

Federal Court



Cour fédérale

Date: 20160608

Docket: IMM-5778-15

Citation: 2016 FC 642

Toronto, Ontario, June 8, 2016

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**REEM NABHANI
OSAMA SAAD MAHFOUDH BAMASOOD
KOBALENTHIRA KANAGASUNTHARAM
MERVIN MAREKANI
RACHELLE NYAMOYA
YOAN SAMUEL NYAMOYA
INGRID NTAHIGIMA NZIKORUHIRO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The seven Applicants have collectively applied for leave and judicial review. They seek an order of *mandamus* requiring the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD or the Board) to hold a hearing in respect of their refugee claims within 60 days of the Court's Order. They also seek a declaration that section 159.9 of the

Immigration and Refugee Protection Regulations, SOR/2002-227 [Regulations], violates Canada's international obligations and section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

[2] By this Motion, the Respondent moves to set aside the Applicants' application for leave and judicial review on the basis the application fails to comply with Rule 302 of the *Federal Courts Rules*, SOR/98-106. The Respondent submits the Applicants should have filed single applications for leave and judicial review.

[3] Rule 302 states:

302 Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

302 Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

[4] The Applicants argue that their collective application raises a legal issue which is common to each claim, namely: whether Canada is in breach of its international obligations by leaving their Convention refugee status indeterminate, and whether the RPD is respecting the purpose of the *Immigration and Refugee Protection Act*, SC 2001, c 27 by failing to determine their status.

[5] The facts and circumstances of the Applicants must be considered in order to determine if the Court should exercise its discretion to permit a common application and whether that is the most appropriate manner by which to proceed.

[6] Here the Applicants do not come from the same country of origin and their circumstances are unique. Reem Nabhani is a Palestinian born in Syria; Osama Saad Mahfoudh Bamasood is a citizen of Yemen; Kobalenthira Kanagasuntharam is a citizen of Sri Lanka; and Mervin Marekani, Rachelle Nyamoya, Yoan Samuel Nyamoya, and Ingrid Ntahigima Nzikoruhiro are from Burundi.

[7] The Applicants' refugee claims were made at different times. The period of delay varies from six months to sixty-four months.

[8] The circumstances giving rise to the delay are different. Reem Nabhani's claim was sent back for redetermination to the RAD following a successful judicial review, and the RAD subsequently referred the matter back to the RPD. Osama Saad Mahfoudh Bamasood and Mervin Marekani's claims were submitted before the coming into force of paragraph 159.9(b) of the Regulations. Kobalenthira Kanagasuntharam's hearing was postponed, by consent, to allow the Canada Border Services Agency to submit further evidence. Rachelle Nyamoya and Yoan Samuel Nyamoya's claims were sent back to the RPD for redetermination following a successful judicial review.

[9] The order issued in *Idris v Canada (Minister of Citizenship and Immigration)* (Unreported, May 18, 2016, Docket IMM-664-16) [*Idris*] is relied upon by the Applicants. In *Idris*, the applicants were all Eritrean refugee claimants whose claims for refugee protection had been outstanding before the Board since 2012. Their claimed relief arose from substantially the same facts and all of the applicants arrived in Canada from Eritrea in 2012 and claimed refugee protection that same year. Their claims to refugee protection had all remained outstanding for over three years at the time of the order.

[10] In my view, *Idris* is distinguishable as the common elements in that case do not present themselves here. Here, the Applicants are from different countries of origin, their refugee claims originate at different times and in different circumstances, the period of the delay varies from half a year to over five years, and the reasons for the delay are distinct.

[11] The situation here is more in keeping with that in *Kaur v Canada (Minister of Citizenship and Immigration)* (Unreported, September 27, 2006, Docket IMM-4404-06) [*Kaur*], where 38 applicants sought a *mandamus* order in respect of 38 different applications for temporary work permits. The Court in *Kaur* held that the interests of justice and of judicial economy did not favour allowing the Applicants to seek relief in a single application.

[12] In this case, the justification for any *mandamus* order would turn on the particular circumstances of each Applicant, including the reasons for the delay and the extent of the delay. These circumstances would have to be assessed individually, thereby likely creating complexity rather than efficiency like in *Kaur*.

[13] I agree with the Respondent that the Applicants' entitlement to the relief sought depends on the unique facts of their individual cases. In my view, the circumstances of the Applicants are not sufficiently common to justify a single application for judicial review. I would therefore allow the Respondent's motion and set aside the application for leave and for judicial review.

ORDER

THIS COURT ORDERS that the Respondent's motion is granted and the within application for leave and judicial review is set aside.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5778-15

STYLE OF CAUSE: REEM NABHANI, OSAMA SAAD MAHFOUDH
BAMASOOD, KOBALENTHIRA
KANAGASUNTHARAM, MERVIN MAREKANI,
RACHELLE NYAMOYA, YOAN SAMUEL
NYAMOYA, INGRID NTAHIGIMA NZIKORUHIRO v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 24, 2016

ORDER AND REASONS: MCDONALD J.

DATED: JUNE 8, 2016

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