Federal Court  Cour fédérale

Date: 20240307

Docket: IMM-3123-23

Citation: 2024 FC 392

Ottawa, Ontario, March 7, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CHIDOZIE CLEMENT ISINGUZO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Chidozie Clement Isinguzo asks the Court to review and set aside the October 18, 2022 decision of an officer denying his application to sponsor his parents as members of the family class. The Officer determined that the Applicant was not an eligible sponsor because he did not meet the minimum necessary income [MNI] requirements prescribed by the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Applicant now claims that he was

denied procedural fairness because he was not given an opportunity to respond to the Officer's calculation of his income in light of his employment insurance [EI] benefits.

[2] In addition to seeking leave from the Court to judicially review that decision, the Applicant asked the Court to extend the time for filing his application.

[3] A judge of this Court granted leave but did not address his request for an extension of time to file the application for leave and judicial review. An extension is required because the Applicant filed his application on March 7, 2023 – more than four months after the 15-day time period prescribed by paragraph 72(2)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, had expired.

[4] The Applicant, in his memorandum, submits that the four factors set out in *Canada (Attorney General) v Hennelly*, [1999] FCJ No 846 (CA) [*Hennelly*] are met. Therein at paragraph 3, the Court of Appeal stated:

> The proper test is whether the applicant has demonstrated
>
> 1. a continuing intention to pursue his or her application;
> 2. that the application has some merit;
> 3. that no prejudice to the respondent arises from the delay; and
> 4. that a reasonable explanation for the delay exists.

[5] The Applicant filed an affidavit with his application addressing his delay, as follows:

> 7. On October 18, 2022, I received correspondence that my application to sponsor my parents had been refused pursuant to

> regulation 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations*. IRCC determined that I did not meet the MNI for 2019 because I was in receipt of Employment Insurance (El). My income for 2019 was assessed at $47,756 which is $2,658 less than the MNI. I was not afforded an opportunity to respond to IRCC's financial assessment prior to my application being refused.
>
> 8. I met with my current counsel on March 6, 2023, 1 was not aware that I had any recourse in this matter. I was advised that I should have received a Procedural Fairness Letter regarding my Financial Assessment. Counsel also advised me to file an Application for Leave and Judicial Review with an Extension of Time request regarding the refusal of my parental sponsorship application.

[6] I agree with the Applicant that there is no requirement that all four of the *Hennelly* factors be established; rather, the overriding consideration is whether it is in the interests of justice that the extension of time be granted: *Cossy v Canada Post Corporation*, 2021 FC 559 at para 18.

[7] I find that the Applicant has not demonstrated a continuing intention to pursue judicial review of the decision under review. To the contrary, he had no such intention as he attests that he did not know that he could seek judicial review of the impugned decision until he met with his lawyer on March 6, 2023.

[8] The Applicant also has not provided a reasonable explanation for the delay. I agree with the Respondent that the Applicant has offered no explanation for his delay. I do not accept the Applicant's submission that being self-represented at the time the decision was rendered, is a fact that ought to be considered. Though not cited by the parties, this Court has held on numerous occasions that being self-represented does not constitute reasonable justification for delay:

Cotirta v Missinnipi Airways, 2012 FC 1262 at para 13, aff'd 2013 FCA 280; *Rooke v Canada (Attorney General)*, 2018 FC 204 at para 23.

[9] The Respondent did not submit that it would suffer prejudice if the extension were granted; however, I do not agree with the Applicant that the Respondent will suffer no prejudice. One of the purposes of time limits is to bring finality to administrative decisions: *Lesly v Canada (Citizenship and Immigration)*, 2018 FC 272 at para 18, citing *Canada v Berhad*, 2005 FCA 267 at para 60. Respondents are entitled to expect that extensions of time will not be granted where non-compliance with a time limit lacks a reasonable explanation: *Collins v Canada (Attorney General)*, 2010 FC 949 at para 6. Prejudice to the Respondent is a factor that weighs against granting the extension here.

[10] Lastly, the Applicant argued that the granting of leave establishes that the application has "some merit" under the second *Hennelly* factor. I doubt that is the case. The test for granting leave is whether there is a serious issue raised by the applicant to be dealt with; specifically, whether a fairly arguable case exists: *Bains v Canada (Minister of Employment and Immigration)* (1990), 47 Admin LR 317; 109 NR 239 (FCA). It is not whether the application has some merit.

[11] Given the above, I am not persuaded, considering the record before me, that it is in the interests of justice to grant the extension of time. Accordingly, the request for an extension of time is denied, the issues raised on this application are moot, and the application for judicial review is dismissed.

[12] Had I assessed the merits of this application, I would have nonetheless found that there was no breach of natural justice as the Applicant submits. This matter is on all fours with the decision the Respondent relies on: *Tosic-Kravic v Canada (Citizenship and Immigration)*, 2017 FC 452 [*Tosic-Kravic*]. Both involved a sponsor being found ineligible for failure to meet the MNI as a result of being in receipt of EI benefits. Both involved a submission that the officer failed to observe the duty of fairness.

[13] The only difference in these two cases is, as the Applicant noted, a difference in the application forms completed. In *Tosic-Kravic*, the form specifically asked the applicant to indicate any amounts "paid to you under the Employment Insurance Act, other than special benefits." The applicant completed this form and indicated that she had not received any EI payments. However, that was inaccurate. The officer requested additional tax documents which the applicant submitted. They clearly indicated that she received EI payments for "regular benefits" and "assistance to re-enter workforce." Similarly, here, the Officer requested additional tax documents from the Applicant that showed he had received regular EI benefits in 2019; a fact of which he would have been aware, especially considering the Applicant himself indicated, as part of his sponsorship application, that he was unemployed for five months in 2019.

[14] The same income sources form that was used in *Tosic-Kravic* exists here. However, applicants are not required to fill out this form when they give consent for Immigration, Refugees and Citizenship Canada to receive an applicant's personal income tax information directly from the Canada Revenue Agency. The Applicant selected this option. I note that the

financial evaluation that all applicants must complete, requests that an applicant provide their employment history, including any periods of unemployment and the gross income/benefits received for that period. In addition, the initial invitation letter sent to the Applicant indicated that he had to meet certain income requirements to be eligible to sponsor, and provided him with links to online resources that explain how his income is calculated against the MNI.

[15] Accordingly, I find that the following from paragraph 19 of *Tosic-Kravic* equally applies here and would be dispositive of the merits had an extension of time been granted:

> The Officer in this case did not breach the duty of procedural fairness by assessing the Applicant's sponsorship application based on the information she submitted. The Officer did not consult any external sources or address any issues not already known to the Applicant. The Officer was not required to provide the Applicant with a further opportunity to provide submissions; nor was the Officer required to request "updated evidence of income" from the Applicant pursuant to paragraph 134(2) (a) since the Applicant had already provided evidence of her income on two prior occasions. The Officer had the necessary information to make a decision and did not breach any duty of fairness by not providing the Applicant with a third opportunity to submit information about her income.

JUDGMENT in IMM-3123-23

THIS COURT'S JUDGMENT is that:

1. The request for an extension of time is refused.

2. This application for judicial review is dismissed.

3. There is no question for certification.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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