Federal Court  Cour fédérale

Date: 20110524

Docket: IMM-3201-10

Citation: 2011 FC 606

Ottawa, Ontario, May 24, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

JUAN JOSE BELTRAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

SUPPLEMENTAL REASONS FOR ORDER AND ORDER

[1] In my initial reasons for order, 2011 FC 516, I directed Mr. Beltran's counsel to prepare for endorsement a draft order to implement the said reasons, which were that it would be an abuse of process to allow the admissibility hearing to continue. Counsel has provided such a draft, approved as to form and content by counsel for the respondent Minister. The order shall be endorsed.

[2] I also gave the Minister a delay to propose a serious question of general importance which could support an appeal to the Court of Appeal. The Minister has proposed two questions. Mr. Beltran submits that neither should be certified.

[3] The questions are:

a. Is a permanent stay of proceedings before the Immigration Division of the Immigration and Refugee Board of Canada, which has the effect of binding the Canada Border Services Agency in addition to the Immigration Division, an appropriate remedy where the applicant has not first challenged the referral of the report by the CBSA under section 44 of the *Immigration and Refugee Protection Act*?

b. In determining whether to grant a permanent stay of the hearing based on a view that the CBSA should not be allowed to proceed before the Immigration Division, is the Federal Court entitled to examine the actual merits of the case to be presented to that division?

[4] In my opinion, the goal of a judicial review of a section 44 report is to right a wrong quite different from that targeted by a permanent stay of proceedings. A judicial review targets the reasonableness (or in some cases, the correctness) of a decision. A permanent stay has nothing to do with the reasonableness of that decision. Rather, its purpose is to halt an abuse of process. Furthermore, a stay is based on a different record as set out at paragraphs 31 and 32 of my initial reasons. The Minister proposes a two-stage process. If leave was not granted or if leave was granted and then the judicial review was dismissed, Mr. Beltran would still have been able to move for a

permanent stay on the grounds of an abuse of process. In my opinion, adding such a step would unnecessarily complicate the process and create additional expense for both parties, an expense Mr. Beltran may not be in position to bear. We must be attuned to fundamental access to justice through procedures that minimize unnecessary costs and complexity (*Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62).

[5] As to the second question, one might well think that the purpose of the exercise was to examine the actual merits of the case. However, the purpose was rather to determine whether, and if so, the extent to which, Mr. Beltran's defence was prejudiced by the passage of time attributable to inaction on the part of the Minister. That point was made at paragraphs 39 and 40 of my initial reasons. Thus, the second question simply does not arise.

[6] An analysis of the material to be presented to the Immigration Division showed that alliances within protest groups in El Salvador were constantly shifting. Mr. Beltran's involvement with LP-28 was a snapshot in time. Mr. Beltran's understanding was that LP-28 was not part of FMLN but rather was part of FDR, see paragraph 44 of the initial reasons.

[7] The delays on the part of the Minister would have made it difficult, if not impossible, for Mr. Beltran to properly defend himself.

[8] Mr. Beltran's counsel makes the point, with which I also agree, that this case is simply too fact-specific to raise an issue of general importance.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Court declares that the admissibility proceeding against the applicant based on the s. 44(1) report signed on February 18, 2009, constitutes an abuse of process.
2. The Minister is prohibited from issuing any further s. 44(1) reports against the applicant regarding an allegation of inadmissibility under s. 34(1) (f) due to his membership in the Ligas Populares 28 de Febrero (the 28th of February Popular Leagues) (LP-28), unless the Minister obtains new, credible and trustworthy evidence about his membership in the LP-28 that the Minister would not otherwise have obtained prior to the date of this order through due diligence efforts.
3. The Immigration Division of the Immigration and Refugee Board of Canada is prohibited from continuing the admissibility hearing against the applicant based on the s. 44(1) report signed on February 18, 2009 and from commencing any other admissibility hearing based on a s. 44(1) report regarding an allegation of inadmissibility under s. 34(1)(f) due to his membership in the LP-28, unless the Minister obtains new credible and trustworthy evidence about his membership in the LP-28 that the Minister would not otherwise have obtained prior to the date of this order through diligence efforts.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3201-10
STYLE OF CAUSE:	JUAN JOSE BELTRAN v MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 17, 2011
SUPPPLEMENTAL REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	MAY 24, 2011

APPEARANCES:

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