IMM-2750-97

OTTAWA, ONTARIO, FRIDAY, AUGUST 8, 1997

PRESENT: MR. JUSTICE RICHARD

BETWEEN:

LÉON MUGESERA, GEMMA UWAMARIYA,

YRENÉE RUTEMA, YVES RUSI, CARMEN NONO,

MIREILLE URAMURI and MARIE-GRACE HOHO,

Applicants,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent

O R D E R

For the reasons given on this date, the application for a stay of proceedings is dismissed.

J.D. RICHARD

Judge

Certified true translation

C. Delon, LL.L.

IMM-2750-97

BETWEEN:

LÉON MUGESERA, GEMMA UWAMARIYA,

YRENÉE RUTEMA, YVES RUSI, CARMEN NONO,

MIREILLE URAMURI and MARIE-GRACE HOHO,

Applicants,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent

REASONS FOR ORDER

RICHARD J.

On August 5, 1997, the applicants filed an urgent motion for a stay of proceedings before the Immigration and Refugee Board, Appeal Division (hereinafter the "Appeal Division") under section 18.2 of the *Federal Court Act*. By consent, this motion was heard by telephone conference on August 8, 1997.

On July 3, 1997, the applicants filed an application for leave under section 82.1 of the *Immigration Act* in respect of a decision of the Appeal Division dated June 19, 1997, dismissing an objection made by the applicants to the expert evidence that the respondent intended to submit at the hearing before the Appeal Division that had been set down for the weeks of August 18 and 25, 1997. On June 19, 1997, the Appeal Division had given the respondent leave to file expert evidence in rebuttal by July 16, 1997, at the latest, and ultimately to call the experts in question to testify. The Appeal Division also gave the applicants the option of recalling their experts after they had reviewed the rebuttal evidence. The applicants filed an application for judicial review of the decision of June 19, 1997, and asked the Appeal Division to stay the proceedings until the Federal Court had disposed of the application for judicial review. On July 30, 1997, the Appeal Division dismissed the application for a stay of proceedings, asserting that the balance of convenience plainly favoured leaving the hearing set down for the weeks beginning on August 18 and 25, 1997, and further that there would be no serious or irreparable harm to the applicants because they would be able to recall their experts as the Appeal Division had decided on June 19, 1997.

On August 4, 1997, the parties were directed to participate in a telephone conference with the Appeal Division.

In the course of that telephone conference, the Appeal Division set dates for hearing the respondent's expert witnesses, for re-examination of the applicants' experts, if necessary, and for hearing the applicants' other witnesses.

It was agreed in the course of that telephone conference that the respondent would call two of his witnesses during the weeks of August 18 and 25, 1997, and that the applicants could recall their expert witnesses and one witness as to the facts during that period.

It was also agreed that one of the respondent's expert witnesses would be heard at the end of September 1997.

On August 5, 1997, counsel and the Appeal Division agreed that the respondent's last expert witness would be heard on November 10, 1997, and that the applicants would testify in the days following that testimony.

The respondent has made travel arrangements for his experts, who are to be heard during the weeks of August 18 and 25, 1997. The airline tickets have been issued and the hotel is reserved.

There is no challenge to the jurisdiction of the tribunal or the constitutionality of the law. The issue is an interlocutory decision concerning the filing of expert reports. In *Szczecka*,[1] Létourneau J. stated that unless there are special circumstances there should not be any appeal or immediate judicial review of an interlocutory judgement, in order to avoid breaking up cases and the resulting delays and expenses, which interfere with the sound administration of justice and ultimately bring it into disrepute.

The decision in *Metropolitan Stores*[2] sets out a three-stage analysis that the courts must follow when they are considering an application for a stay of proceedings. First, a preliminary assessment of the merits of the case must establish that there is a serious question to be tried. Second, it must be determined whether the applicant would suffer irreparable harm if the application were dismissed. Third, it must be determined which of the two parties would suffer the greater harm from the grant or refusal of relief, pending a decision on the merits. On the issue of irreparable harm, the only question is whether denying relief could be so detrimental to the applicant's interests that the harm could not be remedied.

There are numerous factors to examine in determining the balance of convenience, and they vary from case to case. Each case turns on its facts. It is at this stage that the public interest must be taken into account.

Counsel for the applicants argued that there is an appearance of right since the respondent did not comply with Rule 19 of the Appeal Division rules of procedure which provides that a party who intends to call an expert witness shall, at least 20 days before the date set for the hearing, serve on the other party a report signed by the expert witness.

Paragraph 69.4(3)(*c*) of the *Immigration Act* provides that the Appeal Division may, during a hearing, receive such additional evidence as it may consider credible or trustworthy and necessary for dealing with the subject-matter before it. Sections 38 and 40 of the *Appeal Division Rules* provide that the Appeal Division may shorten the time limit and waive a requirement of the Rules.

The respondent notified the applicants and the Appeal Division at the preliminary conference of its intention of filing expert reports and requested dates for its witnesses. The reports were filed on July 16, 1997, and the experts are scheduled to be examined beginning in the week of August 18, 1997.

Even if I agree, for the purposes of this application and so as not to prejudge the application for leave, that there is a serious question to be tried, the applicants have not satisfied me that they would suffer irreparable harm if the application were dismissed.

The harm must be plain, and not speculative. In the reasons stated in support of the application for a stay, the applicants assert that they would have to retain the services of their experts to prepare for cross-examination of the respondent's expert witnesses, and that this would entail enormous expenses that would not necessarily be covered by legal aid. Moreover, the applicants would have to recall their expert witnesses in rebuttal, and this would entail additional costs and days of hearing.

This harm is monetary, and it is highly likely that these expenses would have had to be incurred just the same even if the experts had been heard earlier. The applicants also contend that their experts have been "ambushed". However, the Appeal Division will allow them to recall their witnesses after the respondent's experts have testified.

The hearing of the applicants' appeal began on May 12, 1997. This is an interlocutory application, and as Létourneau J. pointed out, when a final decision has been made on the merits the applicants will be able to apply for a remedy by bringing an application for judicial review. I also believe that it is in the public interest that the appeal in the Appeal Division be heard as soon as is practicable.

For these reasons, the application for a stay of proceedings is dismissed.

J.D. RICHARD

Judge

Ottawa, Ontario

August 8, 1997

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: IMM-2750-97

STYLE OF CAUSE: LÉON MUGESERA, GEMMA UWAMARIYA,

YRENÉE RUTEMA, YVES RUSI, CARMEN NONO,

MIREILLE URAMURI and MARIE-GRACE HOHO v.

MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, MONTRÉAL AND QUÉBEC

VIA TELEPHONE CONFERENCE

DATE OF HEARING: AUGUST 8, 1997

REASONS FOR ORDER OF RICHARD J.

DATED: AUGUST 8, 1997

APPEARANCES:

GUY BERTRAND AND	FOR THE APPLICANTS
SUZANNE GAGNÉ	
LOUISE-MARIE COURTEMANCHE	FOR THE RESPONDENT

SOLICITORS OF RECORD:

GUY BERTRAND ET ASSOCIÉS	FOR THE APPLICANTS
GEORGE THOMSON	FOR THE RESPONDENT
DEPUTY ATTORNEY GENERAL OF CANADA	

---

[1] (1995), 170 N.R. 59 (F.C.A.).

[2] *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110.