Federal Court Cour fédérale

Date: 20190110

Docket: IMM-2992-18

Citation: 2019 FC 34

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Calgary, Alberta, January 10, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

ORJETA ZHUPA BUNECI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON the respondent's motion for a consent to judgment;

HAVING READ the written submissions of the parties;

CONSIDERING that:

- In keeping with the spirit of section 3 of the *Federal Courts Rules*, it is generally in the interests of justice and judicial economy to proceed with a motion for consent to judgment;

- In this case, the respondent gave the Court consent to issue an order setting aside the underlying decision of the application for judicial review initiated by the applicant, and to refer the applicant's application for permanent residence back for reconsideration by a different officer;

- The applicant does not consent to this order because she wants a more specific order from the Court, and she asserts that she will ask the Court to issue instructions or directions to the next decision-maker should her application for judicial review be allowed by the Court;

CONSIDERING that:

- The hearing for this case is already scheduled for January 16, 2019;

- Without commenting on the merits, I note that the decisions from this Court and the Court of Appeal have established that it is not impossible for such an order to be granted, but it is an exceptional power. It is not the usual outcome of an application for judicial review. I refer to Justice Evans' statements in *Canada (Minister of Human Resources Development) v Rafuse*, 2002 FCA 31, at para 14:

> While the directions that the Court may issue when setting aside a tribunal's decision include directions in the nature of a directed verdict, this is an exceptional power that should be exercised only in the clearest of circumstances . . . .

See also: *McIlvenna v Bank of Nova Scotia (Scotiabank)*, 2017 FC 699; and *Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48;

CONSIDERING that if the applicant's application is allowed:

- the application for permanent residence will be reconsidered by a different officer;
- the applicant will have the opportunity to make other submissions on the facts and law that apply to this case;
- the officer may allow the application for permanent residence;

CONSIDERING that, as the Supreme Court noted in *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342, mootness is a policy or practice that allows a court to decline to decide cases that do not involve a live controversy between the parties, but raise only hypothetical or abstract questions;

CONSIDERING that, in the circumstances, the respondent gave consent to set aside the underlying decision of the application for judicial review, and that this case will be reconsidered by a different officer, which could render this debate between the parties entirely moot, and that the applicant will have the opportunity to file submissions before the officer who reconsiders her application;

CONSIDERING that, if the new decision is not satisfactory to the applicant, she will still have the opportunity to seek judicial review of that decision;

CONSIDERING all of the circumstances, I agree that it is in the interests of justice to grant the respondent's motion.

THIS COURT'S JUDGMENT is that:

1. The respondent's motion is granted.

2. The immigration officer's decision dated May 10, 2018, is set aside, and the case is referred back for reconsideration by a different officer.

3. The applicant will have the opportunity to file her submissions with the new officer before the case is reconsidered.

4. Without costs.

"William F. Pentney"
Judge

Certified true translation
This 18th day of January, 2019.

Michael Palles, Translator