

Supreme Court of Canada Shuts Out Poor Immigrants

Friday, November 4th, 2011

Toronto – In a stunning set back for poor immigrants, the Supreme Court of Canada yesterday refused to hear Nell Toussaint's leave application to determine her constitutional right to a waiver of the \$550 application fee for the Humanitarian and Compassionate application, effectively slamming shut the door on thousands of people seeking to regularize their immigration status.

"I went to the Supreme Court of Canada to ask that the \$550 fee that immigrants have to pay before their Humanitarian and Compassionate application is even processed be waived for poor people like me," explained Nell Toussaint. "I don't understand why the Supreme Court Justices refused to even hear this case."

On April 29, 2011, the Federal Court of Appeal ruled that Citizenship and Immigration Canada should consider on Humanitarian and Compassionate grounds not rejecting an immigration application from individuals unable to pay the \$550 application fee. However, before the Court's decision was made, Parliament had legislated changes to the Immigration and Refugee Protection Act so that Humanitarian and Compassionate application fees could only be waived if the Minister himself filed on behalf of the applicant.

Because the Federal Court of Appeal had rejected Ms. Toussaint's claim to a constitutional right to a fee waiver, this change means that the fee waiver that the Federal Court of Appeal ruled on does not apply to anyone but Ms. Toussaint.

"I filed my Humanitarian and Compassionate application with a request for a fee waiver on July 12, 2011, but am still waiting to hear if my fee has been waived," adds Toussaint, a 42 year old woman, who has lived in Canada since 1999. "Even if it is waived for me, it's not enough. I applied to the Supreme Court of Canada to try to make sure that all poor immigrants could have this chance."

"We are devastated that the Supreme Court has again refused to hear a case involving poverty," commented Bonnie Morton, Chairperson of the Charter Committee on Poverty Issues, an intervener in the case. "Poor people in Canada have been trying for twenty years to get the Court to consider whether discrimination against poor people is contrary to the equality guarantee of the Charter, particularly when it denies access to justice as in this case. It is high time that this was dealt with by the Supreme Court. It is difficult for poor people to get to court on issues like this, and even more difficult for immigrants seeking legal status. Nell Toussaint has brought this appeal forward to help all poor people in Canada and we do not know when the Court will have another chance to consider this critical issue."

Sharry Aiken, an immigration expert and law professor at Queen's University agrees. "Nell Toussaint won the right to be considered for a fee waiver under Section 25 of the Immigration and Refugee Protection Act, which the Harper government amended to preclude fee waivers in response to this litigation. The federal government did an end run around the judicial system to ensure that poor immigrants are denied access to the only remedy available for regularizing their status in Canada. Today the Supreme Court of Canada refused to right that wrong."