Federal Court  Cour fédérale

Date: 20100407

Docket: IMM-510-09

Citation: 2010 FC 369

Ottawa, Ontario, April 7, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SELMA MAEMENO RWAMIHETO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion dated February 26, 2010 in writing (filed March 15, 2010) to set aside the Order of Justice Anne Mactavish, dated May 22, 2009, which dismissed the Applicant's Application for Leave and for Judicial Review due to the failure of the Applicant to file an Application Record. Should the motion be granted, the Applicant requests an extension of time to serve and file the Application Record.

[2] The Order of Justice Mactavish stands as the Court is in full agreement with the written arguments of the Respondent.

[3] In *Bergman v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1082, 151 A.C.W.S. (3d) 904, this Court stated that a delay of two months is a prime reason for dismissing a motion to set aside:

> [11] In the very similar case of *Vinogradov v. Canada (Minister of Employment and Immigration)*, 77 F.T.R. 296; [1994] F.C.J. No. 647 (QL), Justice Andrew MacKay was asked to reconsider his earlier dismissal of a leave application. There, the delay in bringing the matter back before the Court was only a matter of days and not, as in this case, months. Justice MacKay dismissed the motion to reconsider and held that such relief could only be granted "in very special circumstances" (see para. 2) and only where the proven facts are sufficient to come within the applicable rules…

(Reference is also made to *Boubarak v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1239, 246 F.T.R. 234).

[4] The Applicant has not demonstrated any justification for an extension of time. In *Canada (Attorney General) v. Hennelly* (1999), 244 N.R. 399, 89 A.C.W.S. (3d) 376 (F.C.A.), the Federal Court of Appeal has drawn the test by which to determine whether a motion for an extension of time should be granted:

a. a continuing intention to pursue the application;

b. that the application has some merit;

c. that no prejudice arises from the delay; and

d. that a reasonable explanation for the delay exists.

[5] In addition, it has been determined by the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v. Varga*, 2006 FCA 394, [2007] 4 F.C.R. 3, that:

> [20] For these reasons, I would allow the Minister's appeal, set aside the decision of the Applications Judge, restore the decision of the PRRA officer, and dismiss the respondents' application for judicial review. I would answer the certified question as follows:
>
> > A PRRA officer has no obligation to consider, in the context of the PRRA, the interests of a Canadian-born child when assessing the risks involved in removing at least one of the parents of that child.

[6] For all of the above reasons, the motion to set aside the Order dismissing the Application for Leave and for Judicial Review is dismissed.

ORDER

THIS COURT ORDERS that the motion to set aside the Order dismissing the Application for Leave and for Judicial Review be dismissed.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-510-09
STYLE OF CAUSE:	SELMA MAEMENO RWAMIHETO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Ottawa, Ontario (in writing)
DATE OF HEARING:	April 7, 2010 (in writing)
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	April 7, 2010

APPEARANCES:

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