

Federal Court



Cour fédérale

Date: 20130220

Docket: IMM-10974-12

Citation: 2013 FC 178

Ottawa, Ontario, February 20, 2013

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

CANRONG LI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

SUPPLEMENTARY REASONS FOR ORDER AND ORDER

[1] By Reasons for Order and Order issued on January 30, 2013, I dismissed the Applicant's motion for an Order compelling the Respondent to produce its computer file notes as "reasons" for a supposed decision not to finalize the Applicant's visa application. In support of that motion, counsel for the Applicant, Pantea Jafari, filed an affidavit deposed by Timothy E. Leahy – a member of the Law Society of Upper Canada. Mr. Leahy's affidavit stated that a letter sent by the Second Secretary of the Canadian Embassy in Guatemala asserting that "no decision has yet been made on the Applicant's application" was "false". Mr. Leahy went on to describe this representation as a

“deceit”. Ms. Jafari’s Brief to the Court also stated that in the Applicant’s previous mandamus application “Justice Hughes imposed the respondent’s terms on [the applicant]”.

[2] In my Reasons for Order and Order dated January 30, 2013 I allowed counsel for the parties to address the issue of costs and, in particular, whether counsel for the Applicant should be ordered to pay costs personally because of the inflammatory and disrespectful language that had been employed in support of the motion. I also noted that Justice Hughes had earlier commented on counsel’s similar conduct in his Order of December 18, 2012 where he said that Mr. Leahy’s affidavit included “intemperate and unprofessional comments about the Court and government officials”. A review of that affidavit discloses that Mr. Leahy had repeatedly stated, without any supporting evidence, that Canadian officials had lied and that several judges of this Court had acted improperly.

[3] Ms. Jafari’s response to my Reasons for Order and Order was that she had no control over the content of Mr. Leahy’s affidavit and that “asking a deponent to change its content would be to tamper with evidence”. This position is, of course, devoid of merit. Counsel of record is not a mere cipher of a client or of some other counsel working on a file. There was a professional obligation on the part of Ms. Jafari to carefully review Mr. Leahy’s affidavit - particularly in light of Justice Hughes’ concerns - and to insist on the removal of all objectionable content. Ms. Jafari also had a professional obligation to discuss this issue carefully with her client and to seek the client’s instructions with respect to the propriety of Mr. Leahy’s affidavit. If those instructions were unsatisfactory, Ms. Jafari should have withdrawn from the file.

[4] Ms. Jafari was also personally responsible for the disrespectful comment that Justice Hughes had “imposed the Respondent’s terms on” her client. Similar disrespectful comments are contained in the earlier motion record.

[5] Ms. Jafari is correct that her client is not responsible for the contents of this record; but she is responsible.

[6] Costs of this motion in the amount \$500.00 payable forthwith to the Respondent by Ms. Jafari personally are ordered.

ORDER

THIS COURT ORDERS that costs of \$500.00 are payable forthwith to the Respondent personally by the Applicant's counsel, Pantea Jafari.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10974-12

STYLE OF CAUSE: LI v MCI

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369**

**REASONS FOR ORDER
AND ORDER:** BARNES J.

DATED: February 20, 2013

APPEARANCES:

Pantea Jafari FOR THE APPLICANT

Lorne McClenaghan FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Toronto, ON

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