

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160831

Docket: A-493-15

Citation: 2016 FCA 214

**CORAM: PELLETIER J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

N.O.

Appellant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on August 31, 2016.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

**WEBB J.A.
NEAR J.A.**

Federal Court of Appeal



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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] The Court has before it a motion brought by the respondent Minister seeking an order that this appeal be dismissed for mootness. The event which gives rise to the motion is that the appellant N.O.'s application for permanent resident status has been granted. She is therefore no longer at risk of removal.

[2] N.O. opposes the Minister's motion, arguing that the appeal is not moot because she could still be subject to deportation if, for whatever reason, she lost her permanent resident status. At that point, the bar on the reopening of refugee claim found at section 170.2 of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27(the Act) would apply so that she would be subject to deportation without having her refugee claim adjudicated. N.O. finds herself in this position because her original refugee claim, which was dismissed, was not based on the true facts for her flight from her country of origin, facts which she suppressed for reasons which are not material to this motion.

[3] N.O. asks that the Minister's motion be decided following an oral hearing which could precede the hearing of the appeal proper. The mootness issue is not such that it cannot be decided on the written record which is before us. Deferring the matter until the commencement of the appeal proper will impose on all concerned the time and expense of preparing for an appeal which might not proceed.

[4] The fact that N.O. is now a permanent resident makes this appeal moot. She no longer has the threat of deportation hanging over her. The outcome of this appeal, one way or the other, will have no practical effect on her situation. It is true that N.O. could lose her permanent resident status at some point but this is speculative and would not justify proceeding with an appeal which is moot: *Guzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 358, [2007] F.C.J. No. 1506, at para. 4.

[5] The factors which would justify the Court in hearing this appeal despite its mootness are absent: The adversarial context is effectively absent in the sense that N.O. no longer has a personal interest in the outcome of the debate. The issue is not one which is elusive of appellate review, as N.O.'s appeal demonstrates. Furthermore, proceeding with the appeal would be effectively a private reference on a constitutional question, a procedure which is to be avoided: see *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, at para. 47; *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97, at para.6.

[6] I would therefore dismiss the appeal.

"J.D. Denis Pelletier"

J.A.

"I agree
Wyman W. Webb J.A."

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-493-15

STYLE OF CAUSE: N.O. v. THE MINISTER OF
CITIZENSHIP AND
IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: WEBB J.A.
NEAR J.A.

DATED: AUGUST 31, 2016

WRITTEN REPRESENTATIONS BY:

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