Federal Court  Cour fédérale

Date: 20090902

Docket: IMM-5246-08

Citation: 2009 FC 867

Ottawa, Ontario, September 2, 2009

PRESENT: The Honourable Frederick E. Gibson

BETWEEN:

MICHAEL ADE THOMPSON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR ORDER AND ORDER

Introduction

[1] These Reasons for Order and Order follow the hearing on the 26th of August, 2009, at Toronto, of an application for judicial review of a decision dated the 26th of September, 2008, denying the Applicant's application for landing from within Canada on humanitarian and compassionate grounds.

Background

[2] The Applicant is a male citizen of Nigeria, born on the 17th of December, 1957. He entered Canada on the 14th of December, 2003 and claimed Convention refugee status. That claim was denied on the 29th of June, 2005. He submitted his application for landing from within Canada on the 10th of January 2007 and applied for a Pre-Removal Risk Assessment on the 30th of May, 2007. Both applications were submitted in the English language which is the only official language that the Applicant speaks, reads and writes well.

[3] Both the Applicant's application for landing from within Canada on humanitarian and compassionate grounds and his Pre-Removal Risk Assessment application were considered and determined, in a manner unfavourable to the Applicant, in Montreal by an Officer who prepared his or her notes to file, ultimately the reasons for his or her decisions, in the French language. The decisions and notes to file were returned to the Office where the applications had been filed which was more conveniently located to the Applicant's residence.

[4] The Applicant was called in to the Greater Toronto Enforcement Centre Office to receive the decisions on his Pre-Removal Risk Assessment and his humanitarian and compassionate application on the 24th of November, 2008. The written notices of decision were provided to the Applicant in the English language. The notes to file in respect of his Pre-Removal Risk Assessment, initially written in French, were provided to the Applicant in an English translated version. The notes to file with respect to the Applicant's humanitarian and compassionate grounds application were only available in the original French language version. The Applicant requested that those notes be translated and that an English language version be provided to him. The English language version of the notes to file in relation to the humanitarian and compassionate grounds

application was only provided to the Applicant in early February, 2009. Thus, the Applicant's application for leave and judicial review of the humanitarian and compassionate grounds decision and the Applicant's Application Record in support of that application were prepared and filed without either the Applicant or his counsel having access to an English language version, prepared at the Respondents' expense, of the related notes to file which constituted the reasons for the negative humanitarian and compassionate grounds decision.

The Issue

[5] In the Applicant's Memorandum of Points of Argument, the Applicant urges that the Respondents breached his constitutional right to be heard and communicated with in the official language of his choice, that being English, that he was denied procedural fairness in that he was not afforded the minimal right to have the Officer's notes to file translated and available to him "... at the time he was given the decision", and that he was denied natural and fundamental justice through the denial of his ability to prepare and pursue his judicial review of the decision at issue in the official language that he understands and in which he would be able to instruct counsel.

[6] The Applicant further, and without elaboration, submitted that the decision-maker "... ignored relevant evidence in his decision."

[7] Before the Court, counsel did not pursue the issue of ignoring evidence. Thus, the only issue presented before the Court was denial of the Applicant's right under the *Canadian Charter of Rights and Freedoms* to be communicated by with a government institution in the official language of his choice and his related rights to procedural fairness and natural and fundamental justice.

Analysis

[8] Subsections 19(1) and 20(1) of the *Canadian Charter of Rights and Freedoms* establish rights before courts created by Parliament, such as this Court, for persons to be heard and dealt with in either official language. They also create rights for members of the public in Canada who deal with institutions of the Government of Canada to conduct those dealings, with certain limitations, in the official language of their choice and to receive communications from those institutions in the language of their choice. With relation to government institutions, the provisions provide no stipulation as to the time within which communications in the official language of the member of the public's choice must be provided. Thus, I take it as implied that, where applicable, government institutions must provide communications within a "reasonable" time of the request for the provision of the communication in a particular official language or, put another way, within a time that results in no prejudice to the individual seeking the communication.

[9] On the facts of this matter, while the delay in providing the notes to file with respect to the decision here under review was, perhaps, inordinate, I find that it resulted in no prejudice to the Applicant.

[10] The Applicant filed his application for leave and for judicial review in this matter in a timely manner. While it is generic in its terminology, it identifies with precision the decision sought to be reviewed, it identifies the relief sought and it identifies the grounds on which relief is sought. It was not challenged by the Respondents and it is entirely sufficient for the Court's purposes to support this matter.

[11] Similarly, the Applicant's Application Record was filed in a timely manner. It includes the decision-maker's notes to file, albeit in the only language then available to the Applicant, the French language. Certainly this Court and the Respondents were capable of relying on that version, the original version, of the notes to file. It does not include an affidavit of the Applicant but rather an affidavit of an administrative assistant in the office of the Applicant's counsel. That deficiency in no way related to the absence at the time of filing of an English language version of the Officer's notes to file.

[12] The Applicant's "Memorandum of Points of Argument", was sparse but, in the event, was sufficient to allow a Judge of this Court to grant leave for this application for judicial review to proceed to hearing.

[13] Finally, a translation into English of the Officer's notes to file supporting the decision under review was provided to the Applicant well in advance of the hearing of the application.

[14] Based upon the foregoing, I conclude that the Applicant suffered no prejudice whatsoever in the prosecution of this application for leave and judicial review by reason of the delay in the provision to him by the Respondents of an English language version of the notes to file of the Officer whose decision is here under review. In the result, against a standard of review equivalent to correctness, this application for judicial review must be dismissed.

Certification of a Question

[15] At the close of hearing of this application, counsel were advised that the application would be dismissed and further, were advised, in a summary way, of the reasons why it would be dismissed. Counsel for the Applicant proposed certification of the following question:

> Is it a violation of the Applicant's constitutional right when he or she applies for Immigration status in one of the two official languages that he writes, speaks, reads, understands and prefers, to receive a communication from the Government in the other official language that he does not write, speak, read, understand or prefer, and contrary to sections 19(1) and 20(1)(b)(2) of the Charter of Rights and Freedoms?

Counsel for the Respondents recommended against certification of the proposed question or any other question. I agree with the position of counsel for the Respondents. On the facts of this matter, the question proposed simply does not arise. Further, this application for judicial review is determined on the basis of its particular facts and thus does not raise a serious question of general importance.

ORDER

THIS COURT ORDERS that this application for judicial review is dismissed. No question is certified.

"Frederick E. Gibson"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5246-08
STYLE OF CAUSE:	MICHAEL ADE THOMPSON v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Toronto, Ontario
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REASONS FOR ORDER AND ORDER:	Gibson D. J.
DATED:	September 2, 2009

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