Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

IMM-4187-96

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BETWEEN:

MINISTER OF CITIZENSHIP
AND IMMIGRATION OF CANADA,

Applicant,

AND

LUTH BALANE-DEJARDIN,

Respondent.

REASONS FOR ORDER

RICHARD MORNEAU,
PROTHONOTARY:

This is an application by the respondent asking the Court to dismiss the application for leave and judicial review filed by the applicant on November 14, 1996 ("the Minister's application"). It is this application which the respondent seeks to have struck out.

Facts

As I understand the documents included in the Court record to date, the facts required to understand the situation are as follows.

On April 17, 1996 a visa officer at the Canadian Embassy in Paris denied the respondent's application for sponsored landing for two individuals whom the respondent alleged were her biological children, namely Clark and Sherwin Balane-Dejardin. The reason for the denial was apparently the fact that there was no acceptable evidence of maternal filiation.

The respondent filed an appeal from this decision to the Appeals Branch of the Immigration and Refugee Board ("the IRB") which, on November 1, 1996, reversed the decision and allowed the respondent's appeal. The reasons for the decision were not issued until later and were received by the applicant Minister on December 9, 1996.

In the meantime, as mentioned earlier, the Minister filed his application on November 14, 1996. This is the application against which the respondent's application to strike is directed.

Analysis

At the hearing of the application the respondent's husband appeared as her advisor and one of the sureties for the children Clark and Sherwin. He stated in an affidavit that he represented the respondent and the said children at all the prior stages leading up to the decision which was the subject of the Minister's application. As such, he sought to represent the respondent for the purposes of the instant application. It may be noted in passing that there was no explanation given to the Court as to why the respondent could not make her representations herself.

The Court does not doubt that the respondent's husband performed this function effectively. However, as I noted at the start of the hearing, by the very wording of Rule 300(1) this Court does not enjoy the same latitude as the IRB Appeals Division, for example, when the time comes to rule on one person's right to represent another. Rule 300(1) reads as follows:

> 300. (1) An individual may act in person or be represented by a solicitor in any proceeding in the Court.

It appears that the present situation cannot fall outside this rule since in another context in which a husband sought to represent his wife in this Court the Federal Court of Appeal pointed to the clear wording of Rule 300(1) and indicated that a husband ". . . has no rights whether

inherent or otherwise to represent his wife in the proceedings" *(Giagnocavo v. Minister of National Revenue* (1995), 189 N.R. 225).

Further, probably so he could represent his wife, her husband filed a [TRANSLATION] "Notice of Appearance" in which he indicated he wished to intervene in the instant case.

No purpose would be served in allowing this application to intervene since the fact is that even as an intervener the respondent's husband would have no more right to represent her, as he is not a solicitor. If Mr. Dejardin still considers that he must be a party to the Minister's application it seems to the Court, based on its understanding of the case, that he would be more qualified as a respondent, if he were to make an application, since he appears to have been heard by the IRB Appeals Division and probably has interests opposed to those of the Minister. However, the Court does not express any final opinion on this point, which is not strictly before it.

Mr. Dejardin was permitted to address the Court on the respondent's behalf at the hearing without prejudice, and the Court must now inform him that it cannot as such accept the representations made by him to the Court because he cannot be authorized to represent his wife.

Additionally, even if I were to admit Mr. Dejardin's representations I consider I would be in no better position to allow the application to strike sought by the respondent.

The respondent is objecting to the fact that the Minister's application would have the effect of delaying the arrival of her two sons in Canada. The said application would suspend reference of the respondent's file to the visa officer so long as the case is under consideration. This seems to be what would happen. Such a stay is provided for by s. 77(5) and (6) of the *Immigration Act*, R.S.C. 1985, c. I-2 ("the Act"). Those subsections read as follows:

> 77. (5) Subject to subsection (6), where the Minister has been notified by the Appeal Division that an appeal has been allowed pursuant to subsection (4), the Minister shall cause the

> review of the application to be resumed by an immigration officer or a visa officer, as the case may be, and the application shall be approved where it is determined that the person who sponsored the application and the member of the family class meet the requirements of this Act and the regulations, other than those requirements on which the decision of the Appeal Division has been given.
>
> (6) Where the Minister has been notified by the Appeal Division that an appeal has been allowed pursuant to subsection (4) and the Minister makes an application for leave to commence an application for judicial review in respect of that decision, the application of subsection (5) shall be stayed until the application is disposed of and, where leave is granted, until the judicial review proceeding has been heard and disposed of and all appeals therefrom have been heard and disposed of or the time normally limited for filing such appeals has elapsed.

The respondent is not challenging the actual wording of these provisions.

Further, I am not persuaded that even if the Minister's application were not there the respondent's children would be sent to Canada more quickly. It would appear that the Act and its implementing Regulations impose requirements other than mere proof of filiation. In this connection, the respondent's application does not in my opinion provide clear evidence that all the requirements have been met and that the Minister's application is the only obstacle.

What is more - and the following problem was also discussed in Court before the respondent and her husband - the applicant Minister has, according to the deadline mentioned in Rules 10 and 21 of the Federal Court Immigration Rules, 1993 (a deadline which may be reduced on application) until January 27, 1997 to file and serve his record on the applicant under Rule 10. It is thus at this time much too early for the Court to consider striking out this application on the basis most favourable to the respondent that it is [TRANSLATION] ". . . frivolous, wrongful and brings the administration of justice into disrepute" (Notice of Application, paragraph 13).

This application by the respondent to strike will accordingly be dismissed.

Richard Morneau
Prothonotary

Montréal, Quebec,
December 19, 1996.

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA

Court No. IMM-4187-96

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION OF CANADA,

Applicant,

AND

LUTH BALANE-DEJARDIN,

Respondent.

REASONS FOR ORDER

FEDERAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE No.:	IMM-4187-96
STYLE OF CAUSE:	MINISTER OF CITIZENSHIP AND IMMIGRATION OF CANADA, Applicant, AND LUTH BALANE-DEJARDIN, Respondent.
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	December 16, 1996
REASONS FOR ORDER BY:	Richard Morneau, prothonotary
DATE OF REASONS FOR ORDER:	December 19, 1996

APPEARANCES:

Michel Synnott	for the applicant
Émile Dejardin	for the respondent

SOLICITOR OF RECORD:

George Thomson Deputy Attorney General of Canada Federal Department of Justice Montréal, Quebec	for the applicant

MAY 2 1 1997

THE FEDERAL COURT OF CANADA

LA COUR FÉDÉRALE DU CANADA

Court No.: IMM-4187-96

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

May 1, 1997

DATE

Richard Morneau

Prothonotary Protonotaire

Form T-4M

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