

Federal Court



Cour fédérale

**Date: 20160607**

**Docket: IMM-5051-15**

**Citation: 2016 FC 632**

**Ottawa, Ontario, June 7, 2016**

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

**BETWEEN:**

**AYRES, VANESSIAH  
AYRES, REBECCA  
DURGANS, ANTHONY**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**ORDER**

**UPON MOTION** in writing dated March 1, 2016, from the Applicants pursuant to Rule 369 of the *Federal Courts Rules* requesting an extension of time to perfect the application for leave and judicial review as per the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*;

**UPON** reading the motion record filed by the Applicants and the motion record in response filed on behalf of the Respondent;

**UPON CONSIDERING** that this motion to perfect the application for leave and judicial review is the third motion of the sort filed by the Applicants; as the first two motions were rejected by this Court;

**UPON CONSIDERING** that in the application for leave and judicial review, filed on November 12, 2015, the Applicants requested a thirty (30) day extension of time for evidence in regard to the matter they brought before the Court:

- a) to provide the necessary medical documentation proving that they have microchip implants in their bodies; and,
- b) to obtain legal representation;

It is well established that the four factors set out in *Canada (Attorney General) v Hennelly*, [1999] FCJ No 846 (FCA) govern the discretionary decision of whether or not to grant the extension of time. To be granted an extension of time, an applicant must demonstrate: (a) a continuing intention to pursue his or her application; (b) that the application has some merit; (c) that no prejudice to the respondent arises from the delay; and (d) that a reasonable explanation for the delay exists (also referenced in order IMM-1109-15 of Prothonotary Roger Lafrenière);

The determination as to whether such discretionary authority should be exercised turns on the facts of each case (*Kniss v Telecommunication Workers Union*, 2013 FCA 293). As the underlying consideration of granting an extension of time is in the interests of justice, and that justice is done between the parties, an extension of time may be granted even if one of the criteria is not satisfied (*Canada (Minister of Human Resources Development) v Hogervorst*,

2007 FCA 41). Finality and certainty must form part of the assessment of the interests of justice (*Canada (Attorney General) v Larkman*, 2012 FCA 204);

The Applicants have specified that they have an intention to proceed with the application for leave. Nevertheless, the Applicants have entirely failed to provide a reasonable explanation for the delay in perfecting their record; notwithstanding that more than six (6) months have passed since the Applicants first requested an extension of time of thirty (30) days to perfect the application for leave and judicial review on November 12, 2015;

The Court is substantially in agreement with the Respondent's written representations. The Applicants have failed, based on the record before the Court, to establish in their motion that the application for leave and judicial review has any merit. The Refugee Protection Division [RPD], having held that the Applicants were not persecuted in the United States, did not have to examine the question of state protection. Secondly, there is no merit to the argument that their judicial review should be granted on grounds of cumulative effect of discrimination rising to the level of persecution. Thirdly, the lack of legal representation before the RPD is without merit, specifically considering the lack of reasonable reasons as to why the Applicants could not avail themselves of legal representation. Fourthly, the Applicants' sur place refugee claim on the grounds that they would be persecuted as a result of the United States secret government knowing that they filed a refugee status claim in Canada is without merit; considering, at the very least, that the Applicants failed to substantiate their allegations with any reliable objective documentary evidence;

The fact that the Applicants did not find a lawyer, who would represent them for their specific alleged fact pattern in their case, does not relieve the Applicants from the requirement to

comply with the deadlines fixed in the *Federal Courts Immigration and Refugee Protection Rules*. The Applicants' responsibility in respect of the time frames necessitated, at the very least, a recognition by them in respect of the Rules of the Court;

Taking into account the forgoing; and, specifically, the fact that more than six (6) months have elapsed since the original motion for a request for an extension of time for leave and judicial review without any concrete action by the Applicants to cure any deficiency of their Application, the Court considers that it would be of no gain to the interests of justice that the Applicants be granted an extension of time to perfect their record. The Court reaches this conclusion, recognizing that the log of the Court and the Respondent have awaited without any valid explanation, that such a matter would even proceed as no counsel has wanted to take up such cause, nor have the Applicants responded in respect of their own request for additional time;

**THIS COURT ORDERS that** the motion for an extension of time be dismissed. While the Respondent has requested costs, the Court will exercise its discretion not to award in the circumstances, recognizing the circumstances of the Applicants.

(Reference is made to a second order bearing the same file number).

"Michel M.J. Shore"

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Judge