

Federal Court



Cour fédérale

Date: 20150128

Docket: IMM-6672-13

Citation: 2015 FC 114

Toronto, Ontario, January 28, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

BILL CHAMBERS HORRACE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks declaratory relief and a *mandamus* compelling the Respondent to grant permanent residence status in Canada to the Applicant.

[2] The Applicant is an adult male citizen of Liberia. He entered Canada claiming refugee status. That claim was twice dismissed. The Applicant sought a Pre Removal Risk Assessment so as to preclude his return to Liberia. That was unsuccessful. The Applicant sought permanent

residence status in Canada on Humanitarian and Compassionate grounds (H&C). He received a letter dated September 19, 2011 from Citizenship and Immigration Canada stating that his application would be determined in a two step process, first is an examination of humanitarian and compassionate factors the second is an examination of other factors such as medical, security and passport considerations; it was stated that the application could be refused if, among other things, the Applicant did not meet all statutory requirements of the *Immigration Refugee Protection Act* (IRPA). The letter included the following:

If preliminary information indicates that you probably meet all statutory requirements of the Immigration and Refugee Protection Act, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs approximately twelve (12) to twenty-four (24) months after the date your visa exemption was approved (see paragraph two of this letter).

[3] As of the date that this Application was filed with the Court, October 16, 2013 and even as of the date of the hearing of the application in Court, January 28, 2015, and despite several requests made on behalf of the Applicant, no decision has been made.

[4] In the affidavit evidence filed by the Respondent, three important matters arise:

- Since the Applicant made his H&C application the Respondent has been made aware of the allegations that the Applicant may be a member of an organization that engaged in terrorism or the subversion by force of a government and/or was a person who committed war crimes or crimes against humanity. The Respondent continues to investigate these allegations. The Applicant swears that the allegations are false.

- In November, 2013, the Applicant was charged under the *Criminal Code* with three different counts, one of which, if it results in a conviction, would render the Applicant inadmissible under IRPA. Applicant's Counsel advises that these charges are still outstanding.
- The average processing time currently in respect of H&C applications is 30 to 42 months, but this time is considerably longer where there are outstanding charges or extensive inadmissibility investigations.

[5] With respect to whether a Court should grant a *mandamus*, Applicant's Counsel cited a number of cases. The matter was succinctly put by Justice Rennie where he wrote at paragraph 25 of his decision in *Liang v. Canada (MCI)*, 2012 FC 758:

25] *It is common ground between the parties that the Minister owes a duty to the applicants to process their applications, and that unreasonable delay amounts to an implied refusal to perform the duty. The Minister contends that even if there is delay, it is justified. The question of satisfactory justification for the delay is the central dispute in these applications. The Minister also raises issues regarding alternative remedies and equitable bars to relief, briefly addressed below.*

[6] I am satisfied that, while there has been a delay in processing the Applicant's H&C application, the Respondent's evidence amply justifies that delay. The granting of a *mandamus* is a discretionary matter. I will not grant a *mandamus*.

[7] As Counsel for the Applicant argued, the grant of a declaration follows the same consideration as a *mandamus*. I will not grant a declaration for the same reasons.

[8] It is unnecessary to address the abuse of process, *Charter* or other issues raised by the Applicant.

[9] Neither party requested a certified question.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;
2. No question is certified;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6672-13

STYLE OF CAUSE: BILL CHAMBERS HORRACE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: WEDNESDAY, JANUARY 28, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: JANUARY 28, 2015

APPEARANCES:

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