

Federal Court



Cour fédérale

**Date: 20141117**

**Docket: IMM-1289-14**

**Citation: 2014 FC 1083**

**Ottawa, Ontario, November 17, 2014**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**ZENAS OGBONNA SAMUEL EKUOKE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a Refugee Appeal Division's [RAD] refusal to grant the Applicant's request for an extension of time to file an appeal of a negative decision of the Refugee and Protection Division [RPD].

II. Background

[2] The Applicant is a citizen of Nigeria, whose refugee claim was rejected by the RPD on September 24, 2013.

[3] On November 13, 2013, the Applicant requested an extension of time to file an appeal before the RAD on the basis that the Applicant's roommate, as a result of a disagreement between him and the Applicant, had allegedly concealed the letter containing the RPD's decision from the Applicant. As a result, the Applicant claims that he only became aware of the RPD's decision on November 1, 2014.

[4] On January 10, 2014, the RAD denied the Applicant's request for an extension of time to file an appeal, notice of which was received by the Applicant on January 17, 2014. It is this decision which is under review before the Court.

[5] The Court notes that, as a result of what seems to have been a clerical error, the date of February 18, 2013, rather than the correct date of January 17, 2014, had been inscribed on the application as the date of reception of the RAD's decision by the Applicant. This error led the Registry to accept the filing of the application on March 3, 2014, based on its perception that it had been filed within the delay.

III. Decision under Review

[6] In its decision dated December 23, 2013, the RAD finds that the Applicant failed to justify his request for an extension of time according to the requirements under the IRPA, and pursuant to the relevant Rules and Regulations, found below.

[7] In particular, the RAD finds that the Applicant failed to meet the requisite criteria relating to a request for an extension of time found in subsection 159.91(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], pursuant to which the RAD may, “for reasons of fairness and natural justice”, extend the time limits “by the number of days that is necessary in the circumstances”.

[8] Furthermore, the RAD relies on factors established in *Canada (Attorney General) v Pentney*, 2008 FC 96 and in *Canada (Attorney General) v Hennelly*, [1995] FCJ 1183 (CAF) [Hennelly], to conclude that, in accordance with the principles of procedural fairness and natural justice, the Applicant did not provide reasonable explanations justifying the granting of an extension of time.

[9] In particular, the RAD finds that the Applicant:

- did not explain how he had come to the knowledge that his roommate had concealed the letter containing the RPD’s decision from him;
- did not explain the nature of the conflict between him and his roommate;

- did not provide any explanation and supporting evidence in support of the above allegations;
- admitted that he had become aware of the RAD's decision on January 17, 2014, confirming the error which led the Registry to accept his application;
- admitted that the decision had been sent to his residence.

(RAD's decision at para 10)

#### IV. Issues

[10] The determinative issues before the Court are whether the Court should dismiss the application by reason that it was filed out of delay and does not include a formal request for an extension of time, and whether the RAD erred in its refusal to allow an extension of time to hear the appeal.

#### V. Relevant Legislative Provisions

[11] First, the IRPA establishes a 15-day time limit for filing an application to the Federal Court:

##### **Application**

**72.(2)** The following provisions govern an application under subsection (1):

*(a)* the application may not be made until any right of appeal that may be provided by this Act is exhausted;

*(b)* subject to paragraph 169(f), notice of the application shall

##### **Application**

**72.(2)** Les dispositions suivantes s'appliquent à la demande d'autorisation :

*a)* elle ne peut être présentée tant que les voies d'appel ne sont pas épuisées;

*b)* elle doit être signifiée à l'autre partie puis déposée au

be served on the other party and the application shall be filed in the Registry of the Federal Court (“the Court”) within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;

(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;

[...]

greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l’alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;

c) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;

[...]

[12] Second, the relevant excerpts from the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 ([FCIRPR], relating to a request for an extension of time before the Court are found in section 6:

**Extension of time to file and serve application for leave**

6.(1) A request for an extension of time referred to in paragraph 72(2)(c) of the Act shall be made in the application for leave in accordance with Form IR-1 set out in the schedule.

(2) A request for an extension of time shall be determined at the same time, and on the same materials, as the application for leave.

**Prorogation du délai de dépôt et de signification de la demande d’autorisation**

6.(1) Toute demande visant la prorogation du délai au titre de l’alinéa 72(2)c) de la Loi, se fait dans la demande d’autorisation même, selon la formule IR-1 figurant à l’annexe.

(2) Il est statué sur la demande de prorogation de délai en même temps que la demande d’autorisation et à la lumière des mêmes documents versés au dossier.

[13] Third, subsections 159.91(1) and (2) of the IRPR provide for the possibility of an extension of time on appeal to the RAD:

#### **Time limit for appeal**

**159.91(1)** Subject to subsection (2), for the purpose of subsection 110(2.1) of the Act,

(a) the time limit for a person or the Minister to file an appeal to the Refugee Appeal Division against a decision of the Refugee Protection Division is 15 days after the day on which the person or the Minister receives written reasons for the decision; and

(b) the time limit for a person or the Minister to perfect such an appeal is 30 days after the day on which the person or the Minister receives written reasons for the decision.

#### **Extension**

(2) If the appeal cannot be filed within the time limit set out in paragraph 1)(a) or perfected within the time limit set out in paragraph (1)(b), the Refugee Appeal Division may, for reasons of fairness and natural justice, extend each of those time limits by the number of days that is necessary in the circumstances.

#### **Délais d'appel**

**159.91(1)** Pour l'application du paragraphe 110(2.1) de la Loi et sous réserve du paragraphe (2), la personne en cause ou le ministre qui porte en appel la décision de la Section de la protection des réfugiés le fait dans les délais suivants :

a) pour interjeter appel de la décision devant la Section d'appel des réfugiés, dans les quinze jours suivant la réception, par la personne en cause ou le ministre, des motifs écrits de la décision;

b) pour mettre en état l'appel, dans les trente jours suivant la réception, par la personne en cause ou le ministre, des motifs écrits de la décision.

#### **Prolongation**

(2) Si l'appel ne peut être interjeté dans le délai visé à l'alinéa (1)a) ou mis en état dans le délai visé à l'alinéa (1)b), la Section d'appel des réfugiés peut, pour des raisons d'équité et de justice naturelle, prolonger chacun de ces délais du nombre de jours supplémentaires qui est nécessaire dans les circonstances.

VI. Analysis

[14] The Applicant filed an application before this Court on March 3, 2014, which exceeds the statutory 15-day delay prescribed by paragraph 72(2)(b) of the IRPA. Accordingly, the Applicant was required to submit a formal request for an extension of time, in accordance with section 6 of the FCIRPR. In assessing such a request, the Court must consider whether the Applicant's explanations and circumstances, in light of the criteria found in the jurisprudence, justify the granting of such a relief.

[15] Not only did the Applicant fail to submit a request for an extension of time but he also did not provide any valid explanation supporting the granting of such a relief.

[16] Moreover, in reviewing the RAD's decision, the Court finds that the Applicant's request for an extension of time before the RAD was not supported by the evidence and accordingly, the RAD did not commit an error.

[17] The Applicant argues that the basis of his request for an extension of time before the RAD is that he did not become aware of the RPD's decision until one month after he had received it, and that he was therefore unable to act sooner.

[18] In *Hennelly*, above at para 3, the Federal Court determined that the test applicable for granting an extension of time is whether an Applicant has demonstrated: 1) a continuing intention to pursue his or her application; 2) that the application has some merit; 3) that no

prejudice to the Respondent arises from the delay, and; 4) that a reasonable explanation for the delay exists.

[19] The Court finds that the RAD rightfully rejected the Applicant's request, based on the Applicant's failure to demonstrate the above-cited criteria.

## VII. Conclusion

[20] The Court concludes that the Applicant did not demonstrate a valid basis by which to justify a grant of relief for the purpose of an extension of time by this Court. Consequently, the application is dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1289-14

**STYLE OF CAUSE:** ZENAS OGBONNA SAMUEL EKUOKE v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** NOVEMBER 13, 2014

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** NOVEMBER 17, 2014

**APPEARANCES:**

Claudette Menghile  
Susan Ramirez

FOR THE APPLICANT

Patricia Nobl

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Me Claudette Menghile, Attorney  
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of  
Canada  
Montréal, Quebec

FOR THE RESPONDENT