

Date: 20081006

Docket: IMM-934-08

Citation: 2008 FC 1123

Ottawa, Ontario, October 6, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

ANDRE LEON THOMPSON

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On January 28, 2008, Andre Leon Thompson appeared before the Immigration Appeal Division of the Immigration and Refugee Board (Board). He was appealing, on humanitarian and compassionate grounds, the issuance of a removal order against him. His appeal was dismissed by the Board.

[2] As evidenced by paragraph 13 of the Board's reasons, the Board understood that Mr. Thompson wanted an adjournment of the hearing. The Board refused that request. Paragraph 13 sets out the Board's reasons for refusing Mr. Thompson's request. There, the Board wrote:

At the commencement of the hearing, the appellant indicated that he did not have counsel because his counsel was on vacation and he could not afford to hire new counsel. I advised the appellant that no more adjournments would be granted in view of the amount of time available to him to organize counsel. The appellant did not submit any documentary evidence even though he was aware that it would be in his best interests to do so.

[3] In refusing the request for an adjournment on that basis, the Board erred in law by failing to consider the factors that it is required, by Rule 48(4) of the *Immigration Appeal Division Rules*, SOR/2002-230, to consider.

[4] Rule 48, in its entirety, is set out in the appendix to these reasons. For ease of reference, Rule 48(4) provides:

48(4) In deciding the application, the Division must consider any relevant factors, including

- (a) in the case of a date and time that was fixed after the Division consulted or tried to consult the party, any exceptional circumstances for allowing the application;
- (b) when the party made the application;
- (c) the time the party has had to prepare for the proceeding;
- (d) the efforts made by the party to be ready to start or continue the proceeding;
- (e) in the case of a party who wants more time to obtain

48(4) Pour statuer sur la demande, la Section prend en considération tout élément pertinent. Elle examine notamment :

- a) dans le cas où elle a fixé la date et l'heure de la procédure après avoir consulté ou tenté de consulter la partie, toute circonstance exceptionnelle qui justifie le changement;
- b) le moment auquel la demande a été faite;
- c) le temps dont la partie a disposé pour se préparer;
- d) les efforts qu'elle a faits pour être prête à commencer ou à poursuivre la procédure;
- e) dans le cas où la partie a

information in support of the party's arguments, the ability of the Division to proceed in the absence of that information without causing an injustice;	besoin d'un délai supplémentaire pour obtenir des renseignements appuyant ses arguments, la possibilité d'aller de l'avant en l'absence de ces renseignements sans causer une injustice;
(f) the knowledge and experience of any counsel who represents the party;	f) dans le cas où la partie est représentée, les connaissances et l'expérience de son conseil;
(g) any previous delays and the reasons for them;	g) tout report antérieur et sa justification;
(h) whether the time and date fixed for the proceeding were peremptory;	h) si la date et l'heure qui avaient été fixées étaient péremptoires;
(i) whether allowing the application would unreasonably delay the proceedings; and	i) si le fait d'accueillir la demande ralentirait l'affaire de manière déraisonnable;
(j) the nature and complexity of the matter to be heard. [emphasis added]	j) la nature et la complexité de l'affaire. [Non souligné dans l'original.]

[5] The only factor the Board considered was that Mr. Thompson had sufficient time to organize counsel. It follows from this error of law that the decision must be set aside. See also: *Herman v. Canada (Minister of Citizenship and Immigration)* (2005), 278 F.T.R. 315 (F.C.).

[6] Counsel posed no question for certification and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, and the decision of the Immigration Appeal Decision dated January 30, 2008, is hereby set aside.
2. The matter is remitted to the Immigration Appeal Division for redetermination by a differently constituted panel.

“Eleanor R. Dawson”

Judge

APPENDIX

Rule 48 of the *Immigration Appeal Division Rules* reads as follows:

48(1) A party may make an application to the Division to change the date or time of a proceeding.

(2) The party must
(a) follow rule 43, but is not required to give evidence in an affidavit or statutory declaration; and
(b) give at least six dates, within the period specified by the Division, on which the party is available to start or continue the proceeding.

(3) If the party's application is received by the recipients two working days or less before the date of a proceeding, the party must appear at the proceeding and make the request orally.

(4) In deciding the application, the Division must consider any relevant factors, including
(a) in the case of a date and time that was fixed after the Division consulted or tried to consult the party, any exceptional circumstances for allowing the application;
(b) when the party made the application;
(c) the time the party has had to prepare for the proceeding;
(d) the efforts made by the party to be ready to start or continue the proceeding;
(e) in the case of a party who wants more time to obtain information in support of the

48(1) Toute partie peut demander à la Section de changer la date ou l'heure d'une procédure.

(2) La partie :
a) fait sa demande selon la règle 43, mais n'a pas à y joindre d'affidavit ou de déclaration solennelle;
b) indique dans sa demande au moins six dates, comprises dans la période fixée par la Section, auxquelles elle est disponible pour commencer ou poursuivre la procédure.

(3) Dans le cas où les destinataires reçoivent la demande deux jours ouvrables ou moins avant la procédure, la partie doit se présenter à la procédure et faire sa demande oralement.

(4) Pour statuer sur la demande, la Section prend en considération tout élément pertinent. Elle examine notamment :
a) dans le cas où elle a fixé la date et l'heure de la procédure après avoir consulté ou tenté de consulter la partie, toute circonstance exceptionnelle qui justifie le changement;
b) le moment auquel la demande a été faite;
c) le temps dont la partie a disposé pour se préparer;
d) les efforts qu'elle a faits pour être prête à commencer ou à poursuivre la procédure;
e) dans le cas où la partie a

party's arguments, the ability of the Division to proceed in the absence of that information without causing an injustice;

- (f) the knowledge and experience of any counsel who represents the party;
- (g) any previous delays and the reasons for them;
- (h) whether the time and date fixed for the proceeding were peremptory;
- (i) whether allowing the application would unreasonably delay the proceedings; and
- (j) the nature and complexity of the matter to be heard.

(5) Unless a party receives a decision from the Division allowing the application, the party must appear for the proceeding at the date and time fixed and be ready to start or continue the proceeding.

besoin d'un délai supplémentaire pour obtenir des renseignements appuyant ses arguments, la possibilité d'aller de l'avant en l'absence de ces renseignements sans causer une injustice;

- f) dans le cas où la partie est représentée, les connaissances et l'expérience de son conseil;
- g) tout report antérieur et sa justification;
- h) si la date et l'heure qui avaient été fixées étaient péremptoires;
- i) si le fait d'accueillir la demande ralentirait l'affaire de manière déraisonnable;
- j) la nature et la complexité de l'affaire.

(5) Sauf si elle reçoit une décision accueillant sa demande, la partie doit se présenter à la date et à l'heure qui avaient été fixées et être prête à commencer ou à poursuivre la procédure.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-934-08

STYLE OF CAUSE: ANDRE LEON THOMPSON, Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 1, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: OCTOBER 6, 2008

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