Federal Court  Cour fédérale

Date: 20251217

Docket: IMM-23194-24

Citation: 2025 FC 1971

Ottawa, Ontario, December 17, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

IBRAHIM ISSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

COSTS ORDER

[1] The Applicant was successful on his application for judicial review (2025 FC 1821) and seeks the costs of his proceeding. The Court reserved its decision on his claim for costs pending receipt of the parties' written submissions on the issue.

[2] Having received and considered the parties' respective submissions in light of the jurisprudence applicable to costs awards pursuant to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [the FCCIRPR], the Court finds that the Applicant has not established that special reasons exist in the circumstances of this proceeding for a costs award to be made.

I. **The Applicable Law**

[3] Rule 22 of the FCCIRPR reads as follows:

Costs	**Dépens**
22 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.	**22** 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.

[4] There is no definition of "special reasons" in the FCCIRPR. The Federal Court of Appeal has recognized that the variety of circumstances that may give rise to an application for judicial review in the immigration context may render such a definition impossible (Ndungu v Canada (Citizenship and Immigration), 2011 FCA 208 at para 6 [*Ndungu*]). This Court has repeatedly described the requirement for "special reasons" as setting a "high threshold" or a "high bar" to be met for a costs award to be made (Ibrahim v Canada (Citizenship and Immigration), 2007 FC 1342 at para 8; Singh v Canada (Citizenship and Immigration), 2022 FC 1643 at para 45; Sisay Teka v Canada (Immigration, Refugees and Citizenship), 2018 FC 314 at paras 41–42). Each case will turn on its own particular circumstances (*Singh Dhaliwal v. Canada (Citizenship and Immigration)*, 2011 FC 201, at para 30, citing *Ibrahim v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1342, [2007] F.C.J. No. 1734, at para. 8).

[5] Madame Justice Catherine Kane of this Court considered the jurisprudence as to what may constitute "special reasons" within the meaning of Rule 22 in *Taghiyeva v. Canada*

(Citizenship and Immigration), 2019 FC 1262, at paras 16 to 23. The prevailing view in the jurisprudence is that "special reasons" may be found if one party has unnecessarily or unreasonably prolonged proceedings, or where one party has acted in a manner that may be characterized as unfair, oppressive, improper or actuated by bad faith.

[6] More recently in *M.F.S. v. Canada (Citizenship and Immigration)*, 2023 FC 321, Mister Justice Nicholas McHaffie considered "special reasons" following the direction provided by the Federal Court of Appeal in *Ndungu*. Justice McHaffie wrote as follows:

> [5] The Court of Appeal in *Ndungu* summarized some of the factors relevant to a determination of whether special reasons exist. These include the nature of the case, the behaviour of the applicant, the behaviour of the Minister or the relevant immigration official, and the behaviour of counsel: *Ndungu* at para 7. The term "behaviour" in this context generally means the conduct of the relevant parties or their counsel in the processing of the applicant's immigration file and/or the handling of the litigation. The Court of Appeal underscored that merely making an erroneous decision cannot justify an award of costs: *Ndungu* at para 7(5)(i). However, misleading or abusive conduct or unreasonable and unjustified delay in rendering a decision may merit a costs award: *Ndungu* at para 7(6)(iii)–(iv).

[7] The question before the Court is whether "special reasons" such as are described above exist in this case.

II. **Arguments and Analysis**

[8] The parties agree on the legal principles that apply to determine the Applicant's request for costs despite relying on different jurisprudence in support of their respective statements of the applicable law.

[9] The Applicant argues that the Respondent Minister acted in an unfair, oppressive manner characterized by bad faith. He argues that he did not commit any misrepresentation and that the visa officer who made the decision that was judicially reviewed gave no indication that they considered the explanations provided by the Applicant in response to a procedural fairness letter.

[10] The Applicant also argues that the visa officer did not get the facts of the case right, that this apparent from a review of the certified tribunal record that was produced, and that the Respondent Minister insisted to proceed to a hearing rather than settle this proceeding in advance of a hearing on the merits.

[11] The Applicant argues that costs may be awarded in these circumstances pursuant to Rule 22 of the FCCIRPR ever if there is no finding that the Respondent Minister acted in bad faith because costs may be used as a way to try to get the Minister to change her approaches, particularly when the certified tribunal record clearly shows that a misrepresentation has not occurred (*Qin v. Canada (Minister of Citizenship and Immigration),* 2002 FCT 1154 [*Qin*]; *Obafemi v. Canada (Citizenship and Immigration),* 2021FC 886 (CanLII), at para 11 [*Obafemi*]).

[12] The Respondent argues that a finding that a decision is not reasonable and should be re-determined by another visa officer does not meet the high threshold of “special reasons” required to support an award of costs pursuant to Rules 22 of the FCCIRPR. The Respondent stresses that successful litigation in the immigration context does not equate to special reasons for awarding costs and that errors on the part of a visa officer, absent bad faith, do not constitute special reasons for costs to be awarded (*Ndungu* at para 5; *Ge v Canada (Citizenship and Immigration),*

2017 FC 594, at para 40). In the end, argues the Respondent, the Applicant has not shown that special reasons exist in this proceeding for an award of costs.

[13] I agree with the Respondent that the Applicant has not established that there are "special reasons" in the circumstances of this proceeding that justify a costs award to be made in favour of the Applicant pursuant to Rule 22 of the FCCIRPR.

[14] There is no evidence that the Respondent Minister acted in bad faith, unfairly, or in a manner that unnecessarily prolonged the proceeding.

[15] While the certified tribunal record may have been found on a detailed examination to show that the Applicant did not commit a misrepresentation and that the decision that was reviewed proceeded from the visa officer's errors of fact, it was not untoward for the Respondent to proceed to a hearing in reliance on prior jurisprudence of this Court *Tuiran v. Canada (Citizenship and Immigration)*, 2018 FC 324); *Quach v. Canada (Citizenship and Immigration)*, 2021 FC 855) pertaining to a visa cancellation or revocation in support of her arguments that a misrepresentation had been made.

[16] This Court's decisions in *Qin* and *Obafemi* are distinguishable and do not apply to support the Applicant's arguments that special reasons are made out.

[17] In *Qin*, the visa officer was found to have breached the duty of procedural fairness and that breach drove the finding of "special reasons" to award costs. The Court there "strongly

disapproved of the unreasonable position and the rigidity manifested by the visa officer". There is no such conduct here and no basis similar to the facts in *Qin* upon which to express a strong disapproval of the visa officer's actions.

[18] *Obafemi* arose from a visa officer giving no consideration to an applicant's response to a procedural fairness letter and making a finding of misrepresentation as a result. Justice McHaffie found that there were "special reasons" to award costs in that proceeding because the Respondent Minister continued to argue on the merits that the applicant had not responded to the procedural fairness letter when the evidence in the record clearly established that they had. The fact situation in this case, although resembling the situation in *Obafemi* in some respects, is distinguishable because the Respondent Minister here acknowledged the Applicant's responses and documents and, as discussed briefly above, argued on the basis of existing jurisprudence that the Applicant's response to the procedural fairness letter confirmed the findings made.

[19] I cannot find on the facts of this proceeding that the Respondent Minister acted in a manner that unnecessarily or unreasonably prolonged the proceeding. I similarly cannot find that the Respondent Minister acted in an unfair manner.

[20] It follows that the Applicant has not established that special reasons exist in this case to justify a costs award pursuant to Rule 22 of the FCCIRPR.

THIS COURT ORDERS that:

1. The Applicant's request for costs pursuant to Rule 22 of the FCCIRPR is rejected.

2. No costs are awarded in respect of the Applicant's application for leave and for judicial review.

"Benoit M. Duchesne"
Judge