

**Date: 20080513**

**Docket: IMM-4093-07**

**Citation: 2008 FC 599**

**BETWEEN:**

**KALADEVI BAGEERATHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER**

**PHELAN J.**

**I. INTRODUCTION**

[1] In this proceeding, the Applicant seeks a form of mandamus directing that permanent resident status be granted to her husband. The reason for the request is that there has been unreasonable delay in the processing of the sponsored application for permanent residence.

[2] This is an unfortunate case of bureaucratic paralysis which requires the Court's direction to the Respondent to carry out its duty. Cases of this type turn on their specific facts and it should be emphasized that the use of mandamus powers are and must remain rare.

## II. FACTUAL BACKGROUND

[3] The Applicant, born in Sri Lanka, is a Tamil woman from the north of the country. She married, lived with her husband and they eventually had a son.

[4] The Applicant left Sri Lanka and arrived in Canada with her son in June 2003. Her claim for Convention refugee status was granted in October 2003.

[5] As a result of her refugee status, the Applicant was entitled to apply for permanent resident status for herself, her son and her husband who had stayed back in Sri Lanka. This she did in November 2003.

[6] Under the *Immigration and Refugee Protection Regulations* (Regulations) the Applicant's husband did not need to meet medical conditions for admission nor did the Applicant have to satisfy financial conditions. The principal clearance for admission is that of security alone.

[7] The problem in this case appears to stem from the Visa Post in Colombo. Despite the fact that the Applicant had a child by her husband, lived with him prior to coming to Canada and wished to have him join her in Canada as her husband, the Visa Post delayed the processing of the permanent resident visa because, it must be assumed, of questions as to their marital status.

[8] Although a couple need only establish that they are in a common law relationship, the Visa Post chose to verify a marriage certificate presented by the husband. As a result, in late 2004, the application processing was stayed, including any interview with the husband concerning his marriage or matters relevant to his admission to Canada.

[9] Despite requests from Immigration officials in Toronto to process the application, the Visa Post did not respond.

[10] In May 2006, the Visa Post, having held the application for 21 months (the application is now 30 months old), noted in its files that it was reviewing the file in six months' time.

[11] Despite not receiving a response from Sri Lankan authorities regarding verification of the marriage certificate, the Visa Post interviewed the husband. He provided further evidence of his marriage, including a wedding album and photographs. The staff person at the Visa Post noted in July 2006: "HAVE NO CONCERNS WITH RELATIONSHIP".

[12] However, in October 2006, another staff member noted in the CAIPS Notes that the marriage certificate had been verified as fraudulent.

[13] This notation led to a visit to the Central Registry in Colombo where the Visa Post staff was informed that there was no marriage certificate filed. In fact, there were no marriage certificates filed that day from any place in Sri Lanka – a time of year deemed auspicious for weddings.

[14] The Visa Post concluded with finality that a marriage certificate issued in Jaffna (during the course of the civil war in that area) but not recorded in Colombo was fraudulent.

[15] The husband was again interviewed – this time in November 2006 - and again he declared that the marriage was genuine, that it had occurred as stated and that the marriage certificate was genuine. The Visa Post then suspended the interview and directed the husband to complete a form listing where he had lived since he was 18 years old.

[16] The last action on this file was the November 2006 interview. Since that time, the Visa Post has not reversed the earlier declaration that the relationship was genuine, reversed the conclusion that the marriage certificate is fraudulent, acted upon the husband's list of past addresses, or otherwise processed the application or made any determination whatsoever.

[17] This complete inaction has continued despite the Applicant obtaining leave to apply for judicial review, the litigation of this application, the Court's adjournment to permit the Respondent to decide whether it could or should issue a temporary resident visa. At the resumed hearing on May 6, 2008, the Respondent continued in its state of suspended animation.

### III. ANALYSIS

[18] Section 141 of the Regulations contains the mandatory language "shall". The relevant provisions are:

**141.** (1) A permanent resident visa shall be issued to a family member who does not accompany the applicant if, following an examination, it is established that

(a) the family member was included in the applicant's permanent resident visa application at the time that application was made, or was added to that application before the applicant's departure for Canada;

(b) the family member submits their application to an officer outside Canada within one year from the day on which refugee protection is conferred on the applicant;

(c) the family member is not inadmissible;

[...]

**141.** (1) Un visa de résident permanent est délivré à tout membre de la famille du demandeur qui ne l'accompagne pas si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) le membre de la famille était visé par la demande de visa de résident permanent du demandeur au moment où celle-ci a été faite ou son nom y a été ajouté avant le départ du demandeur pour le Canada;

b) il présente sa demande à un agent qui se trouve hors du Canada dans un délai d'un an suivant le jour où le demandeur se voit conférer l'asile;

c) il n'est pas interdit de territoire;

[...]

[19] I need not decide whether because the applications were concurrent, s. 141 requires the issuance of a visa for the non-accompanying family member at the same time with the issuance to the Canadian-based other family members.

[20] What is obvious in this case is that the Respondent has ceased processing the husband's application. The Applicant and her husband were entitled to a decision within a reasonable time. The Visa Post has already determined the family relationship to be genuine.

[21] The Applicant and her husband submitted DNA evidence establishing the paternity of their son. That evidence of paternity has not been challenged.

[22] The only impediment appears to be the absence in Colombo (not Jaffna where the marriage ceremony occurred) of a record of their marriage, nor apparently of any other marriage in the whole of the country on that date, a matter which should have raised questions as to the record keeping at the Central Registry.

[23] Under all the circumstances, the Court must conclude that this is an instance of unreasonable delay in making a determination of permanent resident status. It is a disturbing instance of inaction made more egregious by the furthering of the delay during the judicial review process.

#### IV. CONCLUSION

[24] Therefore, judicial review will be granted. While the Applicant, quite reasonably, asks for an order requiring the Respondent to grant permanent residence within 90 days, the Court is reluctant to do so given the outstanding security clearance. It is outstanding because the Respondent has let the police clearance lapse through its own inaction.

[25] The Court has issued an Order requiring the Respondent to make a determination of the application within 90 days. The Court has retained jurisdiction to deal with any issues which may arise that affect the mandatory order.

[26] The Court expects that, barring some unusual circumstance, the Respondent will grant the application prior to the deadline. Further unjustified delay could be contempt of this Court and could lead to penalties and costs.

[27] There is no question for certification.

“Michael L. Phelan”

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Judge

Ottawa, Ontario  
May 13, 2008

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4093-07

**STYLE OF CAUSE:** KALADEVI BAGEERATHAN

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 6, 2008

**REASONS FOR ORDER:** Phelan J.

**DATED:** May 13, 2008

**APPEARANCES:**

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FOR THE APPLICANT

Ms. Leanne Briscoe

FOR THE RESPONDENT

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