

Federal Court



Cour fédérale

Date: 20150505

Docket: IMM-5258-13

Citation: 2015 FC 587

Toronto, Ontario, May 5, 2015

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

JINWOO KANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] **UPON MOTION** for Dismissal of this application for judicial review [Dismissal] filed by the Respondent, pursuant to Rule 369 of the *Federal Courts Rules*; on April 9, 2015;

[2] **AND UPON** reading the materials filed, both with this motion and the judicial review application;

[3] **AND UPON** determining that this Motion should be granted for the following reasons:

1. The Applicant commenced this application for leave and for judicial review on April 8, 2013, challenging the negative decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD].
2. At the December 9, 2014 Federal Court hearing, Ms. Katrina Bérubé appeared as an agent for Ms. Meerai Cho, legal counsel who was retained by the Applicant in this matter. Ms. Bérubé advised the Court and the Respondent that (i) Ms. Cho had been suspended by the Law Society of Upper Canada, and that (ii) while Ms. Bérubé had taken over many of Ms. Cho's files, she had neither been retained by, nor had any contact with, the Applicant despite making several attempts to do so.
3. In addition, Ms. Bérubé claimed that she had become aware of information concerning the Applicant during the file transfer process from Ms. Cho that meant she would not represent the Applicant, even if she were in contact with him.
4. By order of the Court dated January 19, 2015 (annexed hereto), Ms. Bérubé was removed from the proceedings, subject to certain undertakings, which she proceeded to comply with in the intervening months, the most important of which was to attempt to find the Applicant and secure legal representation for him.
5. The matter was adjourned *sine die*, in the hope of appointing new counsel to represent the Applicant.
6. The status quo remains as it was since last December: the Applicant has not been found, despite consistent efforts, first by Ms. Bérubé, and subsequently by Ms. Catherine Bruce. Ms. Bruce, counsel at the Refugee Law Office [RLO], sent correspondence in two letters to the Court, copying the Respondent, on March 26,

2015 and March 30, 2015, advising the RLO had made efforts to contact the Applicant, but had also been unsuccessful in communicating with him (Respondent's Motion Record, Affidavit of Karen Mendonca, Exhibit "C", pp 24-28).

7. Ms. Bruce, in these letters, stated that if the Court "is minded to" hear the judicial review, the RLO wished to submit a motion to be appointed *amicus curiae*.
8. Further communication was received from Ms. Bruce of the RLO, in a follow up letter dated April 26, 2015, a full month after the initial RLO correspondence, stating that the situation, and RLO position, as described above vis-à-vis the Applicant, remained unchanged.
9. The Court is not minded to hear this judicial review. I agree with the Respondent, that the Applicant has not made any attempts to pursue this matter to completion, and appears to have abandoned the litigation. He has not been in communication with the agent, acting on behalf of his former counsel, despite numerous attempts to communicate with him since October 2014. Consequently, the agent was unable to receive instructions from the Applicant. Subsequent to the agent's involvement, the RLO also had no success in communicating with the Applicant. There are no reasonable grounds to believe that the Applicant will present himself to the Court to pursue this matter.
10. In addition to the Applicant's whereabouts being unknown, there is a warrant for the Applicant's arrest that has been outstanding for approximately one year due to his failure to appear at a pre-removal interview. It is possible that he is not even resident in Canada.

11. The Court has faced similar scenarios in previous cases where an applicant's whereabouts were unknown and/or an applicant's counsel had not been able to obtain instructions (*Sakarya* [IMM-5181-12] and *Oduko* [IMM-1623-10]). In those cases, the Court allowed a certain period of time to attempt to find the applicant and upon the failure to do so by the end of the allotted period of time, the Court dismissed the judicial review.
12. The facts were similar in *Sakarya*, for example, where the Court adjourned the hearing because applicant's counsel had not been able to receive instructions from the applicant, and the fact that the applicant's whereabouts were unknown. When the matter came back before the Court, applicant's counsel advised that various unsuccessful efforts had been made to communicate with the applicant, and the Court dismissed the application.
13. In *Oduko*, there was also a breakdown in solicitor-client communication. The Court, considering the procedural history of the case, determined that the Minister's motion to deem the litigation abandoned should be granted.
14. I see no reason to diverge from the case law, based on all the reasons set out above.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This application for Judicial Review is dismissed.
2. There is no order as to costs.

“Alan S. Diner”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5258-13

STYLE OF CAUSE: JINWOO KANG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

**DATE OF MOTION IN
WRITING:** APRIL 9, 2015

JUDGMENT AND REASONS: DINER J.

DATED: MAY 5, 2015

RULE 369 MOTION IN WRITING WITH NO APPEARANCES BY THE PARTIES.

SOLICITORS OF RECORD:

Catherine Bruce
Barrister and Solicitor
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT

Annex

Federal Court



Cour fédérale

Date: 20150119

Docket: IMM-5258-13

Toronto, Ontario, January 19, 2015

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

JINWOO KANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER

UPON AN ORAL MOTION AND IN WRITING MADE TO THE COURT by Katrina Bérubé appearing as agent for the Applicant, seeking to remove herself from any further involvement in this litigation and Michael Butterfield, counsel for the Respondent, consenting to the Motion based on the submission made by Katrina Bérubé.

THIS COURT ORDERS that:

1. Katrina Bérubé is permitted to have no further involvement in this litigation;

2. Pursuant to her oral submissions and written representation, Katrina Bérubé undertakes to contact Legal Aid Ontario to advise that the Applicant has no legal representation before this court in this matter because she cannot act on the Applicant's behalf;
3. In addition, Katrina Bérubé undertakes to ask Legal Aid Ontario to facilitate retaining a new legal counsel on behalf of the Applicant in pursuit of the litigation herein and that she will advise this Honourable Court and the Respondent of the response (if any) provided by Legal Aid Ontario;
4. Katrina Bérubé will update this Honourable Court and Mr. Butterfield of the Department of Justice with the file status on the 30th of every month until such time as Legal Aid Ontario has communicated its position on the file;
5. This matter is adjourned *sine die* and is to be rescheduled when a new counsel has been appointed.

"Alan S. Diner"

Judge