Federal Court Cour fédérale

Date: 20221024

Docket: IMM-4390-22

Citation: 2022 FC 1452

Toronto, Ontario, October 24, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

ZAID OMOGIATE EZIMOKHAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] This motion filed by the Zaid Omogiate Ezimokhai [the Applicant] seeks an interlocutory Order. The Applicant seeks to expedite the hearing of his Application for Leave and for Judicial Review [ALJR] pursuant to Rule 8(1) of the *Federal Courts Rules*, SOR/98-106 [*FC Rules*]. He has brought his ALJR to challenge the refusal of his application for a study permit.

[2] While leave has not yet been granted, he requests that the Court's Order mandate that all steps remaining in this ALJR – namely the leave determination through to the hearing, and including the Court's decision on the merits – all be completed by November 10, 2022, three weeks from the hearing.

[3] I refused the Motion from the bench, with reasons to follow. Before providing those, I will provide a very brief summary of the factual and procedural background to this Motion.

I. Background

[4] The Applicant applied for a study permit on or around February 23, 2022, from outside Canada, to attend the Canadian Aviation College in Pitt Meadows, British Columbia in a one-year commercial pilot license program, commencing in December 2022. The Applicant's study permit was refused on March 9, 2022.

[5] In broad terms, the rationale for the Applicant's study was to improve his qualifications in the aviation industry to become a pilot. He has most recently studied in the United States. The merits of this study permit application, and the basis for refusal, are not before the Court today.

[6] In terms of the process that has taken place before the Court thus far, the Applicant filed his ALJR on May 10, 2022 under section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*Act*]. On July 5, 2022, the Applicant served and filed his Applicant's Record. The Respondent filed its Record opposing the Application – including the granting of leave – on August 3, 2022. The Applicant filed no Reply.

[7] At this stage of the proceedings and as mentioned above, the ALJR has thus been perfected, meaning that all filings for the leave stage have been completed, and decision pursuant to s. 72 of the *Act* is still pending (see Rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* (SOR 93/22) [*IMM Rules*] for more detail on what constitutes a perfected application).

II. Analysis

[8] As explained to the parties at the hearing, the Motion cannot succeed because this Court cannot grant the relief sought under a Rule 8(1) request, given that the Application is still pending a leave decision. Even if leave had been granted, the Motion still suffers several fundamental problems, and fails to demonstrate the exceptionality required for the Court to grant an abridgment under Rule 8(1) (see: *Canadian Wheat Board v Canada (Attorney General)*, 2007 FC 39 at para 13 [*Canadian Wheat Board*]).

[9] Rule 8(1) reads: "On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order." Rule 8(1) cannot compel the Court to render a leave decision within a specific timeframe, because no period has been provided by either the *FC Rules* or by the *IMM Rules* for the rendering of a leave decision.

[10] The *IMM Rules* provide a strict timeframe once leave has been granted, to ensure the Court and the parties meet the 90 day requirement set out in s. 72 of IRPA. Indeed, standard leave Orders of this Court state that "parties may consent to an alternate time line for completing

the steps …, in which case a joint amended schedule shall be filed with the Registry" (see also discussion of subs. 74(b) of the *Act* below).

[11] However, since a leave decision by this Court is still to be issued, and because the timeline for that leave decision is not provided by the *FC Rules* or fixed by a Court order – as stipulated by Rule 8(1) – the timeline required to render a decision on leave remains the prerogative of the Court, and within its exclusive jurisdiction to determine.

[12] Consequently, the relief sought to expedite timelines in this case, as contemplated by Rule 8(1), is simply unavailable in these circumstances, because this Rule cannot be used to compel an order of the Court to grant or deny leave. Despite being given several opportunities to address this fundamental obstacle to the remedy sought, Applicant's counsel was neither able to articulate any rationale in his written submissions, nor subsequently in oral arguments at the hearing, that would allow the Court to overcome this fundamental impediment.

[13] While this fundamental weakness in the relief requested is sufficient to dismiss this Motion, I will nonetheless provide brief reasons as to why – even if the remedy could have been granted – the Applicant's situation does not meet the exceptionality required for the Court to grant a Rule 8(1) request and to depart from the timelines set out by the *Act*, *FC Rules,* and *IMM Rules*. The test for exceptionality was recently applied by Justice Sylvie Roussel (now of the Federal Court of Appeal), in *St-Cyr v Canada (Attorney General)*, 2021 FC 107 at paras 16-18 [*St-Cyr*]:

> [16] Section 8 of the Rules authorizes the Court to "extend or abridge a period provided by these Rules or fixed by an order". In exercising its discretion to do

> so, the Court will consider a number of factors which have been summarized as follows:
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> > a) Whether the proceeding is really urgent or does the moving party simply prefer the matter be expedited;
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> > b) Whether prejudice will ensue to the responding party if the matter is expedited;
> >
> > c) Whether the matter will be moot if it is not expedited; and
> >
> > d) Whether expediting the matter will prejudice other litigants by jumping the queue
>
> (See *May v CBC/Radio Canada*, 2011 FCA 130 at paras 12-13; *Alani v Canada (Prime Minister)*, 2015 FC 859 at para 14 [Alani]; *Conacher v Canada (Prime Minister)*, 2008 FC 1119 at para 16 [*Conacher*]; *Canadian Wheat Board v Canada (Attorney General)*, 2007 FC 39 at para 13 [CWB]).
>
> [17] After reviewing the cases in which reasons were provided on motions to expedite proceedings, the Honourable Mr. Justice Sébastien Grammond found in *McCulloch v Canada*, 2020 CF 565 [*McCulloch*] that the discretion to expedite the hearing of a case was exercised according to two (2) main sets of considerations: (1) whether an expedited hearing is necessary to ensure the effectiveness of the remedy sought; and (2) whether it can be accomplished through a fair process (*McCulloch* at para 12).
>
> [18] Notwithstanding how the relevant factors are framed, the burden lies with the party seeking to vary the timelines provided in the Rules (*Alani* at para 15; *CWB* at para 14; *Conacher* at para 18).

[14] The *Act* itself provides an expeditious regime for these applications. Subs. 74(b) of the *Act* stipulates that the "the hearing shall be no sooner than 30 days and no later than 90 days after leave was granted, unless the parties agree to an earlier day."

[15] I note that the Federal Court's immigration regime, as enshrined by the legislation, is a summary one, including the various steps set out in the *IMM Rules*, and in any standard leave order of this Court (including any production order for a certified tribunal record [CTR] that customarily proceeds the leave order). It sets out a tight timeline from the leave decision through

the hearing stage. Subs. 74(c) of the *Act* requires that "the judge shall dispose of the application without delay and in a summary way."

[16] I will now briefly explain why the Applicant does not satisfy the relevant criteria as set out in St-Cyr above.

a) *Lack of urgency*

[17] First, the Applicant has failed to provide any clear or convincing evidence why the matter should be expedited. Rather, it was purely speculative. Other than his counsel's statements, there is no objective or corroborative evidence from the Canadian Aviation College. The Applicant did not produce any letter, invoice, or piece of evidence stating that he will be at risk of forfeiting funds, being excluded from the program, or being unable to defer his start date, to justify his submission that a final decision on his ALJR is required by the Court by November 10, 2022.

[18] In other words, there is no basis for the Court to conclude that this Application is truly urgent. Rather, the Moving Party simply would prefer the matter be expedited so he can get on with his studies. This was evidenced by the fact that at the hearing, when confronted with this reality, the Applicant's counsel said it was really up to the Court and any date past November 10, 2022, that would nonetheless expedite the timeline, would suffice. It is clear that the Applicant simply prefers to move up ahead in his current place in the litigation queue.

b) *Prejudice to the Respondent*

[19] Second, it is clear, given the stage of the proceedings, that expediting the matter would prejudice the ability of the Responding Party to prepare its response, from obtaining a CTR, to conducting any cross-examination open to it, to putting forth a further reply informed by any of the foregoing.

c) *Lack of mootness*

[20] Third, the Applicant has not argued, or provided any evidence to show that the matter or the underlying admission to the Canadian Aviation College will become moot if the ALJR is not expedited.

d) *Prejudice to other litigants*

[21] Fourth, and last under the *St-Cyr* criteria, there are thousands of other parties who come to this Court every year who would like their matters to be expedited. The Court has received a record number of ALJR this year, and the numbers are continuing to trend upwards. Expediting this matter – just as would be the case for moving up any other judicial review for a different immigration matter, no matter the category (student or otherwise) – will inevitably prejudice other litigants waiting patiently for their turn before the Court.

[22] In sum, the Applicant has failed to provide sufficient evidence to demonstrate that this is a truly exceptional case that would warrant the extraordinary Order sought.

III. Conclusion

[23] The Motion is accordingly dismissed.

ORDER in IMM-4390-22

THIS COURT ORDERS that:

1. This Motion is dismissed.

2. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4390-22
STYLE OF CAUSE:	ZAID OMOGIATE EZIMOKHAI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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DATED:	OCTOBER 24, 2022

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