

Federal Court



Cour fédérale

**Date: 20111020**

**Docket: IMM-1019-11**

**Citation: 2011 FC 1193**

**Ottawa, Ontario, October 20, 2011**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**MARCIA KING**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**SUPPLEMENTARY REASONS FOR JUDGMENT AND JUDGMENT**

[1] In my decision dated September 28, 2011, I requested submissions from the parties with respect to the issue of costs. Those submissions have been received and considered.

[2] I am mindful that an award of costs in an immigration proceeding is exceptional and, indeed, costs are rarely sought and more rarely granted. That is because Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, provides that such costs are only warranted where “special reasons” are present. In *Johnson v Canada (MCI)*, 2005 FC 1262 at

para 26, [2005] F.C.J. No. 1523 (QL), Justice Eleanor Dawson observed that special reasons may be present where a party “has unnecessarily or unreasonably prolonged proceedings” or has acted in a way that is “unfair, oppressive, improper or actuated by bad faith”. This is not an exhaustive list of grounds but it is indicative of the high threshold that is required for an award of costs in a proceeding like this one.

[3] Counsel for Ms. King argues that there are special reasons for an award of solicitor-client costs in this proceeding. Counsel for the Respondent takes the opposite position and says that no award of costs is warranted.

[4] In the context of this proceeding, I am satisfied that an award of costs is justified but not in an amount close to that claimed on behalf of Ms. King.

[5] The material circumstance that justifies a modest award of costs in this case is the failure by the Board to produce a complete copy of its record. This was not an insignificant omission and it was only on the prompting of the Court that the Board’s underlying decision was produced. The Board has provided no explanation for this failure but there is nothing to indicate that it was caused by anything more than carelessness. Nevertheless, this failure did prolong the proceeding and required the Applicant to respond to the issue after it came to light.

[6] It is also somewhat surprising that the Respondent maintained an adamant opposition to hearing Ms. King’s application on the merits, particularly when it knew that she had retained legal counsel before she learned of the Board’s abandonment decision and then moved quickly to deal

with the issue. This fact alone belied the argument that she had been aware of the abandonment hearing and simply neglected to attend. This consideration may not have justified a costs award but considered cumulatively with the Board's mistake and the resulting delay it is a further justification for costs.

[7] I am satisfied that an award of costs in favour of Ms. King in the amount of \$850.00 payable forthwith is warranted.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the Respondent pay forthwith to the Applicant costs in the amount of \$850.00.

"R.L. Barnes"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1019-11

**STYLE OF CAUSE:** KING v MCI

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** August 18, 2011

**SUPPLEMENTARY REASONS  
FOR JUDGMENT AND  
JUDGMENT:** BARNES J.

**DATED:** October 20, 2011

**APPEARANCES:**

Rocco Galati

FOR THE APPLICANT

Teresa Ramnarine

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Rocco Galati Law Firm  
Toronto, ON

FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of Canada  
Toronto, ON

FOR THE RESPONDENT