

Federal Court



Cour fédérale

**Date: 20160301**

**Docket: IMM-4199-15**

**Citation: 2016 FC 261**

**Toronto, Ontario, March 1, 2016**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**JUNIOR OBAS EBAGUA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**UPON MOTION** in writing dated February 11, 2016 made on behalf of the Respondent,  
pursuant to Rule 369 of the *Federal Courts Rules*, for:

- a) Allowing the application for leave and judicial review;
- b) Vacating the hearing scheduled for April 21, 2016, at 9:30 a.m.;

- c) Setting aside the decision dated August 25, 2015 refusing the Applicant's application for a permanent residence from within Canada on humanitarian and compassionate grounds;
- d) Referring the Applicant's application for a permanent residence from within Canada on humanitarian and compassionate to a different officer for redetermination; and
- e) Awarding no costs to either party.

**AND UPON** reading the material filed, including the Respondent's motion record and the Applicant's response dated February 23, 2016.

**AND UPON** determining that the motion be allowed for the following reasons:

[1] The Minister brings this motion under Rule 369 seeking to set aside the decision that is the subject of the underlying application. The Minister concedes that the impugned decision may not conform to the recent decision in *Kanthisamy v Canada (MCI)*, 2015 SCC 61 and that Mr. Ebagua's application for relief should, therefore, be reassessed on the merits.

[2] Mr. Ebagua opposes the motion notwithstanding the fact that his Notice of Application requests the relief that the Minister is now offering. His complaint is based on an assertion that the Minister has repeatedly and unfairly denied relief in the past and, absent a Court order on the merits, is likely to do so again.

[3] There is a fundamental problem with Mr. Ebagua's argument. It is not the role of this Court to decide cases like this on their merits. The Court merely reviews decisions made by others under their assigned statutory authority to determine if they are fairly made and reasonable. Where a decision is set aside by the Court the case must go back to a decision-maker who has statutory authority to decide.

[4] For these reasons the Minister's motion is allowed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the decision that is the subject of this proceeding is set aside with the matter to be redetermined on the merits by a different decision-maker.

“R.L. Barnes”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4199-15

**STYLE OF CAUSE:** JUNIOR OBAS EBAGUA V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369**

**JUDGMENT AND REASONS:** BARNES J.

**DATED:** MARCH 1, 2016

**WRITTEN REPRESENTATIONS BY:**

Junior Obas Ebagua

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Ada Mok

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney  
Deputy Attorney General of  
Canada

FOR THE RESPONDENT