

Date: 20061117

Docket: IMM-2005-06

Citation: 2006 FC 1396

Montreal, Quebec, November 17, 2006

PRESENT: Richard Morneau, Esq., Prothonotary

BETWEEN:

CARLOS MARIO GONZALEZ-RUBIO SUESCAN

applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

respondent

Motion in writing on behalf of Canadian Council for Refugees for leave to intervene.

(Rules 109 and 369 of the *Federal Courts Rules*)

REASONS FOR ORDER AND ORDER

MORNEAU P.

[1] UPON CONSIDERING the motion records material filed by the proposed intervener and by the Respondent who opposes the motion at bar;

[2] CONSIDERING that the substantive application herein arises in the context of an application for leave and judicial review filed on April 13, 2006, against a decision by an immigration officer dated March 31, 2006, which found that the Applicant's application for refugee status in Canada was ineligible to be considered by the Refugee Protection Division, pursuant to paragraph 101(1)(c) of the *Immigration and Refugee Protection Act* (hereinafter "IRPA") on the basis that the Applicant had already made a claim for refugee protection in Canada that was found ineligible on February 21, 2006;

[3] CONSIDERING that leave was granted in the within application on September 15, 2006, yet the proposed intervener did not formally ask for leave to intervene until October 30, 2006 (after the parties had completed submitting their evidence to the Court);

[4] CONSIDERING that the hearing on the merits of the application is scheduled to take place before this Court on December 6, 2006;

[5] CONSIDERING rule 109 and the relevant criteria developed by the jurisprudence for determining intervener status (- see *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, 2001 FCA 233, [2002] F.C.J. No. 220, par. 8 and foll. (QL); *AB Hassle v. Apotex Inc.*, (2006) 265 D.L.R. (4th) 363 (C.A.); *Eli Lilly Canada Inc. v. Canada (Minister of Health)*, 2001 FCA 108, (2001) 289 N.R. 377;

- see also *Wewayakum Indian Band v. Canada and Wewayakai Indian Band* (1993), 65 F.T.R. 292, par. 15 (F.C.T.D.) on the timely manner of any motion to intervene);

[6] CONSIDERING that this Court has come to the conclusion that the proposed intervener does not meet the core applicable criteria for the granting of intervener status in that:

- a) The proposed intervener is not directly affected by the case herein and has only a general interest in the development of the case law which interest is not in itself grounds for allowing a person or organisation to intervene: see *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, *supra*, par.11; *Anderson v. Canadian Customs and Revenue Agency*, 2003 FCA 352 [2003] F.C.J. 1388, par. 6 (QL);
- b) The Applicant is best placed to address the constitutionality of paragraph 101(1)(c) of IRPA since the Applicant has already mounted a challenge to the constitutional validity of said paragraph and has, in this regard, presented evidence and legal submissions;
- c) If any relevant evidence can be presented of alleged violations of *Charter* rights flowing from the application of the relevant legislation in this case, such evidence can only presented by the Applicant;
- d) The Applicant was also best placed to respond to the evidence filed by the Respondent on October 23, 2006, which indicates that the Applicant is entitled to present an application for pre-removal risk assessment in Canada, under s. 112 of IRPA;

- e) That the submissions the proposed intervener wishes to make are either duplicative of the Applicant's submissions or would add very little to the debate;

- f) That if granted the intervention sought will likely lead to further delay and will prevent the holding of the merit hearing on December 6, 2006. Therefore, the motion at bar is untimely.

ORDER

CONSEQUENTLY, FOR THE ABOVE REASONS, this motion for intervention of the Canadian Council for Refugees is denied, the whole with costs.

“Richard Morneau”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2005-06

STYLE OF CAUSE: CARLOS MARIO GONZALEZ-RUBIO SUESCAN
and
LE MINISTRE DE LA CITOYENNETÉ
ET DE L'IMMIGRATION

WRITTEN MOTION DECIDED IN MONTRÉAL WITHOUT APPEARANCE BY PARTIES

REASONS FOR ORDER AND ORDER: PROTHONOTARY MORNEAU

DATED: NOVEMBER 17, 2006

WRITTEN SUBMISSIONS:

Me William Sloan FOR THE APPLICANT

Me François Joyal FOR THE RESPONDENT

Me Pia Zambelli FOR THE PROPOSED INTERVERNER

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