



Date: 19980824
Docket: IMM-5203-97

B E T W E E N:

ADEN FARAH SHIRDON

Applicant

— and —

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

**(Delivered from the Bench at Toronto, Ontario
on Tuesday, August 20, 1998)**

STRAYER J.A.

[1] The respondent has consented to an order quashing the Minister's decision of October 21, 1997 made under paragraph 19.1(1) of the *Immigration Act* and sending the matter back for redetermination by the Minister. The basis for the consent is that "the Court record indicates that the Minister did not consider all the evidence before her . . .".

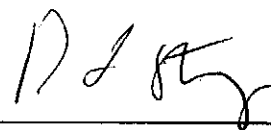
[2] The only contentious issue is as to costs. In accordance with Rule 22 I cannot award costs to the applicant unless there are special reasons for doing so. I have concluded that there is such a reason in respect of steps taken by the applicant in this proceeding which would have been unnecessary if the respondent had shown normal diligence in discovering the obvious defect in

the record of the Minister's decision: namely, that it was not clear that all of the material submitted by the applicant had been put before the Minister.

[3] The application for leave to seek judicial review was filed on December 11, 1997. The applicant had the expense of filing an application record on February 6, 1998, but at this point it would not be fair to assume that the respondent would have had adequate opportunity to assess its record. As a result no special reason would exist for granting any costs to the applicant up to that point. However, the inadequacy of that record was not revealed to the applicant until after leave was granted on May 29, 1998 and the record was accordingly filed with the Court on June 8, 1998. I believe it is fair to conclude that the respondent should have perceived well before June 8, 1998 that the decision making process, and/or the record thereof, was sufficiently flawed that it could not be defended. She had control of all the documents used in the process and the applicant did not. Unnecessary effort was expended and costs incurred by the applicant in this process down to and including the hearing of the respondent's written motion for consent judgment which I directed be heard orally.

[4] Counsel for the applicant has not sought to particularize the unnecessary costs incurred since the filing of the application record. Having regard to Tariff B of the Rules, the somewhat limited scope of the concept of "special reasons" to justify the award of any particular item of costs in these circumstances, and the good faith of the respondent and her counsel in ultimately

offering judgment by consent, I will fix costs payable by the respondent to the applicant in the amount of \$600.

A handwritten signature in black ink, appearing to read "D. J. King", is written above a horizontal line.

Judge

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: IMM-5203-97

STYLE OF CAUSE: ADEN FARAH SHIRDON v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 20, 1998

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE STRAYER (EX OFFICIO
OF THE TRIAL DIVISION)

DATED: August 20, 1998

APPEARANCES:

Mr. Micheal Crane

FOR THE APPLICANT

Mr. Jeremiah Eastman

FOR THE RESPONDENT

SOLICITORS ON THE RECORD:

Ms. Wendy R. Lack
Toronto, Ontario

FOR THE APPLICANT

Mr. Morris Rosenberg
Deputy Attorney General of Canada

FOR THE RESPONDENT