Federal Court  Cour fédérale

Date: 20171205

Docket: IMM-1593-17

Citation: 2017 FC 1104

Ottawa, Ontario, December 5, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

KEHINDE PAUL BALEPO and TEMITOPE JULIANA BALEPO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Principal Applicant, Kehinde Paul Balepo, age 41, and his wife, Temitope Juliana Balepo, age 33, are citizens of Nigeria. Mr. Balepo has applied four times to obtain a study permit to pursue a diploma in Environmental Engineering Technology at Saskatchewan Polytechnic in Saskatoon. Most recently, in a letter dated March 27, 2017, an Immigration Officer in the Visa Section at the High Commission of Canada in Accra, Ghana, refused Mr. Balepo's application for a study permit because, in view of his travel history, family ties in

Canada and in Nigeria, employment prospects in Nigeria, the purpose of his visit, and his personal assets and finances, the Officer was not satisfied that he would leave Canada at the end of his authorized stay. The Applicants have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, for judicial review of the Officer's decision to refuse Mr. Balepo's application for a study permit.

I. Background

[2] Mr. Balepo has a Bachelor of Science in Geology from the University of Benin City, Nigeria, which he obtained in 2003. He has been working in the banking industry since 2006, but claims that geology is his passion and that his goal is to work to prevent pollution in Nigeria, potentially as a consultant with an oil company. Mr. Balepo has family members in Nigeria, Canada, the United States, and the United Kingdom. He and his wife have no children.

[3] In 2015, Mr. Balepo applied to Saskatchewan Polytechnic and was admitted to study Environmental Engineering Technology. His older sister, Agnes Adebisi Ogunsesye [the Sponsor], agreed to sponsor her younger brother's studies. He applied for a study permit at the Canadian visa office in Accra, Ghana, and at the same time, his wife applied for a work permit, apparently in error. His application for a study permit application was refused in a letter dated May 31, 2015. The visa officer was not satisfied that Mr. Balepo was a genuine student who would leave Canada at the end of his studies, finding that he had limited financial, professional, and family ties to Nigeria, and that, after nine years of working in an unrelated industry, it was unusual that he would seek a diploma in a field in which he already had a bachelor's degree.

[4] The decision refusing Mr. Balepo's initial application for a study permit was set aside in a decision of this Court rendered by Justice Southcott on March 1, 2016 (see *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268, 264 ACWS (3d) 1013 [*Balepo*]). Justice Southcott found that since Mr. Balepo's mother and one of his siblings resided in Ontario, while his father and three other siblings lived in Nigeria, the officer's determination that he had strong family ties to Canada and weak family ties to Nigeria could not be reconciled with the evidence. Additionally, Justice Southcott found that the officer had failed to consider evidence which contradicted his findings on financial ties to Nigeria; namely, Mr. Balepo's extensive stock holdings and his real estate in Nigeria. Justice Southcott emphasized that he was making no finding as to whether Mr. Balepo's family and financial ties to Nigeria were sufficient to compel him to return to Nigeria upon completion of his studies.

[5] After this Court's decision in *Balepo*, Mr. Balepo applied again for a study permit. In a letter dated April 18, 2016, a different visa officer in Accra refused Mr. Balepo's second application for a study permit. This officer noted that Mr. Balepo would face tuition and living expenses amounting to at least $77,000 over two and a half years, and found it unreasonable that the Sponsor would spend a substantial amount of her savings to support him. The officer further noted that Mr. Balepo's wife appeared to have applied for a temporary resident visa, and Mr. Balepo had weak financial ties to Nigeria. The officer found that Mr. Balepo's financial and family ties were insufficient to compel his return to Nigeria. The Applicants applied again for judicial review, but that application was discontinued after they reached a settlement with the Respondent that the matter be sent back for redetermination by another officer on a priority basis.

[6] The third visa officer who considered Mr. Balepo's application issued a decision on July 22, 2016. This officer found it questionable that Mr. Balepo's sister would spend a large portion of her savings to support his education, and also found there was no logical explanation as to why he would enrol in the Environmental Engineering Technology program given his degree in geology and his ten-year career in the banking industry. The officer further found it significant that Mr. Balepo had been academically idle for 13 years and it was not credible he would further his education in Canada in an unrelated field. Based on his educational and employment history, the officer refused Mr. Balepo's application. The Applicants again sought judicial review of this refusal, resulting in an order on consent that the matter be redetermined by a different officer.

II. The Officer's Decision

[7] The Officer who considered Mr. Balepo's fourth application for a study permit interviewed him at the visa office in Accra on January 26, 2017. The Officer explained the reasons for the interview in the Global Case Management System [GCMS] notes:

> Given the age of the client, the long interruption of his studies, the fact that he already has a degree in a similar field at a higher level, as well as the fact it appears he has changed careers to banking, I had concerns that he was not a genuine student who would pursue his studies in Canada and then leave at the end of the period authorized for his stay, as required by R216 (b). In order to address these concerns, I interviewed the client on 2017-01-26.

[8] Some two months later, in a letter dated March 27, 2017, the Officer refused Mr. Balepo's application for a study permit. The Officer noted that while Mr. Balepo had presented strong evidence of financial means to support his studies, he had hesitated during many of his

answers to the questions at the interview and found that his explanation about a potential rebound in the price of oil to be contradictory and negatively affected his credibility. The Officer found it unreasonable that Mr. Balepo would not do more research into potential universities since he would be uprooting his life and moving to a foreign country. The Officer found that Mr. Balepo evaded the question of what the Applicants had misunderstood when his wife applied for a work permit. The Officer found his statement that he wished to contribute to his country to be vague, and his explanation about his family caring for his property in his absence to be illogical, undermining his credibility.

[9] The Officer recognized that Mr. Balepo's wife would stay in Nigeria for the time being but gave little weight to this factor given her previous willingness to accompany him, her eligibility for a work permit, their lack of children, and his illogical answers to questions about her situation. The Officer also gave little weight to Mr. Balepo's responses concerning his property and the care for his elderly parents as he had several siblings in Nigeria who could care for them. Since Mr. Balepo planned to use his financial resources to support his studies, the Officer gave this little weight in establishing ties to Nigeria, and since he planned to change careers also gave his career in banking little weight. The Officer noted that Mr. Balepo had left and returned to Nigeria, but had not done so recently. Ultimately, the Officer was not satisfied that Mr. Balepo would leave Canada at the end of his authorized stay.

III. Issues

[10] The Applicants' submissions raise the following issues:

1. What are the appropriate standards of review?

2. Does the doctrine of *res judicata* apply in this case?

3. Did the Officer's delay in issuing the decision violate procedural fairness?

4. Did the Officer unreasonably disregard relevant facts or consider irrelevant facts?

5. Did the Officer's conduct of the interview demonstrate bias or otherwise compromise procedural fairness?

IV. Analysis

A. *Standard of Review*

[11] A visa officer's decision as to whether to grant a study permit is a question of mixed fact and law reviewable on the standard of reasonableness: (see, e.g., *Cayanga v. Canada (Citizenship and Immigration)*, 2017 FC 1046 at para 6; *Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 28, 344 FTR 313; *Gu v Canada (Citizenship and Immigration)*, 2010 FC 522 at para 14, [2010] FCJ No 624 [*Gu*]; and *Li v. Canada (Citizenship and Immigration)*, 2008 FC 1284 at paras 14-16, 337 FTR 100 [*Li*]).

[12] Under the reasonableness standard, the Court is tasked with reviewing a decision for "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland*

and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 16, [2011] 3 SCR 708 [*Newfoundland Nurses*]).

[13] The standard of review for an allegation of procedural unfairness is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339). Whether an administrative decision was fair is generally reviewable by a court. However, the analytical framework is not so much one of correctness or reasonableness but, instead, one of fairness. As noted by Jones & deVillars, *Principles of Administrative Law*, 6th ed. (Toronto: Carswell, 2014) at 266):

> The fairness of a proceeding is not measured by the standards of "correctness" or "reasonableness". It is measured by whether the proceedings have met the level of fairness required by law. Confusion has arisen because when the court considers whether a proceeding has been procedurally fair, the court…decides whether the proceedings were correctly held. There is no deference to the tribunal's way of proceeding. It was either fair or not.

[14] Under the correctness standard of review, the reviewing court shows no deference to the decision-maker's reasoning process and the court will substitute its own view and provide the correct answer if it disagrees with the decision-maker's determination (see: *Dunsmuir* at para 50). Moreover, the Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (see: *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115, [2002] 1 SCR 3).

B. *Does the doctrine of* res judicata *apply in this case?*

[15] The Applicants contend that the doctrine of *res judicata* applies to this proceeding since this Court has already ruled that a previous officer had made unreasonable determinations pertaining to Mr. Balepo's financial and family ties to Nigeria. The Applicants reference the test established in *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 25, [2001] 2 SCR 460 [*Danyluk*], which holds that *res judicata* applies where:

> (1) [that] the same question has been decided;
>
> (2) [that] the judicial decision which is said to create the estoppel was final; and,
>
> (3) [that] the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[16] According to the Applicants, the Officer's decision was made on the same evidentiary basis as the previous determinations (aside from improved financial circumstances of the Applicants and the Sponsor), and it is based on factors already decided by this Court in *Balepo*.

[17] The Respondent contends that the Officer's determination is not contrary to *Balepo*, and the Officer was not estopped from revisiting the same issues considered in that case. The Respondent notes that Justice Southcott explicitly declined to make a finding on whether Mr. Balepo's family and financial ties were sufficient to compel his return to Nigeria. The Respondent says, in view of *Haq v Canada (Citizenship and Immigration)*, 2016 FC 370, 264 AWCS (3d) 1006, that in the absence of express or implied findings by the Court or specific

directions to the decision-maker on redetermination, there is no merit to the Applicants' argument that the decision in *Balepo* was binding on an officer on redetermination.

[18] On this issue, I agree with the Respondent. In *Balepo*, Justice Southcott explicitly stated as follows:

> [19] In my view, the findings related to the Principal Applicant's family and financial ties are sufficiently fundamental to the Officer's decision as to make the decision unreasonable and require the Court to set it aside and return the application to be considered by another visa officer. I emphasize that I am not making any finding as to whether the Principal Applicant's family and financial ties to Nigeria should be regarded as sufficient to compel return to his home country. That is a decision to be made by the visa officer who re-determines the application. [Emphasis added]

[19] Justice Southcott found the first officer's determination unreasonable because that officer had determined that Mr. Balepo had strong family ties to Canada and weak family ties to Nigeria, despite a greater number of family members in Nigeria, and because that officer failed to consider Mr. Balepo's stock and real estate holdings in Nigeria. Both of these factors were addressed by the Officer in this case. The determining factors in the Officer's decision were the findings that Mr. Balepo's siblings in Nigeria could care for his elderly parents, and that he planned to liquidate his assets in Nigeria to fund his education in Canada. In my view, the Officer here did not make the same errors as the previous officer. Moreover, it cannot be said that the decision in *Balepo* was final since the question of whether Mr. Balepo should be issued a study permit was still alive and to be redetermined by a different visa officer.

C. *Did the Officer's delay in issuing the decision violate procedural fairness?*

[20] Mr. Balepo says the Officer advised him to expect a decision within one to two weeks following the interview, which took place on January 26, 2017. The Applicants note that their counsel wrote to the visa office on March 3, 2017, requesting an update as no decision had been received, and that the visa office replied by email on March 9, 2017, apologizing for the delay. According to the Applicants, all previous assessments of his applications for a study permit had been conducted within 30 days, and that the two-month delay in reassessing the application for a fourth time was lax, unmindful, and careless, and therefore unreasonable and unjustifiable.

[21] The Respondent acknowledges that the two-month delay may have been frustrating for the Applicants, but that does not amount to unreasonable delay. The Respondent notes that each case turns on its own facts, and in the absence of evidence of any prejudice to the Applicants, the delay was not unreasonable.

[22] The Applicants have not provided any evidence showing how the two-month delay in receipt of the Officer's decision could be considered excessive and caused them prejudice or harm. As noted by the Court in *Singh v Canada (Citizenship and Immigration)*, 2014 FC 867, 463 FTR 161:

> [23] …a delay in and of itself does not amount to a breach of procedural fairness; the Applicant must show that he has suffered some prejudice from that delay: see *Budh Singh Gill v Canada (Minister of Employment and Immigration)*, [1984] 2 FC 1025 at 1028-1029 (FCA); *Akthar v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 32, [1991] FCJ No 513 at para 20 (FCA); *Dacosta v Canada (Minister of Employment and Immigration)* (1993), 41 ACWS (3d) 706, [1993] FCJ No 674 at

> para 6 (FC); *Maraj v Canada (Minister of Employment and Immigration)* (1993), 62 FTR 256, 19 Imm LR (2d) 90 at 102 (FC); *Qazi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1667 at paras 23-24.

[23] The fact that Mr. Balepo's previous applications for a study permit were assessed and refused within 30 days or so does not make the two-month delay in respect of his fourth application unreasonable or unfair. Each application turned on its own facts and, in the absence of evidence of any prejudice to the Applicants, the delay was neither unreasonable nor unfair.

D. *Did the Officer unreasonably disregard relevant facts or consider irrelevant facts?*

[24] The Applicants maintain that the Officer unreasonably declined to interview the Sponsor, who had travelled to Accra from London, England, to attend the interview and provide original documents and evidence to support the application. According to the Applicants, the Officer's failure to interview either the Sponsor or Mr. Balepo's wife, both of whom were present at the High Commission office, illustrated that he either failed to consider relevant evidence or had no genuine concerns about Mr. Balepo's credibility. In the Applicants' view, the fact they had no children and that Mr. Balepo's wife was eligible for a work permit were irrelevant factors considered by the Officer who unreasonably reached a negative conclusion on the basis that Mr. Balepo would be making a drastic career change and moving to another country.

[25] The Respondent states that, absent strong indications to the contrary, decision-makers are presumed to have weighed and considered all of the evidence before them, and it is not the role of the reviewing court to re-weigh evidence. In the Respondent's view, the Officer's notes reflect

consideration of all relevant evidence, and the Officer's determination that Mr. Balepo did not meet the statutory requirements fell within the range of possible, acceptable outcomes.

[26] At the interview, the Officer asked Mr. Balepo: "Why would your sister spend $40k on you?" to which he replied: "She is my sister. All her kids are moved out. She feels she can do it." The Officer also asked Mr. Balepo about his sources of funding for his intended study, to which he replied that his sister would pay the tuition costs and also cover his living expenses, and that he intended to use funds from his investments in stocks and retirement savings accounts. After the interview, the Officer wrote in the GCMS notes that:

> …the client indicated that his sister owned a company that contracted nurses to private medical establishments. He indicated that she was nearly retired, affluent, and her children were all out of school and financially independent. This information, in combination with the information on file, satisfied me that his sister could support him financially. In addition, noting that he has significant savings himself, I am satisfied that he has sufficient funds to pay for his studies.

[27] Since the Officer was satisfied that Mr. Balepo had sufficient funds to pay for his studies, it is unlikely that the Sponsor would have provided any further information which would have been of benefit to him. In my view, the Officer was under no obligation to interview the Sponsor, especially since there were no credibility concerns about Mr. Balepo's financial resources. Moreover, there was no obligation for the Officer to interview Mr. Balepo's wife. Generally speaking, an applicant for a study permit (much less the spouse of an applicant) will not be granted an interview unless an officer relies upon extrinsic evidence or otherwise forms an opinion which an applicant had no way of anticipating (see, e.g., *Gu* at paras 23-24; *Hara v Canada (Citizenship and Immigration)*, 2009 FC 263 at para 23, 341 FTR 278; *Li* at para 35). As

the Court in *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690, [2016] FCJ No 662), observed:

> [37] A visa officer's duty on an application for a study permit is relaxed, and Ms. Solopova has failed to establish any unfairness on the part of the Officer. The Officer had no duty to call Ms. Solopova for an interview to advise her of any concerns or to put her on notice that a negative decision would be issued. The onus was instead on Ms. Solopova to satisfy the Officer at first instance that a study permit should be issued.
>
> [38] It is well established that a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to provide the applicant with a running score at every step of the application process (*Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at para 8; *Fernandez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 994 (QL) at para 13; *Lam v Canada (Minister of Citizenship and Immigration)* (1998), 152 FTR 316 (FCTD) at para 4). To impose such an obligation on a visa officer would be akin to giving advance notice of a negative decision, an obligation that has been expressly rejected by this Court on many occasions (*Ahmed v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 940 (QL) at para 8; *Dhillon v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 574 (QL) at paras 3-4). There is no requirement for a visa officer to seek clarification, or to reach out and make the applicant's case (*Mazumder v Canada (Citizenship and Immigration)*, 2005 FC 444 at para 14; *Kumari v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1424 at para 7).

E. *Did the Officer's conduct of the interview demonstrate bias or otherwise compromise procedural fairness?*

[28] The Applicants assert that the Officer's assignment of little weight to Mr. Balepo's financial assets in Nigeria because he intended to use the assets to pay for his studies demonstrates "incomprehensible, contradictory and inconsistent" reasoning. According to the Applicants, the materials before the Officer did not make reference to the prior request by Mr.

Balepo's wife for a work permit, and if the Officer had concerns about this issue, he unfairly declined to interview Ms. Balepo who was present in the reception area of the visa office during Mr. Balepo's interview. In the Applicants' view, it was unfair for the Officer to find that Mr. Balepo paused or hesitated before answering some questions because the Officer spoke quickly in a Canadian accent which Mr. Balepo had difficulty understanding. The Applicants claim the Officer unfairly found Mr. Balepo's answers to sometimes hypothetical questions to be unreasonable and contradictory, when in fact his answers demonstrated candour and honesty.

[29] The Applicants further claim the Officer "unfairly prejudiced" Mr. Balepo because of his age, and that the Officer's conduct generally gave rise to a reasonable apprehension of bias and pre-judgment of the application. According to the Applicants, the Officer's decision demonstrated an unlawful fettering of discretion by making a negative determination despite being satisfied that: Mr. Balepo had considerable financial resources in Nigeria; his parents and spouse would remain in Nigeria; the Sponsor would support his studies; and that he had travelled and returned to Nigeria in the past. The Applicants say the Officer's question about whether Mr. Balepo was making a large career change and a drastic move to a new country was immaterial, irrelevant, and outside the scope of the interview.

[30] According to the Respondent, the Officer adequately assessed Mr. Balepo's credibility during the interview and was under no obligation to provide him a further opportunity to address the Officer's concerns. In the Respondent's view, there was no fettering of discretion since the GCMS notes show a reasonable reflection and consideration of the submitted evidence. The Respondent refers to the test for reasonable apprehension of bias - which is whether an informed

person, viewing the matter realistically and practically and having thought the matter through, would think that the decision-maker would decide an issue unfairly - and argues that the Officer's questioning Mr. Balepo on facts which arose from his application did not give rise to a reasonable apprehension of bias.

[31] In *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369, 68 DLR (3d) 716, the Supreme Court of Canada stated the test for reasonable apprehension of bias as follows:

> 40 The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. …the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.'

[32] The Applicants' arguments do not, in my view, demonstrate how the Officer's questions gave rise to a reasonable apprehension of bias. The questions asked by the Officer related to and emanated from the application for a study permit and the documentation submitted with it. Most of the Officer's questions were open-ended in nature and several were formulated in response to Mr. Balepo's answers to such questions. In my view, the Applicants' arguments and objections with respect to the Officer's assessment of Mr. Balepo's answers to the questions asked of him at the interview are without merit. The Officer's weighing and assessment of the evidence gave rise to no fettering of discretion and the Officer's reasons for the decision show no basis for any reasonable apprehension of bias.

[33] *Newfoundland Nurses* dictates that the Officer's reasons must be sufficiently clear to allow the Court to understand why the Officer reached the decision he or she did. It is not this Court's function to reweigh the evidence that was before the Officer, nor is it up to this Court to decide whether Mr. Balepo's family and financial ties to Nigeria are sufficient to compel his return to Nigeria as that is a decision which falls within a visa officer's discretion. The Officer is presumed to have considered all of the evidence in making his or her decision. The Officer's reasons for the decision in this case are transparent, intelligible and justified, and therefore reasonable because they allow the Court to know what factors the Officer considered in making the decision, one which is well within the range of acceptable outcomes based on the facts and the law. The Court sees no reason to intervene and set the Officer's decision aside. This application for judicial review will be dismissed.

V. Conclusion

[34] For the reasons stated above, this application for judicial review is dismissed. The Officer's decision in this case was reasonable because it is transparent, intelligible and can be justified, and it falls within the range of possible and acceptable outcomes defensible in respect of the facts and law.

VI. Costs

[35] The Applicants requested costs in their written submissions. In the Applicants' view, there were "special reasons" for an award of costs because the Officer's assessment of Mr. Balepo's study permit application showed "a flagrant disregard for the rule of law and

fundamental principles of justice, bad faith, bias and abuse of power." In my view, however, as I indicated during the hearing of this application, the facts and circumstances of this case were not such that an award of costs is warranted or necessary.

[36] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, stipulates that: "No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders." The Federal Court of Appeal noted in *Toussaint v Canada (Citizenship & Immigration)*, 2011 FCA 208 at para 6, (sub nom *Ndungu v Canada (Citizenship & Immigration)*) 423 NR 228 [*Ndungu*], that there is no statutory definition of the phrase "special reasons" and no definition has been developed in the jurisprudence because, perhaps, "no such definition is possible, given the variety of circumstances that can give rise to an application for judicial review in the immigration context, or an appeal upon a certified question." Nevertheless, the case law involving the application of Rule 22 does provide some examples of circumstances where "special reasons" to award costs have and have not been found.

[37] For example, in *Patel v Canada (Citizenship and Immigration)*, 2015 FC 900, 37 Imm LR (4th) 38, there were special reasons for an award of costs because the respondent should have permitted the applicant's application for permanent residence to be re-opened after it was evident that there had been a failure of communication, and if the application had been re-opened as requested by the applicant the hearing before the Court would not have been necessary. Similarly, in *Buwu v Canada (Citizenship and Immigration)*, 2013 FC 850, 230 ACWS (3d) 529,

there were special reasons to award costs because the respondent had unreasonably opposed an obviously meritorious application for judicial review and had forced the applicant to take the matter to Court in the face of a decision which was described as “an embarrassment to our refugee process” (para 49).

[38] Other cases in this Court since *Ndungu* show that the threshold for an award of costs for special reasons continues to be a high one. For example, in *Do v Canada (Citizenship and Immigration)*, 2017 FC 1064, no costs were awarded despite what the Court characterized as “a reckless disregard for procedural fairness” (para 27) by an immigration officer. Similarly, in *Lesi v Canada (Citizenship and Immigration)*, 2016 FC 441 at para 56, 266 ACWS (3d) 940, the Court declined to award costs even though the actions by the applicants and their counsel, while not pursued in bad faith, were “inappropriate and improper, amounting to an abuse of process that could constitute special reasons for an award of costs.”

[39] A nearly ten year delay in the processing of the applicant’s application for permanent residence was found to be an insufficient reason to make an award of costs in *Nagulathas v Canada (Citizenship & Immigration)*, 2011 FC 1282, 208 ACWS (3d) 828. Similarly, in *Kanthasamyiyar v Canada (Citizenship and Immigration)*, 2015 FC 1248, 260 ACWS (3d) 579, although the Court granted the applicant’s request for a writ of *mandamus* due to the Minister of Citizenship and Immigration’s failure after more than nine years to render a decision on the applicant's application for permanent residence, it found an award of costs was not warranted. The five year delay between the applicant’s application and the citizenship judge’s decision did not amount to a sufficient reason for costs in *Canada (Citizenship and Immigration) v Suleiman*,

2015 FC 891, [2015] FCJ No 932, since the applicant could have sought the Court's assistance to deal with any prejudice he might have suffered during those five years, but elected not to do so.

[40] By and large, the jurisprudence of this Court since *Ndungu* shows that in most instances requests for costs under Rule 22 are declined: see, e.g., *Canada (Citizenship and Immigration) v Abidi*, 2017 FC 821, 284 ACWS (3d) 229; *Nematollahi v Canada (Citizenship and Immigration)*, 2017 FC 755, 283 ACWS (3d) 162; *Handasamy v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1389, 48 Imm LR (4th) 268; *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594, 280 ACWS (3d) 587; *Faisal v Canada (Citizenship and Immigration)*, 2014 FC 1078, 467 FTR 278; *Garcia v Canada (Citizenship and Immigration)*, 2014 FC 871, 245 ACWS (3d) 181; *Kaba c Canada (Citoyenneté et de l'Immigration)*, 2013 CF 1201, 443 FTR 291; and *Canada (Citizenship and Immigration) v B377*, 2013 FC 320, [2013] FCJ No 522.

[41] The facts and circumstances of this case are not such that an award of costs is warranted or necessary, so no such award will be made.

VII. Certified Questions

[42] At the conclusion of the hearing of this matter, the Applicants submitted a list of ten questions for certification. The Respondent opposes the certification of any question.

[43] The Federal Court of Appeal recently reiterated the test for certification in *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, 23 Admin. L.R. (6th) 185, where it stated that:

> 36 The case law of this Court establishes that in order for a question to be properly certified under section 74 of the IRPA, and therefore for this Court to have jurisdiction to hear an appeal, the question certified by the Federal Court must be dispositive of the appeal, must transcend the interests of the parties and must raise an issue of broad significance or general importance. In consequence, the question must have been dealt with by the Federal Court and must necessarily arise from the case itself (as opposed to arising out of the way in which the Federal Court may have disposed of the case): *Zhang v. Canada (Citizenship and Immigration)*, 2013 FCA 168 at para. 9, 446 N.R. 382; *Varela v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at paras. 28-29, [2010] 1 F.C.R. 129; *Canada (Minister of Citizenship and Immigration) v. Zazai*, 2004 FCA 89 at paras. 11-12, 318 N.R. 365 [*Zazai*]; and *Liyanagamage v. Canada (Secretary of State)*, 176 N.R. 4 at para. 4, [1994] F.C.J. No. 1637 (F.C.A.)

[44] In my view, none of the questions proposed by the Applicants is dispositive of this application, nor do any of them transcend the interests of the parties and raise an issue of broad significance or general importance. I decline, therefore, to certify any of the Applicants' proposed questions for certification.

JUDGMENT in IMM-1593-17

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and no question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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