

Federal Court



Cour fédérale

Date: 20150928

Docket: T-2193-14

Citation: 2015 FC 1122

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, September 28, 2015

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

THIERNO CISSÉ

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

I. Introduction

[1] Thierno Cissé, the plaintiff, brought four actions for damages against Her Majesty the Queen, the defendant, claiming that employees of the Department of Citizenship and Immigration Canada [CIC] committed a fault by including a statement on two of the open work permits he received.

[2] Mr. Cissé alleges that he suffered damages in relation to the statement and is claiming a total of 11 million dollars for defamation, affecting the dignity of his person, infringing his fundamental rights, violating his privacy and disseminating his personal information.

[3] Since his actions were consolidated, only one judgment will be delivered.

[4] The Court finds that Mr. Cissé did not establish fault on the part of the defendant or damages flowing from a possible fault.

[5] At the hearing, Mr. Cissé testified on his own behalf while Ruth Anne Weisman, a senior program specialist at CIC, testified for the defendant.

[6] The Court will first repeat each party's allegations and the evidence they filed in support of those allegations and will then examine whether Mr. Cissé discharged his burden of proof.

II. Allegations of the parties

[7] The Court refers the parties to the facts presented in docket T-2191-14 with respect to the events that occurred prior to the spring of 2012 because they are not relevant in this proceeding. Regarding that period, we will only mention here that Mr. Cissé arrived in Canada on February 1, 2009, and that he then received a work permit valid until May 5, 2011, which authorized him to work only for DMR Conseil and according to the terms and conditions set out therein.

[8] On February 24, 2012, Mr. Cissé applied for refugee status in order to, according to his testimony, obtain an open work permit under section 206 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Mr. Cissé in fact received a first open work permit on March 21, 2012, and he received two others successively, one in April 2013 and one in April 2014, filed respectively as Exhibits P-15, P-16 and P-17 at the hearing.

[9] The open work permits issued to Mr. Cissé in 2013 and 2014 included a statement that had not appeared on the permit issued to him in 2012. One of the permits was marked [TRANSLATION] “Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services”, and the other was marked “Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services.”

[10] Moreover, Mr. Cissé testified that he had been filmed without his knowledge during the winter of 2010 when he was using the shower room of a charitable organization in Montréal. He said that he had also been investigated after he was hired by PAYZA based in Montréal, Quebec, and he claims that the company found the film showing him taking a shower naked and posted it on the Internet. Mr. Cissé filed a copy of the contract between him and PAYZA on June 18, 2012, but he did not file anything with respect to a film or its posting.

[11] Mr. Cissé maintains that the statement added to his 2012 and 2013 open work permits resulted from CIC’s discovery of the film mentioned above and that the statement targeted him

specifically. He also submits that the only reason the statement was added was to ridicule and humiliate him. Mr. Cassé did not adduce any evidence that CIC employees knew about the film.

[12] Mr. Cissé filed in evidence Operational Bulletin 449, [OB 449] of July 13, 2012 (Exhibit P-18), pointing to the statement that this bulletin has expired. He admitted during his testimony that he did not know whether all open work permits include this statement.

[13] Ruth Anne Weisman said that the statement included on the open work permits issued to Mr. Cissé in 2013 and 2014 has appeared on all open work permits since July 2012, in accordance with a new policy adopted on July 13, 2012. She also filed in evidence OB 449 dated July 13, 2012 (Exhibit D-23), which she stated she had drafted.

[14] Ms. Weisman testified that the CIC's computer system statement automatically includes the statement on every open work permit when the code corresponding to an open work permit is entered and that the purpose of this procedure is to protect foreign nationals.

[15] Ms. Weisman filed in evidence a copy of two applications to change conditions of stay, extend stay or remain in Canada as a worker that were completed by Mr. Cissé and two excerpts from Mr. Cissé's files, i.e. exhibits D-19, D-20, D-21 and D-22, and she stated that nothing in these applications shows that CIC employees knew that the film referred to by Mr. Cissé existed.

III. Issues

[16] The Court must determine whether Mr. Cissé (1) established the existence of a fault that engaged the defendant's civil liability, (2) demonstrated the damages that he claims he suffered and (3) proved that the damages were caused by the fault of the defendant.

IV. Position of the parties

A. *Mr. Cissé*

[17] Mr. Cissé submits that the defendant committed a fault by including the above-noted statement on his 2013 and 2014 open work permits. He argues that the defendant defamed him, affected the dignity of his person, infringed his fundamental rights, violated his privacy and disseminated his personal information by including this statement on his open work permits.

[18] He contends that the inclusion of this statement on his 2013 and 2014 open work permits stems from CIC's discovery of a film showing him naked in the showers of a charitable organization and not from OB 449 of July 2012 because it was expired and is not supported by the relevant regulations.

B. *Defendant's position*

[19] The defendant submits generally that her employees did not commit a fault by issuing open work permits with the above-noted statement because that statement has been included on all open work permits since July 2012 under a policy initially adopted pursuant to

paragraph 185(b)(i) of the IRPR to protect foreign nationals, that Mr. Cissé was not personally targeted, that CIC was not aware of the film Mr. Cissé is referring to, that the harm he alleges is not attributable to her and that, in addition, Mr. Cissé did not submit any evidence of any damages.

V. Analysis

[20] Mr. Cissé relies on the fact that OB 449 states that it is expired in arguing that this bulletin is of no value, that it is *ipso facto* not applicable and was also not applicable in 2013 and 2014. The Court cannot concur with this position.

[21] First, the printed version of OB 1449 has a 2014 printing date, which is after Mr. Cissé's work permits were issued. The defendant's witness confirmed that OB 449 was issued in July 2012 and that it remained in effect until the policy was included in the manuals published for this purpose.

[22] Moreover, there is no evidence that CIC employees were aware of the film that Mr. Cissé refers to, assuming that the film exists based on Mr. Cissé's testimony, or that they targeted him personally by adding this condition to his work permit. On the contrary, the defendant clearly showed that the statement was a direct result of the adoption of a policy aimed at protecting vulnerable foreign nationals and that it has been included on all open work permits in this category since July 2012.

[23] Accordingly, the defendant did not commit any fault that engaged its civil liability. No defamation or breach of privacy or dissemination of personal information occurred by including the statement on the open work permits issued by CIC to Mr. Cissé, and he did not submit any evidence of the damages he claims to have suffered.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the action is dismissed with costs in favour of the defendant.

“Martine St-Louis”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2193-14

STYLE OF CAUSE: THIerno CISSÉ v HER MAJESTY THE QUEEN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 15, 2015

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: SEPTEMBER 28, 2015

APPEARANCES:

Thierno Cissé

FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Émilie Tremblay

FOR THE DEFENDANT

SOLICITORS OF RECORD:

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

FOR THE DEFENDANT