Federal Court  Cour fédérale

Date: 20200813

Docket: IMM-2967-20

Citation: 2020 FC 824

Fredericton, New Brunswick, August 13, 2020

PRESENT: Madam Justice McDonald

BETWEEN:

JING WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The Applicant has filed a Motion in writing, pursuant to Rule 369 of the *Federal Courts Rules*, asking for the following:

> "an order enjoining the respondent from seeking to have the permanent resident application my wife submitted to the Ontario Immigrant Nominee Program (OINP) refused on the grounds that I am inadmissible pursuant to s. 40 of the *Immigration and Refugee Protection Act (IRPA)*;

> an order directing the respondent to instruct the OINP to hold open the PNP application, file number EP00382754, of my wife, Siyu Zhao (UCI: 9785-3199), aka Angela Zhao, until this litigation has been finally determined or settled; or, if it has been refused owing to the A40 finding, either to instruct the OINP to re-open the file or to approve the application if this application is allowed or settled;
>
> an order directing the respondent to extend my wife's work permit until sixty (60) days after this litigation and been finally determined or settled."

[2] In the underlying judicial review application (Application), the Applicant seeks judicial review of a decision of a Visa Officer in Beijing, China, denying his request for a work permit on the ground that he is inadmissible to Canada for misrepresentation. The finding of misrepresentation results in him being inadmissible for a period of five years.

[3] The Applicant is self-represented on the Application and on this Motion. In support of the Motion, he relies upon an Affidavit of his wife Siyu Zhao, dated July 8, 2020. The Applicant did not file his own Affidavit. There is no evidence filed with respect to either his wife's permanent resident application or work permit application.

[4] By this Motion, the Applicant seeks an injunction to halt the administrative decision-making process of his wife's permanent resident application and work permit application. However, the Application does not pertain to the Applicant's wife's immigration status or her permit applications. Thus, this Motion is not the appropriate manner by which to seek an injunction regarding the Applicant's wife's permanent resident application or work permit application.

The Test For An Injunction

[5] The legal test to obtain an interlocutory injunction is outlined by the Supreme Court of Canada in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*]. The three-part test requires that the Applicant establish: 1) that a serious issue to be tried has been raised in the underlying application; 2) that the Applicant will suffer irreparable harm if the interlocutory injunction is not granted; and 3) that the balance of convenience favours granting the injunction. This test is conjunctive, meaning, the Applicant must satisfy all three parts of the test.

[6] The granting of a stay is an extraordinary remedy and the burden is in on the Applicant to meet the *RJR-MacDonald* test (*Harkat v Canada (Minister of Citizenship and Immigration*), 2006 FCA 215 at para 10.

[7] In *Janssen Inc v Abbvie Corporation*, 2014 FCA 112 [*Janssen*], Justice Stratas emphasized that the *RJR-MacDonald* test "is aimed at recognizing that the suspension of a legally binding and effective matter – be it a court judgment, legislation, or a subordinate body's statutory right to exercise its jurisdiction – is a most significant thing" (*Janssen* at para 20).

Serious Issue

[8] The first branch of the *RJR-MacDonald* test is that the Applicant must demonstrate that a serious issue is raised in the underlying application.

[9] The Applicant has not demonstrated a serious issue with his own underlying application. The relief sought by the Applicant pertains to his wife's proceedings, which do not form the subject of his Application. As the relief sought does not relate to the Applicant's own immigration proceedings, this cannot qualify as a serious issue.

[10] In any event, the principle of judicial non-interference with ongoing administrative proceedings is a full answer to the Applicant's request (*Okojie v Canada (Citizenship and Immigration*) 2019 FC 880, paras 42-51.

Irreparable Harm

[11] To establish irreparable harm there must be "real, definite, unavoidable harm – not hypothetical and speculative harm" and not "vague assumptions and bald assertions" (*Janssen* at para 24). Further, it is not sufficient to "…enumerate problems, call them serious, and then, when describing the harm that might result, to use broad, expressive terms that essentially just assert – not demonstrate to the Court's satisfaction – that the harm is irreparable" (*Stoney First Nation v Shotclose*, 2011 FCA 232 at para 48).

[12] The Applicant has not submitted detailed or specific evidence about the definite harm he would face if this injunction were not granted. Instead, the Applicant has relied on speculation about possible outcomes concerning his wife's immigration applications. The Applicant's wife states that her application "will be refused". This is mere speculation and does not meet the high threshold of evidence necessary to establish irreparable harm.

[13] The Applicant's wife will have access to the Federal Court in the event her immigration applications are refused. At this time, what will happen with those applications is hypothetical and speculative and does not constitute evidence of irreparable harm.

Balance of Convenience

[14] This final branch of the test "requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction" (*R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12).

[15] As noted by the Federal Court of Appeal in *Glooscap Heritage Society v Minister of National Revenue*, 2012 FCA 255 at para 52: "Where the moving party seeks to prevent statutory actors from carrying out their statutory duties, a 'very important' public interest 'weigh[s] heavily' in the balance (citation omitted)".

[16] Here the Applicant is asking that this Court interfere with the administrative processes relating to his wife's permanent resident and work permit applications. In these circumstances, such a request is inappropriate and the balance of convenience weighs heavily in favor of the Respondent Minister.

[17] In conclusion, the Applicant has not met any of the branches of the test to obtain an injunction. Therefore, the Motion will be dismissed.

ORDER IN IMM-2967-20

THIS COURT ORDERS that:

1. The Applicant's Motion is dismissed.

2. No Costs are awarded.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2967-20
STYLE OF CAUSE:	JING WANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES

ORDER AND REASONS:	MCDONALD J.
DATED:	AUGUST 13, 2020

WRITTEN REPRESENTATIONS BY:

Jing Wang	APPLICANT ON HIS OWN BEHALF
Nimanthika Kaneira	FOR THE RESPONDENT

SOLICITORS OF RECORD:

- Nil -	SELF-REPRESENTED APPLICANT
Attorney General of Canada Department of Justice Toronto, Ontario	FOR THE RESPONDENT