

Date: 20071004

Docket: IMM-4369-06

Citation: 2007 FC 1016

Ottawa, Ontario, October 4, 2007

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**KARIMDAD HAMMADY
SHAFIQA HAMMADY**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of an immigration officer (the Officer) with the Canadian High Commission in Islamabad, Pakistan, dated May 15, 2006. The Officer rejected the application for a permanent resident visa to Canada, on the basis that the principal applicant made contradictory statements during the interview that eroded his credibility to such an extent that the Officer made a general negative finding of credibility.

[2] The respondent filed a motion pursuant to Rule 369 of the *Federal Court Rules*, 1998 to vacate the September 27, 2007 hearing because he agreed that the judicial review should be granted. He also alleged that there would be no prejudice to the applicants because the Order requested, provided the relief sought by the applicants in their application for judicial review. He added that no costs should be awarded to either party.

[3] In their motion record, the applicants stated that the respondent had not satisfied the test for a consent judgment because they were not prepared to settle the matter on the respondent's terms. They said they would be ready to put an end to the judicial review if the respondent accepted that the Visa Officer's fresh review of the application and any interviews with the applicants would be completed and a decision would be rendered on the applicant's eligibility within 120 days of receipt of the applicant's updated application. They also wanted a confirmation that the applicants' application would not be refused on the basis of changed country conditions in Afghanistan and that if the applicants are determined to be eligible, the respondent would render a final decision and issue visas as soon as is reasonably practicable thereafter. They also requested costs in the amount of \$4,000 to \$6,000.

[4] Following a direction issued on September 25, 2007, the Court heard the parties in Toronto on September 27, 2007.

[5] Since the parties agreed that the decision must be quashed, the judicial review shall be allowed. The remaining issues are being dealt below.

[6] The applicants cited extensively *Ndererehe v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 880, [2007] F.C.J. No. 1144 (QL) to support their demands. Judgment in this case was rendered on September 4, 2007, one day prior to the letter from the applicants' counsel to the respondent's letter of July 30, 2007, outlining terms for settlement.

[7] In *Ndererehe*, above, Justice Richard Mosley granted the application and ordered the following:

2. the Visa Officer's fresh review of the application and any interviews with the applicants shall be completed and a decision shall be rendered on the applicants' eligibility within 120 days of receipt of the applicants' updated application;
3. if the applicants are determined to be eligible, the respondent shall render a final decision and issue the visas as soon as is reasonably practicable thereafter; and
4. costs are awarded against the respondent in the amount of \$5000.00, payable forthwith.

[8] The respondent takes no issue with an order from this Court that the applicants' interviews and eligibility decision be made within 60 days and that if the applicants are determined to be eligible, he shall render a final decision and issue visas as soon as is reasonably practicable thereafter.

[9] The respondent opposes the applicants' requests for an order to the newly appointed visa officer that he should not refuse the application on the basis of changed country conditions in Afghanistan because that order would tie the officer's hands and would fetter the redetermining officer's discretion. I agree.

[10] The respondent argues also that the applicants have raised new grounds for relief which were not requested in the application for judicial review.

[11] This argument was mainly raised on the question of costs. On this, I do not think that the applicants are precluded to request costs even if it was not included in their initial application.

[12] After a careful reading of the decision in *Ndererehe*, above, I am of the opinion that the case at bar is distinguishable. I find that there is no evidence here that the respondent unnecessarily or unreasonably prolonged the proceedings. While I agree with Justice Mosley's citation at paragraph 28 in *Ndererehe*, above, where he quoted Justice Eleanor Dawson in *Johnson v. Canada (Minister of Citizenship and Immigration)*, 2005 FC1262, [2005] F.C.J. 1523 (QL), there is no evidence in the case at bar that can be compared to what was described by Justice Mosley in his reasons at paragraph 36. Therefore, there is no reason to distance myself from the principle of Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*:

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.

[13] No questions for certification were proposed and none arise.

JUDGMENT

THIS COURT ORDERS that:

1. The application is granted and the matter remitted to a different Visa Officer for redetermination;
2. The Visa Officer's fresh review of the application and any interviews with the applicants shall be completed and a decision shall be rendered on the applicants' eligibility within 60 days of receipt of the applicants' updated application;
3. If the applicants are determined to be eligible, the respondent shall render a final decision and issue the visas as soon as is reasonably practicable thereafter;
4. No costs are awarded;
5. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4369-06

STYLE OF CAUSE: **KARIMDAD HAMMADY
SHAFIQA HAMMADY and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 27, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

DATED: October 4, 2007

APPEARANCES:

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