Federal Court  Cour fédérale

Date: 20120523

Docket: IMM-4032-12

Citation: 2012 FC 626

Ottawa, Ontario, May 23, 2012

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

PREET DEEP SINGH DATTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion brought in writing by Preet Deep Singh Datta seeking injunctive relief against the Minister in the following form:

> 1. an order enjoining the respondent so long as this matter remains *sub judice* from closing the applicant's federal skilled worker (FSW) application without having first conducted a *bona fide* assessment; [and]
>
> 2. an order enjoining the respondent from refusing the applicant's FSW application by assessing it under selection criteria and a pass-mark not in place at the time the respondent received and accepted full consideration for the

> processing of his FSW application under the current selection and pass-mark; . . .

Mr. Datta also purports to seek identical injunctive relief on behalf of several hundred other applicants who have applied for mandatory prerogative relief in this Court in connection with their outstanding applications for permanent residency.

[2] Although it is not expressly articulated in Mr. Datta's motion materials, he is seeking an injunction to prevent the Minister from acting on proposed legislation entitled Bill C-38, *Jobs, Growth and Long-Term Prosperity Act*, (Bill C-38) which, if passed, may summarily terminate his skilled worker visa application.

Background

[3] According to Mr. Datta's affidavit, in 2004, he and his wife applied for permanent residency in Canada. Mr. Datta sought entry as a member of the skilled worker class. His application appears to have languished until 2008 when he was asked to submit updated documentation. Based on operational advice published by the Minister, Mr. Datta understood that his application should have been assessed by November 2008; however, it was not and his application remains outstanding and unresolved.

[4] Most of the remainder of Mr. Datta's affidavit is argumentative, opinionated, disparaging and in, several places, inflammatory. It is also full of hearsay seemingly lifted from publically available sources but having no obvious evidentiary value on a motion for interim injunctive relief.

The affidavit of Pantea Jafari also contains very little persuasive or relevant evidence and concerns itself mainly with arguments about the wisdom of the Minister's immigration policies.

Issue

[5] Is the Applicant entitled to interim injunctive relief against the Respondent?

Analysis

[6] In order to obtain an interim injunction, there must be something to enjoin. There must also be a serious issue to be resolved and irreparable harm to Mr. Datta. Finally, the balance of convenience must favour Mr. Datta: see *Toth v Canada (MEI)*, [1988] FCJ no 587, 86 NR 302 (CA); and *RJR-MacDonald Inc. v Canada (AG)*, [1994] 1 SCR 311 at para 43, [1994] SCJ no 17 (QL).

[7] I agree with counsel for the Respondent that this motion is devoid of merit because it is premature and speculative. Bill C-38 is currently before Parliament and has yet to receive second reading. There is no certainty that Parliament will enact Bill C-38 in its present form or in some other form that might be legally objectionable: see *Federation of Saskatchewan Indian Nations v Canada*, 2003 FCT 306 at para 22; [2003] 2 CNLR 131. . Accordingly, nothing has yet occurred that is prejudicial to Mr. Datta's visa application moving forward to a conclusion and there is nothing to enjoin. As the Supreme Court of Canada observed in *Re: Resolution to amend the Constitution*, [1981] 1 SCR 753 at p 785, [1981] SCJ no 58 (QL), "[c]ourts come into the picture when legislation is enacted and not before". To the same effect is the decision of Justice Andrew Mackay in *Federation of Saskatchewan Indian Nations*, above, at para 22.

[8] Notwithstanding Mr. Datta's failure to articulate an issue worthy of argument, I am prepared to accept that a serious issue may exist arising out of the Respondent's failure to process Mr. Datta's file for the past eight years. As things presently stand, this failure might support a claim to mandatory relief. However, it is a dubious argument that any contractual obligation has been created in these circumstances and, even if there was such an obligation, there is no legal impediment to Parliament extinguishing such a right if it so decides.

[9] Mr. Datta has failed to establish irreparable harm. His claim to harm rests on a supposition that his file will not be processed because it may be legislatively abolished before it is considered on its merits. According to Mr. Datta, this would render an order for mandamus pointless. This argument similarly rests on speculation and speculation does not constitute irreparable harm: see *Canada (AG) v United States Steel Corp*, 2010 FCA 200 at para 7, [2010] FCJ no 902 (QL) and *Canadian Society of Immigration Consultants v Canada (MCI)*, 2011 FC 669 at para 28, 391 FTR 100. It is also not obvious that the Court would be powerless to do justice between the parties in the face of some unlawful act or unconstitutional legislation.

[10] The Minister also asserts that Mr. Datta's claim to injunctive relief is fundamentally flawed because to enjoin the Minister in the manner proposed would represent improper judicial interference with the business of the legislative branch of government and with the corresponding duty of the Minister to follow and enforce the law. Inasmuch as there may be similar motions presented to the Court if the proposed federal legislation is enacted in its present form, I will not attempt to resolve this point on this record. There is, however, one point that is worthy of comment.

Counsel for Mr. Datta says that the relief he seeks would not interfere with Parliament's right to enact Bill C-38. He simply wants to stop the Minister from acting on the legislation once it is proclaimed. As I read the proposed legislation, the Minister has no residual administrative role or discretion with respect to the affected files. Those files are simply terminated by operation of law. In that context, there is no apparent act that the Minister can be enjoined from performing. Notwithstanding counsel's disclaimer, he is effectively proposing that the Court stay the implementation of a law that has yet to be proclaimed by Parliament. Suffice it to say that there are significant legal issues with respect to the justiciability of such a claim to relief.

[11] For the foregoing reasons, this motion is dismissed with costs payable forthwith to the Respondent in the amount of $750.00 inclusive of disbursements.

ORDER

THIS COURT ORDERS that this motion is dismissed with costs payable forthwith to the Respondent in the amount of $750.00 inclusive of disbursements.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4032-12
STYLE OF CAUSE:	DATTA v MCI

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369

REASONS FOR ORDER:	BARNES J.
DATED:	May 23, 2012

APPEARANCES:

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Alison Engel-Yan Janet Stewart	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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