

Federal Court



Cour fédérale

**Date: 20250127**

**Docket: IMM-16383-23**

**Citation: 2025 FC 170**

**Toronto, Ontario, January 27, 2025**

**PRESENT: Madam Justice Whyte Nowak**

**BETWEEN:**

**ANA PATRICIA CONTRERAS MONTERROSO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Ana Patricia Contreras Monterroso [Applicant], originally brought this application seeking an order for a writ of *mandamus* compelling the Minister of Citizenship and Immigration [Minister] to process and decide the Applicant's spousal application for permanent residence [the First Application]. The order was sought even though the First Application was replaced with a fresh submission in December 2023 [the Second Application].

[2] The Applicant's written submissions acknowledged that the First Application "may be moot" but provided submissions as to why the Applicant continued to be entitled to a *mandamus* order in respect of it as well as costs of this application. At the hearing, the Applicant's Counsel advised that she was only proceeding with the issue of costs.

[3] By way of brief background to this matter, Immigration, Refugees and Citizenship Canada [IRCC] found the First Application to be incomplete as the Applicant's application was missing: i) IMM5406 Additional Family form; ii) IMM5669 Schedule A form for a dependant; and iii) a police certificate for a dependent child over the age of 18, which, according to the Respondent, are required irrespective of whether a dependent child is intended to accompany an adult applicant. The Applicant argues that the application was not incomplete since the information regarding the Applicant's non-accompanying dependant was not required for a spousal application.

[4] IRCC claims to have returned the First Application to the Applicant by mail on May 16, 2022. Although the First Application was mailed to the correct address of Applicant's counsel, the return mail was addressed to the Applicant's spouse (albeit in care of the Applicant's counsel). The Applicant's counsel disputes that the First Application was returned.

[5] The Applicant sent follow up letters to IRCC to enquire about the status of the First Application via IRCC webform but did not receive any response.

[6] While I appreciate the Applicant's frustrations with the processing of the Applicant's applications, I am dismissing this application without costs.

[7] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 provides that no costs shall be awarded to a party in respect of an application for judicial review unless the Court finds "special reasons" for doing so. The threshold for proving "special reasons" is a high one (*Ibrahim v Canada (Citizenship and Immigration)*, 2007 FC 1342 at para 8).

[8] The Applicant submits that special reasons are made out in this case based on her allegation that the Respondent has continued to act in response to this application in a manner which the Applicant describes as "deeply troubling and lacking in transparency," including by reason that the Respondent "continues to maintain its erroneous position rather than agreeing to settle this matter." The "erroneous position" taken by the Respondent is that the First Application was incomplete and that the First Application was in fact returned to the Applicant.

[9] While the Applicant invites this Court to make a determination of these disputed issues, I decline to do so by reason that even if I had found in favour of the Applicant, I would not have found the Respondent's position to have been unreasonable.

[10] The Respondent's position that the First Application was incomplete is supported by the IRCC's *Sponsor Your Spouse, Common-Law Partner, Conjugal Partner or Dependent Child – Complete Guide*, which clearly states that the missing forms are required. Counsel for the

Applicant argued at the hearing that as a matter of practice, this is not what counsel do. Whether that is the case or not, it does not support a finding that the Respondent's position was an unreasonable one to take. Nor was it unreasonable for the Respondent to take the position that the First Application had been returned in circumstances where the First Application was mailed to the correct address and there was evidence that the mail was never returned as undeliverable to IRCC.

[11] The Applicant relies on authorities where "special reasons" were made out where significant time and resources were wasted in litigation because the Minister took inconsistent positions (*Geza v Canada (Minister of Citizenship and Immigration)* (2001), 266 NR 158 (FCA)) and where the Minister unreasonably opposed an obviously meritorious application (*Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208). Given my finding that the Respondent's position was not unreasonable, these authorities are clearly distinguishable.

[12] Even if I had found special reasons for an award of costs to have been made out, I would have reduced the amount sought by the Applicant by reason of the unsubstantiated and improper allegation of dishonesty made by the Applicant against the Minister in her costs submissions to the Court. Casual and unsubstantiated allegations that impugn the character of a party as opposed to their conduct such as those made by the Applicant's counsel have no place in submissions to this Court.

[13] This application is dismissed without costs.

**JUDGMENT in IMM-16383-23**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed without costs; and
2. There is no question of general importance to certify.

"Allyson Whyte Nowak"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-16383-23

**STYLE OF CAUSE:** ANA PATRICIA CONTRERAS MONTERROSO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 22, 2025

**JUDGMENT AND REASONS:** WHYTE NOWAK J.

**DATED:** JANUARY 27, 2025

**APPEARANCES:**

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Jennifer Luu	FOR THE RESPONDENT

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