Federal Court Cour fédérale

Date: 20240412

Docket: IMM-6150-24

Citation: 2024 FC 578

Vancouver, British Columbia, April 12, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

KHASHAYAR LAK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Overview

[1] On November 20, 2023, the Applicant submitted an application for a Temporary Resident Visa [TRV] or, in the alternative, a Temporary Resident Permit [TRP] to visit his critically ill father residing in Canada. To date, a decision has not been rendered.

[2] On April 8, 2024, the Applicant filed an application for leave and judicial review [ALJR] seeking a remedy of *mandamus* to compel the Respondent to make a decision on the Applicant's application.

[3] The Applicant brings a motion to the Court pursuant to Rule 35 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] requesting a Special Sitting of the Court on April 11, 2024 and seeking the following relief:

> 1. The Court should abridge the time period for the Respondent's response from 30 days under Rule 11(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* to 5 days;
>
> 2. The Court should abridge the time period for the Applicant's Reply Memorandum, if any, from 10 days under Rule 13 to 1 day;
>
> 3. If the Applicant is successful on this Motion, the Court should direct the registry to forward a copy of the decision of this Motion to the leave judge so they will be aware of the urgent nature of this Application.

[4] The motion was supported by affidavits from the Applicant and his mother. Also contained in the motion record was an affidavit of the Applicant's father in support of the Applicant's TRV and TRP application.

[5] The Applicant's Rule 35 letter requested that the motion be determined either at a Special Sitting or without personal appearance and based on written representations. On April 10, 2024, after receiving the Respondent's correspondence and the Applicant's reply materials, the Court directed that the motion would be determined based on the correspondence of the parties.

[6] For the reasons below, I am not satisfied that it is in the interests of justice to grant the requested relief. The motion for abridgements of the time periods set forth in the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Immigration Rules*] is dismissed.

II. Background

[7] Subsequent to the application for a TRP and TRV, the Applicant's father underwent surgery on March 12, 2024 and is suffering from health complications from the surgery. The Applicant wrote to the consulate in Ankara, Turkey on March 25, 2024 requesting that the application be expedited. The Applicant's father was previously in a coma, recovered from the coma but as of April 5, 2024 is in another coma. The Applicant's mother is experiencing anxiety and stress as a result of her husband's medical condition and would like the Applicant's support during this time.

III. Issues

[8] The main issue for determination is whether the motion for abridgement of time for the Respondent's response and for the Applicant's Reply, if any, under Rule 8(1) of the *Federal Courts Rules* should be granted. In the Applicant's Reply Memorandum on this motion, the Applicant raised another issue: whether an Order for costs should be granted.

IV. Analysis

A. *The Principles Applicable to Abridgements*

[9] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] already provides an expeditious regime for applications that sets out tight timelines (*Ezimokhai v Canada (Citizenship and Immigration)*, 2022 FC 1452 at paras 14-15 [*Ezimokhai*]).

[10] This Court has also determined that abridgements of time pursuant to Rule 8 require exceptional circumstances (*Ezimokhai* at para 13, citing *St-Cyr v Canada (Attorney General)*, 2021 FC 107 at paras 16-18 [*St-Cyr*]). According to *St-Cyr*:

> [16] Section 8 of the Rules authorizes the Court to "extend or abridge a period provided by these Rules or fixed by an order". In exercising its discretion to do so, the Court will consider a number of factors which have been summarized as follows:
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> > a) Whether the proceeding is really urgent or does the moving party simply prefer the matter be expedited;
> >
> > b) Whether prejudice will ensue to the responding party if the matter is expedited;
> >
> > c) Whether the matter will be moot if it is not expedited; and
> >
> > d) Whether expediting the matter will prejudice other litigants by jumping the queue
> >
> > (See *May v CBC/Radio Canada*, 2011 FCA 130 at paras 12-13; *Alani v Canada (Prime Minister)*, 2015 FC 859 at para 14 [*Alani*]; *Conacher v Canada (Prime Minister)*, 2008 FC 1119 at para 16 [*Conacher*]; *Canadian Wheat Board v Canada (Attorney General)*, 2007 FC 39 at para 13 [*CWB*]).
>
> [17] After reviewing the cases in which reasons were provided on motions to expedite proceedings, the Honourable Mr. Justice

> Sébastien Grammond found in *McCulloch v Canada*, 2020 CF 565 [*McCulloch*] that the discretion to expedite the hearing of a case was exercised according to two (2) main sets of considerations: (1) whether an expedited hearing is necessary to ensure the effectiveness of the remedy sought; and (2) whether it can be accomplished through a fair process (*McCulloch* at para 12).
>
> [18] Notwithstanding how the relevant factors are framed, the burden lies with the party seeking to vary the timelines provided in the Rules (*Alani* at para 15; *CWB* at para 14; *Conacher* at para 18).

B. *Analysis*

[11] The Applicant is not seeking to expedite the determination of the ALJR, rather only that the time period for the Respondent's response and the Applicant's Reply Memorandum, if any, be abridged.

[12] As stated, the Applicant points to his father's health conditions as the reasons for the urgency and for abridging the timeframes set out in the *Immigration Rules*. The Respondent opposes both the request for an urgent hearing and the relief sought by the Applicant. In short, the Respondent submits that the Applicant has not demonstrated why the Court should make an exceptional exercise of discretion to depart from the timelines set out in the *Immigration Rules*.

[13] Applying the applicable legal principles to the facts before the Court, I am not satisfied that the Applicant has met its burden of demonstrating that this is an exceptional situation requiring this extraordinary relief.

[14] First, I do acknowledge that there is the possibility of some harm occurring to the Applicant and his family due to the father's medical condition if the ALJR is not considered in a

timely fashion. The Respondent submits that while this matter is personally urgent to him and his family, this is not a basis to set aside the ordinary timelines established in the *Immigration Rules*. While no one can predict what will happen to the Applicant's father, I acknowledge that this is an urgent matter for the Applicant. The March 25, 2024 correspondence from the doctor of the Applicant's father sets out that the Applicant's father was in an intensive care unit after suffering liver failure and that the prognosis was unknown. I also acknowledge the affidavit of the Applicant's mother sets out additional context for the family's circumstances.

[15] Second, in my view, the Respondent will suffer from prejudice by being required to provide a response in an abbreviated time frame rather than in the normal course of the already strict timelines in the *IRPA* and *Immigration Rules*. The Respondent submits that the Applicant's motion is inherently prejudicial, as the Respondent's time to respond will be reduced from 30 days to 5 days, despite that the Applicant's Application Record lacks evidence of the TRV and TRP application so the Respondent will not have sufficient time to prepare their record and submissions. In contrast, the Applicant submits that the Respondent will not be prejudiced as the law of *mandamus* is settled so this is not a complex application, as well as that a decision on a TRP is often made on the same day as when a person makes a TRP application at a port of entry. I am persuaded by the Respondent's submissions.

[16] It is well known that there are a significant number of applications to be determined in this Court (*Ezimokhai* at para 21). This undoubtedly places pressure on all counsel involved to meet the already stringent timelines for an ALJR to be ready for determination. I do note, however, that there should be less time required for the Respondent to provide the certified

tribunal record since it is clear that no decision has been rendered, thus the request for *mandamus*.

[17] Third, the Applicant has not demonstrated that the matter or the underlying application for a TRP and TRV will become moot if the ALJR is not expedited. The Applicant's submissions only state, "there is a high chance that the matter will be moot if not expedited since the Applicant's father's health is critical, and considering recent events, the Applicant reasonably believes his father will not live long". The Applicant's motion record discloses November 4, 2023 submissions in favour of the TRP and TRV application briefly setting out the circumstances involving his father, however, the Applicant has not provided a copy of this application to provide any context.

[18] Fourth, as stated, there are an incredible number of applications before the Court and expediting this matter will inevitably prejudice other litigants seeking to have their matters determined by the Court. The Respondent acknowledges this high volume of applications in its submissions, but the Applicant submits that abridging the time period for the Respondent's response materials will not prejudice other litigants in and of itself. I am persuaded by the Respondent's submissions and by this Court's observations.

[19] The Applicant has relied on *Tiamiyu v Canada (Citizenship and Immigration)*, 2024 FC 59 [*Tiamiyu*] for this motion, as the Court stated that while it does not have jurisdiction to expedite an ALJR because it cannot compel the judge to decide whether to grant leave within a specific time, it can abridge the time period provided by the *Immigration Rules*. There, the Court

considered that in *Ezimokhai*, both the applicant and respondent had filed records. That was not the case in *Tiamiyu* or in this matter. In *Tiamiyu*, like here, the only time period for abridgement was the filing of the respondent's affidavits and memorandum of argument and the Court was not satisfied that the 30 day time frame for the respondent's record should be abridged (*Tiamiyu* at paras 7-8). It made this finding adopting the applicable test set out above, namely that expediting the timelines would be akin to jumping the queue (at paras 9-10). That would also be the result in this matter.

[20] As stated, the timelines may be expedited at the certified tribunal record stage, as there still has been no decision. It may be that there will be a decision made in the meantime, whether favourable or not to the Applicant.

[21] Jurisprudence has also considered that abridgments of time can be made once leave has been granted if parties are to agree to an alternate timeline (*Ezimokhai* at para 10). While the ALJR was only filed several days ago on April 8, 2024, there is no indication that there has been an attempt to discuss expedited timelines.

V. Costs

[22] The Applicant, in his Reply dated April 10, 2024, seeks an order of costs against the Respondent. The Applicant submits that counsel should not bring meritless applications or oppose an application without merit due to the unprecedented backlog of immigration matters and crisis due to a lack of judges, as well as should not make submissions based on generalities that do not assist the Court, but that the Respondent has done both here.

[23] Rule 22 of the *Immigration Rules* provides that, unless the Court for special reasons so orders, no costs shall be awarded in respect of an application for leave.

[24] I decline to award costs on this motion. If leave is granted and if the Applicant is ultimately successful on the merits at a hearing, then he may consider seeking an order at that time.

VI. Conclusion

[25] For all of the above reasons, I am dismissing the Applicant's motion for an abridgement of time. There will be no order for costs.

ORDER in IMM-6150-24

THIS COURT ORDERS that:

1. The Applicant’s motion is dismissed.

2. There is no order for costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6150-24
STYLE OF CAUSE:	KHASHAYAR LAK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	FAVEL J.
DATED:	APRIL 12, 2024

APPEARANCES:

Cyrus Haghighi	FOR THE APPLICANT
Helen Park	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Atlas Law Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT