Federal Court Cour fédérale

Date: 20160525

Docket: IMM-469-16

Citation: 2016 FC 572

Toronto, Ontario, May 25, 2016

PRESENT: Prothonotary Kevin R. Aalto

BETWEEN:

MARIAM MAGADLIN JOHN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Introduction

[1] This is a motion brought pursuant to Rule 369 for an extension of time to serve and file the Applicant's Record. The Respondent opposes the extension and raises once again the issue of whether the delays inherent in making an application for legal aid is an acceptable explanation for the failure to serve and file the Applicant's Record within the prescribed time limit. In this

case, the delay relating to an unsuccessful application for legal aid is the primary explanation offered as to why the application was not perfected in time.

[2] It is time to revisit this issue as the Respondent frequently opposes extensions of time in cases where the delays in obtaining legal aid is an applicant's excuse for the delay.

II. Background

[3] The Applicant seeks an extension of time to serve and file her application record. In support of her motion the Applicant has filed two affidavits. One is from her son, Ishaiah Peter (Peter Affidavit) and a second from Mary Teresa Connolly (Connolly Affidavit), a law clerk in the office of Applicant's counsel.

[4] The Peter Affidavit recounts the background of the Applicant's encounter with the immigration process and her efforts to seek judicial review of a negative decision. The Refugee Protection Division rejected the Applicant's claim for refugee status and found that she was not a Convention Refugee and was not a person in need of protection. The appeal of that decision was unsuccessful. The appeal decision is dated January 15, 2016. Two errors were found by the appeal tribunal to have been made in the original decision relating to findings on delay and certain documents relating to the Applicant's residency in Kuwait. Notwithstanding these errors, the appeal was denied.

[5] The Peter Affidavit then sets out the steps taken to apply for legal aid to assist the Applicant in bringing this application for leave and judicial review (the Application). A Legal

Aid Certificate was issued for the limited purpose of commencing the Application. Additional materials were requested by Legal Aid to determine if a certificate would be issued for further steps in the Application.

[6] The Applicant's Application was issued on February 1, 2016. The request for further legal aid assistance was in process when it was issued and a lawyer had been selected. Ultimately, on February 25, 2016 the lawyer advised Mr. Peter that the certificate for Legal Aid was refused and a retainer was required within 24 hours. Mr. Peter deposes that he does not live in Toronto and that he tried to contact the lawyer to discuss retainer arrangements. He also deposes to the fact that the lawyer was unavailable and on holiday. Although he asked her to call him back he never heard from her.

[7] Mr. Peter then describes his efforts to find another lawyer and finally located current counsel but she could not meet with the Applicant and her son until March 11, 2016. The retainer was finalized on March 13, 2016. Counsel then set about contacting the former lawyer to obtain the file and sought an extension of time from the Respondent. Counsel was advised by the Respondent that a decision would be made once a motion was served.

[8] The motion was served. The Respondent refused to consent to an extension and opposes this motion. In my view, for the reasons that follow, the Respondent made the wrong decision.

[9] Turning to the Connolly Affidavit, it sets out not facts but argument and law. It points out errors with the decision under review and lists cases to support arguments. In all, it is not

helpful as an affidavit is not necessarily needed to outline the errors of law in the decision and the legal merits of the judicial review.

III. Positions of the Parties

[10] The Respondent argues that the four factors in *Canada (Attorney General) v. Hennelly* (F.C.A.), (1999), 244 N.R. 399, [1999] F.C.J. No. 846 have not been met. The Respondent argues, *inter alia*, that waiting for an application for legal aid to be approved is not a legitimate excuse for delay; that the evidence in support of the request for an extension is not sufficient; the affidavits in support should be given no weight; and, because credibility was a key element of the decision under review, there is no merit to the application.

[11] The Applicant relies upon both the Peter Affidavit and the Connolly Affidavit and submits there is no prejudice to the Respondent, the intention to pursue the Application is clear, merit has been shown, and, the delay has been explained.

IV. Analysis

[12] There is no doubt that *Hennelly* remains the leading case setting out the requirements to be met to obtain an extension of time. That case and others require that the Applicant demonstrate the following:

i. That there was a continuing intention to pursue the application;

ii. That there is some merit to the application;

iii. That no prejudice arises from the delay; and,

iv. A reasonable explanation for the delay exists.

[13] As was observed by Justice Richard Mosley in *Bloom v Canada,* 2010 FC 621, the approach to be taken in respect of the application of *Hennelly* is as follows:

> [12] In considering whether to grant an application to extend time, the Court must consider whether (i) the applicant had an continuing intention to pursue his or her application; (ii) the application has some merit; (iii) that no prejudice to the respondent arises from the delay; and (iv) that a reasonable explanation for the delay exists: *Canada (Attorney General) v. Hennelly* (F.C.A.), (1999), 244 N.R. 399, [1999] F.C.J. No. 846; *Marshall v. Canada* 2002 FCA 172. The length of the period of the extension may also be a relevant consideration. The underlying consideration is to ensure that justice is done between the parties: *Grewal v. Canada (Minister of Employment and Immigration)* [1985] 2 F.C. 263. The four-pronged test set out in *Hennelly* is a means to ensure the fulfillment of that underlying consideration. An extension of time may still be granted if one of the criteria is not satisfied: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41.

[14] The Respondent opposes the extension primarily on the grounds that there is no arguable case and that the explanation for the delay is not sufficient.

[15] Virtually all of the authorities relied upon by the Respondent are older cases, some of which are not readily found nor reproduced in publicly available databases. Very little recent jurisprudence of this Court is referred to. For example, although *Hennelly* remains the leading case setting out the factors to be considered to permit the Court to exercise its discretion to grant an extension, a fifth factor has evolved. That fifth factor is whether the justice of the case supports the granting of an extension as noted in the above quotation from *Bloom*.

[16] In support of his various arguments in opposition to an extension of time, the Respondent has plucked several obscure, one or two paragraph orders from decades ago and cites them as unassailable authority for profound propositions of law. Many of these cases offer no analysis of the issues in this case, fail to provide a context for the order made, and, are often simply statements of conclusions with little or no jurisprudential value or guidance.

V. Explanation for the Delay

[17] The delay, in large part, arises from dealings with Legal Aid which ultimately denied assistance to the Applicant for the conduct of the Application. There is also reference to the difficulties encountered in trying to communicate with former counsel and the need to obtain the file from prior counsel.

[18] In the written representations of the Respondent it is submitted that "this Court has consistently held that waiting for legal aid does not excuse a delay in filing a record." For this proposition the Respondent relies upon five cases. Those cases are:

> *Oduro v Canada*, [1999] F.C.J. No. 1542
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> *Espinoza v Canada*, [1992] F.C.J. No. 437 (FCA)
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> *Kiani v MCI*, [1996] F.C.J. No. 1692
>
> *Tawanapoor v Canada*, [1997] F.C.J. 585 (Proth.)
>
> *Alam v Canada*, [1997] F.C.J. No. 1108 (Proth.)

[19] These cases, it is argued, stand for the immutable proposition that waiting for a legal aid certificate does not provide an excuse for delay in filing an application record. I disagree. It is

worthwhile to actually read the cases upon which a party relies. Those counsel who rely on this argument as though it is written in stone, have simply not read the cases, especially the seminal case of *Espinoza*. Notably, the Respondent has failed to consider the more recent cases of *Chen v Minister of Citizenship and Immigration*, Court File No. IMM-5341-10 (Order granting extension dated November 17, 2010) and *Varga v Minister of Citizenship and Immigration*, (Court File No. IMM-5284-11 (Order granting extension dated November 1, 2011) both of which discuss *Espinoza*.

[20] The proposition upon which the Respondent relies for the position that waiting for a legal aid certificate does not excuse delay in filing an application record is founded on *Espinoza*, a 1992 decision of Mr. Justice Patrick Mahoney of the Federal Court of Canada- Appeal Division.

[21] That case involved a judicial review of a finding that the applicant was not a convention refugee. The application was commenced on February 21st. On March 30th, the applicant brought a motion seeking an extension of time to file his record. The reason given for the delay was the illness of a Spanish translator. There was no reference in the motion to waiting for an answer to an application for legal aid. Justice Mahoney granted a peremptory extension to April 15. A motion was then brought for reconsideration of the order and an **indefinite** extension was sought on the ground that there was a legal aid application outstanding. Justice Mahoney's decision relating to this request is as follows:

> The Applicant now seeks reconsideration of my order and an **indefinite** extension of time on the ground that a Legal Aid application remains undecided and that the Applicant has informed counsel that he is unable to proceed by way of private retainer. **The material does not disclose when the application for Legal**

Aid was made. It does disclose that on April 14 Legal Aid authorities advised counsel that it had not been disposed of.

The Applicant invokes Rule 337(5). That seems to me entirely unnecessary. An order extending time does not finally dispose of any matter in issue and is always open to reconsideration whether made peremptorily or not.

I am not prepared to grant an indefinite extension. The policy of the *Immigration Act* and *Federal Court Immigration Rules* as to the expeditious processing of leave applications is transparently clear. The dilatory initiation of Legal Aid applications, delays in providing opinion letters, which counsel know very well will be required, and the ever slower processing of such applications by some Legal Aid Committees cannot be permitted to defeat the policy of the Act and Rules. As I had occasion to observe in another application for an extension, "the agenda of the London & Middlesex County Legal Aid Committee cannot dictate this Court's administration of the law and application of its Rules."

For example, I see little excuse for the Legal Aid application not being made contemporaneously with the application for leave and none at all for its not being made until the eve of expiration of the time to comply with Rule 9, as is all too often the case. Likewise, I see little excuse for the failure of Legal Aid Committees to deal with applications promptly. **It seems to me that if an extension of time is sought to permit a Legal Aid application to be disposed of, it is necessary that the Court know when the application was made, why it was not made when the leave application was filed, when the Legal Aid Committee will next have an opportunity to deal with it and why it has not already been dealt with if it has been pending for more than two weeks. Those are among the matters that should be addressed in the supporting affidavit**.

If the Legal Aid application were made when the leave application was filed, it would have been outstanding almost 30 days before a Rule 9 extension had to be sought. Some cogent reason for it not having been disposed of in that time would seem called for. **Failure to make the application promptly could be a good reason to deny an extension**.

ORDER

The time for the Applicant to comply with Federal Court Immigration Rule 9 is further extended to June 1, 1992. [emphasis added]

[22] As can be seen, Justice Mahoney did not deny an extension on the basis of delay pending the application for Legal Aid. Justice Mahoney refused to grant an **indefinite** extension but did, in fact, grant an extension of 19 days (the date of his decision May 13, 1992 to June 1, 1992) because there was a pending legal aid application.

[23] Somehow or other this case has been transformed from what it does decide (i.e. that indefinite extensions will not be granted) to something it does not decide (i.e. that waiting for an application for legal aid is not a sufficient explanation for delay). As noted by Justice Mahoney it is important for the Court to have in evidence the circumstances and status of the legal aid application. Extensions are discretionary and the evidence must support the exercise of that discretion in favour of granting an extension where warranted.

[24] The requirement that the Court should have some concrete evidence concerning the status of the legal aid application is voiced in further decisions of the Court relied upon by the Respondent. In *Alam*, Senior Associate Prothonotary Giles, observed:

> There have been numerous cases which have decided the fact that an applicant has been **waiting for legal aid does not excuse delay except in special circumstances. A prompt application for legal aid and diligent follow-up may in certain circumstances excuse delay**. The applicant here found out on April 21st, 1997 that his CRDD decision was adverse. His then lawyer did not tell him to make an application for legal aid until April 28th, 1997. The legal aid then being sought was initially legal aid to have an opinion prepared to attempt to obtain further legal aid to file a record. The applicant attended to apply for legal aid on May 1st, 1997 and was granted initial legal aid on May 16th, 1997. Apparently Legal Aid has admitted it was tardy in granting the initial legal aid; however, it was not until May 23rd, 1997 that the necessary opinion letter to seek further legal aid was sent (the Application for Leave and for Judicial Review was filed on May 6th, 1997 without waiting for Legal Aid's "approval"). [emphasis added]

[25] In *Alam* the motion was dismissed but without prejudice to bring a further motion on better evidence.

[26] *Tawanapoor* is another decision relied upon by the Respondent in which Associate Senior Prothonotary Giles stated as follows:

> 1. As is so often the case, it appears that nothing was done on this file to further the preparation of an Applicant's Record while all concerned waited to see if Legal Aid would be granted. Waiting for Legal Aid does not excuse delay in filing in the usual case. **There is no evidence before me as to when Legal Aid was applied for, nor as to whether there was some special reason that it took so long to get an answer from Legal Aid**.
>
> 2 For an application for an extension of time to file a record to be successful, the applicant must not only excuse all of the delay, but must also show that evidence exists to support an arguable case for leave. This has not been done, so the motion for an extension will be dismissed.
>
> 3 Because the applicant is representing himself, I will grant him leave to reapply for an extension of time on or before June 1st, 1997. Such application must be supported by the necessary affidavit evidence, by the applicant's submissions in support of the new application for an extension. Filing a Reply is not the proper way to submit the applicant's argument.
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> ORDER
>
> 1. The motion for an extension of time is dismissed with leave to reapply for an extension of time on proper evidence on or before June 1st, 1997.
> (emphasis added)

[27] In this case there was insufficient evidence regarding the status of the legal aid application and there was no evidence concerning why it had taken so long. Notwithstanding, the Prothonotary granted leave to file a further motion on proper evidence.

[28] Turning next to a consideration of *Odura*, there is no doubt that it is stated at para. 7 of the decision that:

> 7. It is well established that the administrative delays for approval of a certificate at legal aid do not justify an extension of time. The Federal Court of Appeal settled this issue in Espinosa v. M.E.I. (1992), 142 N.R. 158, and the principle set out therein has been applied again and again since that decision.

[29] However, it is to be noted that this was a motion for reconsideration of an order which dismissed the application on the ground it was superfluous. The motion for reconsideration dealt with an argument that the original order was premised on a wrong principle. There is nothing in the decision which sets out the relevant evidence about the application for legal aid other than it could not be completed within 10 days. As *Espinoza* was the basis for the statement noted above the implication is that an indefinite extension was being sought. In any event, the Court also noted that the motion was doomed to fail as it did not fall within the reconsideration rule. In my view, therefore, on a plain reading of *Oduro*, it is also speaking to indefinite extensions because of legal aid applications and not situations where there is evidence of the timing and status of the application which would allow the Court to grant a fixed time for the extension.

[30] Finally, in *Kiani*, Justice Francis Muldoon of the Federal Court of Canada – Trial Division relied upon *Espinoza* in making the statement that "It has been said many times that waiting for confirmation of legal aid is not an adequate excuse for allowing a prescribed time limit to pass. This principle is virtually inscribed in stone". *Kiani* involved a motion for an extension of time to file a reply memorandum. Justice Muldoon found that the reply would "do little to strengthen the applicant's case". This was clearly a factor in denying the extension because counsel had waited for legal aid approval before seeking to file the reply which

unfortunately was only six days out of time. While the extension was denied for several reasons, the underlying case upon which the Court determined that waiting for a legal aid certificate was an inadequate reason to grant an extension is *Espinoza* which is clear that it relates solely to indefinite extensions.

[31] Thus, having reviewed this line of authority cited by the Respondent, the dicta of the Federal Court of Appeal prevails in that only indefinite extensions should not be granted where a party is waiting for legal aid approval. Further, where an applicant has applied for legal aid it is necessary that the evidence in support of the request for an extension provide evidence regarding the timing and status of the application. Further, this Court retains the discretion to afford an applicant to file a further motion to correct the deficiencies in the original motion.

[32] Turning to the facts of this case, there is the Peter Affidavit providing the chronology of events relating to the decision in dispute and the attempts to obtain Legal Aid. The Peter Affidavit also describes what happened with counsel who prepared the Application and her refusal to continue without Legal Aid approval and, as the son deposes, failed to be responsive to telephone calls in which the son may have been able to make alternative arrangements to retain her services.

[33] It is also clear from the Peter Affidavit that efforts were made in a timely way to obtain assistance from Legal Aid. The application herein was issued on February 1, 2016. The denial of legal aid from the appeal panel of Legal Aid Ontario was received February 26, 2016. Thereafter, efforts were made by the son on his mother’s behalf to obtain counsel and were only

able to meet with Ms. Bharadwaj on March 11, 2016. Ms. Bharadwaj had to obtain the file from prior counsel and contacted the Federal Court registry and was told a motion for an extension was necessary. Ms. Bharadwaj also contacted the Department of Justice to seek consent but was apparently advised to serve and file the motion and a decision would be made at that time. Ms. Bharadwaj, according to the evidence, prepared the motion as soon as she was able and it was finalized on March 30, 2016. No request for an indefinite extension is engaged on these facts.

[34] The Respondent also criticizes the Applicant for not filing her own affidavit and relying on an affidavit of her son and a law clerk.

[35] For this proposition, the Respondent relies upon *Singh v MCI* [1996] F.C.J. No. 232, a one paragraph decision of Associate Senior Prothonotary Giles. Supposedly, this case stands for the proposition that an applicant is required to provide an affidavit. There is no such rule set out in that case. Rather, what the case stands for, and is trite law, is that counsel should not be a witness and counsel on the same matter. It is improper for counsel to rely on her/his affidavit while appearing as counsel on that same matter. In *Singh* the only evidence before the Court which was found to be both inadequate and improper was that of counsel for the applicant. The motion for an extension was dismissed but with leave to re-apply on better evidence.

[36] In this case, the Peter Affidavit details the efforts made to obtain legal aid, communications trying to obtain counsel, and, the difficulties encountered with obtaining the file from previous counsel. It is direct evidence as the son was involved in the process. As is stated

in paragraph 2 of the Peter Affidavit, "I have been assisting my mother with her refugee claimant application and appeal process". He has direct evidence of the facts.

[37] There is nothing improper about relying on this affidavit. One wonders if Respondent's counsel actually read and understood the contents of the direct evidence in the Peter Affidavit. If the Respondent had concerns regarding the veracity of the contents or the completeness of the evidence, the Respondent could have, but did not, cross-examine. The Peter Affidavit provides a complete and thorough explanation for the delay.

[38] In all, the Respondent has failed, on the basis of the authorities cited, to support the argument that the delay has not been explained. In my view the evidence from the Applicant's son provides ample explanation for the delay and demonstrates a continuing intention to pursue the application. Thus, these factors as set out in *Hennelly* for an extension of time have been met.

VI. Merits of the Case

[39] The Respondent argues that there is no arguable case and thus the extension should not be granted in any event as all four factors in *Hennelly* must be satisfied. The written representations of the Respondent state as follows at para. 10:

> 10. An extension of time should only be granted where the Applicant has shown that the Application for an Extension of Time raises a serious issue and discloses a fairly arguable case, with a reasonable chance of success on the merits.

[40] With respect, this sets the bar too high. The application is not being dealt with on the merits at this juncture of the proceedings. It is sufficient that some merit be demonstrated. As was noted in *Varga*:

> The Respondent argues an extension should not be granted for two reasons: 1) the Applicants have not "shown that the application for extension of time [sic] raises a serious issue and discloses a fairly arguable case, with a reasonable chance of success"; and, 2) "this Court has consistently held that waiting for Legal Aid does not excuse a delay in filing a record". Neither of these propositions is supported by the case law. With respect to the first, only "some" merit need be shown. "Serious issue", "fairly arguable case" and "reasonable chance of success" places the bar too high. It is not on a motion for an extension that weighing the merits to meet such a test as "serious issue" should take place. Suffice it say that some merit must be demonstrated which is a relatively low threshold. That low threshold is met in this case.
>
> As for the argument regarding legal aid certificates, this argument proceeds on an incorrect premise. . . .

[41] For its position, the Respondent relies upon *Feder Holdings Ltd. v M.N.R. (Customs and Excise),* [1987] CTC 169 (FCA), another decision of Justice Mahoney. This case involved a motion for an extension of time to bring an application to set aside a decision under the *Customs Act*, S.C. 1986, c. 1. The Court determined that the Court was without jurisdiction and dismissed the motion. Justice Mahoney did refer to a requirement for a "fairly arguable" case but did not define that phrase nor provide any analysis of what would be considered "fairly arguable". The case does not refer to "serious" issue or "reasonable chance of success on the merits".

[42] The Respondent further argues that "showing" that there is a "serious" issue and a "fairly arguable" case requires evidence. The Respondent argues "that it was incumbent on the Applicant to tender some evidence in this regard" and that even having attached a copy of the

reasons for decision under review the Applicant has failed to show any errors. Three cases are cited in support of this proposition: *Shanmugaratnam v Canada (Secretary of State)*, [1994] F.C.J. No. 1472; *Rafique v Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 864; and *Moreno v M.C.I.*, [1996] F.C.J. No. 218.

[43] In *Shanmugaratnam,* Associate Senior Prothonotary Giles in a short two paragraph order makes the observation that to obtain an extension three factors must be met of which the third is "whether an arguable case for leave has been shown (the important word is 'shown')". He then goes on to state:

> The reason for the delay is that counsel was sick and unable to complete the record. In the circumstances outlined, that might constitute a sufficient excuse. It is, however, not shown that the applicant has an arguable case. 'Showing' requires evidence. There is no evidence in that regard.

[44] With respect, I disagree that "showing" or "shown" always requires evidence. Frequently, some merit can be shown by an analysis of the decision being reviewed. It can be based on legal argument to the effect that the tribunal misapplied the relevant law or applied a wrong principle of law. One does not need evidence of these types of errors by a tribunal as they flow from the reasons of the tribunal. It is up to Applicant's counsel in their written representations to connect the dots for the Court as to how the tribunal erred. It is only if the merits of the case is based on facts that may not be apparent from the decision that some cogent evidence is required. For example, if there are allegations of bias or failure to afford due process or a failure of the tribunal to consider evidence that was proffered by an Applicant. These latter circumstances would not necessarily be evidence on the face of the record or in the reasons of the tribunal and therefore would require some evidence to show some merit to the case.

[45] It is to be noted that in *Shanmugaratnam*, the Prothonotary adjourned the motion to allow the Applicant further time to put evidence before the Court.

[46] The next case relied upon by the Respondent is *Rafique*, a decision of Madam Justice Barbara Reed of the Federal Court – Trial Division. This case concerned a motion to reconsider an order previously made. The prior order refused an extension of time. As Justice Reed observed in this very brief decision with respect to the prior order: “the material on file was so sparse that it could not be determined whether the application had any merit at all.” On the reconsideration, Justice Reed determined that there was no authority to grant the reconsideration request. While this short decision speaks to a need to demonstrate merit it does not offer any analysis and is simply a statement of the obvious - that the record should contain enough information to determine if there is some merit.

[47] The third case relied upon for the proposition that the Applicant must provide evidence to show errors in the decision is *Moreno*. This is a decision of Prothonotary Richard Morneau who again articulates the basic proposition that some arguments need to be made to show merit to the application. Prothonotary Morneau states at para 15 of the decision:

> However, there is more. No arguments, even minimally supported, were made to establish the validity of the record or show that the applicants had an arguable case. Counsel’s affidavit is silent in this regard. The written representations in support of the motion merely state that [translation] “the applicants believe they have serious, genuine grounds for their application”. As established above, a mere assertion of this kind is not sufficient.
> [citations omitted]

[48] Again, *Moreno* simply restates the well-known proposition that bald statements by an applicant that their case has merit is insufficient. There must be more than such an empty statement of belief.

[49] It is therefore necessary to determine if some merit has been demonstrated in the motion before the Court. The Respondent argues that there is none and attacks the Connolly Affidavit as being improper.

[50] With respect to the Connolly Affidavit, the Respondent is at least on firmer ground. Much of the Connolly Affidavit amounts to argument and recitations of information obtained from counsel. In some circumstances, particularly interlocutory matters, it is acceptable for counsel to provide information on belief on non-controversial matters. Here, however, the matters are more substantial and it provides information that properly belongs in argument as it recites cases and information from the National Document Package. An affidavit is not required for that information. The affidavit is disregarded and given no weight [see, *M.C.I. v Huntley*, 2010 FC 1175 at para 266-271].

[51] The Respondent argues that no merit is shown as the decision is founded on the Applicant's lack of credibility. The Respondent relies on *Sheikh v Canada*, [1990] 3 FC 238 (FCA) for the proposition that it was open to the tribunal to find that the Applicant's testimony was not credible because of inconsistencies and therefore cast doubt on the totality of her evidence. Therefore, the Respondent argues there is no merit to the application. While *Sheikh* does make the statement that "a general finding of a lack of credibility on the part of the

applicant may conceivably extend to all relevant evidence emanating from his testimony", this statement was made on a full record before the court. Further, it is not an absolute as it is stated that lack of credibility "may conceivably" extend to all of the applicant's evidence.

[52] The written representations of the Respondent, in any event, simply state a conclusion regarding credibility without any analysis of the reasons for decision. The expectation of the Respondent seems to be that the Court will analyze the reasons for decision under review without any guidance from the Respondent as to what parts of the decision support their position.

[53] The purpose of argument is to connect the dots of the evidence and argument. The Respondent has simply not done so. Bare assertions are not enough.

[54] In reviewing the written representations of the Applicant in support of the motion there is a sufficiently arguable case made out. The Connolly Affidavit is not necessary. In particular, the Applicant's written representations refer to errors in the tribunal's assessment of issues of law relating to misapplication of the state protection finding; a failure to conduct the correct analysis to determine the fear of persecution; a failure to meet the requisite standard of reasonableness; a failure to consider the objective basis of the Applicant's claim to risk; and, misapplication of the law by premising one finding on another.

[55] There is little doubt in my mind that the arguments put forth by the Applicant are sufficient to meet the "merit" test. It may be that once the records are complete that these

arguments may not stand up to scrutiny. But that is to be determined on the records of the parties and, if leave is granted, on the record and argument before the hearings judge.

[56] In my view, an interlocutory motion for an extension of time is not the place to determine substantive issues. Where issues are raised which require a careful analysis of the tribunal's decision those should be left to be determined on a full record before a hearings judge.

[57] The Respondent did not argue that it was prejudiced by the granting of an extension. There is no prejudice in the circumstances of this case. This test from *Hennelly* has been met. The Respondent, on the facts of the case, quite rightly, did not argue that the Applicant did not demonstrate a continuing intention to pursue the Application had been shown. This test from *Hennelly* has also been met. Further, the justice of the case supports granting an extension.

[58] For all of these reasons an extension is warranted. An extension of 19 days is granted.

[59] On a final note, self-represented litigants should be encouraged to seek legal assistance. It should be apparent that an applicant having the assistance of counsel is beneficial to the administration of justice. It is often the case that those who are caught up in the immigration maze and who seek to judicially review negative tribunal decisions are without the ready means to retain counsel to pursue their rights. They often act for themselves. They do not understand the intricacies of immigration law or the intricacies of the Court process. They, the Respondent, and the Court, are greatly aided from the assistance of counsel. Thus, efforts to obtain Legal Aid

or *pro bono* assistance from organizations such as Pro Bono Law Ontario should be encouraged so long as it is pursued in a timely way. Fairness and access to justice should be the goal.

ORDER

THIS COURT ORDERS that:

1. The Applicant is granted an extension of time of 19 days from the date of this Order to serve and file the Applicant's Record.

2. The time for taking subsequent steps in the proceeding is extended to run from the date of service of the Applicant's Record on the Respondent.

"Kevin R. Aalto"

Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-469-16
STYLE OF CAUSE:	MARIAM MAGADLIN JOHN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
ORDER AND REASONS:	AALTO P.
DATED:	MAY 25, 2016

CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369

WRITTEN REPRESENTATIONS BY:

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Dorah Dorcine	FOR THE RESPONDENT

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