

Federal Court



Cour fédérale

Date: 20211130

Docket: IMM-665-21

Citation: 2021 FC 1327

St. John's, Newfoundland and Labrador, November 30, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ZAMANUDDIN HUSSAINI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] By a Notice of Motion dated October 22, 2021, filed pursuant to Rule 369 of the *Federal Courts Rules*, SOR/ 98- 106 (the “Rules”), the Minister of Citizenship and Immigration (the “Respondent”) seeks the entry of Judgment, allowing the Application for Judicial Review filed by Mr. Zamanuddin Hussaini (the “Applicant”), setting aside the decision of an Immigration Officer (the “Officer”) made on September 24, 2020 and remitting the matter back to a different immigration officer for redetermination.

[2] In the decision, the Officer refused the Applicant's application for permanent residence in Canada as a member of the Convention refugee abroad class, as defined by section 144 of the *Immigration and Refugee Protection Regulations*, Can. Reg. 2002-227.

[3] The Respondent filed the affidavit of Ms. Helene Jarry, legal assistant, in support of his Motion.

[4] In her affidavit, Ms. Jarry outlined the history of settlement offers made to the Applicant, beginning with a letter dated May 10, 2021. A copy of that letter is Exhibit A to the affidavit.

[5] Ms. Jarry deposed that Counsel for the Applicant, by letter dated May 10, 2021, refused the settlement offer unless "specific instructions" were given to the next officer on the issue of admissibility. A copy of this letter is attached as Exhibit B to the affidavit.

[6] The Respondent replied to this letter by a letter dated June 22, 2021, clarifying the terms for his consent to Judgment. A copy of this letter is attached as Exhibit C to the affidavit.

[7] By letter dated August 2, 2021, Counsel for the Applicant replied to the letter of June 22, 2021. Counsel declined the Respondent's offer to settle and according to Ms. Jarry, Counsel for the Applicant advised that the "only offer his client can reasonably accept is one that promises that the inadmissibility argument under article 35(1) of the *Immigration and Refugee Protection Act (IRPA)* will not be raised by the next immigration officer."

[8] A copy of this letter is attached as Exhibit D to the affidavit.

[9] The Respondent, by an email sent on August 10, 2021, declined to consent to the terms presented by Counsel for the Applicant in the letter of August 2, 2021. A copy of the email is attached as Exhibit E to the affidavit.

[10] Finally, Ms. Jarry deposed that Leave for Judicial Review was granted on October 15, 2021 and the hearing is scheduled for January 13, 2022.

[11] In his Written Representations filed in support of his Motion, the Respondent argues that his offer to settle gives the Applicant the relief sought in his Application for Leave and Judicial Review, that a reviewable error is conceded, that the circumstances for issuing directions pursuant to paragraph 18.1(3)(b) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, are variable and that proceeding to a hearing at this time would be an “unnecessary waste of scarce judicial resources”.

[12] The Applicant did not file an affidavit in response to the Respondent’s Motion, but filed Written Representations.

[13] In those Written Submissions, the Applicant referred to the lengthy history of his application for permanent residence in Canada, beginning with the submission of his application on September 2, 2008.

[14] A decision was not made until February 20, 2018, refusing the application for permanent residence. The Applicant filed an application for leave and judicial review in respect of that decision. The Respondent consented to set aside the negative decision and to remit the matter to a different immigration officer.

[15] The decision upon the redetermination was made on September 2, 2020. Again, it denied the Applicant's application for permanent residence. That decision is the basis of the within Application for Judicial Review.

[16] The Applicant also refers to an expert opinion prepared by Professor Payam Akhavan who teaches international criminal law at McGill University in Montreal. That opinion is included in the Applicant's Application Record filed in support of his Application for Judicial Review.

[17] Otherwise, the Applicant argues that, to date, decisions upon his application for permanent residence have been unreasonable and he cannot afford another long period leading to a third decision "that is not marred with errors and incongruencies".

[18] The Applicant's Application for Leave and Judicial Review in this proceeding seeks the following relief:

- Annul the decision rendered on September 24, 2020;
- Order that the Assessment of the Applicant's permanent residence visa be returned to a different Agent of the Immigration Section in Islamabad Pakistan; and

- Order that a new evaluation be held in accordance with the motives of the decision to be rendered herein

[19] The grounds for judicial review are set out in subsection 18.1(4) of the *Federal Courts Act, supra*. The remedies available upon an application for judicial review are set out in subsection 18.1(3) of that Act. Paragraph 18.1(3)(b) provides as follows:

Powers of Federal Court	Pouvoirs de la Cour fédérale
18.1(3) On an application for judicial review, the Federal Court may	18.1(3) Celle de la personne se trouvant au Canada se fait à l'agent et est régie par la présente partie; toutefois la personne visée par une mesure de renvoi n'est pas admise à la faire.
...	...
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[20] All remedies are discretionary.

[21] I agree with the submissions of the Respondent that the Applicant did not request a "Directed Verdict" in his Notice of Application for Leave and Judicial Review. In any event, that remedy is rarely granted.

[22] In the present case, the basis of the Applicant's request for such relief, as set out in the Responding Motion Record, seems to be the length of time that has elapsed since he filed his application for permanent residence, that is thirteen years.

[23] While the delay is long, that is not the principal issue in the Respondent's Motion of Judgment. The delay may give rise, at some point, to an application for an Order of *Mandamus*.

[24] I agree with the arguments of the Respondent, that it is in the interests of justice to grant the within Notice of Motion for Judgment. The Respondent, in making this Motion, concedes that the decision of the Officer contains a reviewable error. The Respondent is asking the Court to grant the relief that would otherwise be available if the Applicant were to succeed upon the hearing of the Application for Judicial Review.

[25] The Motion will be granted, the decision of the Officer will be set aside and the matter remitted to a different officer for re-determination. There will be no Order as to costs.

ORDER in IMM-665-21

THIS COURT'S ORDER is that the Motion is granted, the decision of the Officer is set aside and the matter remitted to a different officer for re-determination. There is no Order as to costs.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-665-21

STYLE OF CAUSE: ZAMANUDDIN HUSSAINI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: HENEGHAN J.

DATED: NOVEMBER 30, 2021

WRITTEN REPRESENTATIONS BY:

Gjergji Hasa FOR THE APPLICANT

Michel Pépin FOR THE RESPONDENT

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