Federal Court  Cour fédérale

Date: 20200617

Docket: IMM-1744-20

Citation: 2020 FC 695

Ottawa, Ontario, June 17, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ABEER QITA

Applicant

and

IMMIGRATION CONSULTANTS OF CANADA REGULATORY COUNCIL

Respondent

ORDER AND REASONS

I. Background

[1] The Applicant has applied for a stay of an April 17, 2020 decision of a panel of the Immigration Consultants of Canada Regulatory Council (ICCRC), following a January 20, 2020 decision of the ICCRC, until the final determination of the underlying application for judicial review. The April 17, 2020 ICCRC decision revoked the Applicant's ICCRC membership and

applied a number of other penalties [Penalty Decision]. The January 20, 2020 ICCRC decision relates to a finding of misconduct against the Applicant [Discipline Decision].

[2] In the underlying application for judicial review, the Applicant seeks to have the Discipline Decision quashed. Upon the Applicant's request on May 4, 2020, the Court agreed to treat this motion as urgent and the Court subsequently endorsed the parties' joint timetable.

[3] The Minister of Immigration, Refugees and Citizenship Canada, who is not a Respondent to this proceeding per Justice Heneghan's decision in 2020 FC 671, submitted a letter stating that it takes no position on this motion.

[4] For the reasons below, the Applicant's motion for a stay is denied.

II. Decision under Review

[5] The January 20, 2020 Discipline Decision found that the Applicant breached her ethical responsibilities as an Immigration Consultant under the applicable *Code of Professional* Ethics.

[6] The April 17, 2020 Penalty Decision set out the penalty. This decision included, *inter alia*, that:

- The Applicant's membership in the ICCRC was revoked without the possibility of reapplying for two years;
- She must inform all of her existing clients of this revocation;

- She must reimburse $678.00 to certain clients within 180 days and provide proof of the same, and;
- She must pay CAD $50,000.00 in costs to the ICCRC Compliance Department.

III. Issue

[7] The only issue is whether a stay of the ICCRC's Penalty Decision should be granted. A stay is only available if the Court is satisfied that there is a serious issue, that there would be irreparable harm if the stay were not granted, and that the balance of convenience favours the party requesting the stay (*RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR*]). The test is conjunctive, meaning that each element must be satisfied (*Abbvie Corp. v Janssen Inc.*, 2014 FCA 112 at para 14 [*Abbvie*]).

[8] The parties agree on the applicable test, but they disagree as to whether the Applicant has satisfied the conjunctive tripartite test in these circumstances.

IV. Parties' Positions

A. *Applicant's Position*

[9] The Applicant contends that she has met all three stages of the conjunctive, tripartite test. The Applicant spent considerable efforts, in both written and oral submissions, in pointing out the procedural steps in arriving at the hearing of the stay. She also spent considerable efforts in pointing out that there was an issue as to which ICCRC bylaw was applicable to her situation.

Without delving into the specifics of her submissions, I have categorized these submissions as arguments related to whether a serious issue or question exists.

[10] The Applicant argues that a serious issue exists. She notes that the threshold for this issue is merely that the underlying application is not "destined to fail" and is neither "vexatious nor frivolous", citing *Gateway Church v Canada (National Revenue)*, 2013 FCA 126 at para 11; and *RJR* at 337. She highlights a number of issues in the underling application that, for her, establish this reality, including the procedural history and whether a 2015 bylaw or a 2019 bylaw was properly applied by the ICCRC panel.

[11] Second, the Applicant contends that she will suffer irreparable harm if the stay is not granted. She notes that:

- She is, and will be, unable to practice as an Immigration Consultant;
- She will lose her existing clients and income;
- She is a single mother and will be unable to provide for her three children;
- She will be forced to breach the ICCRC's order, since she does not have the funds available to pay the amounts that the Discipline Committee has specified; and
- Her professional reputation will be irreparably impaired;

[12] The Applicant claims that, in *Camp v Canada (Attorney General)*, 2017 FC 240 at para 28 [*Camp*], this Court has acknowledged that reputational harm can continue to be damaged even after a public hearing has occurred.

[13] Third, the Applicant argues that the balance of convenience favours granting the stay. She notes that:

- Her reputation will continue to suffer harm;
- Her clients would be harmed as well, since they would have to pay to find new representation;
- The allegations of misconduct in this case concerned temporary immigration measures that were lifted in early 2017, meaning that there is no ongoing risk of the Applicant engaging in similar conduct with her current clients; and
- There is no real means of obtaining damages from the ICCRC.

[14] Finally, she notes that there is no real prejudice to the ICCRC if a stay is granted. She points to the length of time it took for the ICCRC to complete the proceedings.

B. *Respondent's Position*

[15] The Respondent argues that the Applicant should not be granted a stay.

[16] First, the Respondent claims that there is no serious issue. This is because some of the Applicant's arguments are too vague to support even the low "serious issue" threshold in the case law. The Respondent points out that the Applicant's voluminous materials really only go to the serious issue part of the test. The Respondent cites several examples that show how, for it, the Applicant has failed to provide a "complete and concise statement of the grounds intended to be argued" as required by s 301(e) of the *Federal Courts Rules*. The Respondent also argues that

that the Applicant is now raising arguments that were not in her notice of application. In addition, the Respondent argues that the arguments about the procedural history have no bearing on the stay motion.

[17] Second, the Respondent argues that the Applicant has not established irreparable harm based on her financial claims. It notes that professionals who lose their licenses will nearly always suffer financial losses and this factor is "generally far from dispositive", citing *Sazant v College of Physicians & Surgeons (Ontario)*, 2011 CarswellOnt 15914 at para 11 (ONCA).

[18] The Respondent further notes that the Applicant has not produced sufficient, non-speculative evidence. Her claims of financial losses are not supported on the evidence, as her total reported income for the past three years was between $18,000 and $26,000 per year. If this is true, then she will not be irreparably harmed. She can easily find a job with similar pay.

[19] The Respondent highlights that the Applicant's license was revoked on May 2, 2020, so she has no clients left to lose.

[20] The Respondent notes that the Applicant's claims of reputational harm do not establish irreparable harm. It notes that reputational harm that has already occurred, such as in the Applicant's case, cannot support a stay. It cites *Yazdanafar v College of Physicians and Surgeons of Ontario*, 2012 ONSC 2422 at para 65; *Bansal v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1273 [*Bansal*]. The Respondent also argues that the ICCRC

decisions in question have been made public for some time already. Moreover, the Applicant's claims of reputational harm are based on speculation.

[21] Finally, the Respondent claims that the balance of convenience supports the continuing application of the ICCRC's Penalty Decision. Given the Applicant's misconduct, the enforcement of the ICCRC's Penalty Decision is important to protect the public from further harm. The Applicant's current clients will not be prejudiced if a stay is not granted, because the ICCRC requires members to designate someone to take over their practice if they are taking leave. The Respondent argues that, if the Applicant has complied with the terms of the ICCRC's Penalty Decision, the Applicant would have already designated another representative to do so.

[22] The Respondent highlights that the weakness of the Applicant's judicial review also favours the refusal of a stay.

V. Analysis

[23] I agree with the parties that the test from *RJR* applies (*RJR* at 337-342). The test is conjunctive, meaning each part must be satisfied (*Abbvie* at para 14). As stated out the outset, the Applicant has not satisfied the conjunctive tripartite test for the granting of a stay.

A. *Serious Issue*

[24] The threshold for a serious issue is low. Generally, if a claim is not frivolous or vexatious, then it can meet the test (*R v Canadian Broadcasting Corp.*, 2018 SCC 5 at para 12).

[25] Notwithstanding the arguments of the Respondent, under the circumstances, I am satisfied that there is a serious issue present. That is, I am satisfied that the issues in the underlying application are not frivolous, nor are they vexatious. The Applicant has satisfied this low threshold.

B. *Irreparable Harm*

[26] Irreparable harm is harm that, "either cannot be quantified in monetary terms, or which cannot be cured, typically because one party cannot collect damages from the other party" (*Shoan v Canada (Attorney General)*, 2016 FC 1031 at para 33). It must be based on clear, non-speculative evidence (*United States Steel Corporation v Canada (Attorney General),* 2010 FCA 200 at para 7).

[27] The Applicant has not established that she will suffer irreparable harm if the stay is not granted. In *Bansal,* which dealt with a matter involving similar circumstances, Justice McDonald found the following between paras 23-28:

> Mr. Bansal claims he will face irreparable harm in the form of loss of income and damage to his professional and business reputation if the stay is not granted. […]
>
> I would note that notwithstanding the stay, Mr. Bansal is not prevented from engaging in other employment beyond immigration consulting. […] I am not satisfied that any loss of income that may be suffered by Mr. Bansal rises to the level of irreparable harm that cannot otherwise be satisfied with an award of damages in the event the suspension is found to be unlawful (*Watto v Immigration Consultants of Canada Regulatory Council*, 2018 ONSC 4825 at para 21).
>
> Mr. Bansal also claims he will suffer irreparable damage to his professional and business reputation is the stay is not granted. […] In some circumstances harm to one's professional reputation may

> amount to irreparable harm. However harm which has already occurred at the time of the consideration of the stay does not justify a stay (Douglas v Canada (Attorney General) 2014 FC 1115, 2014 FC 1115 at para 26 and 28). […] Mr. Bansal's membership in the ICCRC has been suspended since August 28, 2019. Accordingly, any harm to his professional reputation has likely already occurred.

[28] Although the present case does not involve a suspension but a complete revocation, I am of the view that the nature of the claimed irreparable harms is the same. As in *Bansal*, I find that there is nothing to indicate that the loss of the Applicant's professional income constitutes irreparable harm. If either of the ICCRC decisions are later found unlawful, there is nothing preventing a claim for damages afterward. Further, as the Respondent pointed out, the evidence presented by the Applicant in the form of her T4 slips do not reveal a substantial income loss and that the Applicant would be able to find a comparable job to make up this amount of income that she claims she will lose.

[29] I also find that the loss to her reputation has likely already occurred from the proceedings at the ICCRC and the associated news article, which focused on the company she worked for at the time in question. I am not persuaded that the Applicant's quoted passage from *Camp* stands for the proposition that her loss of reputation will continue to increase after the ICCRC proceedings. I am persuaded by the Respondent's argument that *Camp* relates to "an end of the line" type of case where a proceeding has been completed, like in the present situation.

[30] As for the amounts that the Applicant is required to pay, these are quantifiable in monetary terms and do not establish irreparable harm. However, I do note that the Applicant is required to pay certain sums directly to certain clients. Admittedly, these amounts will be

difficult to recover, as many different clients will be involved. However, this in my view is insufficient to meet the irreparable harm part of the test.

C. *Balance of Convenience*

[31] In *Manitoba (AG) v Metropolitan Stores Ltd.*, [1987] 1 SCR 110 at 129, the Supreme Court described the balance of convenience as "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits".

[32] In light of the conjunctive nature of the test that must be satisfied for the granting of a stay, and having found that the Applicant has failed in satisfying the irreparable harm part of the test, there is no need to proceed to this last stage of the test.

VI. Conclusion

[33] The Applicant's motion for a stay is denied.

[34] There is no order for costs.

ORDER in IMM-1744-20

THIS COURT ORDERS that the Applicant's motion for a stay is denied. There is no order for costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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