Federal Court		Cour fédérale

Date: 20100326

Docket: IMM-529-09

Citation: 2010 FC 336

Ottawa, Ontario, March 26, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

OLUSEGUN EMMANUEL ADESINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The only live issue is whether the Respondent should pay costs. The original judicial review has been withdrawn and the only matter reserved was that of costs.

[2] This matter started as a mandamus application to require the Minister to return the Applicant's non-fraudulent documents and an application in the nature of declaration that the Respondent's failure to provide the Applicant with an opportunity to respond to the decision (it being assumed that the refusal to return the documents was a decision) violated the principles of procedural fairness.

[3] The Applicant is a citizen of Nigeria who had been sponsored by his sister for permanent residency. As it turns out, the Applicant's application was part of a larger group of applications, some of which were eventually appealed to the IAD. The appeals were withdrawn on January 30, 2009.

[4] In the course of the Applicant's permanent residence application, it was determined by the Canadian High Commission in Lagos that two letters from two universities filed by the Applicant were fraudulent. The Applicant did not contest this conclusion but simply withdrew his application on May 8, 2008 and requested the return of the non-fraudulent documents he had submitted. He was particularly interested in the documents related to his real education. These documents were non-replaceable true copies as opposed to photocopies and therefore of considerable importance to him.

[5] The Respondent did not respond to the written request of May 8, 2008 for return of the non-fraudulent documents nor to other efforts to secure their return until the mandamus application was filed.

[6] While the Court file is lacking in detailed evidence of what transpired regarding the documents, I accept Mr. Butterfield's explanation that the Applicant's documents were tied up in the IAD appeals which ended on January 30, 2009. Under CIC processes, the documents were returned to the visa post after which they appear to have bounced around in the bureaucracy and within Federal Express.

[7] The Applicant now, having obtained the documents, requests that he be awarded costs because of the Respondent's neglect and/or refusal to fulfill its duty to return the non-fraudulent documents. It is argued that such neglect or failure constitutes bad faith and that bad faith constitutes "special reasons" justifying costs under Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*.

[8] The costs requested are modest and really intended to convey disapproval of the Respondent's conduct rather than an attempt to extract legal fees. The Applicant's counsel has been forthright in this regard.

[9] There is insufficient evidence to establish either a deliberate attempt to deprive the Applicant of his documents nor of any callous disregard for his interests. If there was neglect, it appears to be more in the nature of incompetence or inattention than in the nature of callousness.

[10] There is a rational explanation for the documents being tied up in IAD proceedings which terminated at the end of January 2009. The remaining delay, while explainable, is hardly justifiable.

[11] However, Rule 22 evidences a deliberate attempt to have a "no cost" regime on immigration matters. It is a rule which applies to both parties.

22. No costs shall be awarded to or payable by any party in respect of an application for leave, an application for	**22.** 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.

[12] The mere fact that a mandamus order would have been justified is not sufficient basis for a cost order (*Subaharan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1228). The threshold for "special reasons" is high and each case must turn on its own facts (*Ibrahim v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1342).

[13] "Special reasons" have been described, non-exhaustively, as including conduct which is unfair, oppressive, improper, motivated by bad faith or results in undue prolongation of proceedings.

[14] Viewing the whole circumstances, the Applicant contributed to his plight by submitting fraudulent documents. It is not unreasonable that these documents, along with his legitimate documents, would be entangled in related IAD proceedings which ended over one year after the written request for the return of the documents. The remaining time until their return, approximately one year, can be ascribed to bureaucratic rigidity but not to deliberateness or malice.

[15] Therefore, there are no "special reasons" which justify a cost order. Parties should bear in mind the adage "what is sauce for the goose is sauce for the gander" before they seek to narrow the no cost regime of Rule 22.

ORDER

THIS COURT ORDERS that the application for judicial review, being moot, is dismissed. No order as to costs is made.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	OLUSEGUN EMMANUEL ADESINA and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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