

IMM-4370-96

MONTRÉAL, QUEBEC, THE 10th DAY OF MARCH, 1997

PRESENT: RICHARD MORNEAU, PROTHONOTARY

BETWEEN:

EXEQUIEL DIAZ INOSTROZA  
BLASCO MICHELL DIAZ JAMES  
MARTA ANGELICA JAMES MONTERO

Applicants

AND

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**ORDER**

The applicants are given leave to file in the Court record, within five (5) days of the date of this Order, the affidavit of Exequiel Diaz Inostroza, dated February 12, 1997, in order to make this affidavit a component of the applicants' record, which was filed January 8, 1997.

Richard Morneau  
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Prothonotary

Certified true translation

Christiane Delon, LL.L.

BETWEEN:

EXEQUIEL DIAZ INOSTROZA  
BLASCO MICHELL DIAZ JAMES  
MARTA ANGELICA JAMES MONTERO

Applicants

AND

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**REASONS FOR ORDER**

**RICHARD MORNEAU,**  
**PROTHONOTARY:**

The applicants, through their motion, are seeking the Court's leave to file a supplementary affidavit in support of their request for an extension of the time in which to undertake an application for leave and for judicial review (the application for leave).

This motion was submitted to the Court under Rule 324 of the *Federal Court Rules*, which allows a decision to be taken on a motion without personal appearance of a party or a solicitor on his or her behalf, and upon consideration of written submissions.

**Context**

In their application for leave, the applicants indicate that they received the reasons of the Refugee Division on August 28, 1996. Accordingly, pursuant to Rule 7(1) of the *Federal Court Immigration Rules, 1993* (the Rules), the applicants' application for leave should have been filed and served on the parties no later than September 12, 1996, fifteen (15) days after the applicants had been notified of the

decision.

However, the applicants did not file and serve their application for leave until November 25, 1996.

In the said application, the applicants stated that the grounds for the request for an extension of time would be spelled out in the affidavit and the factum they would be filing in the context of filing their record under Rule 10.

But the affidavit they filed with their record does not contain any allegations in support of the request for an extension of time.

The first three paragraphs of the factum that they filed do, however, state the following:

*[Translation]*

1. The applicant asks this Court to extend the time in which to file his application for leave because, after receiving the decision of the Refugee Division, he instructed Guillermo Munoz Bujes, who was already representing him, to file an application for leave;
2. Guillermo Munoz Bujes, which was presenting himself as a lawyer, see to this effect the decision from which leave is requested, told the applicant that he had prepared and filed it;
3. Once I learned that he was not a lawyer and could not have filed my application, I retained Mr. Noël Saint-Pierre as my lawyer.

On February 6, 1997, following receipt of the applicants' record, the respondent served and filed his factum pursuant to Rule 11.

On February 18, 1997 the applicants served and filed the present motion in the Court file.

Counsel for the applicants concede that it was when they received the respondent's factum that they found out that the affidavit in support of the request for an extension of time in the application for leave was missing.

**Analysis**

It is apparent to me that in this case the solicitors who acted on behalf of the applicants certainly did not pay the necessary attention to their clients' file.

In the first place, it is unfortunate that the attorney who prepared the factum and the draft affidavit of one of the applicants did not notice that the said draft did not contain any allegations that could support the first three paragraphs of the applicants' factum.

Secondly, the fact that the attorney having carriage of the applicants' file failed to react to this deficiency until he was out of time, about eleven (11) days after receiving the respondent's record, is likewise regrettable. Having assigned the drafting of important proceedings to another solicitor, it was his responsibility to initiate a review of the work done before filing the applicants' record.

Closer monitoring of the proceedings that were filed was clearly necessary.

However, it is my intention to allow the applicants to see to it that the affidavit evidence in their record corresponds to the submissions in their factum in regard to their request for an extension of the time in which to do a late filing of their application for leave.

There is no need at this point to assess this request for an extension of time on its merits. It will be up to the Court to consider this issue when the application for leave comes before it for adjudication.

This is not an extension of the time under Rule 10 as such. The issue here concerns leave to add an affidavit to the record, the latter having been filed within the requisite time. In the circumstances, in short, it involves allowing the correction of a regrettable deficiency, and not allowing an applicant to file its Rule 10 record in stages.

The respondent argues that the applicants' proceeding is prejudicial to him in that it would allow the applicants to introduce new evidence in opposition to the argument in the respondents' factum. I do not agree.

The affidavit the applicants are seeking to produce, that of Exequiel Diaz Inostroza dated February 12, 1997, simply mirrors the allegations contained in the applicants' factum. The respondent, in paragraphs 8 to 13 of his factum filed on February 7, 1997, was clearly capable of replying to the applicants' allegations. In my opinion, therefore, there is no attempt to add any new evidence other than the fact that the applicants, upon reading paragraph 10 of the respondent's factum, apparently realized the deficiency in their record. In the circumstances the respondent will not be prejudiced in any way, in my opinion. The interests of justice tend to favour allowing the addition sought by the applicants.

The applicants will therefore be given leave to file in the Court record, within five (5) days of the date of this Order, the affidavit of Exequiel Diaz Inostroza, dated February 12, 1997, in order to make this affidavit a component of the applicants' record, which was filed January 8, 1997.

Richard Morneau  
Prothonotary

Montréal, Quebec  
March 10, 1997

Certified true translation

Christiane Delon, LL.L.

**Federal Court of Canada**

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Court file no. IMM-4370-96

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BLASCO MICHELL DIAZ JAMES  
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Applicants

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MINISTER OF CITIZENSHIP AND  
IMMIGRATION

Respondent

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**REASONS FOR ORDER**

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**FEDERAL COURT OF CANADA**  
**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**FILE NO.** IMM-4370-96

**STYLE:**EXEQUIEL DIAZ INOSTROZA  
BLASCO MICHELL DIAZ JAMES  
MARTA ANGELICA JAMES MONTERO

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MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**WRITTEN MOTION EXAMINED IN MONTRÉAL WITHOUT APPEARANCE BY PARTIES**

**REASONS FOR ORDER BY:**Richard Morneau, Prothonotary

**DATE OF REASONS FOR ORDER:** March 10, 1997

**WRITTEN SUBMISSIONS BY:**

Noël St-Pierre for the applicant

Daniel Latulippe for the respondent

**SOLICITORS OF RECORD:**

Noël St-Pierre  
Montréal, Quebec for the applicant

George Thomson  
Deputy Attorney General of Canada  
Federal Department of Justice

Montréal, Quebec

for the respondent