IMM-426-96

OTTAWA, ONTARIO, THIS 3rd DAY OF FEBRUARY 1997.

PRESENT: THE HONOURABLE MR. JUSTICE JOYAL

BETWEEN:

NGALIEMA ZENA BULA,

Applicant,

AND:

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

ORDER

The application made by the applicant is dismissed.

L. Marcel Joyal

J.

Certified true translation

C. Delon, LL.L.

IMM-426-96

BETWEEN:

NGALIEMA ZENA BULA,

Applicant,

AND:

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

JOYAL J.

The applicant arrived in Canada in 1991. On March 23, 1992, the Refugee Division denied his refugee claim. On June 16, 1992, his application for leave to pursue the matter in the Federal Court was allowed. Two years later, on June 16, 1994, his application for judicial review was dismissed on the merits. On July 4, 1994, the applicant appealed to the Federal Court of Appeal; that appeal was dismissed on June 19, 1995.

On July 19, 1995, the respondent received an application for permanent residence in Canada from the applicant, which application was based on special regulations defining the "members of the Deferred Removal Order Class" ("DROC"). Because the fees required by the regulations were not included, the application was returned to the applicant. On August 23, 1995, the respondent informed the applicant that his request for a loan to pay his fees had been refused.

The applicant submitted an entirely new application, but not until November 17, 1995. That application was complete and was accompanied by the necessary fees. On January 19, 1996, the applicant was informed that he could not be considered as a member of the DROC because his application had been submitted after the deadline set by the Act.

Naturally, the applicant is challenging that interpretation, citing the following facts:

1. it was never pointed out to him that in order to ensure that his application would be eligible the fees had to be included;
2. no mention was made of this during the period from July 10, 1995, to November 17, 1995;
3. the information that the respondent provided to him created a reasonable expectation, particularly when he was told, on July 19 and August 23, 1995, that his application would be considered as soon as the fees were paid; and
4. the respondent's interpretation is wrong in fact and in law.

The respondent contends that an application cannot be considered unless it is accompanied by the required fees. This interpretation is based on the decision in *Maharas v. M.C.I.*, Court file no. IMM-4768-94 (unreported), in which Mr. Justice Teitelbaum dealt with section 3 of the *Immigration Act*, *1976 Fees Regulations*,

SOR/86-64, which clearly states that the fees are payable at the time the application is made. That principle is also supported by subsections 3.1(1), 4(1), 5(1), 6(1), 8(1) and 9(1) of those Regulations.

The rule is also repeated in a pamphlet published by the respondent which clearly states: "the processing fee must be submitted with your application".

It may therefore be concluded that payment of the application fee is a condition *sine qua non* that admits of no exception. This condition is one that some people might find harsh, not to say punitive. However, the wording of the Act does not seem to allow room for any more liberal interpretation or any interpretation more advantageous to the applicant.

I would add that the rule does not create an anomaly. The rule is made plain in each of the subsections cited *supra*, and it imposes an obligation to pay the fees at the time the application is made.

It may be apparent that the text of these regulations raises certain practical difficulties, if we consider the intention of the government in making them. As counsel for

the applicant pointed out, the provision seems to admit of no flexibility in respect of the deadline where a request for a loan is made.

On the other hand, I agree with the argument made by counsel for the respondent, which is that the program in question is an exceptional program which does not, in itself, create any right or privilege. The regulations merely allow for an exemption order to be made, and in that case they may impose any condition designed solely to ensure the proper administration of the system.

With respect to the doctrine of reasonable expectation cited by counsel for the applicant, I find little merit in it. The text of the rule is clear, and I see no special circumstances in the case based on which I could find that the applicant was misled or that he might have concluded that he was being granted an extension of time.

While I see no grounds on which my intervention would be warranted, nonetheless the case of the applicant and his family invites sympathetic consideration. The Court further recognizes that the *Immigration Act* has always provided for exceptions to the usual rules, which require that an application for permanent residence be made "at a port of entry". It is up to the applicant to take the initiative.

Lastly, I have considered the remarks of counsel for the parties with respect to questions to be certified. The parties may conclude on reading my reasons that I do not see the necessity for this here.

L. Marcel Joyal

J.

OTTAWA, Ontario
February 3, 1997

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO:	IMM-426-96
STYLE OF CAUSE:	Ngaliema Zena Bula v. M.C.I.
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REASONS FOR ORDER OF JOYAL J.	
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APPEARANCES:

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