

Federal Court



Cour fédérale

Date: 20230228

Docket: IMM-7463-21

Citation: 2023 FC 282

Ottawa, Ontario, February 28, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Jose Henry MONGE CONTRERAS

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

ORDER AND REASONS

I. Overview

[1] This Order addresses the Applicant's request for costs, and disposes of his Judicial Review Application (as defined below).

[2] For the reasons that follow, I award the Applicant lump sum costs in the amount of \$2,000, inclusive of legal fees and disbursements. In addition, the Judicial Review Application is dismissed for mootness.

II. Relevant Background

[3] This matter involved an application for judicial review [Judicial Review Application] seeking a *mandamus* order requiring the Respondent to process the Applicant's application under section 42.1(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* for Ministerial relief from the *IRPA*'s inadmissibility provisions [Ministerial Relief Application] within 30 days of the Court's decision.

[4] The Judicial Review Application also sought the Applicant's costs in the amount of \$4,000 and requested that the issue of costs be dealt with in writing.

[5] The Applicant filed the Ministerial Relief Application in 2013 and sought numerous updates in the intervening years. As early as 2017, the Applicant also signalled an intention to file an application for *mandamus* to the Canada Border Services Agency [CBSA].

[6] On May 25, 2022, after the Applicant filed the Judicial Review Application and after the Respondent informed that Court that he would not oppose the leave application, the Applicant received a draft version of the CBSA's recommendation to the Minister. The Applicant had 60 days to provide comments before the recommendation would be sent to the Minister. The Applicant responded to the CBSA on July 11, 2022.

[7] On December 9, 2022, just days before the December 13, 2022 hearing scheduled before the Court, the Respondent informed the Court that the Minister had rendered a positive decision on the Applicant's request for relief, and submitted that the Applicant's request for *mandamus* was moot. The Respondent subsequently served and filed his submissions regarding the issue of costs, and the Applicant served and filed reply costs submissions.

[8] The Court also directed the parties to confer and advise the Court if, in the circumstances, they agreed on the disposition of the Judicial Review Application.

III. Analysis

[9] As a preliminary matter, the Respondent points out in his costs submissions that the Minister of Public Safety and Emergency Preparedness is responsible for Ministerial relief declarations under the *IRPA* s 42.1. Having regard to the *IRPA* s 4(2)(d), I agree, as does the Applicant in his reply costs submissions. I thus order the style of cause amended immediately to identify the Respondent as the Minister of Public Safety and Emergency Preparedness, in place of the Minister of Citizenship and Immigration.

[10] The general rule is that there is no costs award in respect of an application for judicial review in the immigration context, unless the Court orders otherwise for "special reasons": Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*FCCIRPR*].

[11] Acceptable special reasons depend on the circumstances. In terms of *mandamus*, special reasons for a costs order may exist where an immigration official issues a decision after an unreasonable and unjustified delay: *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 [*Ndungu*] at para 7(6)(iv).

[12] Both parties rely on case law to support their respective positions. For example, in the case of *John Doe v Canada (Citizenship and Immigration)*, 2006 FC 535 on which the Applicant relies, among others, the application for Ministerial relief itself was pending for 8 years (para 5) and was a factor the Court took into account in awarding costs for the respondents' failure to take a decision on a permanent residence application requested almost 20 years ago.

[13] The Respondent, on the other hand, relies on the case of *Kanthasamyiyar v Canada (Citizenship and Immigration)*, 2015 FC 1248, among others, where Associate Chief Justice Gagné found that there was no evidence of unfair conduct or bad faith on the part of the respondents (para 61). She thus declined to award costs, notwithstanding the grant of the applicant's judicial review application requiring the Minister of Citizenship and Immigration to render a decision on the applicant's permanent residence application that had been pending for about 9 years.

[14] In my view, neither case is of great assistance to either party here because in the end, the Applicant grounds the request for costs on the failure of the Minister to comply with its own proposed timelines, to the prejudice of the Applicant.

[15] The Applicant's initial costs submissions in his Further Memorandum describe two bases for the costs request – first, the overall delay in the processing of the Ministerial Relief Application, and second, the Respondent's failure to comply with proposed deadlines. The Respondent admits in its costs submissions that the CBSA did not meet timelines proposed between January 2021 and October 2021 for the disclosure of the draft recommendation on the Ministerial Relief Application.

[16] The Respondent further submits that he did not oppose leave and did not adduce evidence or file any written submissions. I find, at best, these are neutral factors: *Ndungu*, above at para 7(6)(v).

[17] In addition, the Respondent submits that although the Applicant faced uncertainty about his status in Canada while waiting for a decision on his Ministerial Relief Application, the Applicant's evidence is that he has been able to work and support himself and his family in the meantime. I find this argument unpersuasive, however, because it ignores the Applicant's second reason for bringing the Judicial Review Application, that is the Respondent's failure to comply with its own proposed timelines.

[18] The Applicant takes no issue with the conduct of the Department of Justice itself. The Applicant's reply costs submissions clarify that it is rather the Respondent's lack of adherence to agreed upon timelines that underlies the request for costs because it resulted in the Applicant seeking an order for *mandamus* from this Court, and thus incurring additional costs to perfect the Judicial Review Application and to take other steps leading up to the hearing.

[19] I note that between March 10, 2022, when the Respondent advised the Court that he would not oppose the leave application, and December 9, 2022, when the Respondent advised the Court that the Minister rendered a positive decision on the Applicant's request for relief, the Applicant took steps to advance the Judicial Review Application to the hearing scheduled for December 13, 2022, including the service and filing of the Applicant's Further Memorandum. Although the CBSA provided the Applicant with the draft recommendation to the Minister and the Applicant responded during this period, the Respondent did not provide any explanation or justification for the delay once leave was granted on September 15, 2022 until less than one week before the scheduled hearing of this matter.

[20] I find in the circumstances that the repeated, cumulative delays rise to the level of special reasons, warranting an award of costs.

[21] Regarding the disposition of the Judicial Review Application, the parties conferred at the direction of the Court and agreed that it should be dismissed, and I agree, because the Minister's positive decision renders it moot, but for the costs request.

IV. Conclusion

[22] The Judicial Review Application therefore is dismissed for mootness.

[23] Regarding the Applicant's request for costs, I conclude that a reasonable award of costs in this matter is the lump sum of \$2,000, inclusive of legal costs and disbursements, payable by the Respondent to the Applicant.

ORDER in IMM-7463-21

THIS COURT'S ORDER is that:

1. The style of cause is amended immediately to identify the Respondent as the Minister of Public Safety and Emergency Preparedness, in place of the Minister of Citizenship and Immigration.
2. The Applicant's Judicial Review Application is dismissed for mootness.
3. The Applicant is awarded lump sum costs in the amount of \$2,000, inclusive of legal fees and disbursements, payable by the Respondent.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7463-21

STYLE OF CAUSE: JOSE HENRY MONGE CONTRERAS v MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

ORDER AND REASONS: FUHRER J.

DATED: FEBRUARY 28, 2023

APPEARANCES:

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