Federal Court Cour fédérale

Date: 20130130

Docket: IMM-10974-12

Citation: 2013 FC 94

Ottawa, Ontario, January 30, 2013

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

CANRONG LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion in writing by the Applicant seeking an Order requiring the Respondent to provide a copy of departmental computer file notes as "reasons" for a supposed decision not to finalize the Applicant's visa application.

[2] The Applicant's underlying application for judicial review seeks an Order in the nature of *mandamus* requiring the Respondent to finalize his visa application within a period not to exceed six months. In response to a Rule 9 request from the Court, counsel for the Respondent took the usual position in cases like this by pointing out "that no decision has yet been made on the Applicant's

application for permanent residence" and, therefore, no reasons for a decision exist. According to the Applicant's counsel this was not responsive and it was "downright false" because the decision was "not to finalize the file". There is no evidence before the Court to establish that the Respondent has decided not to finalize the Applicant's file and, indeed, the Rule 9 response states exactly the opposite.

[3] What the Applicant is actually seeking is an Order for discovery of potentially relevant evidence from the Respondent's file. This motion is a colourable attempt to circumvent the Rules of the Court by seeking file disclosure before leave has been considered and granted. The Applicant is, of course, able to obtain this information through an access to information request but apparently believes that process to be inconvenient. This motion is devoid of legal merit and it is dismissed.

[4] In an earlier decision rendered by Justice Roger Hughes in this proceeding, note was taken of counsel's "intemperate and unprofessional comments about the Court and government officials". No order of costs was made by Justice Hughes because Ms. Jafari undertook to speak to Mr. Leahy about the Court's concern. Notwithstanding that admonition, the material filed by Ms. Jafari on this motion, including an affidavit deposed by Mr. Leahy, contains similar scandalous accusations. Apparently these counsel continue to wrongly believe that it is appropriate to gratuitously accuse opposing counsel of "deceit" and of a failure to be "forthright and honest". Of at least equal concern is the improper statement that Justice Hughes "imposed the respondent's terms on Mr. Li" and that Justice Donald Rennie had acted "contrary to assurances" that I had allegedly given in the context of a case management conference.

[5] Counsel for the Applicant sought costs from the Minister on this motion. Given the history of this proceeding, an order of costs against the Applicant is undoubtedly justified. Ms. Jafari is counsel of record and he will have ten days to address the issue of costs in writing including the issue of whether costs should be ordered payable personally by counsel. The Respondent will have seven days to reply. Neither submission is to exceed ten pages in length.

ORDER

THIS COURT ORDERS that this motion is dismissed with the issue of costs to be reserved pending further submissions from the parties.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10974-12
STYLE OF CAUSE:	LI v MCI

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	BARNES J.
DATED:	January 30, 2013

APPEARANCES:

Pantea Jafari	FOR THE APPLICANT
Lorne McClenaghan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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William F. Pentney Deputy Attorney General of Canada Toronto, ON	FOR THE RESPONDENT