

Federal Court



Cour fédérale

Date: 20100317

Docket: IMM-2383-09

Citation: 2010 FC 305

Ottawa, Ontario, March 17, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

AMARDEEP BOPARAI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant sought judicial review of the outstanding decision on a spousal sponsorship application filed by the Applicant on May 29, 2006, and not decided by the Respondent for reasons not known to the Applicant at the time his application for judicial review was filed. The Applicant sought the following relief by way of judicial review:

An order requiring that the respondent process the application for spousal sponsorship for landing from outside Canada in accordance with the policy provisions set out in IP 2 and OP 24 of the Immigration Manual (sic) and other guidelines. Any further relief this Honourable Court may deem just and proper.

[2] On December 17, 2009, permanent resident visas were issued to the Applicant's wife and infant son.

[3] This application is moot. There is no longer a live issue between the parties and the Court declines to exercise its discretion to decide the matter on the merits (see *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; [1989] S.C.J. No. 14).

[4] The sole matter that the Applicant is now raising is the issue of costs and whether special reasons exist for the awarding of costs against the Respondent. Given the history of this file there is a question as to whether the Court should consider the matter of costs as a live issue as between the parties given that the substantive issues have all been resolved. However, I have decided that it is appropriate to consider the matter of costs based on the facts of this case.

[5] The Applicant argues that the Court should find that special reasons exist pursuant to Rule 22 of *The Federal Court Immigration and Refugee Protection Rules*, (SOR/93-22). The Applicant takes the position that there was an unreasonable delay in the processing of the Applicant's sponsorship application for his wife and child and invited the Court to "send a message" to the Minister that these applications should be processed in a more timely fashion.

[6] The initial sponsorship application was made in May, 2006, it was approved in May 2009, and the visas were issued in December 2009. The sole reasons for the visas not being issued earlier

was the wife's pregnancy and inability to travel. Thus, the processing time in question from application to approval is slightly less than three years.

[7] The Respondent acknowledges that the time to process the sponsorship application was somewhat longer than the norm, but states that there is no evidence of bad faith and that there were circumstances in this case that led to the longer timeframe. The Respondent argues it had fully explained the reasons for the delay to the Applicant throughout the process.

[8] I agree that there is no evidence of bad faith on the part of the Respondent or that the Respondent acted in a way that could be described as unfair, oppressive or improper in the conduct of this litigation, or prolonged the proceedings as contemplated by this Court in *Johnson v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262; 275 F.T.R. 316, and *Huot v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 917; 83 Imm. L.R. (3d) 144. Further investigation of the sponsorship application was required to consider allegations of an "immigration marriage" made against the Applicant and lead to the delays. Accordingly, I find that there are no special reasons to award costs against the Respondent.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. this application is dismissed; and
2. there is no order as to costs.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2383-09

STYLE OF CAUSE: BOPARAI v. MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: MARCH 9, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: MARCH 17, 2010

APPEARANCES:

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