

Federal Court



Cour fédérale

Date: 20141003

Docket: IMM-2659-14

Citation: 2014 FC 941

Vancouver, British Columbia, October 3, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

FRONTLINE FRAMING LTD.

Applicant

and

**THE MINISTER OF EMPLOYMENT AND
SOCIAL DEVELOPMENT CANADA**

Respondent

JUDGMENT AND REASONS

[1] Frontline Framing Ltd. seeks judicial review of an Employment and Social Development Canada Officer's refusal to issue a positive Labour Market Opinion on the grounds that the company had not demonstrated the existence of a labour shortage for experienced carpenters able to provide framing services for residential properties. A positive Labour Market Opinion would have allowed the company to hire a non-Canadian under the Temporary Foreign Worker Program.

[2] The company also seeks an extension of the statutory time limit for the bringing of this application.

I. The Extension of Time

[3] Reviews of decisions made under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 are to be conducted in a summary fashion. Paragraph 72(2)(b) of the Act requires that an applicant commence its application for judicial review within 15 days of receiving the decision in issue. This application was not filed until 41 days after the company received the decision now being challenged. As a result, the application was commenced 26 days late.

[4] To be entitled to an extension of time, the applicant must establish first, that it had a continuing intention to pursue the application; second, that there is some merit to the application; third, that no prejudice to the respondent arises as a result of the delay; and fourth, that there is a reasonable explanation for the delay: *Canada (Attorney General) v. Hennelly*, (1999)167 F.T.R. 158, 244 N.R. 399 (F.C.A.).

[5] The underlying consideration when deciding a request for an extension of time is that justice be done between the parties: *Grewal v. Canada (Minister of Employment and Immigration)*, [1985] 2 F.C. 263, 63 N.R. 106.

[6] Given that leave was granted in this case, I am prepared to accept that it is arguable that there is some merit to the application. The respondent has not argued that it was prejudiced by the delay, with the result that the third requirement of the *Hennelly* test has also been met.

[7] There is, however, no evidence before the Court to demonstrate that the company had a continuing intention to pursue the application, or that it has a reasonable explanation for the delay.

[8] The decision under review in this case does not finally determine the rights of the applicant for all time. It remains open to the company to reapply for a Labour Market Opinion, should one still be required, and there is no evidence before me to show that doing so will cause the company hardship. In these circumstances, the motion for an extension of time is refused.

II. The Merits of the Application

[9] Given my conclusion with respect to the extension of time, it is not strictly speaking necessary to address the merits of the case. Had it been necessary to do so, however, I would have dismissed the application on its merits.

[10] It was reasonably open to the Employment and Social Development Canada Officer to conclude that Frontline Framing Ltd. had not demonstrated the existence of a labour shortage, particularly in light of the admission by one of the company's owners that it had been able to hire Canadian carpenters on several occasions in the past. The company's real problem seemed to be that these individuals left the company after only three or four months.

[11] Indeed, the owner acknowledged that the company had "retention issues", and that she hoped that hiring a non-Canadian under the Temporary Foreign Worker Program would help Frontline Framing Ltd. achieve a measure of stability in its workforce. That is not the purpose of the Temporary Foreign Worker Program, and it was thus entirely reasonable for Employment and Social Development Canada to refuse the application on that basis.

III. Conclusion

[12] The application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDER AND ADJUDGES that the motion for an extension of time is refused and the application for judicial review is dismissed.

“Anne L. Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2659-14

STYLE OF CAUSE: FRONTLINE FRAMING LTD. v THE MINISTER
OF EMPLOYMENT AND SOCIAL DEVELOPMENT
CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: MACTAVISH J.

DATED: OCTOBER 3, 2014

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