Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

97 226 019

IMM-418-97

BETWEEN:

GUILLERMO ALFRE GARCIA PAREDES,

Applicant,

AND

MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA,

Respondent.

REASONS FOR ORDER

**RICHARD MORNEAU,
PROTHONOTARY:**

This is a motion by the applicant under subsection 21(2) of the *Federal Court Immigration Rules, 1993* (the "Rules") for an extension of the time allowed by subsection 10(1) of the Rules for serving and filing his record. This motion was presented to the Court under Rule 324 of the *Federal Court Rules*, which provides that a decision in respect of a motion may be made without personal appearance of a party or that party's solicitor, upon consideration of representations in writing.

The facts

On January 30, 1997, the applicant filed an application for leave and an application for judicial review of a decision of the Refugee Determination Division dated December 31, 1996.

Under rule 10 of the Rules, the applicant had until March 3, 1997, to perfect his application, which he did not do.

On March 17, 1997, after the time had expired, the applicant served on the respondent a motion for an extension of time seeking leave to serve and file his record after the time allowed.

In the motion for an extension of time, counsel for the applicant stated:

[TRANSLATION]

> 3. As a result of an unfortunate error, attributable to a trainee secretary in the office of the undersigned, this case was diaried for April 3, 1997, for filing the applicant's record;
>
> ...
>
> 5. The applicant's record is ready to be filed;
>
> 6. The undersigned counsel respectfully submits that this unfortunate error should not at any time prejudice the applicant in that he was in no way responsible for it;
>
> 7. The undersigned counsel respectfully submits that this was a factual error and that the applicant's record is ready to be filed;

The law

It is settled law that the Court's primary expectation is compliance with the time allowed by the Rules.[1] Accordingly, as Strayer J. (as he then was) noted in *Beilin*,[2] when an application is made for an extension of time,

> ... An applicant must show that there was some justification for the delay throughout the whole period of the delay and that he has an arguable case (see e.g. *Grewal v. M.E.I.*, [1985] 2 F.C. 263, 63 N.R. 106 (F.C.A.)).
>
> (Emphasis mine)

With respect, more specifically, to the question of what explanations would establish that it was not possible to comply with the whole of the time limit set out in subsection 10(1) of the Rules, resulting in the need for an extension of time, Reed J. of this Court noted in *Chin* that there must be

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1 See *Chin v. Canada (Minister of Employment and Immigration)* (1994), 22 Imm. L.R. (2d) 136, 138 ("*Chin*").

2 *Beilin v. Minister of Employment and Immigration* (1995), 88 F.T.R. 132.

> ... some reason for the delay which is beyond the control of counsel or the applicant, for example, illness or some other unexpected or unanticipated event.[3]

According to Reed J., this kind of standard is required in the interests of fairness to parties and counsel who make an effort to comply with the time limits set out in the Rules.[4]

Where the Court is satisfied in a case that the time limit in rule 10 has been interrupted or significantly affected by an unexpected or unforeseen event, it may exhibit indulgence to an applicant and grant him or her an extension of time. It is accepted that the need for indulgence in these cases is often prompted by the very conduct of the applicant's counsel.

It will be understood that in those circumstances, fairness means that the twofold test in *Beilin* is more often not mentioned, while not necessarily being ruled out.

Does this case really involve an unexpected event? I am not at all satisfied of this, for the following reasons.

Less than nine months before, counsel for the applicant approached the Court in two other cases (file nos. IMM-1644-96 and IMM-1646-96) seeking extensions of the time allowed by rule 10 for exactly the same reason as he has stated here.

Showing the indulgence referred to earlier, I granted a ten-day extension of time in each of those cases, on July 31, 1996.

However, I was careful in each of those orders to note the following:

[TRANSLATION]

> HAVING REGARD TO the affidavit filed in support of this motion;
>
> HAVING REGARD TO the reasons set out in the motion and the facts alleged in the affidavit, which affidavit refers to an error that cannot occur again;

(Emphasis mine)

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[3] *Supra*, note 1.

[4] *Ibid.*

It was to be hoped that counsel for the applicant would take note of those orders when they were received and have regard to them in future. Obviously this was not the case.

Accordingly, it is impossible for me to conclude here that there was some "unfortunate error" in the nature of an unexpected event.

This brings us to the elements of the test in *Beilin*, and on this point it need only be pointed out that on the second element of the test, neither the applicant nor even his counsel gave any details, by affidavit, of whether the case is arguable on the merits. Moreover, counsel for the applicant failed to see fit to attach the applicant's record under rule 10 to his motion, although he asserts that the record was ready when the instant motion was filed.

For these reasons, this motion will be dismissed.

Lastly, counsel for the applicant contends, in paragraph 6 of the motion, that the applicant should not be prejudiced by his counsel's error. Undeniably, this is an unpleasant situation for the applicant. Nonetheless, on this point, I adopt the following comments of the Court in *Chin*:

> I know that courts are often reluctant to disadvantage individuals because their counsel miss deadlines. At the same time, in matters of this nature, counsel is acting in the shoes of her client. Counsel and the client for such purposes are one. It is too easy a justification for non-compliance with the rules for counsel to say the delay was not in any way caused by my client and if an extension is not granted my client will be prejudiced.[5]

Richard Morneau
Prothonotary

Montréal, Quebec
April 14, 1997

Certified true translation

C. Delon, LL.L.

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[5] *Id.*, p. 139.

Federal Court of Canada

Court file No. IMM-418-97

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GUILLERMO ALFRE GARCIA PAREDES,

Applicant,

— and —

MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA,

Respondent.

REASONS FOR ORDER

FEDERAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO:	IMM-418-97
STYLE OF CAUSE:	GUILLERMO ALFRE GARCIA PAREDES, Applicant, AND MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA, Respondent.

MOTION IN WRITING CONSIDERED IN MONTRÉAL WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER BY:	Richard Morneau, Prothonotary
DATE OF REASONS FOR ORDER:	April 14, 1997

WRITTEN REPRESENTATIONS BY:

Yves Dumoulin	for the applicant
Ian Hicks	for the respondent

SOLICITORS OF RECORD:

Yves Dumoulin Montréal, Quebec	for the applicant
George Thomson Deputy Attorney General of Canada Department of Justice Canada Montréal, Quebec	for the respondent

AUG 1 4 1997

THE FEDERAL COURT OF CANADA

LA COUR FÉDÉRALE DU CANADA

Court No.: IMM-418-97

No. de la cause:

Let the attached certified translation of the following document in this cause be utilized to comply with Section 20 of the **Official Languages Act.**

Je requiers que la traduction ci-annexée du document suivant telle que certifiée par le traducteur soit utilisée pour satisfaire aux exigences de l'article 20 de la **Loi sur les langues officielles.**

Reasons for Order

July 30, 1997

DATE

Richard Morneau

Prothonotary Protonotaire

Form T-4M

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