



IMM-905-96

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B E T W E E N:

SHAHIN ZANIFPOUR

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

GILES, A.S.P.:

The motion before me seeks an extension of time within which to file the Applicant's Record. The motion should have been filed before 5:00 p.m. on Friday, April 12th, 1996. At 3:00 p.m., on that afternoon, an emergency situation arose in the office of the applicant's solicitor, which is it indicated to me should be taken into account when excusing the delay in filing. It is not suggested that the record was ready, and that serving and filing were delayed because of the emergency. I think it reasonable to conclude, that the happening of the emergency had no influence whatsoever on the failure to file. The other and apparently principal reason for the delay is that counsel was awaiting the grant of Legal Aid. In *Morales v. S.S.C.*, now reported at 29 Imm. L.R. (2d) 34, Mr. Justice Teitelbaum points out that; "an application for an extension should not normally be granted if the sole reason for the application is the waiting for Legal Aid to give its approval." While there was apparently some time spent during the two days before filing was due trying to contact the client to ascertain what was to be done if Legal Aid was to be refused, or to obtain "instructions," which I take to

be a euphemism for an undertaking to pay fees, and some indication of how this was to be done.

The amount of delay due to matters other than awaiting Legal Aid is so minimal, that awaiting Legal Aid can be considered to be the sole reason for the delay. In *Awogbade v. M.C.I.*, now reported in 29 Imm. L.R. (2d) 281, also cited by the Respondent, Mr. Justice Muldoon comments extensively on the practice of assisting in the commencement of an application for leave, and then abandoning the client pending the granting of Legal Aid.

I have also taken account of the possibility that the applicant's counsel may have intended to prepare the Record for filing over the weekend, to file on the Monday (when counsel calculated the filing was due), had the emergency not arisen. There is however, no evidence that this was the case, and appearances are that nothing would have been done because of the failure to obtain Legal Aid, or "instructions".

Counsel for the respondent has filed written submissions with respect to the requirement to show an arguable case, and the failure to do so in this case, I agree with those submissions. Therefore, because of all the delay has not been excused, and no arguable case has been shown, the application for an extension to file the Applicant's Record will be dismissed.

ORDER:

Motion dismissed.

"Peter A.K. Giles"

A.S.P.

Toronto, Ontario
May 1, 1996

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-905-96

STYLE OF CAUSE: SHAHIN NAZIFPOUR

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

CONSIDERED AT TORONTO, ONTARIO UNDER THE PROVISION OF
RULE 324.

REASONS FOR ORDER
AND ORDER BY: GILES, A.S.P.

DATED: MAY 1, 1996

SOLICITORS OF RECORD:

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For the Respondent

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