Date: 20070706

Docket: IMM-1787-07

Citation: 2007 FC 715

Toronto, Ontario, July 6, 2007

PRESENT: Kevin R. Aalto, Esquire, Prothonotary

BETWEEN:

AKINOLA BABAJIDE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] **UPON MOTION** in writing on behalf of the Applicant dated June 11, 2007, pursuant to Rule 369 of the *Federal Courts Rules*, for an Order granting the Applicant a short extension of time for serving and filing the Applicant's Application Record;

[2] **AND UPON** reading the Applicant's Motion Record and the Respondent's Motion Record and the Application for Leave and for Judicial Review;

[3] The Applicant seeks an extension of time to file the Application Record because a Legal Assistant in the office of the Applicant's counsel misplaced the Application Record and thus it was inadvertently not filed on time. The Applicant received the decision from which the Application for Leave was taken on April 24, 2007. That Application was filed on May 2, 2007, well within the time for commencing the Application. The Application Record should therefore have been filed on or before June 1, 2007. The evidence filed on behalf of the Applicant indicates the Application Record was ready to be served and filed by June 1, 2007 and but for having misplaced the Application Record it would have been served and filed on time. The mistake became known to the lawyer on June 11, 2007. The very brief affidavit in support of the motion is sworn by the Legal Assistant who misplaced the Application Record. There is neither an explanation in that affidavit why it was not known to the lawyer earlier that it was not filed nor any information as to what steps were taken by the lawyer to ensure it was served and filed after he gave it to the Legal Assistant. Further, there is no evidence regarding the merits of the Application for Leave.

[4] The Respondent opposes the extension of time and argues that the four prong test for granting an extension has not been met. In particular, counsel for the Respondent emphasizes in Written Submissions that inadvertence of a secretary or counsel does not constitute a sufficient ground to grant the extension. There are several cases cited in support of this proposition, including *Canada (A. G.)* v. *Hennelly* (1995), 91 F.T.R. 317 and *Chin* v. *Canada (M.E.I.),* [1993] F.C.J. No. 1033. The four factors set out in *Hennelly* govern the discretionary decision of whether or not to grant an extension of time. Thus, to be granted an extension of time, the Applicant must demonstrate each of the following:

1. a continuing intention to pursue the application;

2. that the application has some merit;

3. that there will be no prejudice to the Respondent from the delay; and

4. that there is a reasonable explanation for the delay exists.

[5] A further factor sometimes considered is whether an extension should be granted in order to do justice between the parties. (see, *The Minister of Citizenship and Immigration.* v. *Simakov*, 2001 FCT 469 at paras. 3-5).

[6] Each case must be determined on its own facts. In this case the evidence indicates that factors one and three are met: the Applicant had a continuing intention to pursue the application and there is no obvious prejudice to the Respondent. The difficulty with the Applicant's case is the failure to satisfy parts two and four of the conjunctive *Hennelly* test. The Applicant's Written Submissions concedes that there is no reasonable explanation for the delay in this case. The case law cited by the Respondent supports that proposition.

[7] The Applicant's request for an extension therefore falters by failing to meet parts two and four of the *Hennelly* test. There is a paucity of information about the merits of the appeal. In looking at the Application for Leave for assistance in understanding the merits one comes up empty-handed. The grounds in the Application for Leave are nothing but empty boilerplate

bereft of any substantive ground arising specifically from the decision of the Tribunal. The grounds in the Application for Leave are the following:

a) That the Panel failed to observe the principles of natural justice, procedural fairness or otherwise acted beyond or refused to exercise its jurisdiction;

b) The Panel erred in law in making its decision whether or not the error appears on the face of the record; and

c) The Panel's decision was based on erroneous findings of fact made in a perverse and capricious manner without regard to the materials before the Panel."

[8] These "grounds" give no clue as to what merit there is to the Application for Leave and Judicial Review. Thus, on this ground alone the motion for the extension could fail (see, for example, *Lieu* v. *Canada (M.E.I.)*, [1994] F.C.J. No. 857; and *Rafique* v. *Canada (M.E.I.)*, [1992] F.C.J. No. 864). However, in this case, the fact that there is no reasonable explanation for the delay in accordance with the jurisprudence of this Court combined with the failure to provide minimally substantive information regarding the merits of the Application for Leave does not meet the minimum threshold to grant an extension. The motion is therefore denied.

ORDER

THIS COURT ORDERS that

1. This motion is dismissed.

"Kevin R. Aalto"
Prothonotary

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-1787-07
STYLE OF CAUSE:	**AKINOLA BABAJIDE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER BY:	AALTO P.
DATED:	July 6, 2007

WRITTEN REPRESENTATIONS BY:

Sina Ogunleye	FOR THE APPLICANT
Ricky Tang	FOR THE RESPONDENT

SOLICITORS OF RECORD

Sina Ogunleye Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT