



Date: 20091028

Docket: IMM-4564-09

Citation: 2009 FC 1100

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 28, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ZUY MEMBILA BLANDINE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

I. Background

[1] The Court must always ask itself who has the right to order what, to whom and for which reason. It is in itself the nature of the separation of powers, where each branch of government must not be driven to act against what the legislator, in its capacity, envisages for each of them; and it is the executive branch that has the prerogative to act within its own unique powers. Knowing that tasks are divided between the three branches of government, the duty of the court system is to interpret the legislation with respect to each respective branch of government based on the powers granted to each of them and not to intrude on their powers.

[2] Thus, each branch of government has its own distinct task. A continual dialogue between the three branches is essential to ensure that the government (in each of the three branches) is not paralyzed – by an interpretation that could lead to the negation of the power and, in the extreme, the very existence of another branch of government.

[3] The applicant, of her own free will, chose to pay her tuition fees before receiving a response regarding her temporary residence application. The applicant may therefore not state that the fact that she paid her tuition fees is a serious reason to grant an order for special management. If the applicant was afraid of losing her money, she should have awaited a decision from the visa officer before paying her tuition fees.

II. Introduction

[4] The applicant filed a motion pursuant to section 369 of the *Federal Courts Rules*, SOR/98-106 (*Federal Courts Rules*), asking that her application for leave and for judicial review (ALJR) be treated as a specially managed proceeding, under section 384 of the *Federal Courts Rules*.

III. Facts

[5] The applicant, Ms. Zuy Membila Blandine, is a citizen of the Democratic Republic of the Congo [DRC].

[6] In July 2009, Ms. Blandine made a temporary residence application as a student so that she could study at the Cité collégiale in Ottawa.

[7] On August 14, 2009, a visa officer refused Ms. Blandine`s request for the reasons that she had not provided evidence of ties outside of Canada, that the period of Ms. Blandine`s stay and the purpose of entry did not correspond to the information that she provided during an interview at the Canadian Embassy in Paris in April 2009, and that Ms. Blandine`s program of study was not in good faith.

[8] On September 14, 2009, Ms. Blandine decided to contest this decision and made an ALJR to the Court.

[9] On October 13, 2009, Ms. Blandine filed a motion pursuant to section 369 of the *Federal Courts Rules*, asking that her application for leave and for judicial review (ALJR) be treated as a specially managed proceeding, under section 384 of the *Federal Courts Rules*.

[10] Ms. Blandine asked that her ALJR be treated as a specially managed proceeding because she had already paid her tuition fees and because she had postponed the start of her program of study until January 11, 2010. Ms. Blandine held that special management was essential so that a decision would be rendered on her file before the start of her program of study, which was scheduled for January 11, 2010.

IV. Issues in dispute

[11] Should the Court order that the applicant's ALJR be treated as a specially managed proceeding?

V. Analysis

[12] The Court is very much in agreement with the respondent's words.

[13] Special management is neither routine nor automatically granted on request. (*Huang v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 196, 121 A.C.W.S. (3d) 123, subsection 2).

[14] There must be a substantial reason to remove a proceeding from the timetables set out in the *Federal Courts Rules* (*Huang*, above; *Canada (Information Commissioner) v. Canada (Minister of the Environment)*, (1999), 179 F.T.R. 25, 93 A.C.W.S. (3d) 402 (F.C.A.)).

[15] Ms. Blandine's ALJR is governed by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. The *Federal Courts Citizenship, Immigration and Refugee Protection Rules* sets out an expeditious schedule for immigration matters.

[16] Subsection 21(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* states that no time limit prescribed by these Rules may be varied except by order of a judge or prothonotary.

[17] By her motion under section 384 of the *Federal Courts Rules*, Ms. Blandine wants to change the schedule established by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*.

[18] Ms. Blandine states that a change in the schedule established by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* is justified because she has already paid her tuition fees and because she plans to start her program of study on January 11, 2010.

[19] Payment of tuition fees does not justify special management. The fact that a decision of the Court will not be rendered before the date when Ms. Blandine plans to begin her program of study is nothing more than an inconvenience. A large number of individuals are inconvenienced because of the fact that they must await a decision on the merits of their claim. Being inconvenienced because of the schedule provided for by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* and the *Federal Courts Rules* does not constitute a serious reason justifying the granting of special management.

[20] The timing desired by Ms. Blandine is not reasonable. Even if the Court ordered special management and if the ALJR were granted, it is impossible to render a decision on the merits of the case before January 11, 2010, given the circumstances. In the present case, the respondent must submit written representations related to the ALJR. Next, the applicant must file her reply. The Court must then decide if it will grant the ALJR. If the ALJR is granted, the applicant must file her

supplementary affidavit, and the respondent must file his supplementary affidavit. If necessary, the affidavits will be followed by cross-examinations, supplementary written representations from the applicant, and supplementary written representations from the respondent. The Court must then schedule a hearing for the case. After the hearing, a decision must be rendered. If the decision is in favour of the applicant, her file must be returned to another visa officer so that a new decision be made in relation to the temporary residence application.

[21] Consequently, there is no serious reason to order special management of Ms. Blandine's ALJR. Ms. Blandine's ALJR should proceed in accordance with the schedule provided by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*.

VI. Conclusion

[22] Given the foregoing, Ms. Blandine's request for special management is denied.

ORDER

THIS COURT'S JUDGMENT is that:

- 1) The applicant's request for special management is denied;
- 2) The applicant's application for leave and for judicial review will follow the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*;
- 3) the whole with costs.

“Michel M. J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4564-09

STYLE OF CAUSE: ZUY MEMBILA BLANDINE
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

DATE RECEIVED IN WRITING: October 27, 2009

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: October 28, 2009

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