

Federal Court



Cour fédérale

Date: 20211207

Docket: IMM-742-21

Citation: 2021 FC 1365

St. John's, Newfoundland and Labrador, December 7, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

PATRICK ABAH EBIEGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND ORDER

[1] By a Notice of Motion, filed on August 16, 2021, submitted for consideration without personal appearance, pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106, (the “Rules”), the Minister of Citizenship and Immigration (the “Respondent”) seeks the entry of judgment in this proceeding, setting aside the decision dated January 18, 2021 of a Visa Officer (the “Officer”) and remitting the matter to a different officer for re-determination, all without costs.

[2] Mr. Patrick Abah Ebiega (the “Applicant”) applied for a permanent resident visa to Canada. In the decision of January 18, 2021, his application was denied. On February 3, 2021, he commenced an application for Leave and Judicial Review of that decision, seeking the following relief:

- An Order quashing the decision refusing the Applicant’s application pursuant to Section A11(1) of the *Immigration and Refugee Protection Act*; and
- An Order directing a visa officer to grant the Applicant’s application pursuant to Section A11(1) of the *Immigration and Refugee Protection Act*; or in the alternative
- An Order referring the matter for re-determination by a different Officer in accordance with the law.
- Such further orders as this Honourable court allows.

[3] In support of his Motion, the Respondent filed the affidavit of Ms. Karen Mendonca, a paralegal employed with the Ontario Regional Office of the Federal Department of Justice, Counsel for the Respondent. Ms. Mendonca deposed that the Respondent, by way of a letter dated April 1, 2021, offered to resolve the within proceeding , and the related proceeding in cause number IMM-6239-20, upon the discontinuance of the two proceedings, the setting aside of the decisions underlying the two proceedings, the re-determinations of the Applicant’s underlying applications made to the Respondent by different officers upon the opportunity to the Applicant to submit updated documentation in support of those applications, and no costs to either party.

[4] A copy of the April 1, 2021 letter is attached as an Exhibit to Ms. Mendonca’s affidavit.

[5] Ms. Mendonca further deposed that the Applicant “has not accepted the Respondent’s settlement offer”.

[6] By Reasons and Order issued on November 30, 2021 recorded as *Ebiega v. Canada (Minister of Citizenship and Immigration)*, 2021 FC 1322 (“Ebiega No. 1”), judgment was granted upon a similar Motion of the Respondent. Those Reasons refer to the Applicant’s Responding Motion Record, as follows:

[6] The Applicant responded to the Respondent’s Notice of Motion by filing a Motion Record. The Motion Record includes the Applicant’s affidavits sworn on March 13, 2021 and on August 23, 2021, as well as the affidavit of Mr. Ernest Ihensekhien, sworn on August 26, 2021.

[7] In his affidavit sworn on March 13, 2021, the Applicant sets out the basis for his Application for Leave and Judicial Review in the within proceeding. The Applicant filed this affidavit in support of his Application for Leave and Judicial Review.

[8] In his affidavit sworn on August 23, 2021, the Applicant commented on his response to the settlement offer of April 9, 2021. He also provided his opinion that the Officer had committed “egregious” errors.

[9] Mr. Ihensekhien is an articling student employed in the office of Counsel for the Applicant. He attached to his affidavit a copy of a document that was referenced in the Applicant’s affidavit sworn on August 23, 2021.

[10] The Applicant also included a Memorandum of Fact and Law in his responding Motion Record. In this document, he set out the terms upon which he would be prepared to settle the within Application for Leave and Judicial Review, including the payment of his costs on a solicitor and client basis.

[7] The Respondent filed a Reply to the Applicant’s Responding Motion Record. He maintained his position that the entry of judgment in this matter is appropriate, at this time. He

acknowledged that the decision underlying the Applicant's Application for Leave and Judicial Review was made in breach of procedural fairness.

[8] The Respondent set out his reasons for rejecting the Applicant's settlement proposal and addressed the Applicant's request for payment of costs on a solicitor and client basis.

[9] I agree with the submissions of the Respondent.

[10] The Respondent concedes that the decision in issue in this proceeding was made in breach of procedural fairness and that accordingly, the decision should be set aside.

[11] Success upon an application for judicial review requires an applicant to show a reviewable error, either in the decision-making process or upon the merits of the application.

[12] In the present case, the Respondent acknowledges a reviewable error, that is a breach of procedural fairness by the Officer who made the decision.

[13] The entry of judgment in favour of the Applicant, without a hearing, gives him the "best" available outcome following any hearing.

[14] I note that Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, addresses the award of costs in matters arising under those Rules. Rule 22 provides as follows:

No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[15] I am not persuaded that the Applicant has shown any “special reasons” that would justify the award of any costs in this matter, let alone the solicitor and client costs that he seeks.

[16] The fact that the Applicant has sought leave and judicial review more than once relative to decisions made under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, does not mean that an award of costs is justified.

[17] In the result, the Respondent’s Motion for Judgment is granted, the decision of the Officer made on January 18, 2021 is set aside and the matter is remitted to a different officer for re-determination. In the exercise of my discretion, there will be no Order as to costs.

ORDER in IMM-742-21

THIS COURT'S ORDER is that the Motion of the Respondent is granted, the decision of the Officer made on January 18, 2021 is set aside and the matter is remitted to a different officer for re-determination. In the exercise of my discretion, there is no Order as to costs.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-742-21

STYLE OF CAUSE: PATRICK ABAH EBIEGA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

REASONS AND ORDER: HENEGHAN J.

DATED: DECEMBER 7, 2021

WRITTEN REPRESENTATIONS BY:

Kingsley I. Jesuorobo

FOR THE APPLICANT

Nicole Rahaman

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley I. Jesuorobo
Barrister and Solicitor
North York, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT