

Date: 20090915

Docket: IMM-4041-08

Citation: 2009 FC 917

Toronto, Ontario, September 15, 2009

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**CHHEANG KAING HUOT, CHHENG KUN HY, CHANNY HUOT,
CHANVATHANA HUOT AND SAOSEKHARITH HUOT**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review and for a writ of mandamus pursuant to section 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, in relation to a delay in processing of a family sponsorship application submitted on January 26, 2004 to the visa section at the High Commission of Canada in Singapore.

[2] At the hearing, counsel advised the Court that passports and visas had been issued to the applicants. Although the documents had not as yet been received, the parties agreed that the

application is effectively moot. The only issue argued was whether costs should be awarded against the respondent for unreasonable delay in processing the applications.

[3] Costs may be awarded against any party under Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/2002-232 where the Court, for special reasons, so orders. The applicants contend that the circumstances in this case, which included repeated requests for information and prolonged delays, constitute special reasons.

[4] The respondent submits that delay, in itself, is not sufficient to support a finding of special reasons absent evidence of bad faith: *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 54, [2003] F.C.J. No. 69 at paragraph 14. The respondent argues that bad faith requires more than simple negligence in the fulfilment of a duty. It requires the conscious doing of a wrong: *Guccione v. Alberta Veterinary Medical Association*, 207 A.R. 331, 74 A.C.W.S. (3d) 127, [1997] A.J. No. 918 (Alta. Q.B.) at paragraph 7.

[5] In my view, Rule 22 does not apply solely to cases in which there is a finding of bad faith on the part of the Minister or his servants. In *Johnson v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262, [2005] F.C.J. No. 1523 at paragraph 26, Justice Eleanor Dawson held that special reasons may also be found if one party has unnecessarily or unreasonably prolonged proceedings, or acted in a manner that may be characterized as unfair, oppressive or improper. See also *Ndererehe v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 880, [2007] F.C.J. No. 1144 where I considered it appropriate to impose costs against the Minister for unreasonable delay.

[6] In this instance, there were a number of questions about the identity of the sponsored candidates and their ages which had to be resolved before a decision could be made on the application. In addition, information previously submitted by the principal applicant was inaccurate. A review of the computer assisted immigration processing system notes in the certified record does not support a finding that the delays encountered were unreasonable in the sense that they were unfair, oppressive or improper. Nor is there any evidence of bad faith. Accordingly, I make no determination that there are special reasons to award costs against the respondent.

[7] The application is granted. As the principal remedy sought has been achieved, it is not necessary to order that a decision be rendered by the Singapore visa office. The applicants may seek a writ of mandamus should the visas not be delivered as expected within a reasonable time. No costs are awarded.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that:

1. The application is granted.
2. No costs are awarded.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4041-08

STYLE OF CAUSE: CHHEANG KAING HUOT, CHHENG KUN HY, HANNY HUOT, CHANVATHANA HUOT AND SAOSEKHARITH HUOT v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 15, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MOSLEY J.

DATED: SEPTEMBER 15, 2009

APPEARANCES:

Nancy Lam FOR THE APPLICANTS

Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nancy Lam FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General