

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121119

Docket: A-64-12

Citation: 2012 FCA 303

**CORAM: BLAIS C.J.
NADON J.A.
TRUDEL J.A.**

BETWEEN:

SHARMARKE MOHAMED

Appellant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Heard at Vancouver, British Columbia, on November 19, 2012.

Judgment delivered from the Bench at Vancouver, British Columbia, on November 19, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on November 19, 2012)

NADON J.A.

[1] This is an appeal of a decision of Harrington J. (“the Judge”), dated January 20, 2012, 2011 FC 1473, who held that the Minister’s opinion that the appellant constituted a danger to the public in Canada pursuant to paragraph 115(2) of the *Immigration and Refugee and Protection Act*, S.C. 2001, c. 27 (“the Act”), was not unreasonable.

[2] By reason of this determination, the appellant became a person who could be removed from Canada by the minister to Somalia, notwithstanding the difficult and dangerous conditions prevailing generally in that country.

[3] Although the Reasons for Judgment are dated December 4, 2011, the Order which has given rise to this appeal was issued on January 20, 2012. In that Order, the Judge dismissed the appellant's judicial review application and he certified a question of general importance which reads as follows:

In the context of a danger opinion analysis, if the Minister determines that there would be no personalized risk faced by the person concerned and therefore avoids balancing the risk posed by the person with the risk faced, is the Minister required by section 7 of the *Charter* to balance the generalized risk that would be faced at the humanitarian and compassionate stage of the analysis?,

thereby allowing the appellant to appeal his decision to this Court. We note that in his Reasons for Judgment the Judge did not address the question which he certified.

[4] On April 13, 2012, this Court dismissed the appellant's motion for a stay of the removal order made against him. As a result, he was removed from Canada and is no longer present in this country.

[5] We are all agreed that the appeal is moot, the appellant having already been removed to Somalia after his unsuccessful attempt to stay the removal order. In our view, there is no longer a live controversy existing between the parties. While it is true that we have discretion to hear the appeal, notwithstanding its mootness (see: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 (“*Borowski*”)), we do not believe that we should so exercise our discretion in the circumstances of this case.

[6] In *Borowski*, the Supreme Court of Canada set out the criteria which should guide us in exercising our discretion with respect to hearing an appeal that has become moot (*Borowski*, pages

358 to 363). We are satisfied that there is no adversarial context remaining, considering that the question raised under section 115 of the Act was whether or not the appellant should be removed from Canada. As to our proper law-making function, we are satisfied that the issue certified by the Judge will arise in other cases where, in our view, it will be more appropriate to deal with it. To this, we would add that the fact (and this is not a determinative factor, but a relevant consideration) that the Judge did not address the question which he certified militates in favour of declining to exercise our discretion to hear the appeal. In effect, we are deprived of the Judge's view and reasoning on the point at issue. Had the matter not been moot, we would have considered returning it to the Judge.

[7] Consequently, it follows, in our view, that scarce judicial resources should not be used to determine the issue raised by the certified question. In so concluding, we express no opinion as to the merits of the issue arising from the question certified by the Judge.

[8] For these reasons, the appeal will be dismissed.

"M. Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-64-12

STYLE OF CAUSE: SHARMARKE MOHAMED v.
M.C.I.

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 19, 2012

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J., NADON J.A. and
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

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