Date: 20080211

Docket: IMM-1646-07

Citation: 2008 FC 174

Ottawa, Ontario, February 11, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MARIA THERESA PHILLIP

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Respondent has moved for reconsideration of the Court's partial cost award of $5,000.00 out of a claimed $13,000.00. The Respondent claims that it has new facts which should alter the Court's conclusion that the Respondent's conduct "may not be bad faith, it has a certain air that causes one concern". The new facts consist of an affidavit from another of the Respondent's counsel in an earlier proceeding filed presumably to show that the Court's concern, for a certain "taint" surrounding the manner of treating the Applicant, was unjustified.

[2] Rule 399(2) is quite specific in empowering a variance of a court order – that a matter "arose or was discovered subsequent to the making of the order". The Respondent's materials do not meet this threshold.

[3] The issue of the Respondent's conduct, the inducing to withdraw an application for a stay on condition of an expedited H&C decision and the virtually immediate negative H&C decision after the withdrawal of the stay motion, was raised by the Applicant in the judicial review.

[4] The Court accorded the Respondent an opportunity, post hearing, to address the issue of costs – which it did.

[5] The evidence now submitted by the Respondent attempting to explain away its conduct is evidence of what had previously transpired and was available to the Respondent at the time of its cost submission. In this regard, the Respondent had notice of the legal issue and the facts in issue, and yet did not put forward the "new" evidence even though it was readily available.

[6] Rule 399(2) is not a vehicle for appeal or an opportunity to repair a deficient submission. Nor does the evidence even alleviate the Court's concern. The Respondent knew that it was prepared to defer removal but did not advise the Applicant until a stay application was filed to stop the fast approaching removal date. The new evidence reinforces the general concern for conduct

because it establishes that the deferral decision had essentially been made before the stay application – but it had not been communicated to the Applicant.

[7] Therefore, this motion is dismissed. As this motion is unjustified and compounds the Court's earlier conclusion, the Applicant shall have its costs of the motion in the amount of $1,000.00.

ORDER

THIS COURT ORDERS that this motion is dismissed with costs to the Applicant in the amount of $1,000.00.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1646-07
STYLE OF CAUSE:	MARIA THERESA PHILLIP and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE AND DATE OF HEARING:	Motion in writing pursuant to Rule 369 of the *Federal Courts Rules*
REASONS FOR ORDER AND ORDER:	Phelan J.
DATED:	February 11, 2008

APPEARANCES:

Mr. Matthew Jeffery	FOR THE APPLICANT
Mr. John Provart Ms. Judy Michaely	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. MATTHEW JEFFERY Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
MR. JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT