

Cour fédérale



Federal Court

**Date: 20111109**

**Docket: IMM-2305-11**

**Citation: 2011 FC 1282**

**Toronto, Ontario, November 9, 2011**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**ALAGARATNAM NAGULATHAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] In 2001, Alagaratnam Nagulathas applied for an immigrant visa as part of the Family Class. He was sponsored by his wife, Rathy Tharmalingam. After the couple commenced an application for *mandamus* in 2011, a decision was rendered in relation to the application. Mr. Nagulathas was found to be inadmissible to Canada under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 as there were reasonable grounds to believe that he was a member of a terrorist organization, namely the Liberation Tigers of Tamil Eelam [LTTE].

[2] The fact that a decision has been rendered in relation to the visa application renders the application for *mandamus* moot. However, Mr. Nagulathas seeks his costs of the *mandamus* application, arguing that he should not have been forced to commence litigation in order to have a decision rendered in relation to his application for permanent residence.

[3] For the reasons that follow, I am not persuaded that there are “special reasons” justifying an award of costs in this case.

#### **The Law Governing Costs in Immigration Proceedings**

[4] Costs are not ordinarily awarded in immigration proceedings in this Court. Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 provides that “[n]o costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders”.

[5] This Court has found undue delay in processing a claim to be a “special reason” justifying an award of costs: see, for example, *Manivannan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1392, [2008] F.C.J. No. 1754 at para. 60, and *Aghdam v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 131, [2011] F.C.J. No. 193 at paras. 19-22. “Special reasons” have also been found to exist where an immigration official issues a decision only after an unreasonable and unjustified delay: see the decisions referred to in *Ndugngu v. Canada (Minister of Citizenship and Immigration)* 2011 FCA 208, [2011] F.C.J. No. 933 at para. 6(vi).

**Are There “Special Reasons” Entitling Mr. Nagulathas to Costs in this Case?**

[6] Despite the lengthy time taken to process Mr. Nagulathas’ application for permanent residence, I am not satisfied that special reasons exist in this case justifying an award of costs in his favour.

[7] This is because Mr. Nagulathas does not come before this Court with clean hands. It is now admitted that he lied on his initial immigration application when he indicated that he had never been detained in Sri Lanka. He was in fact detained by Sri Lankan authorities for three years between 1995 and 1998 while he was facing charges under the *Prevention of Terrorism Act*.

[8] Mr. Nagulathas was subsequently acquitted of the charges when the trial judge “g[a]ve [him] the benefit of the doubt” and found that it had not been established that his confession to membership in the LTTE had been given voluntarily.

[9] Mr. Nagulathas’ acquittal was not, however, determinative of the question of whether there were reasonable grounds to believe that he was a member of a terrorist organization. The fact that he had been detained and charged under the *Prevention of Terrorism Act* and his concealment of these facts were undoubtedly of real concern to Canadian immigration authorities, and required further investigation.

[10] While there were delays in the processing of Mr. Nagulathas’ claim, not all of the delay can be fairly attributed to the respondent. Some of the delay was clearly attributable to Mr.

Nagulathas having concealed highly material information in his immigration application. In the circumstances, and in the exercise of my discretion, I decline to make an award of costs in his favour.

[11] I agree with the parties that there is no serious question of general importance for certification in this case.

[12] On the consent of the parties, the style of cause is amended to remove Rathy Tharmalingam as an applicant and the Minister of Public Safety and Emergency Preparedness as a respondent.

**ORDER**

**THIS COURT ORDERS that:**

1. Mr. Nagulathas' motion for costs is dismissed;
2. The style of cause is amended to remove Rathy Tharmalingam as an applicant and the Minister of Public Safety and Emergency Preparedness as a respondent; and
3. No serious question of general importance is certified.

“Anne Mactavish”

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Judge

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

**DOCKET:** IMM-2305-11

**STYLE OF CAUSE:** ALAGARATNAM NAGULATHAS v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 8, 2011

**REASONS FOR ORDER  
AND ORDER:** MACTAVISH J.

**DATED:** November 9, 2011

**APPEARANCES:**

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A. Leena Jaakkimainen FOR THE RESPONDENT

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