

Federal Court



Cour fédérale

Date: 20230127

Docket: IMM-10117-22

Citation: 2023 FC 133

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 27, 2023

PRESENT: Associate Chief Justice Mireille Tabib

BETWEEN:

SIMRANJIT SINGH

Applicant

and

**DEPARTMENT OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant has submitted in writing a formal motion for an extension of time to serve and file his record. The respondent has objected.

[2] The factors that the Court may consider and weigh to determine whether granting an extension would serve the interests of justice are well known. The factors are as follows:

1. Is there a reasonable explanation for the delay?
2. Did the applicant demonstrate a continuing intention to pursue his or her application?
3. Would prejudice to the respondent arise from the delay?
4. Does the application have merit?

(See, as examples, *Canada (Attorney General) v Hennelly*, (1999) 244 NR 399, and *Lesly v Canada (MCI)*, 2018 FC 272.)

[3] The applicant's record was to be served and filed no later than November 16, 2022. The formal motion before me was not filed until December 8, 2022.

[4] The applicant claims to have served his respondent's record on November 28 and 29, 2022. However, the evidence in the record does not support this claim. The applicant also claims to have contacted the respondent to ask it to consent to the extension of time on November 28, 2022. Although the evidence on the record also does not support this claim, the respondent, at paragraph 18 of its written submissions in reply, appears to admit that it received an informal request for an extension for the first time on that date.

[5] The evidence on the record also establishes that some confusion occurred in the applicant's counsel's office when cases were assigned for November 2022. Because of the fact

that the firm was dealing with two cases with a similar name, a colleague mistakenly believed that this case had been assigned to another lawyer. The error was discovered [TRANSLATION] “after Mr. Istvanffy’s return”. However, the affidavits filed in support of the motion do not specify the date of Mr. Istvanffy’s return. The statement in the notice of motion and in the written submissions that his return took place on November 21, 2022, is therefore not supported by the evidence.

[6] Thus, the evidence establishes to the Court’s satisfaction that there was indeed confusion in the applicant’s counsel’s office as to who was responsible for preparing the applicant’s case. The Court is satisfied that this was an error in good faith that explains a certain delay.

[7] However, there is insufficient evidence to explain the full length of the delay. The Court is not in a position to determine the date on which the error was actually discovered, and is therefore not in a position to conclude that the applicant did exercise diligence to remedy the defect as soon as the error was discovered.

[8] Indeed, even if it were accepted that the error was discovered on November 21, 2022, and that the record was served on November 28, 2022, the fact remains that the applicant unreasonably delayed notifying the respondent of the situation and requesting its consent to an extension. The 10-day delay between service of the record and filing of the formal motion for an extension is also excessive and unjustified. The argument that counsel’s workload did not allow

him to act earlier cannot be accepted. A lawyer or firm that accepts too many cases to be able to adequately respond to an unforeseen event does not show reasonable foresight.

[9] As to the continuing intention to pursue the application, the evidence on the record does not seem to support the testimony of Ms. Vasquez, secretary-receptionist, that the applicant often called the firm to follow up on his file. The Court presumes that counsel notified his client of the procedural deadlines when agreeing to represent him, including the deadline of November 16, 2022. When the deadline passed and the applicant had not heard from his counsel, he should have checked in with the firm, which would have enabled the lawyers to realize their error. But the error remained unknown until counsel undertook a general review of the cases.

[10] Finally, regarding the merit of the application, the motion record merely states, in the written submissions, that the applicant claims there are [TRANSLATION] “serious deficiencies in the assessment of the evidence that was submitted to the authorities, as well as significant errors in the assessment of the facts and serious errors of law in that the Panel arbitrarily rejected some very convincing evidence.” This gratuitous statement is devoid of details and is not supported by any document that would have allowed the Court to be satisfied with its merits.

[11] In short, the Court believes that counsel for the applicant committed an error in good faith that resulted in the time limits for serving and filing the applicant’s record being exceeded. However, having made this mistake, neither the applicant nor his counsel showed diligence or were eager to rectify the error. Rather, they appear to have been quite complacent, as if the

existence of a reasonable explanation for the initial error relieved them of their responsibility to act promptly thereafter. Yet it is the entire delay that the applicant must explain, including any delay in seeking an extension. This delay, which is both significant and unjustified in the circumstances, does not demonstrate a continuing intention to pursue the litigation. Since the applicant has also not satisfied the Court that the application merits being heard, the Court concludes that it is not in the interests of justice to grant the extension.

ORDER

THIS COURT ORDERS as follows:

1. The motion is dismissed.

“Mireille Tabib”

Associate Chief Justice

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10117-22

STYLE OF CAUSE: SIMRANJIT SINGH v DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MOTION CONSIDERED WITHOUT APPEARANCE

DATE OF HEARING: MOTION CONSIDERED WITHOUT APPEARANCE

**REASONS FOR ORDER AND
ORDER:** TABIB A.C.J.

DATED: JANUARY 26, 2023

APPEARANCES:

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