

Federal Court



Cour fédérale

Date: 20120411

Docket: IMM-4739-11

Citation: 2012 FC 413

Ottawa, Ontario, April 11, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

WALID MOHAMED ELKATEB

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Walid Mohamed Elkateb, seeks an order of mandamus compelling a decision on his request for reconsideration of his application for permanent residence, dated June 7, 2011, from the Canadian Embassy in Cairo.

I. Background

[2] As a citizen of Egypt, the Applicant applied for permanent residence in Canada under the skilled worker category based on his employment as a dentist. In December 2010, the visa officer sent the Applicant an email requesting an updated reference letter and contact information to verify his work experience. On February 7, 2011, he was sent another email reminder and warning to provide the requested information.

[3] Since there was no response from the Applicant, the visa officer refused his application in a letter dated April 20, 2011, stating “I cannot verify your history of employment and residency.”

[4] The Applicant asked the visa officer to reconsider this decision claiming that he did not receive the emails requesting documents due to internet service disruption during the revolution in Egypt. The visa officer would not grant reconsideration. An entry in the Computer Assisted Immigration Processing System (CAIPS) notes on April 21, 2011 states:

EMAIL RECEIVED FROM APPLICANT WITH DOCUMENTS ATTACHED. CITES SITUATION IN EGYPT IN FEBRUARY AS REASON FOR DELAY. DOCS WERE REQUESTED IN DECEMBER AND REFUSAL WAS SENT IN APRIL AFTER MORE THAN 4 MONTHS, INCL A WARNING LETTER [S]ENT IN FEBRUARY. DOES NOT CHANGE DECISION.

[5] In a letter dated June 7, 2011, Applicant’s counsel also requested that the refusal be reconsidered.

[6] Prior to any response on this request, the Applicant brought an application for judicial review on June 22, 2011 challenging the visa officer's refusal (IMM-4124-11). He also brought the present application in relation to the request for reconsideration on July 25, 2011.

[7] In IMM-4124-11 above, the Applicant argued that the decision was unfair because of the disruption to internet service in Egypt during the revolution. The Respondent maintained that this disruption was very brief and did not provide an excuse for failing to respond to the emails and provide documents. On November 1, 2011, Justice Robert Barnes denied leave for that application.

II. Analysis

[8] Given the background in this case, I see no basis for issuing an order of mandamus compelling a decision regarding the request reconsideration as the Applicant is asking the Court. The principal reason for this is that the matter has already been decided and to do so would lead to inconsistencies and duplication of effort.

[9] As is evident from the CAIPS notes, the visa officer considered and responded to the initial request for reconsideration based on the internet service disruption and declined to accept it. While the initial email was sent in December, with a reminder in February, and a decision rendered in April; the actual disruption was only for a brief period at the end of January and early February.

[10] In addition, Justice Barnes declined leave to judicial review the visa officer's refusal. Forcing a decision on the further request for reconsideration on similar grounds where the refusal was upheld would, in my view, be contradictory.

[11] The Applicant's insistence that his first request for reconsideration was made without the assistance of counsel, unlike the second request in June 7, 2011, is irrelevant. As is counsel's suggestion that if he had included a particular case in the application for judicial review of the refusal, leave might have been granted.

[12] The only matter now before me is whether it is appropriate to issue an order compelling a decision on the further request from reconsideration in light of what has already been considered and resolved by the visa post and this Court.

[13] The Applicant's continued assertion that he would certainly have responded to the emails if he had received them but was unable to do so because of internet disruptions was not accepted by the visa officer or for the purposes of leave for judicial review. It was considered insufficient.

[14] The Applicant is attempting to re-argue these issues by presenting additional evidence in the form of Citizenship and Immigration Canada (CIC) Operational Bulletin 265. Although I see no need to delve into the reasonableness of the previous decision, I note that this Bulletin does not fully support the Applicant's position. It states that on requests for re-consideration based on a failure to receive emails requesting documents "officers should consider all the circumstances of the case and use their judgment in determining whether to re-open the application." While it allows for

reconsideration, it is on a discretionary basis considering all of the circumstances as the CAIPS notes suggest the visa officer did in this case.

III. Conclusion

[15] For these reasons, I am not prepared to issue an order of mandamus compelling a decision on the request for reconsideration. The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: WALID MOHAMED ELKATEB v MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: MARCH 21, 2012

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

DATED: APRIL 11, 2012

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