

Federal Court



Cour fédérale

Date: 20201109

Docket: IMM-1561-20

Citation: 2020 FC 1042

Ottawa, Ontario, November 9, 2020

PRESENT: Madam Justice Pallotta

BETWEEN:

**RENE STOJKA, TIFFANY STOJKOVA,
ENRICO STOJKA AND SISSI STOJKOVA**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The parties have made an informal motion for judgment on consent. They ask the Court to grant the application for judicial review, set aside a February 18, 2020 decision of the Refugee Protection Division (RPD) that terminated the applicants' refugee claims based on ineligibility (Decision), and remit the matter to the RPD for re-determination.

[2] The record before me provides insufficient information to satisfy me that I should grant the requested relief, and I must dismiss the motion.

[3] Initially the parties filed two documents—a Notice of Settlement and Request for Judgment on Consent (Request) and a draft order. The Request states that the parties agreed to settle the judicial review proceeding for the reason that the RPD “based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it”. The Request did not identify the errors in the Decision under review, even though the Court’s sample form of Notice of Settlement and Request for Judgment on Consent instructs the parties to do so (see Annex C to the Court’s Notice to the Profession titled “Pilot Project (Toronto Local Office Only): Settlement Discussions in Proceedings Under the Immigration and Refugee Protection Act”). The draft order did not provide details regarding the error, either. It merely states that “the tribunal erred in law”.

[4] As a result, I issued a direction stating that the parties were seeking judgment based solely on their consent. The direction stated that the parties had not filed evidence or written submissions identifying the agreed-upon errors with reference to the reasons, and as such, there was no basis to satisfy the Court that the RPD erred. The direction referred to some of the jurisprudence establishing that the Court, acting judicially and not as a rubber stamp, must be satisfied on the facts and the law that it should grant judgment on consent in an application for judicial review: *Garshowitz v Canada (Attorney General)*, 2017 FCA 251 at paras. 17-19; *Advantage Products Inc. v Excalibre Oil Tools Ltd.*, 2019 FCA 22; *Johnson v Canada (MCI)*, 2005 FC 1262 at paras. 14-18. The parties were asked to provide further evidence and/or submissions to support the consent judgment requested, in accordance with the jurisprudence.

[5] In response to the direction, the parties filed a letter stating the parties agree that “the Refugee Protection Division erred in law when it terminated the Applicants’ refugee claims based on a finding of ineligibility made by the [Canada Border Services Agency (CBSA)], which was subsequently determined to be erroneous, and the litigation of which has been settled privately between the parties”.

[6] I am not satisfied that the letter provides sufficient, additional information to support the order that the Court is asked to make. The parties have not identified the agreed-upon errors with reference to the reasons, and they did not provide a copy of the Decision. The parties have not explained the CBSA’s finding of ineligibility or indicated who determined that finding to be wrong, and why. Also, the parties have not explained why the Decision should be set aside as a result of a subsequent determination that the CBSA erred. Even taking the parties’ submissions as agreed facts, the motion materials do not provide sufficient information to satisfy me that the RPD erred, and that the error constitutes a sufficiently serious shortcoming to justify setting the Decision aside: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100.

[7] Furthermore, I have reviewed the court record and did not find any evidence to satisfy me that the Decision should be set aside.

[8] For these reasons, the motion for consent judgment is dismissed. This order is made without prejudice to the parties’ ability to file a new motion seeking the same relief, if so advised.

ORDER in IMM-1561-20

THIS COURT ORDERS that:

1. The parties' motion for judgment on consent is dismissed.
2. The parties are not precluded from bringing a further motion for judgment.
3. There is no order as to costs.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1561-20

STYLE OF CAUSE: RENE STOJKA, TIFFANY STOJKOVA, ENRICO STOJKA AND SISSI STOJKOVA v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MOTION IN WRITING CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS: PALLOTTA J.

DATED: NOVEMBER 9, 2020

APPEARANCES:

Anthony Navaneelan FOR THE APPLICANTS

Alksandra Lipska FOR THE RESPONDENT

SOLICITORS OF RECORD:

Refugee Law Office FOR THE APPLICANTS
Legal Aid Ontario
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario