

Federal Court



Cour fédérale

**Date: 20191001**

**Docket: IMM-2967-19**

**Citation: 2019 FC 1247**

**St. John's, Newfoundland and Labrador, October 1, 2019**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**ATTILA KISS AND ANDREA KISS**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] Mr. Attila Kiss and Ms. Andrea Kiss (collectively “the Applicants”) seek leave and judicial review of a decision made by a Canada Border Services Agency Liaison Officer on or about April 2, 2019, cancelling their Electronic Travel Authorization to Canada. In their Notice of Application for leave and judicial review, the Applicants seek the following relief:

- (a) an Order setting aside the Officer's decision, and restoring the electronic travel authorization of the Applicants to Canada;
- (b) an Order declaring that the Officer acted unlawfully; and
- (c) such further and and [sic] other relief as the Applicants may advise and this Honourable Court may permit.

[2] The Notice of Application for leave and judicial review was issued on May 10, 2019. A Notice of Appearance was filed by the Minister of Citizenship and Immigration (the "Respondent") on May 16, 2019.

[3] By a Notice of Motion in writing, filed on July 11, 2019, pursuant to the *Federal Courts Rules*, SOR/98-106 (the "Rules"), the Respondent seeks the following relief:

- 1. Setting aside the decision dated April 2, 2019;
- 2. Remitting the matter back to a different decision maker to assess whether the Applicants are admissible to Canada and eligible to hold electronic travel authorizations;
- 3. Allowing the Applicants to submit updated documentation in support of their application;
- 4. Without costs to either party.

[4] Among other things, the Respondent sets out in his Notice of Motion the concession that the decision under review was made in breach of procedural fairness.

[5] In support of his Notice of Motion, the Respondent filed the affidavit of Ms. Lindsay Lowden, a legal assistant employed with the Atlantic Regional Office of the Department of Justice, the Office of Counsel for the Respondent.

[6] By letter dated July 17, 2019, the Applicants asked that their proceeding proceed as a specially managed proceeding. They also indicated that they intend to oppose the Notice of Motion on the grounds that the remedies sought by the Respondent “substantially differ from those sought in the Notice of Application.”

[7] The Applicants submit that there is a live issue between the parties. In their letter, the Applicants also questioned the propriety of the affidavit filed by the Respondent in support of his Motion, that is the affidavit of Ms. Lowden.

[8] The Respondent submitted a letter dated July 19, 2019 in response to the Applicants’ letter of July 17.

[9] The Respondent notes that the Applicants do not consent to his motion. He disagrees with the Applicants’ request for case management and with their objections to the affidavit of Ms. Lowden.

[10] The Applicants replied to the Respondent’s letter by their own letter dated July 19, 2019.

[11] The Applicants oppose the Respondent’s motion for judgement, principally on the ground that the relief proposed does not correspond to the relief they seek in their Notice of Application for leave and judicial review.

[12] I agree with the submissions of the Applicants.

[13] The relief offered by the Respondent is not the same as the relief they set out in their Notice of Application for leave and judicial review. The Applicants are entitled to oppose the Respondent's Notice of Motion and pursue their Application for leave and judicial review.

[14] In the result, the Respondent's motion is dismissed. The Applicants shall perfect their Application for Leave in accordance with the applicable rules, that is subsections 10(1) and 10(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

[15] It is not necessary for me to address the other issues raised by the Applicants in their response to the Respondent's Notice of Motion.

[16] There are no special reasons to award costs and there will be no order in that regard.

**ORDER in IMM-2697-19**

**THIS COURT ORDERS** that the motion is dismissed, no order as to costs.

"E. Heneghan"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2967-19

**STYLE OF CAUSE:** ATTILA KISS AND ANDREA KISS v. MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND  
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** HENEGHAN J.

**DATED:** OCTOBER 1, 2019

**WRITTEN REPRESENTATIONS BY:**

Attila Kiss  
Andrea Kiss

FOR THE APPLICANTS  
(ON THEIR OWN BEHALF)

Mary Anne MacDonald

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Halifax, Nova Scotia

FOR THE RESPONDENT