

Federal Court



Cour fédérale

Date: 20141224

Docket: IMM-8031-14

Citation: 2014 FC 1256

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 24, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

KOUADIO MATHURIN YAO

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

ORDER AND REASONS

I. Introduction

[1] This is a motion by the applicant dated December 3, 2014, to stay his removal to Côte d'Ivoire, scheduled for December 11, 2014, until a decision on the merits is made on his application for leave and for judicial review of the refusal to defer the removal and, in the alternative, until a decision is made on his application for permanent residence [APR] as a family member of a person with refugee status.

[2] On December 10, 2014, the applicant's motion to stay was allowed, with reasons to follow. These are the reasons for that decision.

II. Facts

[3] The applicant is a citizen of Côte d'Ivoire. He is married to Eva Marie Pierre Yao Bayi, with whom he has three children.

[4] The applicant stayed in Canada from July 5, 2008, to September 20, 2009, and worked occasionally by virtue of his foreign representative status in Canada.

[5] On October 16, 2008, Ms. Bayi and the three children joined the applicant in Canada. On July 9, 2009, the applicant and his spouse separated, and on August 5, 2009, Ms. Bayi filed a refugee protection claim in her own name and on behalf of the children on the basis of a fear of her husband and his family if she had to return to Côte d'Ivoire.

[6] After returning to Côte d'Ivoire, the applicant came back to Canada on December 9, 2009, to apply for a work permit, and this application was refused in May 2010 because the applicant's foreign representative status had expired on October 1, 2009.

[7] In August 2010, the applicant claimed refugee status on the basis of his political opinions and his membership in the Baoulé ethnic group in Côte d'Ivoire.

[8] On April 19, 2011, the Refugee Protection Division [RPD] granted Ms. Bayi and the three children Convention refugee status. On August 1, 2011, Ms. Bayi filed an APR as a protected person with Citizenship and Immigration Canada [CIC], who assigned her the following personal identification number: 60600589.

[9] On March 6, 2012, CIC sent Ms. Bayi a letter stating that she and her children met the eligibility criteria for permanent resident status as protected persons but that additional information was needed to finalize her application. The letter also states that the application to include dependents living outside Canada could not be processed because Ms. Bayi had deposited only \$1,000, whereas the required amount was \$1,550.

[10] On March 12, 2012, the RPD rejected the applicant's refugee protection claim, and on December 13, 2012, the Court dismissed his application for judicial review of that decision.

[11] On April 30, 2012, the applicant filled out form IMM 0008 for the purpose of submitting an APR. This form indicates that the applicant submitted his APR in the [TRANSLATION] "Family Member of a Convention Refugee" class.

[12] On October 9, 2012, CIC sent the applicant a letter stating that his APR [TRANSLATION] "in the Spouse or Common-law Partner in Canada class" was incomplete, particularly because he had enclosed \$550 when the total required was \$1,000. The applicant's personal identification number with CIC is 60208085.

[13] On November 9, 2012, and November 12, 2012, the applicant sent CIC two letters through his lawyer, Sangaré Salif, to clarify the situation. In these letters, the applicant asks CIC to combine applications 60600589 and 60208085, explains that the \$550 in processing fees he paid were in addition to Ms. Bayi's APR processing fees and provides the documentation missing from her file.

[14] On February 14, 2013, CIC sent Ms. Bayi a letter repeating that her application to include dependents living outside Canada could not be processed because she had deposited only \$1,000 instead of the required \$1,500 and asking her to provide contact information for the persons in question. CIC then sent Ms. Bayi a letter on January 17, 2013, stating that it had received her correspondence of November 22, 2012, and that her file had been transferred to the Canada Immigration Centre in Ottawa for decision. This letter makes no mention of any missing information or fees regarding dependents living outside Canada. The correspondence of November 22, 2012, was not filed in the record in support of the motion to stay.

[15] The applicant then submitted an application for a pre-removal risk assessment, which was rejected on May 28, 2014. The applicant filed an application for judicial review that is still pending before the Court but is unrelated to this motion to stay.

[16] On November 26, 2014, the applicant sent CIC a request to stay his removal until a decision could be made on an APR sponsored by his spouse as a family member, which according to the applicant was still being processed. The removal officer reviewed the applicant's file and, on December 3, 2014, refused to defer the applicant's removal on the basis

of a lack of evidence that the applicant was included in his spouse's APR. That decision is currently under judicial review by the Court and concerns this motion to stay.

III. Analysis

[17] This case includes several irregularities, the most important of which are explained below.

[18] First, according to the applicant's affidavit, Ms. Bayi did not include him as her spouse in her APR when she submitted her initial application on August 1, 2011, but instead added him in April 2012. However, Ms. Bayi's IMM 5202 form dated August 1, 2011, indicates that her three children are included as family members in Canada and that the applicant is included as a family member outside Canada, such that all of them are covered by the APR. In addition, Section C of the form, "Family Members Outside Canada", shows signs of having been altered. It appears that the original information was erased and that the applicant's name was subsequently added.

[19] Furthermore, all of the IMM 0008 form, that is, the applicant's APR dated April 30, 2012, was filled out electronically, with the exception of two boxes in the "Application Details" section, namely the "Program under which you are applying" box and the "Category under which you are applying" box, in which the applicant wrote [TRANSLATION] "Other" and [TRANSLATION] "Family Member of a Convention Refugee". On October 9, 2012, CIC wrote a letter to the applicant in which it states that the applicant submitted an APR [TRANSLATION] "in the Spouse or Common-law Partner in Canada class". The Court notes that the information

appearing in the applicant's form in the box concerning the class in which he submitted his APR appears to have been changed.

IV. Conclusion

[20] For these reasons, the Court finds that the documents submitted in support of this motion appear to have been altered.

[21] In its order dated December 10, 2014, the Court granted the applicant a 60-day stay to allow him to file the necessary documents to regularize his status. At that time, the Court did not the additional submissions from the respondent that shed light on the facts laid out in this motion.

[22] The Court is obliged to maintain its order dated December 10, 2014, granting the applicant a stay. However, these reasons contribute to a proper understanding of how the applicant's case evolved and will be of assistance in the upcoming decisions that will have to be made in this case.

ORDER

THE COURT ORDERS that the stay application is granted for a period of 60 days beginning on the date of the order, December 10, 2014.

“Peter Annis”

Judge

Certified true translation
Michael Palles

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-8031-14

STYLE OF CAUSE: KOUADIO MATHURIN YAO v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 9, 2014

ORDER AND REASONS: ANNIS J.

DATED: DECEMBER 24, 2014

APPEARANCES:

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