Federal Court Cour fédérale

Date: 20240723

Docket: IMM-5801-23

Citation: 2024 FC 1155

Ottawa, Ontario, July 23, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

PUNEET KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] On December 27, 2021, Puneet Kaur made a request to withdraw her sponsorship of her ex-husband. The marriage had broken down and she did not want to continue with the sponsorship.

[2] Following several attempts to obtain information on the status of her request, Ms. Kaur filed an application for *mandamus* on May 3, 2023. She sought a decision on her request, as well

as answers to several questions including whether she was bound by the undertakings she had made in the sponsorship application and if so, when these undertakings took effect.

[3] The parties filed their materials in the proceeding before this Court, and the file progressed. On April 30, 2024, the hearing of the matter was fixed for a hearing date of July 10, 2024.

[4] On June 6, 2024, the Respondent informed Ms. Kaur that her request to withdraw her sponsorship application was approved. The letter also advised that if she received a request to reimburse a province or territory for any benefit provided as social assistance to or on behalf of her ex-husband, she was to inform the Respondent. The letter stated that the Respondent promised to "reimburse you, on a dollar to dollar basis, for any costs billed to you by a province or territory… until February 20, 2025, the date by which the sponsorship undertaking expires."

[5] On June 26, 2024, the Respondent filed a motion asking the Court to dismiss the application for *mandamus* because it was moot.

[6] Ms. Kaur's former counsel filed a further memorandum of argument on June 21, 2024, and subsequently filed a motion seeking leave to be removed as Solicitor of Record. That motion has been granted by separate Order, and Ms. Kaur filed a notice of her intention to represent herself.

[7] Ms. Kaur filed submissions opposing the Respondent's motion to dismiss her application. In light of the circumstances, the Court convened a hearing by videoconference on July 10, 2024, to hear the parties' submissions on the Respondent's motion.

[8] The Respondent submits that the Applicant's *mandamus* request is now moot, because she has received the decision on her sponsorship withdrawal request. In the Respondent's view, there is no purpose to be served in hearing the application because the only remedy that would be available to the Court is no longer needed. The Respondent acknowledged the delay that occurred in processing the Applicant's request to withdraw her sponsorship, but argued that the matter was now moot and the application should be dismissed.

[9] The Applicant is frustrated by the delay in processing her request to withdraw her sponsorship. She points out that despite many requests for information, she did not receive answers about the status of her request or any explanation for the delay. She says that she was forced to hire a lawyer and file a *mandamus* request, and this is the only reason the Respondent made a decision. The Applicant says that the sponsorship undertaking that she provided when the application was originally filed has hung over her head for no good reason, and she does not want her case to be dismissed.

[10] The Applicant argues that the Respondent should have to explain why it took so long to make the decision. She also says that if the Respondent had taken timely action on her request, her ex-husband would not have been allowed entry to Canada. She asks that the Court order the Respondent to take back any benefits her ex-husband has received as a result of the spousal

sponsorship, including his permanent residence status. She also asks the Court to direct the Respondent to prepare a report against her ex-husband under section 44 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], because he gained entry to Canada under false pretenses.

[11] Mainly, the Applicant wants answers about why it took so long to deal with her request to withdraw her spousal sponsorship application. The delay has caused her worry and frustration, and the sponsorship undertaking has hung over her head in a cloud of uncertainty for several years. She did everything she could to withdraw the sponsorship as soon as she found out that her ex-husband had lied about his intentions in marrying her. She has obeyed the law and followed the rules, and she wants the Respondent to be held accountable for their delay.

[12] To start my discussion of this case, I want to say three things, as clearly and as plainly as I can. First, I completely understand why the Applicant feels frustrated about the delay in handling her request. She saw it as a simple thing, and she acted as quickly as she could. The delay in responding was not her fault.

[13] Second, the June 6, 2024 letter, to the Applicant makes it clear that as far as the federal government is concerned, the Applicant's request to withdraw her sponsorship has been granted. She is no longer under any obligation towards the Respondent because of the sponsorship. It has come to an end.

[14] Third, the sponsorship undertaking also included a promise by the Applicant that she would repay provincial authorities for any expenses incurred by her ex-husband over a period of three years. As Respondent's counsel confirmed during the hearing, the federal government is not in a position to erase that promise. But rather than leaving this hanging over her head, the Respondent has promised to repay her on a "dollar for dollar" basis if any such costs are incurred.

[15] This undertaking to repay the Applicant is stated clearly in the June 6, 2024 letter. Respondent's counsel confirmed that it means what it says - the federal government will pay her back if any province sends her a bill for services provided to her ex-husband. This promise by the government will last until February 20, 2025, the date that the sponsorship undertaking ends.

[16] During the hearing, Respondent's counsel confirmed that if the Applicant receives any demand for payment from a province during this time, she should contact Respondent's counsel by phone or email, and she will assist the Applicant in getting paid as quickly as possible.

[17] As I explained during the hearing, the focus of the Applicant's *mandamus* application was her request to withdraw her sponsorship application. Once the Respondent took the decision to grant her request, as expressed in the June 6, 2024 letter, there was no purpose in pursuing the application.

[18] While I understand why the Applicant wants to see action taken against her ex-husband, such matters fall outside of the scope of the case before the Court. As I stated during the hearing,

there are other legal processes to address any concerns regarding the ex-husband's entry into Canada and his legal status here. The Applicant has done what she can to provide the right authorities with the information she has about her ex-husband, and the responsibility now lies on the appropriate officials to follow up on his case.

[19] In the end, I can find no basis in law to refuse the Respondent's request that this application be declared moot. The Applicant's request for an order in the nature of *mandamus* was overtaken by events when the Respondent issued the June 6, 2024 letter granting her request to withdraw her sponsorship application. There is no point in hearing this matter on its merits. There is no longer an issue in dispute between the parties. To borrow the language of the leading case on the issue, "the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties" (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at p 353). None of the exceptions apply (*Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at para 17). Therefore the Respondent's motion will be granted and the Applicant's application for an order in the nature of *mandamus* will be dismissed.

[20] During the hearing, the Applicant asked for her legal costs to be paid, because she had been forced to hire a lawyer and had only stopped using her lawyer because the fees were becoming too expensive. She says that a decision was finally made on her request only because she had launched a *mandamus* application, and that she should not have to pay the costs of her lawyer just to get a simple answer from the Respondent.

[21] The general rule in proceedings under *IRPA* is that no costs are available unless the Court finds "special circumstances" for doing so: Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. There is no definition of the term "special circumstances" set out in the Regulations or case-law: *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 6. The threshold for an award of costs is a high one, and each case will turn on its own particular circumstances: see the discussion in *Diakité v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 170 at para 58.

[22] The case-law provides some examples where costs have been awarded because special circumstances have been found. This includes situations where unexplained and unjustified delay by the Respondent has exposed the claimants to unnecessary danger, or undue stress and aggravation (*Ndererehe v. Canada (Citizenship and Immigration)*, 2007 FC 880); where a party acts in a manner that may be characterized as unfair, oppressive, improper or in bad faith (*Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 201 at para 31); or where there has been reprehensible, scandalous or outrageous conduct on the part of a party (*Toure v Canada (Public Safety ;and Emergency Preparedness)*, 2015 FC 237 at para 16).

[23] The Applicant's claim for costs rests on her argument that the Respondent took too long to make its decision. I note that in earlier cases, a nearly ten year delay in processing an application for permanent residence was not found to be sufficient to award costs (*Nagulathas v Canada (Citizenship & Immigration)*, 2011 FC 1282). In another case, although the Court granted the applicant's request for *mandamus* due to the Minister's failure to make a decision after nine years, it found that an award of costs was not warranted (*Kanthasamyiyar v Canada*

(Citizenship and Immigration), 2015 FC 1248). A review of the cases shows that in most cases requests for costs under Rule 22 are declined.

[24] Each case must turn on its own particular facts. In this case, despite the Applicant's obvious frustration with the delays and lack of explanation over several years, I am not persuaded that any special circumstances justify an award of costs. The Respondent explained why it took so long to deal with the Applicant's request. Part of the delay was due to the fact that the case was more complicated because her ex-husband was already landed. In addition, it took some time to find a means to provide the Applicant with the guarantee that she will be reimbursed for any claims made by any province pursuant to the sponsorship undertaking.

[25] For these reasons, no costs will be awarded.

JUDGMENT in IMM-5801-23

THIS COURT'S JUDGMENT is that:

1. The Respondent's motion to dismiss this application is granted. The application for an order of *mandamus* is now moot because the Respondent granted the Applicant's request to withdraw her spousal sponsorship application.

2. No costs are awarded.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5801-23
STYLE OF CAUSE:	PUNEET KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	EDMONTON, ALBERTA
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APPEARANCES:

Puneet Kaur	THE APPLICANT ON HER OWN BEHALF
Galina Binning	FOR THE RESPONDENT

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