11:59:59 p.m. on the date that they were due, exactly like in immigration matters before the Immigration and Refugee Board". The informal motion was accompanied by correspondence exchanged between counsel between December 20 and 26, 2022, as well as a letter from the respondent dated January 10, 2023, indicating that he did not oppose the motion and was leaving the matter to the discretion of the Court.

[28] On February 2, 2023, the Court issued the above-mentioned direction, refusing to consider the informal motion. In addition to raising the effect of the Notice regarding deemed discontinuances, the direction mentions the following concerns:

> [TRANSLATION]

> The Court also notes that the entirety of the delay has not been explained, in particular, why it took the applicant 20 days after receiving the respondent's January 10, 2023, letter to bring his informal motion.

[29] The February 2 direction invites the applicant to bring a formal motion to revoke the deemed discontinuance, reopen the proceeding and extend time to file his record [TRANSLATION] "and that addresses all the issues." In addition, the direction states that [TRANSLATION] "such a motion must be served and filed by February 7, 2023."

[30] The motion record that is now before the Court was served and submitted for filing on February 8, 2023, that is, one day after the expiry of the time period set out in the Court's direction. The Court nevertheless allowed it to be filed.

[31] The motion record contains only one affidavit: the affidavit of the employee who had been responsible for serving and filing the record on December 19, 2022. This affidavit confirms the allegations made the informal motion of January 30, according to which the employee thought that the time period expired at 11:59 p.m., as it does before the Immigration and Refugee Board. He adds that, believing that he had plenty of time, he had put this record aside and worked on a number of other files, including on his homework. As a result, he finalized the record and sent it to the respondent before 11:59 p.m. on December 19, but after 5 p.m.

[32] The motion record provides an explanation for the 20 day delay between the respondent's letter of January 10, 2023 and the filing of the informal motion, but only in the written submissions. According to this explanation, counsel for the applicant, having received no response to his request for consent to an extension of time, telephoned counsel for the respondent

on January 13, 2023. The respondent's letter was purportedly included in an email sent on Friday, January 13, 2023, at around 5 p.m., which would have gone to counsel for the applicant's junk mail folder. Counsel for the applicant only realized that this had happened when he followed up with the respondent a second time [TRANSLATION] "after a few business days had passed".

[33] Lastly, the motion record does not include the record that the applicant proposes to file, even though this record should have been ready a while ago. The applicant's written submissions—which, once again, are not supported by admissible evidence—contain assertions to the effect that this matter has potential merit because [TRANSLATION] "the RPD erred in law by continuing the hearing despite there being open hostility between the member and counsel and despite the fact that issues of procedural fairness had been raised during the hearing . . . that this matter was before the Refugee Appeal Division, which erred in law by writing that there was no issue of procedural fairness in this case while acknowledging, at the same time, that there were issues related to hostility between the member and counsel, and finally, . . . that the Refugee Protection Division should have allowed the applicant to make amendments, which led to the Board erring in its assessment of the refugee protection claimant's credibility."

B. *The law*

[34] *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) sets out as follows the factors to be considered on a motion for an extension of time:

1. Has the applicant provided a reasonable explanation for the entire duration of the delay?

2. Has the applicant shown a continuing intention to pursue his or her application?

3. Does the application have some merit?

4. Would prejudice to the respondent result from the extension?

[35] As mentioned by the Federal Court of Appeal in *Canada (Attorney General) v Larkman*, 2012 FCA 204:

> [62] These questions guide the Court in determining whether the granting of an extension of time is in the interests of justice: *Grewal*, *supra* at pages 277-278. The importance of each question depends upon the circumstances of each case. Further, not all of these four questions need be resolved in the moving party's favour. For example, "a compelling explanation for the delay may lead to a positive response even if the case against the judgment appears weak, and equally a strong case may counterbalance a less satisfactory justification for the delay": *Grewal*, at page 282. In certain cases, particularly in unusual cases, other questions may be relevant. The overriding consideration is that the interests of justice be served. See generally *Grewal*, at pages 278-279; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 at paragraph 33; *Huard v. Canada (Attorney General)*, 2007 FC 195, 89 Admin LR (4th) 1.

[36] It should also be noted that the obligation to justify the delay applies to the entire period of the delay, including the time between the moment when the party realizes that the prescribed time limit could not be or was not met and the moment when the motion is filed. A party who discovers that a procedural step was not completed in a timely manner must act promptly in order to remedy the default (see, for example, *Canada (Attorney General) v Tran*, 2008 FC 297 at paras 24–28 and *Abikan*, above, at para 28).

[37] Lastly, although counsel frequently argue that their clients should not suffer prejudice on account of their counsel's errors or negligence, counsel and client "are one" for the purposes of motions to extend time. Counsel are acting—or failing to act—in the shoes of their clients, and clients can therefore not expect to escape the consequences of their counsel's carelessness (*Chin v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1033, 22 Imm LR (2) 136, 69 FTR 77).

C. *Application of the tests to the facts*

(1) Explanation for the delay

[38] The applicant submits that the initial delay in serving the record, which was attributable to the employee's misunderstanding regarding the effective time of service upon the respondent, is [TRANSLATION] "an unfortunate administrative error that is not the result of carelessness on his part." I do not agree with this characterization. It is the responsibility of counsel who tasks his or her employee with sending documents within a prescribed time frame to provide that employee with the information needed to complete the task. In this case, the delay was caused by counsel's failure to provide his employee with basic information. This is not an administrative error, but a lack of diligence on the part of counsel. A lack of diligence is not a reasonable justification for the delay.

[39] I accept that this delay was short in duration and that counsel showed diligence in promptly contacting counsel for the respondent to ask him whether he would consent to an extension of time. For the purposes of this analysis, I am not taking into account the Court's seasonal recess, running from December 21, 2022, to January 7, 2023.

[40] The facts set out in the applicant's written submissions to attempt to justify the delay between January 10, 2023, and the filing of the initial informal motion on January 30, 2023, are not supported by an affidavit or by other admissible evidence. This is troubling given that the Court specifically drew the applicant's attention to the need to provide this justification. What is more, the explanation provided is implausible. It is not credible that counsel working in the field of immigration would use an email system that sends emails from the Department of Justice Canada, his or her main interlocutor, to junk mail. I therefore cannot take this explanation into account in the determination of the motion.

[41] I would add that a party who fails to meet a deadline must act diligently to remedy the default. The *Consolidated General Practice Guidelines* of June 8, 2022, allow the parties to proceed by way of an informal motion when they can demonstrate that the opposing party consents to or does not oppose the remedy sought. This direction was put in place in order to simplify procedures with a view to expediting the determination of motions. However, the defaulting party is not required to proceed, as a first step, to seek the opposing party's consent with a view to proceeding informally. Quite the contrary—his or her obligation is to act diligently in order to file the motion for an extension with the Court as soon as possible.

[42] It should be recalled that the dispensation from formality contemplated in the *Consolidated General Practice Guidelines* remains subject to the discretion of the Court. The Court may require a formal motion even when the opposing party consents to the motion or does not oppose it. The opposing party does not have to take either of these positions. Accordingly, a party cannot expect to be relieved from the obligation to bring a formal motion in order to obtain an extension of time. A party who requests the consent of the opposing party but who does not

receive a response in a timely manner is thus not justified in continuing to do nothing while he or she waits for an answer. The obligation act diligently requires that he or she be prepared to bring the motion formally, with no additional delay.

[43] Accordingly, and even if I were to take the facts set out in the applicant's written submissions as true, I would still find that the applicant did not act diligently in waiting until January 30, 2023, to file an informal motion. There is no reasonable explanation for the 20-day delay between January 10, 2023, and January 30, 2023.

[44] Lastly, I note that in the face of the Court's direction requiring that a formal motion be served and filed by February 7, 2023, the applicant failed to meet that deadline by an additional day, for which no explanation was provided.

(2) Continuing intention to proceed

[45] For the purposes of this analysis, I assume that the applicant had a continuing intention to pursue his application. I infer this intention from the fact that the application record seems to have been prepared and finalized as of December 19, 2022, and that counsel for the applicant took certain steps to obtain an extension of the time limits.

(3) Existence of a meritorious case

[46] The applicant was required to demonstrate, in his motion record, that his application has a reasonable chance of success. However, all the applicant does is to make general assertions relating to the existence of hostility issues between the RPD member and counsel for the

applicant, and to the effect that that the RPD should have allowed the applicant to make amendments.

[47] Like my colleague in *Abikan* (at paras 23–24), it is impossible for me to determine whether there is any merit to these contentions or to the ALJR because the applicant did not submit any evidence supporting these claims. Hostility between the RPD member and counsel, even if its existence is acknowledged by the Appeal Division, does not by itself constitute grounds for judicial review. It all depends on the circumstances and on the reasons provided by the RAD. In failing to submit, in support of his motion, the application record that he would like to file or even the decision that is the subject of the judicial review, the applicant is denying the Court the ability to assess the reasonableness of these grounds. The same is true with respect to the RPD's alleged refusal to allow amendments, the nature of which is not even specified.

[48] The applicant's decision not to submit his application record in support of his motion is all the more perplexing given that the applicant's attention had been drawn to the reasons given in *Abikan*, which emphasize the importance of providing this evidence. I find that the applicant has not demonstrated that his ALJR has potential merit.

(4) Prejudice to the opposing party

[49] In light of the respondent's position that he does not oppose the remedy sought, I presume, for the purposes of this analysis, that it would cause him no prejudice.

(5) Weighing the factors and the interests of justice

[50] The Notice regarding deemed discontinuances describes the issues confronting the Court as a result of the significant increase in the volume of ALJRs in citizenship and refugee protection matters. The Notice highlights the administrative burden that processing un-perfected ALJRs represent. Similarly, every intervention required with respect to a file, including the processing of informal motions, places an additional administrative burden on a Court that is already overloaded. A missed deadline, no matter how short the delay, leads to a motion for an extension of time. The process of receiving this motion, referring it to the Court for determination, entering the resulting order in the docket, sending it to the parties and following up on it, diverts valuable administrative and judicial resources from other files. Furthermore, this process must all too often be repeated when an informal motion is incomplete, as was the case here, and the Court must require that a formal motion be brought.

[51] In this context, it is appropriate that significant weight be given to the initial reason for the delay. When, by reason of a party's lack of diligence, a motion for an extension of time is brought, the processing of other meritorious cases, in which the parties acted diligently, is delayed.

[52] One would expect that an applicant whose case has merit would hasten to demonstrate this and to take steps to assert his or her right without delay. The applicant in this case did no such thing. Of the 33 days that elapsed between the expiry of the time period prescribed by the FCCIRPR and the filing of the formal motion (not taking into account the seasonal recess), nearly 20 days—i.e., more than half of the time—were not adequately justified. In addition to this lack of diligence, the applicant has failed to demonstrate that the application has some merit.

[53] In the circumstances of this case, I give these factors determinative weight. The applicant's continuing intention to pursue the application and the lack of prejudice to the respondent are insufficient in the circumstances to justify granting an extension. It is not in the interests of justice to divert the Court's limited resources to the benefit of a party who demonstrated neither diligence nor the existence of a meritorious case.

THIS COURT ORDERS that:

1. The motion is dismissed.

"Mireille Tabib"
Associate Judge

Certified true translation
Melissa Paquette, Jurilinguist

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11480-22
STYLE OF CAUSE:	MANDEEP SINGH v MINISTER OF CITIZENSHIP AND IMMIGRATION
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DATE OF HEARING:	MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES
REASONS FOR ORDER AND ORDER:	ASSOCIATE JUDGE TABIB
DATED:	MARCH 20, 2023

APPEARANCES:

KWADWO DAMOA YEBOAH	FOR THE APPLICANT
CHANTAL CHATMAJIAN	FOR THE RESPONDENT

COUNSEL OF RECORD:

KDY LEGAL INC. Montréal, Quebec	FOR THE APPLICANT
Department of Justice Canada (Attorney General of Canada) Montréal, Quebec	FOR THE RESPONDENT