Date: 20080521

Docket: IMM-4359-07

Citation: 2008 FC 604

BETWEEN:

Vignarajah SELLATHURAI
Jeyanthi VIGNARAJAH

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR ORDER

Pinard J.

[1] This is an application for an order of *mandamus*, requiring the respondent to complete the processing and come to a decision regarding the applicants' applications for permanent residence. On April 21, 2008, the applicants filed a letter with the Court confirming that the matter had been settled, but that the parties would appear at the hearing to request a Consent Order and to make arguments concerning costs. At the hearing before me, both the request for a Consent Order and arguments concerning costs were made.

[2] The applicants are a husband and wife from Sri Lanka. Mr. Sellathurai came to Canada by himself and was recognized as a refugee, then applied for permanent residence for himself and his wife on April 17, 1998.

[3] After two years of waiting for their permanent resident applications to be processed, Ms. Vignarajah came to Canada on her own, and was recognized as a refugee on January 25, 2002. She submitted her own application for permanent residence that same year.

[4] A number of communications took place between the applicants and the respondent, as well as between other authorities involved in the processing of the applications. On June 28, 2002, a letter was sent from CSIS informing the applicants that the results of their enquiries had been reported to Citizenship and Immigration (CIC). The applicants were also required to attend interviews and provide updated and further information. From the record, it appears as if the applicants complied with all of the respondent's requests in a timely manner.

[5] On October 22, 2007, the applicants filed this application for judicial review. The respondent submitted the affidavit of Amandeep Sangha, Supervisor of Inland Processing Unit at the Vancouver CIC office. According to Ms. Sangha, the applicants' files were transferred to the Canada Border Services Agency (CBSA) in July 2007. The CBSA informed Ms. Sangha that it will have completed its processing on the file by June 30, 2008. Ms. Sangha affirms that the processing of the application by CIC will be completed by August 30, 2008, if the applicants comply with CIC's requests, in particular, the completion of new medical examinations.

[6] As mentioned above, the parties have reached a settlement, the terms of which are the following:

> (1) the Canada Border Services Agency will make a recommendation to Canada Immigration with respect to the applicants' security screening by June 30, 2008;
> (2) Canada Immigration will make a final decision with respect to the application for permanent residence by June 30, 2008;
> (3) if the applicants are referred to Canada Immigration for processing, it will be completed by August 30, 2008;
> (4) the applicants will comply with all requests for information in a timely manner to facilitate processing of their applications.

[7] The only issue that arises, therefore, is whether an order for costs is appropriate.

[8] In immigration matters, the awarding of costs is governed by section 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22:

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.

[9] In *Kalachnikov v. Canada (Minister of Citizenship and Immigration)* (2003), 236 F.T.R. 142, the Court found that a delay of three years in the processing of the applicant's application, which the respondent explained was due to security concerns, was unreasonable. However, it did not order costs because it concluded that the applicant had not demonstrated "special reasons".

[10] In *Abdolkhaleghi v. Minister of Citizenship and Immigration*, 2005 FC 729, [2005] F.C.J. No. 967 (T.D.) (QL), the applicant applied for an order of *mandamus* after a four year delay in the processing of his application, during which the respondent had simply stated that its investigations were ongoing. The Court found that the respondent's delay had been unreasonable and unjustified, and awarded costs in accordance with Column V of Tariff B of the *Federal Court Rules, 1998*, SOR/98-106.

[11] I do not find the case of *Khorrami v. Canada (Minister of Citizenship and Immigration)* (2002), 223 F.T.R. 149, cited by the respondent, helpful, as in that case the Court only declined to award costs due to the lack of evidence or arguments concerning the reasonableness of the delay. In this case, the applicant has in fact argued that the delay was unreasonable, and has submitted persuasive evidence to this effect.

[12] The respondent also refers to *Singh v. Minister of Citizenship and Immigration*, 2005 FC 544, [2005] F.C.J. No. 669 (T.D.) (QL), and submits that it should not be penalized for conducting the necessary background checks. In that case, the applicant had sought an award of solicitor-client costs after a delay of twelve years in the applicant's permanent residence application. However, the Court concluded that the respondent, although it had unreasonably delayed its decision concerning the applicant's landing, had not conducted itself in a manner that warranted an award of solicitor-client costs. More particularly, the respondent had not opposed leave to apply for an order of *mandamus*, and had sped up the processing of the applicant's application. The Court did, however, award party and party costs.

[13] In this case, there is a delay of ten years for which the respondent has provided little or no explanation. The respondent notes that the applicants' files were transferred to CBSA in July 2007. However, the applicants filed their applications for permanent residence in 1998 and 2002. The respondent has provided no explanation for the length of time it took to send the file to the CBSA in the first place. In my opinion, had the respondent performed its duty in a reasonable amount of time, the applicants would not have been forced to incur the costs of bringing this application for judicial review (see *Dragan v. Canada (Minister of Citizenship and Immigration)*, [2003] 4 F.C. 189). Therefore, I would conclude that this is an appropriate case in which to make an award of costs, on a party and party basis, which, pursuant to Federal Courts Rule 400(4), I fix in the lump sum of two thousand five hundred dollars ($2,500.00).

"Yvon Pinard"
Judge

Ottawa, Ontario
May 21, 2008

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4359-07
STYLE OF CAUSE:	Vignarajah SELLATHURAI, Jeyanthi VIGNARAJAH v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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Ms. Kimberly Shane	FOR THE RESPONDENT

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